

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SEP 11 2020

**SC Court of Appeals**

Francis O. Johnson and Ralph L. Haynes, Respondents,

v.

Mason C. Heyward, Berkeley Electric Cooperative, Inc., and Clementine  
Ravenel, Defendants,

Of whom Mason C. Heyward is the Appellant.

Appellate Case No. 2019-001216

The Honorable Mikell R. Scarborough  
Charleston County  
Trial Court Case No. 2008CP1001054

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RECORD ON APPEAL

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Order of June 1, 2010

Johnson  
Plaintiff

versus

McYward  
Defendant

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRC;  Rule 41(a), SCRC (Vol. nonsuit)  Rule 43(k), SCRCP (Settled);  Other - \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRC;  Bankruptcy;  Binding Arbitration, Subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_

FILED  
2010 JUN - 1 AM 9:04  
JULIE J. ARMSTRONG  
CLERK OF COURT

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by Court

$\Delta$ 's Motion to continue and add the county as a party is granted.

Dated at Charleston, South Carolina,

5/28/10  
Date

*[Signature]*  
Judge

This judgment was entered on the \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_, and a copy mailed first class this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_, to attorneys of record or to parties (when appearing pro-se) as follows:

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

Order of August 13, 2010

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 08-CP-10-1054

FRANCIS O. JOHNSON, )  
Plaintiff, )

vs.

**ORDER**

MASON C. HEYWARD, BERKELEY )  
ELECTRIC COOPERATIVE, INC., and )  
CLEMENTINE RAVENEL, )  
Defendants. )

FILED  
2010 AUG 20 AM 9:50  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter came before me on January 20, 2010, and May 28, 2010, concerning certain easements of ingress and egress Plaintiff Frank Johnson claimed to his property by "grant, deed, plat, estoppel, implication, prescription, or necessity." Though certain matters have arisen concerning the claimed dedicated 25 foot easement that prevents a final ruling on that issue and related issues, I am prepared to rule on Plaintiff's Frank Johnson's claim of a prescriptive easement on the old dirt road. I find Frank Johnson has established a claim to a prescriptive easement on the dirt road. <sup>known as</sup> ~~This dirt road is shown with width details on the plat of Steve Johnson entered into evidence as Plaintiff's exhibit A at the May 28<sup>th</sup> hearing.~~ *Resurrection Road.*

In order to establish an easement by prescription, a party must show: (1) the continued and uninterrupted use or enjoyment of a right for a full period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under a claim of right. Jones v. Daley, 363 S.C. 310 609 S.E.2d 597 (Ct. App. 2005) Horry County v. Lachur, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993); Loftis v. South Carolina Elec. & Gas, 361 S.C. 434, 604 S.E.2d 714, 716 (Ct. App. 2004).

There is ample undisputed evidence that the dirt road has been there since "dirt was new." This dirt road has been used by the property owners as a community road for ingress/egress for as long as anyone can remember. Because of this, Frank Johnson testified that he believed he had a

right to use the road. He and his predecessors had used the road. Frank Johnson has asserted his right to use the road independently of the claims of others.

The extent of prescriptive easement is outlined on the Plat of Steve Johnson admitted into evidence at the May 28<sup>th</sup> hearing as exhibit A. The prescriptive easement on the plat is noted on the plat with a notation "Edge of Existing Road known as Resurrection Road.." The road is shown with a solid line, with north/south widths noted at various points in the road. This road by prescription runs in a generally east/west direction parallel and to the north of the claimed dedicated 25 foot right of way for approximately one-half of the total length shown on the Johnson plat and then intersects with the claimed 25 foot right of way at point H and then continues into the claimed 25 foot right of way to line BC (L3) shown on that plat. This road is generally denoted with a solid line with a slight shading right next to the solid line. This is the prescriptive easement that Frank Johnson has established.

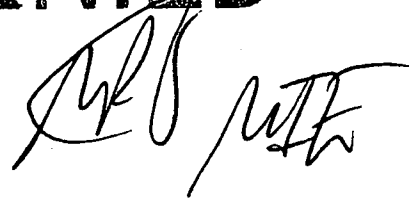
As to all other issues, this court is not ready to rule. However, Frank Johnson has proved his claim to a prescriptive easement of ingress and egress as outlined above, and this court orders and declares that Frank Johnson has a prescriptive easement as outlined above.

**DENIED**  
Honorable Mitchell R. Scarborough, Master in  
Equity for Charleston County

Charleston, South Carolina

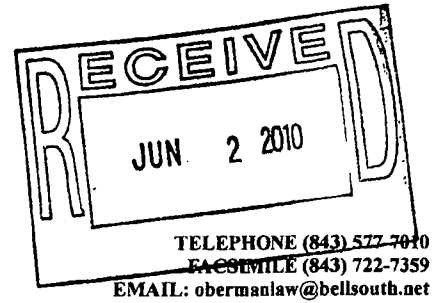
June \_\_, 2010.

8/13



the nature, scope <sup>location</sup> and extent of which is yet  
to be determined by <sup>the</sup> court.

**OBERMAN & OBERMAN, LLC**  
ATTORNEYS AND COUNSELLORS AT LAW  
104 CHURCH STREET  
CHARLESTON, SOUTH CAROLINA 29401



MARVIN I. OBERMAN  
HAROLD A. OBERMAN

June 2, 2010

*Handwritten note: 5/28 file to clerk*

Honorable Mikell R. Scarborough  
Master in Equity for Charleston County  
100 Broad Street  
Charleston, SC 29401

BY COURIER

RE: Francis O. Johnson v. Mason C. Heyward, Berkeley Electric Cooperative, Inc., and  
Clementine Ravenel  
Case No. 08-CP-10-1054

Dear Judge Scarborough:

Per your instructions at the hearing on Friday, May 28, 2010, I enclose a proposed Order regarding the prescriptive easement. If the Order meets with your approval, would you be so kind as to sign it, have a member of your staff file the original, and return three clocked-in copies to me in the enclosed envelope.

With warmest personal regards, I remain

Yours very truly,

Marvin I. Oberman

MIO/shb

Enclosures

cc: John Edward Robinson, Esquire (w/enclosure) (BY COURIER)  
John B. Williams, Esquire (w/enclosure) (BY COURIER)

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Order of June 30, 2015

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 08-CP-10-1054

FRANCIS O. JOHNSON, )  
 )  
 )  
Plaintiff, )

vs. )

MASON C. HEYWARD, BERKELEY )  
ELECTRIC COOPERATIVE, INC., and )  
CLEMENTINE RAVENEL, )  
 )  
Defendants. )

FILED  
2015 JUN 30 PM 2:08  
JULIE J. ARMSTRONG  
CLERK OF COURT

MASON C. HEYWARD, )  
 )  
Crossclaim Plaintiff, )

vs. )

FRANCIS O. JOHNSON and )  
CHARLESTON COUNTY, a political )  
Subdivision of the State of South Carolina, )

Crossclaim Defendants, )

and )

RALPH L. HAYNES, )  
 )  
Crossclaim Defendant and )  
Counterclaimant. )

**FINDINGS OF FACT AND ORDER**

The within matter was originally commenced by the service and filing of a Summons and Complaint in the case of *Francis O. Johnson v. Mason C. Heyward, Berkeley Electric Cooperative, Inc., and Clementine Ravenel* seeking a declaratory judgment that Plaintiff has easements and roads

to his property by express grant, prescription, implication, estoppel, or otherwise (and) a decree setting forth the dimensions of said roads or easements. Those pleadings were dated and filed on February 25, 2008. Service of process was effected within days of the filing of same.

Responsive pleadings and extensive discovery processes were completed. By Consent Order of Reference of the Honorable Roger M. Young, dated December 9, 2008, the matter was referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, to direct entry of final judgment under Rule 53 of the SCRCF.

The matter was tried before this Court on January 19 and 20, 2010, and the parties presented voluminous testimony and exhibits.

On January 20, 2010, after due consideration of the testimony and the exhibits presented to the Court, I entered up preliminary findings of fact and rulings that included the following:

1. I found that the matter was an easement case and not a takings case and there was no constitutional question involved. I found that there was no governmental action involved.

2. I found that there was a prescriptive easement which had been in existence for many, many years and that it had been there as "the old road, a community road, Captain Bill's road" and that prescriptive easement or the road, was in existence "since dirt was new."

3. I found that the parties thereto and adjoining property owners had and continue to have the right to use that prescriptive easement from its originating point on its western boundary at what is now Betsy Kerrison Parkway along and through to its terminus to the east approximately 2,000 feet at a point slightly to the north of the northeast corner of the property of Louise Donny Bennett. I found that there was difficulty as to the extent of that easement as to its width at various points running from its beginning on Betsy Kerrison Parkway, along its length of some 2,000 feet to point

of termination. There is no question that there is a prescriptive easement along the whole length of what has been called or named "Resurrection Road."

4. I found that in addition to the prescriptive easement, there is an easement that was created in 1996 and it was dedicated to the County by the Defendant, Mason C. Heyward. That dedicated easement was intended for the use of the public.

5. I found that the dedicated easement was shown on a survey and plat by Lewis E. Seabrook dated January 18, 1996, revised February 27, 1996, and recorded on May 20, 1996 in Book G-269, page 298, and Plat Book DA, page 789, RMC Office for Charleston County.

6. That survey and plat was entitled "Johns Island, Charleston County, South Carolina, Plat of Subdivision of Lot J, Owned by Mason C. Heyward, into Lot J-1, Containing 1.30 Acres and an Approximately 5.0 Acre Residual Tract and a 0.51 Acre R/W."

7. The right of way is shown on that approved and recorded plat as "Resurrection Rd. 25' R/W" containing 25.24 feet in width at its beginning on Betsy Kerrison Parkway and running generally in a south, southeasterly direction—north  $82^{\circ} 14 \text{ min. } 52 \text{ sec.}$  west, 891.13 feet to its termination on property of the Nautilus Group, shown as TMS No. 204-00-00-017, and at its terminus is shown to be 25.13 feet wide, all as is shown on the Final Approved Plat signed by the Clerk, Charleston County Council and the Director of Planning, Charleston county Planning Board, dated May 7, 1996 and designated as No. PP#16467. That right of way is also shown to contain 22,290 square feet.

8. An examination of that plat shows a broken and wavy line to north and parallel to the 25' Resurrection Rd. 25' R/W and at the point it intersects with the 25' R/W at its easternmost 298.80 portion it is identified as "Centerline Resurrection Rd."



9. In my ruling from the bench on January 20, 2010, I reserved the question as to whether or not the 25' R/W dedicated by the Seabrook survey and plat was abandoned by the County and I left open the question of abandonment because the County of Charleston was not at that date a party and I had not heard that the County had done anything during the thirteen or fourteen years that the dedicated easement had been in existence.

10. I ruled from the bench that the open questions unanswered on January 20, 2010, was the location of the easement and the extent of the easement—that is, exactly where it is ten feet, twelve feet, or fourteen feet wide and whether “you can couple it with the 25 feet that’s there” **and those decisions are within the equitable powers of this Court.** (emphasis added)

11. I found that in previous cases, the parties had the option of working out a location on their own and I strongly suggested that the ball was in the lawyers’ court to resolve something among themselves.

12. I even suggested that the agreement among the parties might entail payment of some money to get it and I suggested that something be worked out within 30 to 60 days.

13. All of this will appear by a transcript or “working copy” prepared by Bernadette A. Cali, CSR, which is made a part hereof by reference.

14. Though the Plaintiff (Johnson) holds out otherwise—that he had taken various proactive steps—and presented to the Court various surveys and plats commissioned from George A.Z. Johnson, Jr., Inc. attempting “to work something out”, nothing was accomplished and the matter dissolved into amended pleadings, added parties, crossclaims, motions, memoranda in support and in adverse to motions, depositions, and appearances before the Court.

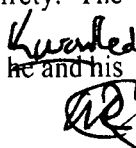
15. The litigation and subsequent legal maneuverings resulted, in part, from the position of the County of Charleston “that the purported dedication (plat of 1996) was merely an offer to dedicate the property and that if, arguendo, there was a dedication, there was no acceptance of the property offered for dedication” and the entrance of Ralph L. Haynes, M.D. as a concerned property owner–Crossclaim Defendant and Counterclaimant–into the morass of claims, counterclaims, and crossclaims into which the litigation had descended.

16. Unfortunately, the parties did not take my suggestion of January 20, 2010 that they resolve something among themselves–that is to work something out–and the case was set for a day certain trial commencing on January 14, 15, 17, and 18, 2013. The trial of the matter commenced at 2:00 p.m. on Monday, January 14, 2013. The following appeared before the Court: Marvin I. Oberman, Esquire, representing Francis O. Johnson (Plaintiff) and Ralph L. Haynes (Cross-Claim Defendant and Counterclaimant). Francis O. Johnson appeared with Mr. Oberman and Dr. Haynes appeared through his deposition de bene esse, which the Court read in full; John Edward Robinson, Esquire, attorney for the Defendant and Cross-Claim Plaintiff, Mason C. Heyward, and his client, Mason C. Heyward; John B. Williams, Esquire, the attorney for the Defendant, Berkeley Electric Cooperative, Inc.; and Bradley A. Mitchell, Esquire, representing the Defendant, Charleston County.

17. Marvin I. Oberman, representing the Plaintiff, Francis O. Johnson, and Crossclaim Defendant and Counterclaimant, Ralph L. Haynes, entered, through testimony and exhibits, the following:

- A. As Exhibit “A”, the working copy of the Court’s findings of fact and rulings from the bench made on January 20, 2010

B. The Consent Order of October 20, 2011 joining Ralph L. Haynes into the suit, individually

18. Mr. Oberman offered to read the de bene esse deposition of Ralph L. Haynes taken on November 26, 2012 and to resubmit the 18 exhibits attached to that deposition. The Court demurred as to the reading of the deposition into the record; took the deposition and 18 exhibits to chambers; and as promised, read that deposition as to the direct and cross-examinations in its entirety. The Court found, from the reading of that deposition, that Dr. Haynes was well informed and <sup>knowledgeable</sup> ~~he~~ and his ~~testimony were most impressive.~~ 

19. Steven J. Johnson was again qualified as an expert witness as to his skills and experience in surveying. As will appear by the transcript of “working copy” prepared by Bernadette A. Cali, CSR dated January 20, 2010 (Exhibit “A”), I stated there were open questions as to the location and the extent of the easement—that is, where it is, 10', 12', 14' wide, whether “you can couple it with the 25' that’s there”. Mr. Steven Johnson testified that he and his firm—George A.Z. Johnson, Jr., Inc.—had drawn a survey and plat showing the physical location of Resurrection Road and as per questions raised on January 20, 2010, had drawn a survey and plat showing in detail showing the physical location of Resurrection Road and, as per questions raised on January 20, 2010, that survey and plat showed in detail the various widths of the existing prescriptive dirt road known as Resurrection Road at approximately fifteen (15') foot intervals. It also showed the “existing 25' right of way” contained within the letters and line formed thereby A-B-C-D-A. That survey and plat showed that the existing 25' right of way ran generally to the south and parallel to the prescriptive dirt road known as Resurrection Road up to point H on the northernmost boundary line of the existing right of way, some 593.28' east of Betsy Kerrison Parkway. The existing dirt prescriptive

road at the point H intersected with the northern boundary line of the 25' easement and continued to run in an easterly direction from point H approximately 450' (within and threading that 25' dedicated easement) to line B-C (also shown as L3 on the plat), the easternmost terminus of that 25' right of way lies about midway from the northernmost boundary line of the property of Francis O. Johnson (204-00-00-014) and at the southwesterly corner of the property of Ralph L. Haynes (204-00-00-017).

20. That survey and plat was entered into evidence through Mr. Steven Johnson as Exhibit "1" and in board form as Exhibit "1-A" and it specifically references the "Plat by E.M. Seabrook, Jr., Inc., dated January 18, 1996, recorded in Plat Book DA, page 789, Planning Board No. 16467, RMC Office for Charleston County."

21. The referenced plat of E.M. Seabrook, Jr., Inc. dated/revised February 27, 1996 was entered into evidence as Exhibit "2" and in board form as Exhibit "2-A" and shows "Plat of the Subdivision of Lot J, Owned by Mason C. Heyward Into Lot J-1, Containing 1.30 Acres and an Approximately 5.0 Acre Residual Tract and a 0.51 Acre Right of Way."

22. The plat, by Seabrook, on its face shows "Approved Final Plat" signed by the Clerk of Charleston County Council and the Director of Planning of Charleston County Planning Board and that approval was dated May 7, 1996 as No. PB 16467.

23. The coversheet—Charleston County Planning Department Subdivision Transmittal Coversheet showing meeting dates of the Planning Board on April 29, 1996 and the Public Works Committee on May 2, 1996 and County Council Meeting of May 7, 1996—outlines in detail the efforts of Mason C. Heyward and his surveyor—Lewis E. Seabrook, to secure the Resurrection Road 25' Right of Way through the Health Department, Public Works Department, and the Planning

Department. The Planning Department and Public Works Department had recommended disapproval and the Health Department had recommended approval. The exhibits submitted into evidence showed the Planning Staff and Public Works Department recommended disapproval; the Public Works Department had indicated the minimum width right of way necessary to construct a County standard road is 50' and that **"Resurrection Road serves as access to the approximately 25 acres of property with high developmental potential."** (emphasis added) The Minutes dated April 29, 1996 showed the actions taken as to File 16467; plans of Mason Heyward; that "Larry Kennerty explained to the Board that the Planning Staff and Public Works Department requested a 50' road right of way but the applicant will only give a 25' right of way." Mr. Kennerty informed the Board, "Mr. Heyward owns the entire 50' strip, but he is only willing to give us 25' of right of way. There are landlocked properties behind him, it is the County's obligation to provide access to those landlocked properties." Mr. Heyward stated **"If the people in the rear would like access to the property, let them pay him for the additional 25' of right of way."** (emphasis added) E.M. Seabrook, Jr. (the surveyor for Mr. Heyward) and by carbon copy, Mason Heyward were notified by letter of May 8, 1996, that "County Council at their meeting on May 7, 1996 **granted APPROVAL of a 25' road right of way being dedicated to the public** (emphasis added). Resurrection Road serves as access to approximately 25 acres of property with high developmental potential." That letter was signed by Beverly T. Craven, Clerk of Council and copies were sent to County Planning Department, Public Works Department, and Mason Heyward.

24. All parties and witnesses are in agreement that the westernmost portion of the existing 25' right of way (A-B-C-D-A) of approximately 240' (that is, the area between Betsy Kerrison Parkway and the westernmost boundary of the easement for the overhead utility line shown as

existing 75' power line easement, 37.5' each side per reference No. 2) is as a practical matter impassable because of grand trees and other topographic hindrances in that area.

25. The Plaintiff, Johnson, and Haynes submit that the area to the north of the dedicated easement and to the east of the 75' power line easement (referred to by Mr. Oberman as "the radish patch") can be used to expand the width of Resurrection Road to the desired and usable 25' width without in any way impacting practically on the home place property of Mason C. Heyward (204-00-00-133).

26. The attorney for Francis O. Johnson and Ralph L. Haynes and those individuals have respectfully requested that this Honorable Court exercise not only its legal powers but apply the maxims of equity with which it is empowered so that it will not suffer a wrong to be without a remedy Key Corporate Capital v. County of Beaufort, 360 S.C. 513, 519, 602 S.E.2d 104 (Ct. App. 2004) Lane v. New York Life Ins. Co., 147 S.C. 333, 369, 145 S.E. 196, 207 (1928); see also State ex rel. Daniel v. Strong, 185 S.C. 27, 43, [519\*519] 192 S.E. 671, 678 (1937) ("[E]quity abhors a wrong without a remedy.") and require as done that which ought to be done in fairness and with conscience. Regions Bank v. Wingard 394 S.C. 241, 715 S.E.2d 348 (Ct.App. 2011). Those parties submit that equity would treat the subject matter, as to collateral consequences, and incidents, in the same manner as if the final acts contemplated by the parties had been executed exactly as they ought to have been. The Court has the power to compel the parties to do that which ought to be done and which was contemplated by the parties at the time of the transaction. Kerr v. City of Columbia, 232 S.C. 405, 410, 102 S.E.2d 364 (1958). Equity imputes an intention to fulfill an obligation. Where



an obligation to perform an act rests on one with the means of performing, that person will be presumed to intend to perform through such means, and usually will not be permitted the contrary.<sup>1</sup>

27. The within case pertains to and is limited to the area between Betsy Kerrison Parkway and line B-C as shown on the plat of George A.Z. Johnson, Jr., Inc., measuring from Betsy Kerrison Parkway to that line, 891' and does not impact upon the balance of the existing dirt road known as Resurrection Road to the east thereof to point M on that plat of Johnson.

28. Francis O. Johnson and Ralph L. Haynes submit that the only a portion of area of 1,733 square feet referred to the "radish patch" by Mr. Oberman; and the small area to the east of the 75' power line easement at point H would be all that is necessary to be given up by Mason C. Heyward and that the area within the 75' power line easement would allow the edge of the existing dirt road known as Resurrection Road to be expanded into an existing 25' right of way so as to impute the intention on the part of Mason C. Heyward to fulfill his obligation in dedicating a 25' easement of ingress/egress by his actions in 1996.

29. This Court has found that there is a prescriptive easement on the old community road and evidence has been presented of the 25' dedicated easement. Francis O. Johnson and Ralph L. Haynes submit to the Court their plan that does not unduly burden Defendant Heyward. In Goodwin v. Johnson, 357 S.C. 49, 591 S.E.2d 34 (Ct. App. 2003) the court states:

A court using its equity powers may relocate an easement when the relocation will not (a) significantly lessen the utility of the easement, (b) increase the burdens on the owner of the easement in its use and

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<sup>1</sup>Equitable Maxims were discussed in detail in The South Carolina Bar Continuing Legal Education Seminar of the 2011 Master-in-Equity Bench Bar of Friday, October 14, 2011, as will appear by reference to the printed text, which is made a part hereof by reference thereto.

enjoyment, or c) frustrate the purpose for which the easement was created. Restatement (Third) of Property: Servitudes § 4.8

Those parties proposed expansion of the prescriptive easement into or through the radish patch towards or to the 25' dedicated easement, moves the easement further away from Heyward's property and combines two divergent paths of travel into one. This seems to be the logical and equitable thing to do. Rather than necessitating Plaintiff and Dr. Haynes to remove trees and denude the landscape by cutting a new path within the 25' dedicated easement of the parties' proposal, with minimal change, charts a reasonable path. Heyward's sole argument is that this path will "frustrate the purpose for which the easement was created" and allow increased automobile traffic that will impact on his quality of life. Johnson and Haynes disagree. The proposal certainly carries out the intentions of Heyward's dedication while doing nothing to undermine the right of ingress and egress on the prescriptive easement. Heyward will not be inconvenienced nor his quality of life impacted by the movement of the easement boundary to the south and **away** from his property.

The purpose of the restatement rule is to allow development as long as it does not unduly interfere with the legitimate interests of the parties. See Generally, St. James Village, Inc. v. Cunningham, 210 P.3rd 190, 194-195 (2009) discussing Restatement (Third) of Prop: Servitudes § 4.8 cmt. f (2000). Heyward's argument that this change would unduly burden the easement is premature, and, contrary to the spirit of the Restatement rule in Goodwin.

30. Mr. Oberman refers to the area between the existing dirt road prescriptive easement and the "Existing 25' Right-of-Way" as the "radish patch" and it is said to contain approximately 1,773 square feet. That area is within the staff of the flag lot of Mason C. Heyward (TMS No. 204-00-00-133), to the south of property of Clementine Ravenel (TMS No. 204-00-00-019), and to the west of

the overhead utility line easement. That "radish patch" area is some two hundred fifty (250') feet to the east of the home lot of Mason C. Heyward and is isolated from his home by the utility easement and the prescriptive dirt road easement and only a proportionately small area of the "radish patch" would be necessary to even out and make consistent the southernmost boundary line of the existing prescriptive Resurrection Road easement.

31. The widening of the prescriptive dirt road easement to the south towards or into the Existing 25' Right-of-Way some four to five and one-half feet would have little to no detrimental effect on the value of the patch area to Mason C. Heyward. Mr. Heyward could even continue to cultivate his "radishes" or other plants on the remaining area. The Court could, however, in the exercise of equity, have an appraisal made of the effected area and award Mr. Heyward monetary compensation for the effected square footage.

#### COMPENSATION

32. The graverman or the basic gist of the claims of Mason C. Heyward and his almost herculean efforts to block the desired, required ingress/egress to the properties of Francis O. Johnson and Ralph L. Haynes was and is summed up in his desire for "compensation." As far back as April/May, 1996, as will appear in the Minutes dated April 29, 1996, Larry Kennerty informed the Board that "Mr. Heyward owns the entire 50' strip, but he is only willing to give us 25' of right of way to the landlocked properties behind him, it is the County's obligation to provide access to those landlocked properties." Mr. Heyward stated **"if the people in the rear would like access to the property, let them pay him for the additional 25' of right of way."** (emphasis added) Mason C. Heyward testified under oath in his depositions and the two trials before this Court that he wanted compensation and that "if Mr. Johnson wants to develop it, if he wants to build houses in there-I



should be compensation for it.” Francis O. Johnson testified that Mason C. Heyward threatened to block ingress/egress to Johnson’s property unless he, Mason C. Heyward, was paid compensation. That he, Mason C. Heyward, first asked for the sum of \$10,000, which he then raised to \$50,000. It is to be noted that there was testimony that Mr. Heyward would alternatively take one or more of the subdivided lots as his compensation. It is to be further noted that Mr. Heyward demanded and received a check of \$600 dated April 30, 1999 for his grant of easement to William M. Kerrison, who at that time owned Parcel 16.

33. Though counsel for Mason C. Heyward has couched Heyward’s arguments proposing the ingress/egress easements on livability/environmental grounds, i.e., increased traffic on Resurrection Road, there has been no showing that Resurrection Road would be relocated closer to an area where the garage of Mr. Heyward is sited and that the grant of the 25' Resurrection Road easement was given at the expressed request of Mr. Heyward and his surveyor to allow the construction of his approximate 12,000 square foot home in the subdivided Lot J-1, 1.3 acres, as a compromise and as access to the approximately 25 acres of other properties with high developmental potential to the perceived landlocked properties behind Mr. Heyward and that it was an obligation of the County to provide access to those landlocked properties.

### **THE POSITION OF THE COUNTY OF CHARLESTON**

(Dedication and Acceptance)

34. The County of Charleston had previously taken a position “that the purported dedication (plat of 1996), was merely an offer to dedicate the property and that if, arguendo, there was a dedication, there was no acceptance of the property offered for dedication.”

35. Prior to the commencement of the trial on February 14, 2013, counsel for the County of Charleston and Marvin I. Oberman announced that Francis O. Johnson and Dr. Haynes had agreed to forego their cause of action of conspiracy against the County of Charleston and that the County agreed in exchange to forego its position as to the denial of the dedication and acceptance of the 25' easement.

36. The law as to a publically dedicated easement of ingress/egress is clearly set forth in the case of John M. Tupper, et al. v. Dorchester County (Dorchester County Council), et al., 326 S.C. 318, 487 S.E.2d 187 (1997) and in the cases as cited therein in which the Court takes up the essential elements of a publically dedicated easement. The case states in summary form that: "Two elements are required to perfect dedication." "First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use." Second, "and there must be some form of acceptance of the offer to dedicate." Helsel v. City of North Myrtle Beach, 307 S.C. 24, 413 S.E.2d 821 (1992). Dedication is an exceptional manner of passing an interest in land and proof thereof must be strict, cogent, and convincing. Mack v. Edens, 320 S.C. 236, 464 S.E.2d 124 (Ct.App. 1995). To have a completed dedication, there must be some form of acceptance of the offer to dedicate. Baugus v. Wessinger, 23 Am.Jur. 2d Dedication ¶42 at 38 (1983); Hodge v. Manning, 241 S.C. 142, 127 S.E.2d 341 (1962). **The use, repair, and working of the streets by public authorities is a mode of acceptance.** (emphasis added) Chapfee v. City of Aiken, 57 S.C. 507, 35 S.E.2d 800 (1900). The matter of dedication and acceptance was also taken up in the unpublished opinion of S.W. Youngblood v. County of Charleston, filed on November 2, 2006 and that unpublished opinion quoted the elements outlined in Tupper v. Dorchester County (citing Helsel v. City of North Myrtle Beach) and stated that the second element of perfecting a dedication, the

acceptance, must either be expressed or implied and the acceptance must be made within a reasonable amount of time. Helsel, 307 S.C. 27, 413 S.E.2d at 823 [citing Outlaw v. Moise, 322 S.C. 24, 30, 71 S.E.2d 509, 511 (1954)]. Acceptance may be inferred from the public's continuous use of the property or a public authority's maintenance of the property. Van Blarcum, 337 S.C. at 451, 523 S.E.2d at 489 (citing Tupper, 326 S.C. 326, 487 S.E.2d at 192).

37. In the case before this Court, there should be no doubt that the owner, Mason C. Heyward, expressed in a positive and unmistakable manner his intention to dedicate his property to public use. Mr. Heyward and his civil engineer and land surveyor, Lewis E. Seabrook, went through a series of steps and appearances before the Charleston County Planning Department, the Public Works Committee, the Health Department, and Charleston County Council to seek approval of a 0.51 acre right-of-way shown on the survey as "Resurrection Rd. 25' R/W 22,290 square feet" between Betsy Kerrison Parkway and terminating to the east on a line 25.13 feet in width (line BC on the Johnson survey). Those parties—Mr. Heyward and Mr. Seabrook—appeared before those various committees and council to argue for the 25' right-of way in lieu of a 50' right-of-way required at that time..

38. Based upon those active steps and plea of Mason C. Heyward and his engineer/surveyor, the County Council of Charleston, by its letter of Beverly T. Craven, Clerk of Council dated May 8, 1996, informed Mr. Seabrook, Mr. Mason Heyward, the County Planning Department, and Public Works Department that "County Council at their meeting on May 7, 1996 granted approval of a 25' road right of way to be dedicated to the public. Resurrection Road serves as access to approximately 25 acres of property with high developmental potential." These active steps by the owner, Mason Heyward, and his engineer/surveyor expressed in a positive and unmistakable manner the intention

to dedicate property of Heyward to public use. The survey and plat prepared at the request of Mr. Heyward and presented by Mr. Heyward and his surveyor to Charleston County Counsel was marked as an approved final plat on May 20, 1996. It was recorded in Plat Book DA, page 789, RMC Office for Charleston County and has remained as notice to the public since that date to the present.

39. To have a completed dedication, there must be some form of acceptance of the offer to dedicate. The letter of the Clerk of the Charleston County Council states clearly and explicitly that the "25' road right of way (is) being dedicated to the public."

40. James R. Neal, the Director of Public Works for the County of Charleston, testified that the County of Charleston has records of 34 years of continuous maintenance on Resurrection Road, including motor grader operators to maintain the road. The assigned motor grader operator would go down Betsy Kerrison to blade the roads to the one side, come back and blade the roads on the other side. If the operator needed dirt/fill or whatever, then a foreman would follow up with an inspection to see that he did it properly. Inspections and maintenance occurred on a monthly basis. Numerous exhibits were entered through Mr. Neal and they included a list of the county non-standard roads. Resurrection Road was shown on that list and it was noted—"approximate years maintained—34; it is in Council District 8; number of adjacent properties are 9. Travelway is 30'; no turn around at the end. No drainage. There are trees. The length in miles is .4." Mr. Neal agreed that the existing right-of-way had at least existed since August 16, 1982. Mr. Neal testified that a portion of the existing prescriptive right-of-way was within the boundaries of the dedicated 25' right- of- way and was regularly maintained by the County of Charleston.

41. Mr. Neal stated that he, as the Director of Public Works, sent a letter to all persons owning property joining Resurrection Road that stated in part as follows:



Our records reflect that you reside upon or along property adjoining a road formerly characterized as a community road. County records show that you have allowed lengthy public use of property for the above-referenced road; and the County has performed long-term, continuous maintenance of this road for 20 years or more. As a result of these actions, Council determined as of December 6, 2011 at a County Council meeting that Resurrection Road is a public road. In that regard, please consider the following:

1. The County believes that this road is a public road because you have allowed the public to use your property for over 20 years, and the County has no record of your refusing our maintenance and/or improvement efforts. The County is planning to improve this road's condition.
  
4. Unless you notify the County in writing at the above-listed address within 90 calendar days from the date of this date of letter that you disagree and/or oppose these actions, the County will proceed with this continued maintenance and improvements under its public roads maintenance system.

42. A like letter was sent to all property owners adjoining Resurrection Road and only Mason C. Heyward gave notice, through counsel, that he disagreed with the contents of the letter.

43. Counsel for the County of Charleston presented two long-term employees of the County—Mr. Raymond Robinson and Mr. Paul Porter—who testified that they maintained, repaired, and worked on Resurrection Road over a period of many years. These employees testified that they had on a regular basis graded portions of the road, that they had at times ordered fill, packed and leveled any developing potholes, **and that they had trimmed and cut back vegetative growth on either side of the travel path.** (emphasis added) Mr. Neal and these employees testified that a green Resurrection Road sign had been erected by the County, in place for many years, and was maintained by the County. The green color of the sign indicated that Resurrection Road was a public road as opposed to a blue sign which would indicate that it was a private road maintained by the



residents of that private road. The testimony and records of Mr. Neal and the testimony of the on-the-ground workers of the County of Charleston showed a continuing long-term repair and working of the road by the public authorities of the County of Charleston. Those actions and records, together with the correspondence to adjoining land owners, show a strict, cogent, and convincing dedication of Resurrection Road and the acceptance of that offer to dedicate that road as a public road.

### **THE AGREEMENT - DEDICATION**

44. In the Spring of 1996, Mason C. Heyward sought to subdivide his parcel of property (TMS No. 204-00-00-018) comprised of 6.3 acres into a 1.30 home lot (TMS 204-00-00-133)—Lot J-1 and the residual—Lot J—5.0 acres. Mr. Heyward's unsubdivided parcel fronted to the west on Betsy Kerrison Parkway.

45. Mr. Heyward testified that he wished to replace his former home that had burned, but he never could or would explain the necessity that Lot J-1 (1.30 acres) be subdivided from the overall parcel of 6.30 acres nor why he could not have ingress/egress to Lot J-1 through and over his residual property directly from Betsy Kerrison Parkway.

46. Mr. Heyward testified that he was told that he would be required to dedicate a fifty (50') foot ingress/egress easement commencing at Betsy Kerrison Parkway and running in a generally westerly direction approximately 891.13 feet to provide a 50' roadway to the approximately 25 acres of property with high developmental potential.

47. Mr. Heyward and his surveyor/engineer, Mr. Seabrook, prevailed upon the various agencies of the County of Charleston and County Council of Charleston to allow, in lieu of the 50' easement, a 25' easement; those prayers were agreed upon and the prepared survey and plat was approved and recorded at the RMC Office for Charleston County.



48. Mr. Heyward, upon his request, was allowed approval of "a 25' road right-of-way being dedicated to the public" and it was again noted that Resurrection Road serves as access to approximately 25 acres of property with high developmental potential.

49. Mr. Heyward, based upon his agreement with the County of Charleston, built his home of approximately 11,500 to 12,000 square feet.

50. The County of Charleston as part of its agreement allowed the twenty-five (25') foot easement in lieu of the fifty (50') foot easement, then at that time required, and maintained Resurrection Road for the benefit of all landowners adjoining it and the citizens of Charleston County.

51. The Court has previously remarked, in paragraph 18 of these findings of fact that the witness, Dr. Haynes, was well informed and that he and his testimony were most impressive. The Court has taken the opportunity to re-read that de bene esse deposition.

52. The Court finds that the testimony elicited on the direct and cross-examinations form a summary—a framework of the essential facts and elements of this long and vigorously contested litigation.

53. The testimony of Ralph L. Haynes elicited by deposition at the Landstuhl Medical Center in Landstuhl, Germany shows, outlines, and ratifies in capsule form:

- (a) That he is the owner of land—Parcel No. 204-00-00-017—comprised of 12.8 acres lying some 891' to the east of Betsy Kerrison Parkway.
- (b) Dr. Haynes purchased the parcel April 22, 1999 by deed recorded May 5, 1999 in Book U-235, page 436, RMC Office for Charleston County.
- (c) Dr. Haynes was in possession of the Seabrook plat dated January 18, 1996, revised February 27, 1996, approved May 7, 1996, and recorded May 20,

19996, in Plat Book DA, page 789, RMC Office for Charleston County, in 1999 when he acquired parcel 17.

- (d) The property of Dr. Haynes makes up more than fifty (50%) percent of the “approximately 25 acres of property with high developmental potential” put forth by Mason C. Heyward and/or his supporters as a reason to allow him to grant a twenty-five (25') foot road right-of-way in lieu of the requested fifty (50') foot right-of-way. (See letter of approval of may 8, 1996 and agenda notes attached to County Council meeting of May 7, 1996).
- (e) The parcel of Dr. Haynes (17) together with the parcel of Francis O. Johnson (#14 - 5.3 acres) makes up 18.1 acres or 72.4% of the 25 acres of property with high developmental potential.
- (f) The Planning Board Minutes of April 29, 1996 show that Larry Kennerty informed the Board that “there are landlocked properties behind it. It is the County’s obligation to provide access to these landlocked properties.”
- (g) While under the previous ruling of this Court as to the prescriptive nature of the existing roadbed of Resurrection Road, Dr. Haynes would have access of as little as 12.1 feet wide, the property of Dr. Haynes and of Francis O. Johnson would be essentially landlocked for “high developmental potential” as submitted by Mr. Kennerty in support of Mr. Mason Heyward.
- (h) Ralph L. Haynes, M.D. testified “. . . in summary, I purchased that Parcel 17 over 15 years ago as an investment based on access to that property. It appears that Mason Heyward went before the County in 1996 and he and his surveyor-engineer did everything by proper procedure and dedicated 25-foot access easement to the public. I clearly would never have purchased a property had it been at risk of being landlocked. I noted in my original letter, which was an answer in October 8, 2010, that I vigorously opposed the abandonment of Resurrection Road by the County of Charleston. And noted that any proposed abandonment would markedly affect the value of my property and would make it essentially worthless as well as abrogating the right -- abrogating the right-of-way would disenfranchise those who were relying on such county road access. Also, the County of Charleston had accepted the dedication. The County had acquired a 25-foot right-of-way. The County had stamped the plat approved final plat, quote, unquote, which approval was assigned by Beverly Craven, Clerk of the County Council, and William Miller, Director of Planning in accordance with Exhibit 10, and recorded the plat in book BA, page 298, in the public records. Further, the County Council, by its letter of May 8, 1996, informed E.M. Seabrook, who was Mason's surveyor-engineer as well as the County Planning Department,



the Public Works Department, and Mason Heyward that the County, at their meeting on 7 May, 1996, had granted approval of a 25-foot road right-of-way -- I correct myself there -- dedicated to the public, and that Resurrection Road served as access to approximately 25 acres of property with high developmental potential. Again, those two sentences are clearly interconnected and related and refer to the same easement and event. So the County of Charleston had accepted the dedication by its actions as listed above and has further evidenced that acceptance by at least the following actions, and I have here a picture of the sign that the County has put up and maintained and that had been present for over 23 years, which is this sign."

54. This Court has given weight to the aforesaid testimony and exhibits of Ralph L. Haynes and has at the urging of counsel for Francis O. Johnson and Ralph L. Haynes given great weight to its legal powers and to its right and duty to apply the maxims of equity as referenced in paragraph 26 of its findings and therefore rules:

This Court, having reviewed the testimonies of the great number of witnesses and the voluminous items of evidence, including correspondence, surveys and plats, aerial and on the ground photographs, tax maps, minutes and other written documentation of the County of Charleston, pleadings and supporting affidavits of the parties and their supporting witnesses and after days of trial, enters its Order as follows:

**FIRST: The Prescriptive Easement.** The existing dirt road known as Resurrection Road as shown on the "Exhibit Showing the Physical Location of Resurrection Road Located on Johns Island, Charleston County, South Carolina" by George A.Z. Johnson, Jr., Inc. dated October 31, 2011, entered as Exhibits "1" and "1-A", in board form, is, as per my ruling from the bench, of January 20, 2010, a prescriptive easement and that the parties and adjoining property owners had and continue to have the right to use that prescriptive easement from its originating point on the western boundary at what is now Betsy Kerrison Parkway, along and through to its terminus to the east approximately



2,000 feet at a point slightly to the north of the northeast corner of the property shown as Parcel # 204-00-00-016—property of Louise Donny Bennett.

SECOND: George A.Z. Johnson, Jr., Inc. be retained at the expense of Francis O. Johnson and Ralph L. Haynes to redraw in two or more plats, in recordable form:


- (1) A survey and plat commencing at Betsy Kerrison Parkway and terminating and including the property of Francis O. Johnson to Line J-N (the easternmost boundary line of parcel 14) on the survey of October 31, 2011 with specific detail up to Line B-C on said plat, including the Existing 25' Right-of-Way (A, B, C, D, A)
- (2) A survey and plat showing the area from Line B-C (also shown as L3) to the point of termination at point M (1.0.5/8" Rebar).

THIRD: The southernmost boundary line between the Existing Dirt Road known as Resurrection Road be moved or relocated to the south between points A and H on the Johnson survey and plat so as to widen the prescriptive easement from the said point A to point H to a uniform width of twenty-five (25') feet.

FOURTH: From point H on the Johnson plat (the point of intersection of the existing dirt road with the existing 25' Right-of-Way) the existing dirt road be incorporated into and become a part of the easternmost 415.37' to Line B-C on the Johnson plat.

FIFTH: The movement or relocation of the southernmost boundary of the existing dirt road, as aforesaid, will create a viable, uniform right-of-way to Line B-C (line L2) on the plat of Johnson with a length of 891.13 feet and a uniform width of twenty-five (25') feet as contemplated by the actions of Mason C. Heyward and Charleston County Council, all as shown on the approved Final Plat recorded in Plat Book DA, page 789, RMC Office for Charleston County.

SIXTH: The area of the Existing 25' Right-of-Way to the west of point H on the Johnson survey and plat is impassable because of vegetative and topographical features and that area be used by the

*Returned*  


County of Charleston in its natural state ~~as a passive nature park~~ <sup>to</sup> or at the request of Mason C. Heyward ~~returned to him~~ <sup>was</sup> as the compensation for the portion of the "radish" patch used to create the uniform twenty-five (25') foot of the westernmost portion of Resurrection Road.

SEVENTH: The attorneys for the parties and the parties have presented to this Court countless items of testimony, exhibits, and written and verbal arguments. Days have been spent in trial, depositions, and pleadings. This Court has distilled the crux—the basic, central, or critical points—of the litigation before it. This whole matter boils down to two questions, that is:

- (1) What did the parties intend to accomplish by their actions taken in the Spring of the year, 1996?
- (2) Can this Court by the use and exercise of the broad powers of law and equity vested in it accomplish what the parties intended ~~to regard as done that which ought to be done~~ **to impute an intention to fulfill an obligation.**

The distillation of the facts of this case as to the intentions and actions of all parties in the Spring of 1996 show that:

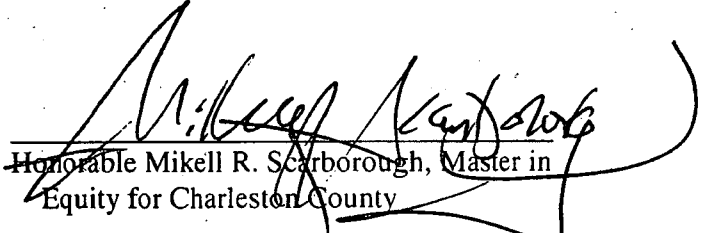
- A. Mason C. Heyward sought and achieved a boon—a favor given by Charleston County Council in answer to his request to allow a twenty-five (25') foot road right-of-way in lieu of the fifty (50') foot road right-of-way required at that time. Mr. Heyward requested that that right-of-way be twenty-five (25') feet in width and eight hundred ninety-one and 13/100 (891.13') feet in length and evidenced that right-of-way on a survey and plat recorded in the RMC Office for Charleston County.
- B. Charleston County, acting through its Planning, Public Works, Health Departments, and Charleston County council, after due consideration of the request of Mason C. Heyward and his surveyor/engineer, Lewis E. Seabrook, "granted APPROVAL of the 25' road right-of-way being dedicated to the public" and by its letter of approval noted that Resurrection Road serves as access to approximately 25 acres of property with high developmental potential. That recorded survey showed a right-of-way to be twenty-five (25') feet in width and eight hundred ninety-one and 13/100 (891.13') feet in length.
- C. Larry Kennerty (with the Planning and Administration section of the Planning Board) intended that the landlocked properties behind the properties of Mason C. Heyward

be given access and that it was the County's obligation to provide access to those landlocked properties.

AND IT IS FURTHER ORDERED THAT:

EIGHTH: Within forty-five (45) days subsequent to this Order becoming the Final Order of this Court, the George A.Z. Johnson, Inc. survey team draw, in recordable form, the two surveys and plats as outlined in paragraph Second, subparagraphs 1 and 2 of this Order.

AND IT IS SO ORDERED.

  
Honorable Mikell R. Scarborough, Master in  
Equity for Charleston County

Charleston, South Carolina

6/30, 2015

Order of June 13, 2019

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Francis O. Johnson, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Mason C. Heyward, et al., )  
 )  
 vs. )  
 )  
 Charleston County, )  
 )  
 Defendants. )

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IN THE COURT OF COMMON PLEAS  
 CASE NO. 2008-CP-10-1054

FILED  
 2019 JUN 13 PM 4:38  
 JAMES J. HARRIS, CLERK OF COURT  
 2

**ORDER DENYING  
 MOTION TO RECONSIDER,  
 NEW TRIAL AND RULE 60 RELIEF**

This matter came before me on April 10, 2019, for a hearing on Heyward's motion to reconsider this court's order of June 30, 2015. This case involves the location and scope of a roadway known as Resurrection Road on Johns Island in Charleston County, South Carolina.

After hearing arguments from counsel for both Plaintiff and Defendants, I hereby deny Petitioner's motion to reconsider on the grounds that Defendant Heyward seeks a ruling on matters either already ruled upon, not tried or for an advisory ruling on matters not yet ripe for consideration by the court.

First, the court should note that the Motion to Alter and Amend Judgment, for a New Trial and for Relief from Judgment was timely filed on July 15, 2015. The court held a hearing on November 10, 2015 at which all parties were present. At the conclusion of the hearing, the court was informed the parties were working to resolve the issues involved with this easement dispute. Thereafter the parties were

unable to resolve their dispute; however, no notice of this breakdown was given the court until March 2019 when this matter was brought back before the court.<sup>a</sup>

Notwithstanding this delay, the court addresses the issues as presented below:

1. The issue of the amount of compensation was clearly ruled on in Paragraphs 32 and 33 and in Conclusion #6 on pages 22-23.
2. While Heyward contends the County acquiesced in his position that the road had been abandoned, that issue was also clearly ruled upon in paragraphs 34-43 as the court found dedication and acceptance of the road.
3. At the outset of the case, the County moved to amend its pleadings to reflect this change and the case was tried on that basis; accordingly, I find the pleadings conformed to the proof at trial. Rule 15(b), SCRPC.
4. Heyward seeks the court's clarification on certain rulings; however, I find that the issue of who is going to make the desired improvements to the road was not an issue tried before this court and therefore not yet ripe for determination. The record clearly shows the county has accepted the road into its system by its continued use and maintenance.
5. Heyward seeks a "definitive ruling" on whether or not Resurrection Road is a public or private road. Again, this issue was clearly ruled upon as Heyward's 1996 plat dedicated his 25 foot right of way to the public. Furthermore the county has accepted the road into its road system as it has continued to maintain and scrape the road over the years.

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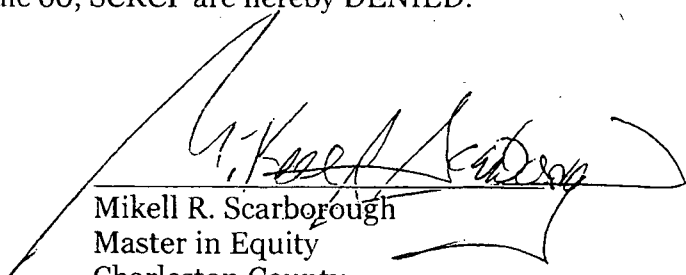
<sup>a</sup> The court apologizes to the parties and their counsel for this long delay as it was under the impression the parties resolved their dilemma. Furthermore, Petitioner was to supplement the motion with a memorandum citing to the record in this case but this was never presented to the court.



6. On Heyward's argument that the court has "merged the easements," this court used its equitable powers to clarify the location and scope of the easement. The court is not allowed to alter or amend an express easement. If ultimately so determined, the court would rule the express easement should be added to the Prescriptive easement found to exist by the court.
7. Finally, Heyward contends the court erred "in both moving and expanding an existing prescriptive easement" and, apparently, in creating an express easement for the future use of the public and cites to Goodwin v. Johnson, 357 SC 49, 591 SE 2d 34 (SC App. 2003) for authority. This case presents the opposite corollary of Goodwin however, as here, the dedicated road was not used to the extent of the pre-existing easement. In its decree, this court sought to lessen the burden on Heyward by reducing the location of the express easement and moving it away from his home; however, if not agreeable to Heyward, the court finds that both the express and implied (prescriptive) easements should be allowed to stand with the result that a wider easement shall exist on Heyward lands.

For the reasons set forth, It IS HEREBY ORDERED and ADJUDGED that the Petitioner's motions for Reconsideration under Rule 52, New Trial per Rule 59 and Relief from the Judgement under Rule 60, SCRPC are hereby DENIED.

AND IT IS SO ORDERED!



Mikell R. Scarborough  
Master in Equity  
Charleston County

June 10, 2019  
Charleston, SC

Order of November 18, 2019

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
FRANCIS O. JOHNSON, )  
 )  
Plaintiff, )  
vs. )  
MASON C. HEYWARD, et. al., )  
vs. )  
CHARLESTON COUNTY, a political )  
Subdivision of the State of South )  
Carolina, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2008-CP-10-1054  
(Referred to Master-in-Equity)

**ORDER FOR SUPERSEDEAS BOND**

**THIS MATTER APPEARS** before me on motion of attorney for Respondent Mason C. Heyward, wherein Heyward requests pursuant to Rule 241, SCAR, that the Court set a supersedeas bond in this matter, should such a bond be required. Upon reviewing the record in the case and hearing arguments of counsel, IT IS ORDERED:

1. That a supersedeas bond in this matter be set in the amount of \$5,000.00, payable to the Clerk of Court for Charleston County, in the form of 2 surety bonds, or in the alternative a bond posted in cash or other certified funds by Heyward.
2. Heyward has 30 days from the date of this hearing to post the required bond.

AND IT IS SO ORDERED!

\_\_\_\_\_  
HON. MIKELL R. SCARBOROUGH  
Master in Equity, Charleston County

November \_\_\_, 2019  
Charleston, SC



Charleston Common Pleas

**Case Caption:** Francis O Johnson VS Mason C Heyward , defendant, et al  
**Case Number:** 2008CP1001054  
**Type:** Order/Supersedeas

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2019-11-18 11:53:48 page 2 of 2

Ruling of January 20, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

FRANCIS O. JOHNSON

Plaintiff,

VS.

MASON C. HYEWARD, ET AL,

Defendants.

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CASE NO.: 2008-CP-10-1054

*WORKING*  
COPY

Ruling before the  
Honorable Mikell R. Scarborough, reported by Bernadette A.  
Cali, CSR and Notary Public, on January 20, 2010  
at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: Marvin Oberman, Esq.  
Harold Oberman, Esq.  
Charleston, S.C. 29401

For the Defendant: John Robinson, Esq.,  
Charleston, S.C. 29401

Bernadette A. Cali, CSR  
Notary Public

Bernadette A. Cali, CSR  
Master in Equity, 100 Broad Street  
Charleston, South Carolina 29401  
(843) 958-5071

1 THE COURT: I'm ready to rule. At least as to  
2 some of it. This is a difficult case. I find that  
3 easement cases are some of the more difficult cases.  
4 What this case is not, it's not a takings case, not a  
5 constitutional question. There is no governmental  
6 action. That was done back in 1996 when the government  
7 exacted the 25-foot right of way from Mr. Heyward for  
8 future development purposes.

9 This is a private dispute between, essentially,  
10 adjoining land owners as to a right of access.

11 Gentlemen, Mr. Johnson, Mr. Heyward, I appreciate  
12 your-all's position. I think you've done a great job  
13 of bringing a case in here. You have good lawyers.  
14 I'm very impressed with both of you and what you have  
15 done with your families.

16 (Discussion)

17 THE COURT: You've done the right thing by  
18 bringing this case to this court. I'll leave out the  
19 option that you can always try and resolve this case  
20 and that's how I left it with these lawyers yesterday.  
21 This is an easement case.

22 The first question is whether or not there is an  
23 easement in existence. If so, what is that easement?  
24 The question of the existence of an easement is a  
25 question of law to be determined by a fact finder and a

1 question-of-law case. The extent of the easement is a  
2 matter in equity.

3 What I typically do is bifurcate my rulings  
4 between the legal question and the equitable question,  
5 so what I'm going to give you today is the legal  
6 decision, and then I'll throw out some options and some  
7 alternatives. Then I'll have your lawyers come back on  
8 another day and try to answer the rest of the  
9 questions. That will put the ball back in your all's  
10 court to resolve something amongst yourselves, if you  
11 can. If you can't, that's why they pay me the big  
12 bucks.

13 As to the existence of the easement I find that  
14 there is a prescriptive easement which is existing for  
15 many, many years and that it exists for the purpose --  
16 what, evidently, was referred to as the old road,  
17 community road; Captain Bill's Road, I heard it  
18 referred to by Mr. Limehouse today. Been there since  
19 dirt was new. There is a prescriptive easement.

20 The difficulty here is the extent of that easement  
21 and that's what's causing the problem.

22 In addition to that I find that there is a  
23 dedicated easement that was created in 1996 when it was  
24 dedicated to the county by Mr. Heyward and it was  
25 intended for the use of the public.

1 I'm reserving the question as to whether or not  
2 that easement has been abandoned. But it clearly was  
3 dedicated by a plat. And one of the things that our  
4 title abstract expert doesn't seem to know yet is if  
5 you subdivide based on a plat it's just as good as if  
6 it's a document of record. That's another matter for  
7 another day.

8 I will leave open the question of abandonment  
9 because I haven't heard -- one, the county's not a  
10 party and; two, I haven't heard that the county's done  
11 anything in the last thirteen or fourteen years with  
12 that 25-foot easement.

13 The problem here, the legal -- ultimate legal  
14 question for me is, it appears that the Plaintiff seeks  
15 to burden the easement with additional traffic due to a  
16 proposed subdivision. The testimony indicates that the  
17 subdivision would be what the county refers to as a  
18 minor subdivision, meaning there would be ten lots or  
19 less which allows for more relaxed standards for road  
20 criteria in the county. If it were a major subdivision  
21 I think the county requires a 50-foot right of way and  
22 ditching.

23 So that being the real question here I turn to  
24 some law. Thankfully, Mr. Williams, you're in this  
25 case because you helped make some of it. That case is

Bernadette A. Cali, CSR  
Master in Equity, 100 Broad Street  
Charleston, South Carolina 29401  
(843) 958-5071

1 Goodwin versus Johnson. Mr. Williams was the Master In  
2 Equity of Berkeley County and in that case he  
3 determined that with an easement by necessity the court  
4 had the authority to move the easement. That built  
5 upon some prior law having to do with prescriptive  
6 easements which also gave the court the authority to do  
7 that.

8 The court is not at liberty to move an expressed  
9 easement, that being in the nature of a contract. I'll  
10 read you some law from the Johnson case. 357 S.C. 49,  
11 Court of Appeals, 2003.

12 The conclusion of the court is --

13 (Reading)

14 -- realign South Carolina with those jurisdictions  
15 provided a court of equity has the power to relocate  
16 the existing easement.

17 In this case created by necessity. I'm finding we  
18 have a prescriptive easement here.

19 Now, the burden first goes to the owner of the  
20 servient estate. That is the Defendant. That is Mr.  
21 Heyward. In this instance the real dominant tenant is  
22 Mr. Limehouse and Ms. Bennett down there at the end but  
23 being further down the road, at least as to these two  
24 parties, that puts Mr. Johnson in the position of the  
25 dominant tenement.

1 (Reading)

2 THE COURT: Unless denied by the terms of the  
3 easement the owner the servient estate is entitled to  
4 make reasonable changes in the location or dimensions  
5 of an easement. At the servient owner's expense --  
6 again, Mr. Heyward -- to permit normal use or  
7 development of the servient estate, but only if the  
8 changes do not, a, significantly lessen the utility of  
9 the easement; b, increase the burdens on the owner of  
10 the easement in its use and enjoyment or; c, frustrate  
11 the purpose for which the easement was created.

12 In that case, the Johnson case, the court remanded  
13 the case --let me think. Excuse me. I'm citing from  
14 another case.

15 On the remand. In other words, the case went up  
16 on appeal and came back. The parties had the option of  
17 working out a location on their own.

18 (Reading)

19 In the absence of an agreement the trial court  
20 should exercise jurisdiction in locating an adequate  
21 right of way so that the servient tenement in a manner  
22 to permit ingress and egress of vehicular traffic in a  
23 manner least burdensome to the servient tenant.

24 One of my factors is going to be if it's going to  
25 be moved, how is it going to burden Mr. Heyward the

1 least? That's essentially what I'm telling you-all.

2 So in that case the court determined where the  
3 easement would be. And that's essentially what I'm  
4 telling you all, without having to go up on appeal. If  
5 you all can come to terms as to where it's going to be,  
6 more power to you. If you can't, back to me.

7 In that case, Johnson case, the road was within 10  
8 feet of the Johnson's home. Testimony here today is  
9 more like 50 to 60 feet.

10 What I'm looking to do is to create an easement.  
11 I would like to settle this question once and for all,  
12 because it seems like it's going to keep appearing.

13 One of the other things that's of concern to me,  
14 and I think the document -- I don't remember who  
15 created the document, Plaintiff's Exhibit 10, Express  
16 Grant of Easement. I'll tell you I think that was  
17 contemplating exactly what was probably intended,  
18 prescriptive easement. Up until the point in time that  
19 prescriptive easement no longer exists -- and I'm not  
20 ruling on this yet, but I'm not so sure the owner of  
21 the servient estate, Mr. Heyward, hasn't already  
22 created the easement, by the dedication of the 25-foot.

23 The Sandy Island case.

24 As to the burden, (reading) the easement is  
25 limited to use reasonably necessary, what's convenient

1 and as little burdensome to the servient estate as  
2 possible for the use contemplated.

3 Clearly what's contemplated here is a change in  
4 use. It's no longer going to be a rural community  
5 road.

6 (Reading) Consideration must be given to what is,  
7 quote, essentially necessary to the enjoyment of the  
8 property. I'm citing there to the case of Smith versus  
9 CPW, 312 South Carolina 460. That's a Court of Appeals  
10 case 1994. That was Jack Williams' predecessor, Bill  
11 Shipley, another Berkeley County Master in Equity case.

12 All right. I'll also cite you to another  
13 document, although you won't have access to this. This  
14 is a memorandum prepared by a local judge that you may  
15 be familiar with. The paper is captioned What  
16 Constitutes A Prescriptive Easement And Why Can't I  
17 Find It Of Record? It's not been published yet because  
18 it's mine. Perhaps this is the case it will be  
19 published in.

20 So subject to any other points of clarification,  
21 which I'm glad to try and answer today, what I'm doing  
22 is putting the ball back in your court.

23 Mr. Williams, your client may have some interest  
24 in this. I'm a little bit unclear as to what's going  
25 on at the front of the property. Looks like there is a

Bernadette A. Cali, CSR  
Master in Equity, 100 Broad Street  
Charleston, South Carolina 29401  
(843) 958-5071

1 road traversing what I assume to be your-alls property  
2 over into -- looks to me like Mr. Limehouse gains  
3 access to his piece across your piece.

4 MR. WILLIAMS: It's by an agreement, Your Honor.  
5 His main access is from Betsy Kerrison.

6 THE COURT: He has legal access off Betsy  
7 Kerrison?

8 MR. WILLIAMS: Yes, sir. Occasionally that right  
9 of way is closed off so that you can't get into  
10 Mr. Limehouse's property.

11 THE COURT: If I have to take care of a problem I  
12 would like to take care of a problem once and for all.

13 (Discussion)

14 THE COURT: Any other matters?

15 I'm trying to make some clarification so you know  
16 what I'm finding. I want you to know what I think is  
17 left to decide. That is going to be the location of  
18 the easement. I'm leaving that up to you all to start  
19 with. I would ask you get back TO me within 30 to 60  
20 days. Put your heads together. It may entail paying  
21 some money to get it. I don't know. If you come to an  
22 agreement I think is fair we can put it on the record  
23 and this thing will be done. If not I'll have to make  
24 that decision.

25 Part of that decision has to do with the extent of

1 the easement, that equitable part we're talking about.  
2 I will tell you, as I sit here right now, I'm not real  
3 sure exactly where it's 10 feet wide, where it's 12  
4 feet wide and where it's 14 feet wide. That's really  
5 what -- there's been testimony to that, but unless you  
6 want to send Mr. Johnson back out there and measure the  
7 whole thing, figure out exactly what it is -- as I  
8 understand it, 12, 14 feet don't get it for Mr. Johnson  
9 and the relief he seeks, unless you can couple it with  
10 the 25 feet that's already there.

11 MR. OBERMAN: Or A portion of the 25 feet?

12 THE COURT: Right.

13 MR. OBERMAN: Where can we get a copy of that  
14 article?

15 THE COURT: When I issue my ruling.

16 (Laughter)

17 THE COURT: Any other questions?

18 MR. HAROLD OBERMAN: For clarification, on the  
19 dedicated easement you're not sure if it's been  
20 abandoned or not?

21 THE COURT: I found the county's abandoned them  
22 before, may do it again. I don't do it without giving  
23 them due process. They're not a party to this thing.  
24 Anything else? Mr. Robinson?

25 MR. ROBINSON: No, sir.

1 THE COURT: All right. Folks, I feel confident I  
2 won't need to call the police out there.

3 (Discussion off the record.)

4 (Hearing adjourned.)

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Plaintiff's Complaint

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 FRANCIS O. JOHNSON, )  
 Plaintiff, )  
 vs. )  
 MASON C. HEYWARD, BERKELEY )  
 ELECTRIC COOPERATIVE, INC., and )  
 CLEMENTINE RAVENEL, )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO. 08-CP-10- 1054

COMPLAINT  
 NON-JURY  
 (DECLARATORY JUDGMENT)

FILED  
 2008 FEB 25 PM 1:49  
 JULIE CHRISTRONG  
 CLERK OF COURT

The Plaintiff above named, complaining of the Defendants above named, alleges that:  
FIRST: This action is brought pursuant to the provisions of the South Carolina Uniform Declaratory Judgment Act, §§ 15-53-10, et seq., Code of Laws for South Carolina, 1976, to obtain a declaration of the rights, status, and other legal relations of the parties hereto in respect to the real estate hereinafter described; pursuant to the provisions of §§ 15-67-10, et seq., Code of Laws for South Carolina, 1976, and for the quieting of title to the real estate hereinafter described.  
SECOND: The Plaintiff, Francis O. Johnson, is a resident of the County of Charleston, State of South Carolina. He owns property at 2792 River Road, #B, Johns Island, SC 29455. He purchased this property from Erline S. Manigault, William Simmons, Jr., Maybelle Mitchell, and Ethelee Jenkins, a/k/a Ethel Lee Jenkins on July 6, 1977. The property is described as follows:

ALL that certain piece, parcel, or lot of land, with improvements and buildings thereon, situate, lying, and being on Johns Island, County of Charleston, State aforesaid, which said tract of land is more fully described and delineated on a plat thereof made by John McCrady Co., A. L. Glen, C.E., June 1945, the original plat being recorded on July 11, 1945 in Plat Book V45, page 173, RMC Office for Charleston County; measuring and containing according to said plat five and 3/10 (5.3) acres, more or less; butting and bounding to the North on land of Laher (subject to a road or right of way), to the east on land of Charlotte Atkins, to the south on marshland, the property of Margaretha Andell, and to the west on land of Margaretha Andell, all of which is more fully shown on said plat.

THIRD: The Defendant, Mason C. Heyward, owns an 8 acre parcel that he subdivided in 1996.

That property is described as follows:

ALL those certain parcels of real property situate, lying, and being on John's Island, in Charleston County, South Carolina and shown and designated as "LOT J, RESIDUAL 5.0 ACRES PORTION OF TMS 204-00-00-018" and "LOT J-1, 1.30 ACRES PORTION OF TMS 204-00-00-018" on a plat entitled "plat of the Subdivision of lot J Owned by Mason C. Heyward Into Lot J-1 containing 1.30 Acres and an Approximately 5.0 Acre Residual Tract and a 0.51 Acre R/W" made by Lewis E. Seabrook, Civil Engineer and Land Surveyor dated January 18, 1996 revised February 27, 1996 and recorded May 20, 1996 in Plat Book, DA, page 789, RMC Office for Charleston County.

FOURTH: Plaintiff owns property that abuts on the north on Resurrection Road. Resurrection Road has been a road for well over fifty (50) years with the abutting property owners using said road for well over fifty (50) years.

FIFTH: In addition to this decades old road, when subdividing property on February 27, 1996, Defendant Heywood had Lewis Seabrook draw a plat (Book DA, page 789) which shows a 25' right of way from Betsy Kerrison Parkway to Plaintiff's property. Plaintiff's property abuts this 25' right of way that Defendant Heywood created. These right of ways were necessary for Defendant Heywood to subdivide his property. A copy of the Seabrook plat is attached hereto as Exhibit "A".

SIXTH: Defendant Heywood recognized the 25' right of way by a "Confirmation of a Grant of Easement" given by Mr. Heywood and recorded in Book N325, page 750, RMC Office for Charleston County.

SEVENTH: The two roads—the decades old Resurrection Road and the right of way drawn by Seabrook—converge and overlap at certain points and create a road or right of way varying in width from 52.03 feet on its western line to 25.13 (line 34—points C-D) on its eastern line, all as is shown on a plat entitled "Plat showing the Physical Location of Resurrection Road Located on Johns Island, Charleston County, South Carolina" dated January 16, 2008, a reduced copy of which plat is attached hereto as Exhibit "B".

EIGHTH: Defendants Berkeley Electric Cooperative, Inc. (Berkeley) and Clementine Ravenel (Ravenel) are joined in this action because they have real property abutting the rights of way.

NINTH: The Defendant, Berkeley Electric Cooperative, Inc., is a non-profit corporation organized and existing under the laws of the State of South Carolina and is the owner of a parcel of property (TMS No. 204-00-00-022) on the south side of Resurrection Road.

TENTH: The Defendant, Clementine Ravenel, is a resident of the County of Charleston, State of South Carolina and is the owner of a parcel of property (TMS No. 204-00-00-021) on the north side of Resurrection Road.

ELEVENTH: Plaintiff seeks a declaration concerning the rights of the Plaintiff and the Defendants Heyward, Berkeley, and Ravenel in and to their use and access on Resurrection Road, the extent of the easement or easements, and the width of the right of way(s).

#### **DECLARATORY JUDGMENT GRANTING AN EASEMENT**

TWELFTH: Plaintiff reasserts and realleges the above paragraphs here.

THIRTEENTH: Plaintiff has easements of ingress and egress to his property by grant, deed, plat, estoppel, implication, prescription, or necessity.

FOURTEENTH: Defendant Heyward has recorded instruments that gave Plaintiff an express 25' right of way to his property.

FIFTEENTH: Defendant Heyward made certain representations that gave Plaintiff and Defendants Berkeley and Ravenel well defined rights of ways and showed the intent of Defendant Heyward to give 25' road access to their properties.


SIXTEENTH: In the alternative, Plaintiff has continually, openly, exclusively and uninterruptedly used, under a claim of right, for a period in excess of twenty (20) years, the roads to his property, and therefore has easements by prescription, or a public road has been dedicated to the owners of the adjoining parcels.

SEVENTEENTH: In the alternative, if Plaintiff has no access to the property as outlined above, he has easements of necessity over the lands of Defendant.

WHEREFORE, the Plaintiff prays judgments as follows:

1. The Plaintiff be given a decree declaring that Plaintiff has easements and roads to his property by express grant, prescription, implication, estoppel or otherwise, a decree setting forth the dimensions of said roads or easements.
2. For other and further relief as this Court may deem just and proper, including the costs of this action and attorneys' fees if appropriate.

OBERMAN & OBERMAN, LLC



Harold A. Oberman  
Marvin I. Oberman  
ATTORNEYS FOR THE PLAINTIFF  
104 Church Street  
Charleston, SC 29401  
(843) 577-7010

Charleston, South Carolina

February 25, 2008.

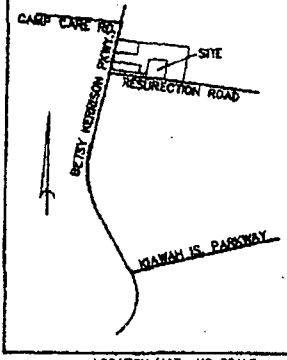
f:\obj\johnson-heyward738\pleading\complaint

FIG 269PG298

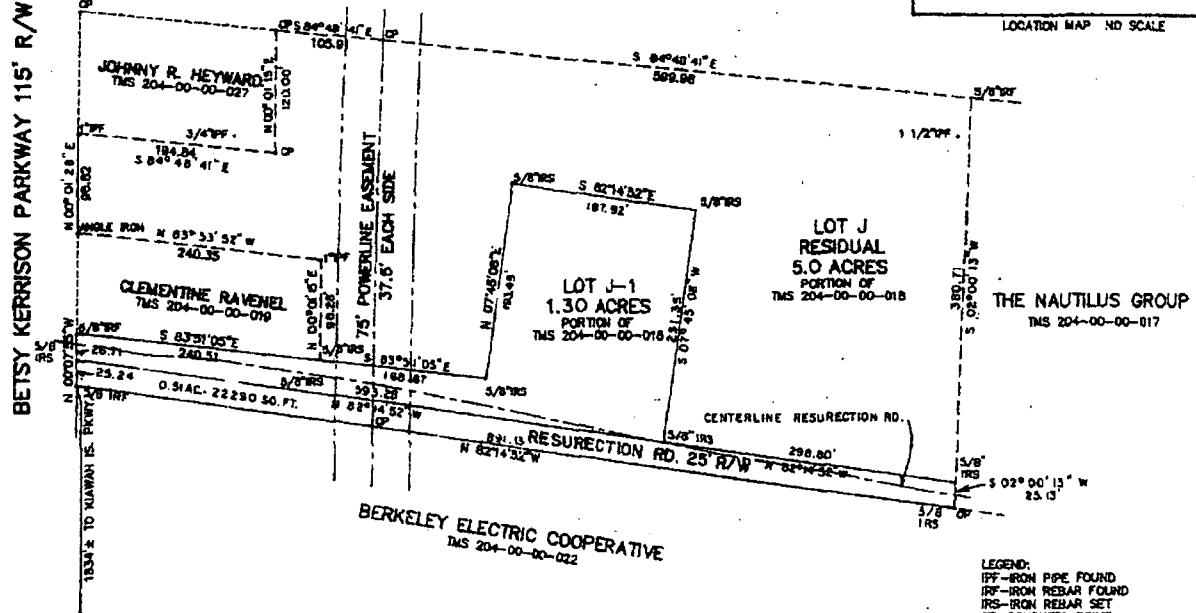
Charleston, South Carolina  
Office of Register Marine Conveyance

Plat recorded this 19th day of May 1996 at 2:55 o'clock in Plat Book 269 page 298, and tracing cloth copy Reg. in File # 2. Drawer # 44. Drawing No. 269. Original plat (in ink print) delivered to Charles C. Zifford.

*Charles C. Zifford*  
Register Marine Conveyance



EDGAR A. & MARGARET B. BUCK  
TMS 203-00-00-047



WARNING! APPROVAL OF THIS PLAT BY THE PLANNING BOARD AND/OR COUNTY COUNCIL DOES NOT INDICATE APPROVAL NOR ADJUDICATE TITLE OF THE ACRES OR RIGHT-OF-WAY SHOWN HEREON. (THIS NOTE TO BE PLACED ON PLAT).

THIS APPROVAL IN NO WAY OBLIGATES THE COUNTY OF CHARLESTON TO MAINTAIN THIS RIGHT-OF-WAY UNTIL IT HAS BEEN CONSTRUCTED TO COUNTY STANDARDS.

LEGEND:  
PPF—IRON PIPE FOUND  
IRF—IRON REBAR FOUND  
IRS—IRON REBAR SET  
CP—COMPUTED POINT

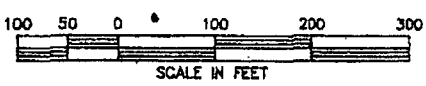
- REF. PLATS:  
1. PLAT BY SOUTHEASTERN SURVEYING, INC. DATED 02/05/91 REVISED 05/28/92 PLANNING BOARD # 04729 RECORDED IN PLAT BOOK CH PAGE 25  
2. PLAT BY SOUTHEASTERN SURVEYING, INC. DATED 03/21/91 REVISED 04/27/92 PLANNING BOARD # 04733 RECORDED IN PLAT BOOK CH PAGE 33  
3. PLAT BY SOUTHEASTERN SURVEYING, INC. DATED 03/21/91 REVISED 04/27/92 PLANNING BOARD # 04734 RECORDED IN PLAT BOOK CH PAGE 29

# JOHNS ISLAND CHARLESTON COUNTY, S. C.

PLAT OF THE SUBDIVISION OF LOT J OWNED BY MASON C. HEYWARD INTO LOT J-1 CONTAINING 1.30 ACRES AND AN APPROXIMATELY 5.0 ACRE RESIDUAL TRACT AND A 0.51 ACRE R/W

SCALE: 1"=100'

JANUARY 18, 1996  
REVISED FEB. 27, 1996



APPROVED FINAL PLAT  
*William W. Miller*  
DIRECTOR OF PLANNING  
CHARLESTON COUNTY PLANNING BOARD  
DATE MAY 7, 1996  
PB# 16467

I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein.

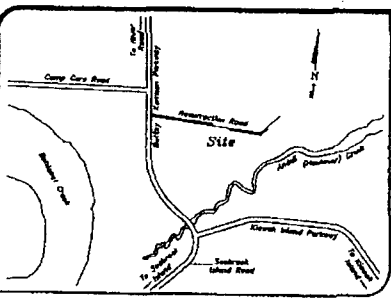
*Lewis E. Seabrook*  
LEWIS E. SEABROOK  
CIVIL ENGINEER & LAND SURVEYOR  
S. C. REG. NO. 09890  
P. O. BOX 95  
MT. PLEASANT, S. C. 29465  
(803)264-4490



E. M. SEABROOK, JR., INC.  
ENGINEERS - SURVEYORS - PLANNERS

THIS LOT DOES MEET MINIMUM HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUB-SURFACE DISPOSAL SYSTEM ONLY.

For Official Use Only



LOCATION MAP

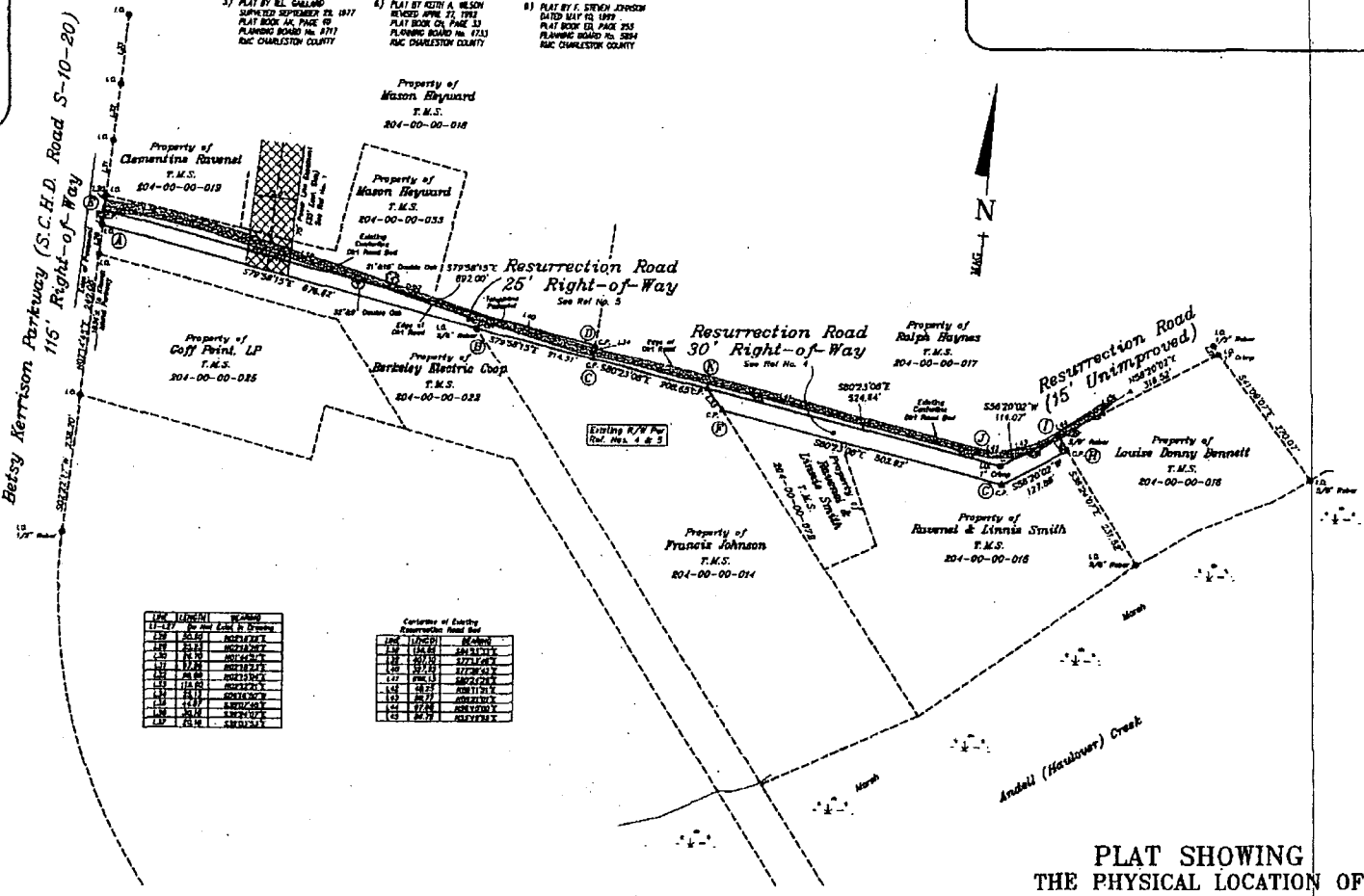
- NOTES:**
- 1) ANYTHING SHOWN OUTSIDE THE DOTTED BOUNDARY OF THIS PLAT IS FOR INFORMATION PURPOSES ONLY.
  - 2) AREA IS BARRICADED BY COORDINATE METHOD.
  - 3) THE BEARINGS SHOWN HEREON ARE MAGNETIC AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION.
  - 4) THE PRESENCE OR ABSENCE OF U.S. ARMY CORP. OF ENGINEERS TERRITORIAL RECLAIMER IS UNDERTAKEN AS OF THE DATE OF THIS SURVEY.
  - 5) THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY, AND IS NOT THE RESULT OF A TITLE SEARCH.
  - 6) THIS PROPERTY IS LOCATED IN FLOOD ZONE "A1", ELEVATION 16, AS PER FEMA MAP COMMUNITY-PANEL NO. 433413 0703 A DATED NOVEMBER 17, 2004. IT IS THE OWNER'S RESPONSIBILITY TO VERIFY THIS FLOOD ZONE WITH LOCAL AGENCIES PRIOR TO BUILDING.
  - 7) DECLARATION IS MADE TO THESE PERSONS FOR WHOM THIS PLAT WAS PREPARED: IT IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS. THIS DECLARATION IS AN INSTRUMENT OF SERVICE AND IS THE SOLE PROPERTY OF GEORGE A.Z. JOHNSON, JR., INC. IT SHALL NOT BE REPRODUCED OR USED IN ANY MANNER WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF G. A. Z. JOHNSON, JR., INC. SEE REG. NO. 10024. COPYRIGHT © 2007, F. Steven Johnson.
  - 8) USE OF UNPAID COPIES OF THIS DOCUMENT IN ANY COURT, FINANCIAL OR LAND TRANSACTION, OR PLACED WITH ANY PUBLIC AGENCY OR OFFICE IS UNAUTHORIZED USE AND IS A VIOLATION OF FEDERAL COPYRIGHT LAWS.
  - 9) "SURVEY INSPECTIONS" OR "CHECKS" OF THIS MAP ARE PROHIBITED.
  - 10) THESE CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTRUMENTS OR SUBSEQUENT OWNERS.
  - 11) THESE PROPERTIES ARE ZONED B-4.

**LEGEND:**

- 1.0 IRON PIN OLD
- 1.1 IRON PIN NEW (5/8" NEMA)
- Δ CALCULATED POINT

**REFERENCES:**

- 1) PLAT BY KEITH A. NELSON DATED MAY 28, 1993 PLAT BOOK CDL PAGE 25 PLANNING BOARD NO. 04779 RIC CHARLESTON COUNTY
- 2) PLAT BY HELEN C. SETHS DATED NOVEMBER 28, 1977 PLAT BOOK 2, PAGE 77 PLANNING BOARD NO. 1843 RIC CHARLESTON COUNTY
- 3) PLAT BY KEITH A. NELSON DATED SEPTEMBER 23, 1977 PLAT BOOK JK, PAGE 95 PLANNING BOARD NO. 8717 RIC CHARLESTON COUNTY
- 4) PLAT BY KEITH A. NELSON DATED SEPTEMBER 23, 1982 PLAT BOOK 48, PAGE 15 PLANNING BOARD NO. 0525 RIC CHARLESTON COUNTY
- 5) PLAT BY LINDA C. SLEMMER DATED FEBRUARY 17, 1988 PLAT BOOK 84, PAGE 78 PLANNING BOARD NO. 1848 RIC CHARLESTON COUNTY
- 6) PLAT BY KEITH A. NELSON DATED APRIL 27, 1983 PLAT BOOK CDL PAGE 29 PLANNING BOARD NO. 0724 RIC CHARLESTON COUNTY
- 7) PLAT BY KEITH A. NELSON DATED APRIL 18, 1978 PLAT BOOK A533, PAGE 203 PLANNING BOARD NO. 0181 RIC CHARLESTON COUNTY
- 8) PLAT BY F. STEVEN JOHNSON DATED MAY 10, 1999 PLAT BOOK CD, PAGE 258 PLANNING BOARD NO. 0884 RIC CHARLESTON COUNTY



ZONING REGULATIONS	
MAXIMUM DENSITY	1 dwelling units per acre
MINIMUM LOT AREA	
Min. Public Water 400' Street	2,700 square feet
Min. Public Water 60' Street	10,000 square feet
Min. Public Water 80' Street	14,000 square feet
MINIMUM LOT WIDTH	60 feet
MINIMUM SETBACKS	
Front Street (30' Min. W)	25 feet
Side	5 feet
Rear	10 feet
Corner (Minimum 45°)	35 feet
MAXIMUM BUILDING COVER	20% of lot
MAXIMUM HEIGHT	35 feet

LINE	LENGTH	BEARING
101	25.00	S00°15'00"W
102	25.00	S00°15'00"W
103	25.00	S00°15'00"W
104	25.00	S00°15'00"W
105	25.00	S00°15'00"W
106	25.00	S00°15'00"W
107	25.00	S00°15'00"W
108	25.00	S00°15'00"W
109	25.00	S00°15'00"W
110	25.00	S00°15'00"W
111	25.00	S00°15'00"W
112	25.00	S00°15'00"W
113	25.00	S00°15'00"W
114	25.00	S00°15'00"W
115	25.00	S00°15'00"W
116	25.00	S00°15'00"W
117	25.00	S00°15'00"W
118	25.00	S00°15'00"W
119	25.00	S00°15'00"W
120	25.00	S00°15'00"W

LINE	LENGTH	BEARING
121	10.00	S00°15'00"W
122	10.00	S00°15'00"W
123	10.00	S00°15'00"W
124	10.00	S00°15'00"W
125	10.00	S00°15'00"W
126	10.00	S00°15'00"W
127	10.00	S00°15'00"W
128	10.00	S00°15'00"W
129	10.00	S00°15'00"W
130	10.00	S00°15'00"W
131	10.00	S00°15'00"W
132	10.00	S00°15'00"W
133	10.00	S00°15'00"W
134	10.00	S00°15'00"W
135	10.00	S00°15'00"W
136	10.00	S00°15'00"W
137	10.00	S00°15'00"W
138	10.00	S00°15'00"W
139	10.00	S00°15'00"W
140	10.00	S00°15'00"W

**General Property Survey**  
 F. Steven Johnson, a Registered Professional Land Surveyor in the State of South Carolina, hereby certifies that this survey shows herein was made in accordance with the requirements of the Professional Standards Manual for the Practice of Land Surveying in South Carolina, and hereby certifies his responsibility for a Class "A" survey as specified therein.



**GEORGE A.Z. JOHNSON, JR., INC.**  
 ENGINEERS · PLANNERS · LAND SURVEYORS  
 8171 SAVANNAH HIGHWAY  
 RAVENHILL, SOUTH CAROLINA 29470  
 (843) 889-1488 Charleston No. 722-3538 Edisto No. 868-1495  
 Fax No. (843) 889-1054

**PLAT SHOWING THE PHYSICAL LOCATION OF RESURRECTION ROAD LOCATED ON JOHNS ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA**  
 DATE: JANUARY 16, 2008 SCALE: 1"=100'  
 100 50 0 50 100 200 300  
 SCALE IN FEET

Exhibit "RR" 57

**OBERMAN & OBERMAN, LLC**  
ATTORNEYS AND COUNSELLORS AT LAW  
104 CHURCH STREET  
CHARLESTON, SOUTH CAROLINA 29401

MARVIN I. OBERMAN  
HAROLD A. OBERMAN

February 25, 2008

TELEPHONE (843) 577-7010  
FACSIMILE (843) 722-7359  
EMAIL: obermanlaw@bellsouth.net

Honorable Julie J. Armstrong  
Clerk, Charleston County Court of  
Common Pleas  
100 Broad Street  
Charleston, SC 29401

BY COURIER

RE: Francis O. Johnson v. Mason C. Heyward, Berkeley Electric Cooperative, Inc., and  
Clementine Ravenel

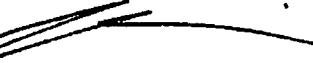
Dear Julie:

I enclose the original and four copies of a Civil Action Coversheet, Certificate of Exemption/  
Withdrawal From Arbitration, Summons and Complaint in the above-captioned matter, along with  
our firm's check in the amount of \$150.00.

Would you be so kind as to have a member of your staff file the original and return four  
clocked-in copies to me by Bullet Deliveries.

With warmest personal regards, I remain

Yours very truly,



Marvin I. Oberman

MIO/shb

Enclosures

f:\obj\johnson758\ltr\armstrong.b25

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

FRANCIS O. JOHNSON, )

Plaintiff(s) )

vs. )

MASON C. HEYWARD, BERKELEY )  
ELECTRIC COOPERATIVE, INC., and )  
CLEMENTINE RAVENEL, )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2008- CP - 10 - 1054

(Please Print)

Submitted By: Marvin I. Oberman

Address: 104 Church Street  
Charleston, SC 29401

SC Bar #: 4256

Telephone #: (843) 577-7010

Fax #: (843) 722-7359

Other:

E-mail: obermanlaw@bellsouth.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.


DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- |  |   |   |  |
|--|---|---|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>   | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input checked="" type="checkbox"/> Other (499)</li> </ul>   |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>   | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Driver's License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture (840)</li> <li><input type="checkbox"/> Other (899)</li> </ul>  | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Administrative Law Judge (980)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> </ul>  |   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> </ul>  |  |

Submitting Party Signature: 

Date: 02/25/08

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

STATE OF SOUTH CAROLINA )  
 CHARLESTON COUNTY )  
 FRANCIS O. JOHNSON, )  
 Plaintiff )  
 vs. )  
 MASON C. HEYWARD, BERKELEY )  
 ELECTRIC COOPERATIVE, INC., and )  
 CLEMENTINE RAVENEL, )  
 Defendant )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

**CERTIFICATE OF  
 EXEMPTION/WITHDRAWAL  
 FROM ARBITRATION**

Docket No. 08-CP-10-1054

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

- monetary relief requested in this case exceeds \$25,000;
- this is a class action;
- there is a substantial claim for injunction or declaratory relief requested in this case;
- this case involves (*check one or more of the following*)
  - title to real estate;
  - wills, trusts and decedents' estates;
  - mortgage foreclosure;
  - partition;
- this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
- monetary relief requested in this case is unspecified but exceeds \$25,000;
- this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;
- this action is appellate in nature;
- this is a post-conviction relief matter;
- this is forfeiture proceeding brought by the State; or
- this is a contempt of court proceeding.

Date:

2/25/08



Attorney for Plaintiff

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 08-CP-10-1054

FRANCIS O. JOHNSON, )  
Plaintiff, )

vs. )

MASON C. HEYWARD, BERKELEY )  
ELECTRIC COOPERATIVE, INC., and )  
CLEMENTINE RAVENEL, )  
Defendants. )

SUMMONS

NON-JURY  
(DECLARATORY JUDGMENT)

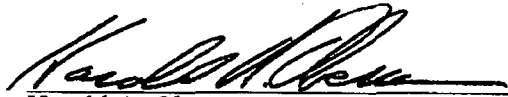
2008 FEB 25 PM 1:48  
JULIE ARMSTRONG  
CLERK OF COURT  
BY [Signature] PH

FILED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the Plaintiff's Attorneys, Oberman & Oberman, LLC, 104 Church Street, Charleston, South Carolina 29401, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default may be rendered against you for the relief demanded in the Complaint.

OBERMAN & OBERMAN, LLC



Harold A. Oberman  
Marvin I. Oberman  
ATTORNEYS FOR THE PLAINTIFF  
104 Church Street  
Charleston, SC 29401  
(843) 577-7010

Charleston, South Carolina

February 25, 2008.

F:\objohnson-heyward758\pleading\summons

08-002681

Heyward's Answer

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
FRANCIS O. JOHNSON, )  
Plaintiff, )  
vs. )  
MASON C. HEYWARD, et al. )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2008-CP-10-1054

**ANSWER**

**FILED**  
2008 MAR 28 PM 3:44  
JULIE HARRISTONG  
CLERK OF COURT

NOW COMES, the Defendant, Mason C. Heyward, by and through his undersigned attorney, answers the allegations of the Complaint as follows:

1. Heyward denies each and every allegation of the Complaint not specifically admitted, qualified, or explained and demands strict proof thereof.
2. Heyward denies Paragraph 1 of the Complaint: Heyward lacks knowledge and information sufficient to form a belief as to the legal relief sought by Plaintiff.
3. Heyward admits Paragraphs 2, 3, 4,5 and 6 of the Complaint.
4. Heyward denies Paragraph 7 of the Complaint and demands strict proof thereof.
5. Heyward admits Paragraphs 8, 9, and 10 of the Complaint.
6. Heyward denies Paragraph 11 of the Complaint, as he lacks knowledge and information sufficient to form a belief as to the legal remedies sought by the Plaintiff.
7. Heyward denies Paragraph 12 of the Complaint and demands strict proof thereof.
8. Heyward denies Paragraph 13 of the Complaint and demands strict proof thereof.

The Plaintiff must demonstrate any rights or claim or right to easements asserted against the Defendant.

9. Heyward denies Paragraph 14 and 15 of the Complaint and demands strict proof thereof. Heyward denies that he made any representations to Plaintiff that gave them an implied

right of way of any sort other than those admitted expressly above. Any allegations inconsistent with this Paragraph are denied.

10. Heyward denies Paragraph 16 of the Complaint and demands strict proof thereof. The Plaintiff has not met the requirements to assert adverse possession or a prescriptive easement in South Carolina because his actions were not hostile, did not give notice, were not exclusive to any of the Defendants or other third parties. Furthermore, Heyward denies that Resurrection Road is a public road, thoroughfare, or right of way. Any rights of way, access, easements, or easements of necessity exist only at the assent of Heyward.

11. Heyward denies Paragraph 17 of the Complaint and demands strict proof thereof. Furthermore, the Plaintiff may not assert an easement of necessity that exceeds the scope of a sufficient easement expressly granted by Heyward.

#### **FOR A FURTHER DEFENSE, AND BY WAY OF COUNTERCLAIM**

Defendant Heyward alleges:

12. Plaintiff seeks to create a 25-unit development on his property at the end of Resurrection Road.

13. Plaintiff is in the process of seeking permit approval for various improvements his property, TMS #, and in order to receive these permits from the Charleston Zoning Commission, SCDOT, and various other public entities, Plaintiff must condemn portions of the property of the Defendants to create a public road sufficient for the development scheme he has approved to the detriment of Defendants.

14. Plaintiff may have a right of way to the property, which he must prove to the Court, but such a right of way is not a public road or other public access other than that expressly granted by Mason Heyward.

15. Plaintiff has harassed and threatened Heyward in order to coerce him to give other easements or rights of way that will allow Plaintiff to go ahead with his development scheme.

**FOR A FURTHER DEFENSE**

16. The foregoing defenses are incorporated herein by reference fully as if repeated verbatim.

17. The Complaint fails to state facts upon which a claim for relief can be granted, and should therefore be dismissed pursuant to Rule 12 (b)(6), SCRCP.

**FOR A FURTHER DEFENSE**

18. The foregoing defenses are incorporated herein by reference as fully as if repeated verbatim.

19. Plaintiff's inequitable conduct may bar his claims under the doctrine of unclean hands.

**FOR A FURTHER DEFENSE**

20. The foregoing defenses are incorporated herein by reference as fully as if repeated herein verbatim.

21. Plaintiff's claims are barred by the doctrines of abandonment, estoppel, waiver, and/or laches.

**FOR A FURTHER DEFENSE**

22. The foregoing defenses are incorporated herein by reference as fully as if repeated herein verbatim.

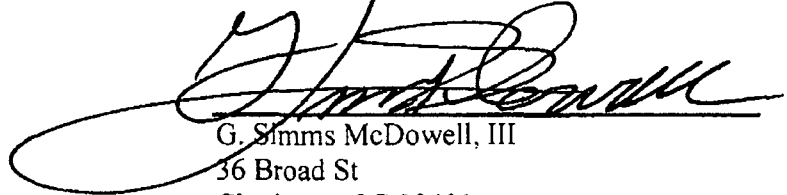
23. Plaintiff's claims may be barred or otherwise reduced due to Plaintiff's failure to mitigate damages as required by law.

**WHEREFORE**, having fully answered Plaintiff's Complaint, Mason C. Heyward prays:

- A. That Plaintiff's Complaint be dismissed with prejudice and its prayers for relief be denied;
- B. That any easement or right of way to Plaintiff be limited to access reflective of the status of Resurrection Road as a private road with rights of access bound by the rights of way and easements expressly granted with the assent of Mason C. Heyward;
- C. An Order barring Resurrection Road from being declared, zoned, or otherwise made a public road for the purposes of sustaining a 25-unit development;
- D. That Mason C. Heyward be awarded costs and attorneys' fees pursuant to the appropriate statutory and case law;
- E. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

MCDOWELL LAW OFFICES



G. Simms McDowell, III

36 Broad St

Charleston SC 29401

*Counsel for Defendant Mason C. Heyward.*

March 28, 2008  
Charleston, South Carolina

Berkeley Electric Cooperative Inc's Answer

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 08-CP-10-1054

FRANCIS O. JOHNSON, )

Plaintiff, )

Vs. )

MASON C. HEYWARD, BERKELEY )  
ELECTRIC COOPERATIVE, INC. and )  
CLEMENTINE RAVENEL, )

Defendants. )

ANSWER OF BERKELEY ELECTRIC  
COOPERATIVE, INC.

BY *JS*

JULIE J. ARMSTRONG  
CLERK OF COURT

2008 APR - 1 PM 1:39

FILED

The Defendant, Berkeley Electric Cooperative, Inc. ("BEC," ) answering the  
Complaint of the Plaintiff, states as follows:

1. Each and every allegation not hereinafter specifically admitted is hereby denied.
2. BEC has insufficient knowledge regarding the First Allegation and, therefore, neither admits nor denies same.
3. BEC has insufficient knowledge regarding the Second Allegation and, therefore, neither admits nor denies same.
4. BEC has insufficient knowledge regarding the Third Allegation and, therefore, neither admits nor denies same.
5. BEC has insufficient knowledge regarding the Fourth Allegation and, therefore, neither admits nor denies same.

6. BEC has insufficient knowledge regarding the Fifth Allegation and, therefore, neither admits nor denies same.

7. BEC has insufficient knowledge regarding the Sixth Allegation and, therefore, neither admits nor denies same.

8. BEC has insufficient knowledge regarding the Seventh Allegation and, therefore, neither admits nor denies same.

9. BEC has insufficient knowledge regarding the Eighth Allegation and, therefore, neither admits nor denies same.

10. Admitted.

11. BEC has insufficient knowledge regarding the Tenth Allegation and, therefore, neither admits nor denies same.

12. The Eleventh Allegation merely describes the relief sought by Plaintiff and therefore requires no response by BEC. To the extent it is deemed that this paragraph asserts any factual allegations requiring a response, BEC replies that has insufficient knowledge regarding this allegation and, therefore, neither admits nor denies same.

13. In response to the Twelfth Allegation, BEC reasserts its responses set forth above.

14. BEC has insufficient knowledge regarding the Thirteenth Allegation and, therefore, neither admits nor denies same.

15. BEC has insufficient knowledge regarding the Fourteenth Allegation and, therefore, neither admits nor denies same.

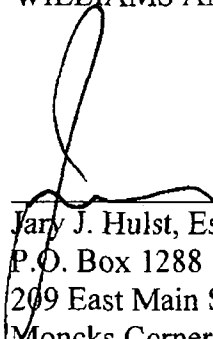
16. BEC has insufficient knowledge regarding the Fifteenth Allegation and, therefore, neither admits nor denies same.

17. BEC has insufficient knowledge regarding the Sixteenth Allegation and, therefore, neither admits nor denies same.

18. BEC has insufficient knowledge regarding the Seventeenth Allegation and, therefore, neither admits nor denies same.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendant, Berkeley Electric Cooperative, Inc., does pray this Court inquire into the matters raised herein and issue an Order dismissing Plaintiff's action and awarding said Defendant attorneys fees and costs and such further relief as this Court may deem fair and equitable.

WILLIAMS AND HULST, LLC



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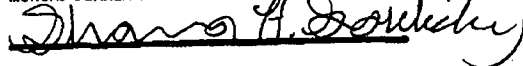
Jary J. Hulst, Esquire  
P.O. Box 1288  
209 East Main Street  
Moncks Corner, SC 29461  
(843) 761-8232  
Facsimile (843) 899-5834

Attorneys for Berkeley Electric Cooperative,  
Inc.

Dated: March 26, 2008

I HEREBY CERTIFY THAT I HAVE MAILED A COPY OF  
THE ABOVE AND FOREGOING TO COUNSEL OF RECORD IN  
SAID PROCEEDING TO HIS OFFICE ADDRESS WITH SUFFICIENT  
POSTAGE ATTACHED

MONCK'S CORNER SC THIS 27<sup>th</sup> DAY OF March 2008



John B. Williams  
Jary J. Hulst  
K. Elisabeth Hoover

209 East Main Street  
Moncks Corner, SC 29461

Phone 843.761.8232  
Fax 843.899.5834

# WILLIAMS AND HULST, LLC.

ATTORNEYS AT LAW



Personal injury  
Wrongful death  
Wills  
Real estate  
Probate and estate matters  
Contracts  
Construction law  
Appellate work  
Insurance coverage  
Business formation  
Municipal law  
Condemnation  
Commercial disputes  
Utility industry related matters  
Aviation law

March 26, 2008

Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street  
Charleston, SC 29401

RE: Francis O. Johnson vs. Mason C. Heyward, et al.  
Case Number: 08-CP-10-1054

Dear Ms. Armstrong:

Enclosed is an original and two (2) copies of the Answer of Berkeley Electric Cooperative, Inc. in the above referenced matter.

Please file the original with your office and return the clocked-in copies to me in the self addressed stamped envelope provided.

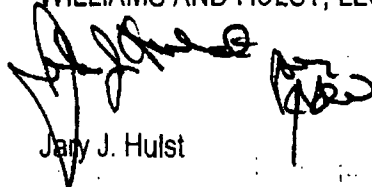
By copy of this letter I am serving the Answer on Mr. Harold A. Oberman the attorney for the Plaintiff.

Thank you for your assistance in this matter. Please contact me should you have any questions.

With kindest regards, I remain

Sincerely,

WILLIAMS AND HULST, LLC



Jary J. Hulst

JJH:shs  
cc: Mr. Harold A. Oberman, Esq.  
Mr. E.E. Strickland-BEC

[www.WilliamsandHulst.com](http://www.WilliamsandHulst.com)

Affidavit of Service of August 6, 2010

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

FRANCIS O. JOHNSON )  
Plaintiff, )

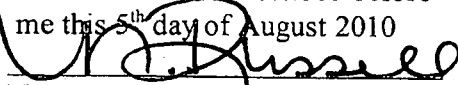
IN THE COURT OF COMMON )  
PLEAS )  
CASE NO. 2008-CP-10-1054 )

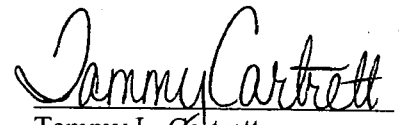
AFFIDAVIT OF SERVICE )

MASON C. HEYWARD, BERKELEY )  
ELECTRIC COOPERATIVE, INC., )  
And CLEMENTINE RAVENEL. )  
Defendant. )

FILED  
2010 AUG -6 PM 2:26  
JULIE J. ARMSTRONG  
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Tammy L. Cartrett, who first being duly sworn does depose and say that she is the person who has personally served Ralph L. Haynes, Goff Point, LP; Mr. & Mrs. Ravenel Smith, Louise Bennett, Francis Johnson, Berkeley Electric Coop, and Clementine Ravenel via First Class, Certified mail with Return Receipt on the 28<sup>th</sup> day of July 2010 and the persons to whom the process has been delivered has retained a correct copy thereof.

SWORN to and subscribed before  
me this 5<sup>th</sup> day of August 2010  
  
Notary Public of South Carolina  
My Commission Expires 05/29/2012

  
Tammy L. Cartrett  
36 Broad Street  
Charleston, SC 29401  
(843) 723-5152

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Ralph L. Haynes 225 Burns Rd. Elyria, OH 44035-1512		<i>Alfred [Signature]</i>	<i>02-01-2006</i>
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
7008 1140 0000 9887 8807		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

U.S. Postal Service™	
<b>CERTIFIED MAIL™ RECEIPT</b> (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ 44
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.24
Sent To	
Ralph L. Haynes	
Street, Apt. No. or PO Box No. 225 Burns Rd.	
City, State, ZIP+4 Elyria, Ohio 44035-1512	
PS Form 3800, August 2005 See Reverse for Instructions	

7008 1140 0000 9887 8746

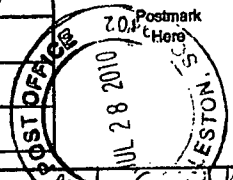
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Goff Point, LP 4480 Betsy Kerrison Pkwy Johns Island, SC 29455			<i>7.29.10</i>
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
7008 1140 0000 9887 8746		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

U.S. Postal Service™	
<b>CERTIFIED MAIL™ RECEIPT</b> (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ 80
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 82.30
Sent To	
Goff Point LP	
Street, Apt. No. or PO Box No. 4480 Betsy Kerrison Pkwy	
City, State, ZIP+4 Johns Island, SC 29455	
PS Form 3800, August 2005 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:  Mr. + Mrs. Ravenel Smith 4443 Betsy Kerrison Pkwy Johns Island, SC 29455	B. Received by (Printed Name) <i>Gwendolyn Smith</i>	C. Date of Delivery 08-02-10
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	7008 1140 0000 9887 8777	
	PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ .44
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ <del>3.24</del> 5.54
Sent To: Mr. + Mrs. Ravenel Smith Street, Apt. No., or PO Box No. City, State, ZIP+4	
PS Form 3800, August 2005 See Reverse for Instructions	

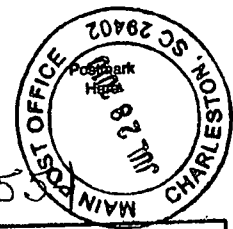
7008 1140 0000 9887 8777



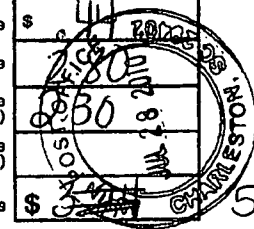
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:  Louise Bennett 3205 Resurrection Rd. Johns Island, SC 29455	B. Received by (Printed Name)	C. Date of Delivery 7-29-10
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	7008 1140 0000 9887 8791	
	PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		

7008 1140 0000 9887 8791

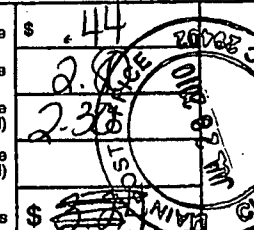
U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ .44
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ <del>3.24</del> 5.54
Sent To: Louise Bennett Street, Apt. No., or PO Box No. 3205 Resurrection Rd. City, State, ZIP+4 Johns Island, SC 29455	
PS Form 3800, August 2005 See Reverse for Instructions	



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<input type="checkbox"/> Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
1. Article Addressed to: Francis Johnson 2792 River Rd. Johns Island, SC 29455	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
2. Article Number (Transfer from service label) 7008 1140 0000 9887 8760	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
<b>OFFICIAL USE</b>	
Postage \$ 44 Certified Fee 2.30 Return Receipt Fee (Endorsement Required) 0.50 Restricted Delivery Fee (Endorsement Required) Total Postage & Fees \$ 5.54	Postmark Here 
Sent To Francis Johnson Street, Apt. No., or PO Box No. 2792 River Rd. City, State, ZIP+4 Johns Island, SC 29455	
PS Form 3800, August 2003 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<input type="checkbox"/> Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
1. Article Addressed to: Berkeley Electric Coop P.O. Box 1234 Moncks Corner, SC 29461	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
2. Article Number (Transfer from service label) 7008 1140 0000 9887 8753	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
<b>OFFICIAL USE</b>	
Postage \$ .44 Certified Fee 2.30 Return Receipt Fee (Endorsement Required) 2.30 Restricted Delivery Fee (Endorsement Required) Total Postage & Fees \$ 5.54	Postmark Here 
Sent To Berkeley Electric Coop Street, Apt. No., or PO Box No. P.O. Box 1234 City, State, ZIP+4 Moncks Corner, SC 29461	
PS Form 3800, August 2003 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee  <i>Clementine Ravenel</i></p> <p>B. Received by (Printed Name) C. Date of Delivery  7.31.0</p>
<p>1. Article Addressed to:</p> <p>Clementine Ravenel  4435 Betsy Kerrison Pkwy  Johns Island, SC  29455</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number, (Transfer from service label) 7008 1140 0000 9887 8814</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$ .44
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ <del>3.21</del>

Sent To: Clementine Ravenel  
Street, Apt. No., or PO Box No.: 4435 Betsy Kerrison Pkwy  
City, State, ZIP+4: Johns Island, SC 29455

PS Form 3800, August 2006 See Reverse for Instructions

7008 1140 0000 9887 8814

40  
2008  
5.5  
Postage  
Help  
2012  
MAIN POST OFFICE  
CHARLESTON, S.C.

Letter of Ralph L. Haynes, M.D. Dated October 8, 2010 to the court

DEPARTMENT OF THE ARMY  
LANDSTUHL REGIONAL MEDICAL CENTER  
CMR 402  
APO AE 09180-0402

8 October 2010

Judge  
Superior Court of Charleston County  
Charleston, SC 29402

Subject: Johnson v. Hayward, CA No 2008-CP-10:1054

Dear Sirs:

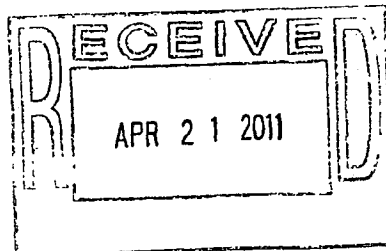
I have been notified by Mr. Edward Robinson of McDowell Law Offices of the above suit, which seeks to establish that the right-of-way to my property, Resurrection Road, has been abandoned by the county; Mr Hayward seeks to regain title of that right-of-way which leads to my property.

I wish to protest any abandonment of the county's right-of-way on the basis that it markedly affects the value of my 12 +/-acres (TMS 204-00-00-017) that borders on the marsh of Haulover Creek. When I purchase this land over 15 years ago, I envisioned it as an investment to either occupy on retirement or to sell, subdivide, or otherwise provide resources for my retirement. Accordingly, it is owned by my IRA. Its initial and current value are predicated upon having County Road access and right-of-way For the county to abrogate such right-of-way in effect disfranchises those relying on such county Road assess. The injustice of positioning Mr. Hayward to control access to his neighbors along the Resurrection Road right-of-way is far more profound than his assertion that the county has abandoned its claim to this right-of-way.

Please take these views and considerations into your deliberations on this matter

Sincerely,

Ralph L. Haynes, M.D.  
CMR 402 box 1617  
APO AE 09180



**FILED**  
2010 OCT 21 PM 1:45  
JULIE J. ANDERSON  
CLERK OF COURT  
*Clocked in date Canceled*

DEPARTMENT OF THE ARMY  
LANDSTUHL REGIONAL MEDICAL CENTER  
CMR 402  
APO AE 09180-0402

8 April 2011


Ms. Julie J. Armstrong, Clerk of Court  
Charleston County  
100 Broad Street  
Charleston, SC 29401-2258

**Certified Mail**

Subject: Johnson v. Hayward, CA No. 2008-CP-10-1054

Dear Ms. Armstrong,  
Since I have never received an answer to my letter of 8 October 2010 (attached), I am hopeful that you can provide me an update on this issue and its current status, as well any right of appeal that I may have.

Sincerely,

  
Ralph L. Haynes M.D.  
CMR 402 Box 1617  
APO AE 09180

Defendant Heyward's First Amended Answer and Crossclaim of October 29, 2010

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
) )  
FRANCIS O. JOHNSON, )  
) )  
Plaintiff, )  
vs. )  
) )  
MASON C. HEYWARD, )  
) )  
vs. )  
) )  
CHARLESTON COUNTY, a political )  
Subdivision of the State of South )  
Carolina, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2008-CP-10-1054

**DEFENDANT HEYWARD'S FIRST  
AMENDED ANSWER  
AND CROSSCLAIM**

2010 OCT 29 AM 11:32  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**FILED**

NOW COMES, the Defendant, Mason C. Heyward, by and through his undersigned attorney, answers the allegations of the Complaint as follows:

1. Heyward denies each and every allegation of the Complaint not specifically admitted, qualified, or explained and demands strict proof thereof.
2. Heyward denies Paragraph 1 of the Complaint. Heyward lacks knowledge and information sufficient to form a belief as to the legal relief sought by Plaintiff.
3. Heyward admits Paragraphs 2, 3, 4,5 and 6 of the Complaint.
4. Heyward denies Paragraph 7 of the Complaint and demands strict proof thereof.
5. Heyward admits Paragraphs 8, 9, and 10 of the Complaint.
6. Heyward denies Paragraph 11 of the Complaint, as he lacks knowledge and information sufficient to form a belief as to the legal remedies sought by the Plaintiff.
7. Heyward denies Paragraph 12 of the Complaint and demands strict proof thereof.
8. Heyward denies Paragraph 13 of the Complaint and demands strict proof thereof.

The Plaintiff must demonstrate any rights or claim or right to easements asserted against the

Defendant.

9. Heyward denies Paragraph 14 and 15 of the Complaint and demands strict proof thereof. Heyward denies that he made any representations to Plaintiff that gave them an implied right of way of any sort other than those admitted expressly above. Any allegations inconsistent with this Paragraph are denied.

10. Heyward denies Paragraph 16 of the Complaint and demands strict proof thereof. The Plaintiff has not met the requirements to assert adverse possession or a prescriptive easement in South Carolina because his actions were not hostile, did not give notice, were not exclusive to any of the Defendants or other third parties. Furthermore, Heyward denies that Resurrection Road is a public road, thoroughfare, or right of way. Any rights of way, access, easements, or easements of necessity exist only at the assent of Heyward.

11. Heyward denies Paragraph 17 of the Complaint and demands strict proof thereof. Furthermore, the Plaintiff may not assert an easement of necessity that exceeds the scope of a sufficient easement expressly granted by Heyward.

**FOR A FURTHER DEFENSE, AND BY WAY OF COUNTERCLAIM**

Defendant Heyward alleges:

12. Plaintiff seeks to create a 25-unit development on his property at the end of Resurrection Road.

13. Plaintiff is in the process of seeking permit approval for various improvements his property, and in order to receive these permits from the Charleston Zoning Commission, SCDOT, and various other public entities, Plaintiff must condemn portions of the property of the Defendants to create a public road sufficient for the development scheme he has approved to the detriment of Defendants.

23. Plaintiff's claims may be barred or otherwise reduced due to Plaintiff's failure to mitigate damages as required by law.

**FOR A FURTHER DEFENSE, AND AS A FIRST CROSSCLAIM**

24. In 1996, Defendant Heyward's house was destroyed by fire. In order to rebuild his home, the County of Charleston required that Heyward give a 25' dedicated Right of Way to the County that would allegedly provide access to his homesite.

25. Heyward had his property surveyed, a plat was drawn subdividing his property, and Charleston County Council and Charleston County Planning and/or Zoning approved acceptance of a 25' Right of Way running the length of the southern boundary of the Heyward property.

26. Heyward alleges that since this 1996 platting of the 25' Right of Way, the County of Charleston has not undertaken any improvement or repair efforts on the 25' Right of Way. On information and belief, the County may have done some repair work or maintenance on the physically-existing Resurrection Road lane of travel that has existed in one form or another for decades, but Defendant further alleges this is not one and the same as the 25' Right of Way. Heyward demands that the County prove evidence of maintenance of any portion of Resurrection Road or the 25' Right of Way, and alleges that the County has done neither.

27. On information and belief, Heyward is an interested party contemplated by S.C. Code Ann. 57-9-10 et. seq. as the landowner abutting this undeveloped Right-of-Way, and has standing to bring an action for abandonment of the described Right of Way.

28. Pursuant to S. C. Code Ann. §57-9-10, et. seq., South Carolina Code of Laws of 1976, as amended, Heyward, the landowner of the servient tenement encompassing the County's Right of Way and the Resurrection Road lane of travel, alleges that the County has through

express and implied conduct, actions, or omissions, has abandoned the 25' Right of Way, and title or ownership of this property should revert to the grantee, Mason Heyward and/or his heirs or assigns. Heyward prays for a hearing to take testimony related to abandonment of the described Right of Way, and an Order finding the County has abandoned the Right of Way and vesting absolute title to the area encompassed by the Right of Way to Mason Heyward.

29. On information and belief, County's actions or omissions from 1996 to the present time regarding the 25' Right of Way constitute an exaction that may have been intended as a substitute for the dirt path Resurrection Road. In the event that the Right of Way has not been found to be abandoned, Defendant County should be required to develop or maintain the dedicated 25' Right of Way to the benefit of residents of Resurrection Road, closing the extant Resurrection Road dirt pathway in the manner least burdensome to the servient tenement and returning that land to Heyward's exclusive possession, and Heyward prays for an Order granting the same relief.

**WHEREFORE**, having fully answered Plaintiff's Complaint, Mason C. Heyward prays:

- A. That Plaintiff's Complaint be dismissed with prejudice and its prayers for relief be denied;
- B. That the County of Charleston be joined to this action, and that the Court either 1) declare the dedicated 25' Right of Way to be abandoned, and returning ownership and control of that property to Defendant Heyward or 2) declare that the dedicated 25' Right of Way is not abandoned, and that the County be required to develop and maintain the express Right of Way

for the benefit residents of Resurrection Road, closing the extant Resurrection Road and returning the land to Heyward;

- C. That any easement or right of way to Plaintiff be limited to access reflective of the status of Resurrection Road as a private road with rights of access bound by the rights of way and easements expressly granted with the assent of Mason C. Heyward;
- D. An Order barring Resurrection Road from being declared, zoned, or otherwise made a public road for the purposes of sustaining a 25-unit development;
- E. That Mason C. Heyward be awarded costs and attorneys' fees pursuant to the appropriate statutory and case law;
- F. For such other and further relief as this Court may deem just and proper.

McDowell Law Offices



---

John E. Robinson  
36 Broad Street  
Charleston, SC 29401  
Telephone: (843) 723.5152  
Facsimile: (843) 577.4570

*Attorney for Mason C. Heyward*

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
) )  
FRANCIS O. JOHNSON, )  
) )  
Plaintiff, )  
vs. )  
) )  
MASON C. HEYWARD, )  
) )  
vs. )  
) )  
CHARLESTON COUNTY, a political )  
Subdivision of the State of South )  
Carolina, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2008-CP-10-1054

**CERTIFICATE OF SERVICE**


2010 OCT 29 AM 11:32  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

I hereby certify that a true and correct copy of the DEFENDANT HEYWARD'S FIRST AMENDED ANSWER AND CROSSCLAIM in this matter was served by First-Class Mail on the 29<sup>th</sup> day of October, 2010 to:

Oberman & Oberman,  
104 Church Street,  
Charleston, South Carolina 29401

Charleston County Corporate Counsel  
Attn: Bernard Ferrara  
4045 Bridge View Drive  
N. Charleston, SC 29405

  
Melissa S. Russell  
Paralegal

Affidavit of Publication of October 29, 2010

FILED

2010 OCT 29 AM 11:31

JULIE J. ARMSTRONG  
CLERK OF COURT

1054

G SIMMS MCDOWELL  
36 BROAD ST  
CHARLESTON SC 29401

# AFFIDAVIT OF PUBLICATION

## The Post and Courier

State of South Carolina  
County of Charleston

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Charleston, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

appeared in the issues of said newspaper on the following day(s):

- 10/09/10 Sat PC
- 10/16/10 Sat PC
- 10/23/10 Sat PC
- 10/09/10 Sat CNW
- 10/16/10 Sat CNW
- 10/23/10 Sat CNW

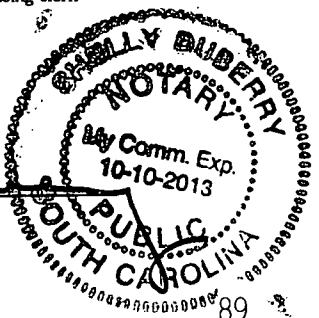
at a cost of **\$460.37**  
Account# **105940**  
Order# **386957**  
P.O. Number:

Subscribed and sworn to before me this 26th day of October A.D. 2010

L Hair  
advertising clerk

State Of South Carolina  
County Of Charleston  
IN THE COURT OF  
COMMON PLEAS  
CASE NO.  
2008-CP-10-1054  
FRANCIS O. JOHNSON,  
Plaintiff,  
vs.  
MASON C. HEYWARD, et  
al.  
vs. CHARLESTON COUN-  
TY, a subdivision of the  
State of South Carolina,  
Defendants.  
**NOTICE TO PUBLIC OF  
SUMMONS AND NOTICE  
OF FILING OF  
COMPLAINT**  
(Suit for Road Abandon-  
ment)  
NOTICE IS HEREBY  
GIVEN that pursuant to  
Sections 57-9-10 et. seq., of  
the South Carolina Code of  
Laws of 1976, as amended,  
Defendant and Cross-  
claimant Mason Heyward  
will file a Crossclaim and  
Petition for Abandonment  
against the County of  
Charleston for certain  
property constituting a 25'  
Right of Way allegedly  
dedicated by Heyward  
near and/or abutting Res-  
urrection Road, Johns Is-  
land, South Carolina,  
shown in Plat DA 789  
recorded on May 20, 1996,  
in the Charleston County  
RMC.  
Furthermore, NOTICE is  
hereby given that the origi-  
nal Complaint in the above-  
entitled action was filed in  
the office of the Clerk of  
Court for Charleston Coun-  
ty on February 25, 2008,  
and that Crossclaimant  
Heyward's action against  
the County of Charleston  
will be filed and served  
after this Notice has been  
published for three conse-  
cutive weeks, and Heyward  
will request an Order  
granting the relief prayed  
for in the Complaint against  
the County of Charleston.  
All interested and/or af-  
fected persons or entities  
should address their in-  
quiries to the lawyer and  
firm subscribed below.  
MCDOWELL LAW OF-  
FICES  
John Edward  
Robinson, Esq.  
ATTORNEY FOR  
PLAINTIFF  
36 Broad Street  
Charleston, SC 29401  
(843) 723-5152  
Charleston, South Carolina  
August 31, 2010 AD# 386957

Sherry  
NOTARY PUBLIC, SC  
My commission expires



**Plaintiff's Answer to Defendant's Crossclaim**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 08-CP-10-1054

FRANCIS O. JOHNSON,  
Plaintiff,

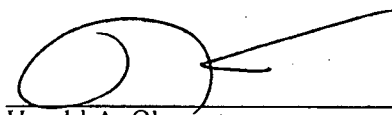
vs.

MASON C. HEYWARD, BERKELEY  
ELECTRIC COOPERATIVE, INC., and  
CLEMENTINE RAVENEL,  
Defendants.

**PLAINTIFF'S REPLY TO DEFENDANT  
MASON C. HEYWARD'S CROSSCLAIM**

To the extent that Defendant Mason C. Heyward's pleading purports to assert a counterclaim against Plaintiff, Francis O. Johnson, in paragraphs 12 through 15 of his Amended Answer and Counterclaim, it is denied.

OBERMAN & OBERMAN, LLC



Harold A. Oberman  
Marvin I. Oberman  
ATTORNEYS FOR THE PLAINTIFF  
104 Church Street  
Charleston, SC 29401  
(843) 577-7010

Charleston, South Carolina

November 5, 2010.

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JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

)  
)  
)  
IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 08-CP-10-1054

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 5th day of November, 2010, a true and correct copy of the Plaintiff's Reply to Defendant Mason C. Heyward's Crossclaim was hand delivered by courier to:

John Edward Robinson, Esquire  
McDowell Law Offices  
Attorneys at Law  
36 Broad Street  
Charleston, SC 29401

*Sue Belton*

Charleston, South Carolina.

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JULIE J ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

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**OBERMAN & OBERMAN, LLC**  
ATTORNEYS AND COUNSELLORS AT LAW  
104 CHURCH STREET  
CHARLESTON, SOUTH CAROLINA 29401

MARVIN I. OBERMAN  
HAROLD A. OBERMAN

TELEPHONE (843) 577-7010  
FACSIMILE (843) 722-7359  
EMAIL: obermanlaw@bellsouth.net

November 5, 2010

Honorable Julie J. Armstrong  
Clerk, Charleston County Court of  
Common Pleas  
100 Broad Street  
Charleston, SC 29401

BY COURIER

RE: Francis O. Johnson v. Mason C. Heyward, Berkeley Electric Cooperative, Inc., and  
Clementine Ravenel  
Case No. 08-CP-10-1054


Dear Julie:

I enclose the original and one copy of Plaintiff's Reply to Defendant Mason C. Heyward's Amended Answer and Crossclaim in the above-captioned matter.

Would you be so kind as to have a member of your staff file the original and return one clocked-in copy to me by Bullet Deliveries.

With warmest personal regards, I remain

Yours very truly,

  
Harold A. Oberman

HAO/shb

Enclosures

F:\obj\johnson758\tr\armstrong k05

Answer of Defendant Charleston County of November 15, 2010

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Francis O. Johnson, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Mason C. Heyward, )  
 )  
 vs. )  
 )  
 Charleston County, a political )  
 Subdivision of the State of South )  
 Carolina, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO. 2008-CP-10-1054

2010 NOV 15 AM 11:54  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

FILED

**ANSWER OF DEFENDANT CHARLESTON  
 COUNTY, A POLITICAL SUBDIVISION OF  
 THE STATE OF SOUTH CAROLINA**

The Defendant Charleston County, a political subdivision of the State of South Carolina ("Charleston County") answering the Counterclaim and Cross-claim of Mason C. Heyward ("Heyward"), alleges and states as follows:

1. Charleston County denies each and every allegation of the Complaint, Counterclaim and Cross-claim that is not specifically admitted and demands strict proof thereof.
2. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11; therefore, it denies the same.

**AS TO THE COUNTERCLAIM**

3. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 12 and 13; therefore, it denies

the same and demands strict proof thereof.

4. The allegations contained in Paragraph 14 constitute conclusions of law, requiring no answer. To the extent a response is required Charleston County denies the allegations contained in the Paragraph.

5. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15; therefore, it denies the same.

6. The allegations contained in Paragraphs 16, 17, 18, 19, 20, 21, 22 and 23 constitute affirmative defenses requiring no responses.

#### AS TO THE CROSS CLAIM

7. Charleston County denies the allegations contained in Paragraphs 24, 25 and 26 and demands strict proof thereof.

8. The allegations contained in Paragraphs 27, 28 and 29 constitute conclusions of law, requiring no answer. To the extent a response is required, Charleston County denies the allegations contained in the Paragraphs and demands strict proof thereof. Charleston County affirmatively alleges that the purported dedication was merely an offer to dedicate the property and that if, *arguendo*, there was a dedication, there is no acceptance of the property offered for dedication.

#### BY WAY OF FURTHER ANSWER AND AS AN AFFIRMATIVE DEFENSE

9. Heyward fails to state facts sufficient to constitute a cause of action for which relief can be granted, and his Counterclaim and Cross-claim should be dismissed in accordance with Rule 12(b)(6), S.C.R.C.P.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

10. Charleston County is a political subdivision of the State of South Carolina, a governmental entity, and as such is immune from liability for losses in accordance with the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq. In addition, Charleston County is immune from an award of attorney's fees, costs and disbursements for any actions as alleged in the Counterclaim and Cross-claim of Heyward.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

11. Heyward lacks standing to complain of the allegations contained in the Counterclaim and Cross-claim.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

12. The claims of Heyward are barred by his failure to mitigate his damages.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

13. The claims of Heyward are barred, in whole or in part, by the doctrines of collateral estoppel, equitable estoppel and judicial estoppel.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

14. The claims of Heyward are barred by the doctrines of waiver, acquiescence, and mootness.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

15. Heyward's damages, if any, have or may have been caused, in whole or in part,

by his own acts or omissions and other parties over whom Charleston County had no control and for whose acts it is not responsible.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

16. The claims of Heyward are barred, in whole or in part, by his negligence.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

17. The claims of Heyward are barred by the doctrine of laches.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

18. The claims of Heyward are barred by the doctrine of unclean hands.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

19. Heyward would be unjustly enriched at the expense of Charleston County and the citizen-taxpayers of the County if he is granted the remedy to have the County be required to develop and maintain the alleged right of way,

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

20. Heyward fails to properly plead his cause of action asserted against Charleston County.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

21. Heyward fails to satisfy the requirements for an award of attorney's fees and costs; therefore, his request should be denied.

**WHEREFORE**, the Defendant Charleston County, a political subdivision of the State of South Carolina, answering the Counterclaim and Cross-claim of Mason C. Heyward, prays that the same be dismissed together with costs and disbursements of this action, and for such other and further relief as this Honorable Court deems just and proper.

**CHARLESTON COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF SOUTH  
CAROLINA**



**JOSEPH DAWSON, III**, County Attorney  
**BERNARD E. FERRARA, JR.**, Deputy County Attorney  
**AUSTIN A. BRUNER**, Assistant County Attorney  
**BRADLEY A. MITCHELL**, Assistant County Attorney  
CHARLESTON COUNTY ATTORNEY'S OFFICE  
Lonnie Hamilton, III Public Services Building  
4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

-----  
**ATTORNEYS FOR DEFENDANT**  
-----

November 12, 2010  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Francis O. Johnson, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Mason C. Heyward, )  
 )  
 vs. )  
 )  
 Charleston County, a political )  
 Subdivision of the State of South )  
 Carolina, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO. 2008-CP-10-1054

**CERTIFICATE OF SERVICE**

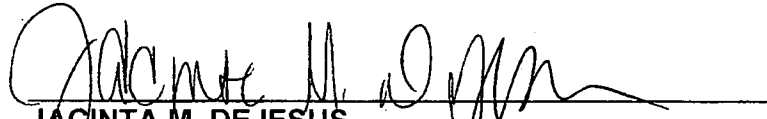
FILED  
 2010 NOV 15 AM 11:54  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

I certify that I served the **Answer of Defendant Charleston County, a political subdivision of the State of South Carolina** on the attorney for Mason C. Heyward and all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on November 12, 2010, addressed as follows:

John E. Robinson, Esquire  
 MCDOWELL LAW OFFICES  
 36 Broad Street  
 Charleston, South Carolina 29401  
 Attorney for Mason C. Heyward

Harold A. Oberman, Esquire  
 OBERMAN & OBERMAN, LLC  
 104 Church Street  
 Charleston, South Carolina 29401  
 Attorney for Plaintiff Francis O. Johnson

John B. Williams, Esquire  
WILLIAMS & HULST, LLC  
209 East Main Street  
Moncks Corner, South Carolina 29461  
Attorney for Defendant Berkeley Electric Cooperative, Inc.



**JACINTA M. DEJESUS**  
CHARLESTON COUNTY ATTORNEY'S OFFICE

**BERNARD E. FERRARA, JR.**  
DEPUTY COUNTY ATTORNEY



CHARLESTON COUNTY ATTORNEY'S OFFICE  
Lonnie Hamilton, III Public Services Building  
4045 Bridge View Drive  
North Charleston, South Carolina 29405-7464  
Telephone: 843.958.4010  
Facsimile: 843.958.4017  
bferrara@charlestoncounty.org

November 12, 2010

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, South Carolina 29401

Re: Francis O. Johnson vs. Mason C. Heyward, et al.  
Case No. 2008-CP-10-1054

Dear Ms. Armstrong:

Enclosed please find for filing the original and one copy of the Answer of Charleston County, a political subdivision of the State of South Carolina, and Certificate of Service in the above-referenced matter. Kindly file the original and return the date-stamped copy to me in the enclosed envelope. By copy of this letter, I am serving the same on all counsel of record.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE

Bernard E. Ferrara, Jr.

BEFJR/tc  
Enclosures

cc: John E. Robinson, Esquire  
Harold A. Oberman, Esquire  
John B. Williams, Esquire

Charleston County's Amended Answer

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2008-CP-10-1054

Francis O. Johnson, )  
 )  
Plaintiff, )

vs. )

Mason C. Heyward, Berkeley )  
Electric Cooperative, Inc., and )  
Clementine Ravenel, )  
 )  
Defendants. )

*(Handwritten initials)*

2011 NOV 21 PM 12:55  
JULIE J. AMES TRIPP  
CLERK OF COURT

FILED

Mason C. Heyward, )  
 )  
Crossclaim Plaintiff, )

vs. )

Francis O. Johnson and )  
Charleston County, a political )  
Subdivision of the State of South )  
Carolina, )  
 )  
Crossclaim Defendants, )

**AMENDED ANSWER OF CROSSCLAIM  
DEFENDANT CHARLESTON COUNTY,  
A POLITICAL SUBDIVISION OF THE  
STATE OF SOUTH CAROLINA**

and )

Ralph L. Haynes, )  
 )  
Crossclaim Defendant )  
and Counterclaimant. )

The Crossclaim Defendant Charleston County, a political subdivision of the State of South Carolina ("Charleston County") answering the Amended Answer of Ralph L. Haynes/Ralph L. Haynes, IRA and Crossclaims and Counterclaims Against Mason C. Heyward, Crossclaim Plaintiff and Charleston County, Crossclaim Defendant, alleges

and states as follows:

1. Charleston County denies each and every allegation of the Amended Answer of Ralph L. Haynes/Ralph L. Haynes, IRA and Crossclaims and Counterclaims Against Mason C. Heyward, Crossclaim Plaintiff and Charleston County, Crossclaim Defendant that is not specifically admitted and demands strict proof thereof.

2. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the First, Second and Third Paragraphs; therefore, it denies the same.

3. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Fourth Paragraph; therefore, it denies the same and refers to the application for subdivision application submitted by Mason C. Heyward, which speaks for itself.

4. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Fifth Paragraph; therefore, it denies the same and refers to the Agenda of April 29, 1996, #16467 - Lands of Mason Heyward, which speaks for itself.

5. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Sixth Paragraph; therefore, it denies the same and refers to the letter of May 8, 1996, to E.M. Seabrook, the County Planning Department, Public Works Department and Mason Heyward, which speaks for itself.

6. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Seventh Paragraph; therefore, it denies the same.

7. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Eighth and Ninth Paragraphs; therefore, it denies the same and refers to the record of the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, which speaks for itself.

8. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Tenth, Eleventh and Twelfth Paragraphs; therefore, it denies the same and refers to the instruments to the instruments referenced in the Paragraphs and the record of the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, which speaks for itself.

9. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Thirteenth Paragraph; therefore, it denies the same.

10. The allegations contained in the Fourteenth Paragraph constitute conclusions of law, requiring no answer. To the extent a response is required Charleston County denies the allegations contained in the Paragraph.

11. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Fifteenth Paragraph; therefore, it denies the same.

12. The allegations contained in the Sixteenth, Seventeenth, Eighteenth and Nineteenth Paragraphs constitute conclusions of law, requiring no answer. To the extent a response is required Charleston County denies the allegations contained in the Paragraphs.

AS TO THE COUNTERCLAIMS  
AGAINST MASON C. HEYWARD, DEFENDANT/CROSSCLAIM PLAINTIFF,  
AND CHARLESTON COUNTY, CROSSCLAIM DEFENDANT

13. Charleston County responds to the allegations contained in the Twentieth Paragraph by restating the foregoing paragraphs of this Amended Answer as fully and completely as if repeated verbatim herein.

14. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Twenty-First, Twenty-Second and Twenty-Third Paragraphs; therefore, it denies the same.

15. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Twenty-Fourth and Twenty-Fifth Paragraphs; therefore, it denies the same and refers to the instruments referenced in the Paragraphs and the record of the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, which speaks for themselves.

16. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Twenty-Sixth and Twenty-Seventh Paragraphs; therefore, it denies the same.

17. Charleston County denies the allegations contained in the Twenty-Eighth Paragraph.

18. Charleston County denies the allegations contained in the Twenty-Ninth Paragraph and refers to the tax maps and aerial photographs referenced in the Paragraph, which speaks for themselves.

19. Charleston County admits only that portion of the allegations contained in the Thirtieth Paragraph that alleges it placed a street sign titled Resurrection Road and from

time to time maintained the road, and it denies the remaining allegations contained in the Paragraph.

20. The allegations contained in the Thirty-First, Thirty-Second, Thirty-Third, and Thirty-Fourth Paragraphs constitute conclusions of law, requiring no answer. To the extent a response is required Charleston County denies the allegations contained in the Paragraphs.

21. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Thirty-Fifth Paragraph; therefore, it denies the same.

22. Charleston County denies the allegations contained in the Thirty-Sixth Paragraph and demands strict proof thereof.

23. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Thirty-Seventh Paragraph; therefore, it denies the same and refers to the record of the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, which speaks for itself.

24. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Thirty-Eighth, Thirty-Ninth, Fortieth, and Forty-First Paragraphs; therefore, it denies the same.

25. Charleston County denies the allegations contained in the Forty-Second and Forty-Third Paragraphs and demands strict proof thereof.

26. Charleston County is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Forty-Fourth and Forty-Fifth Paragraphs; therefore, it denies the same.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

32. The claims of Ralph L. Haynes are barred by his failure to mitigate his damages.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

33. The claims of Ralph L. Haynes are barred, in whole or in part, by the doctrines of collateral estoppel, equitable estoppel and judicial estoppel.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

34. The claims of Ralph L. Haynes are barred by the doctrines of waiver, acquiescence, and mootness.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

35. The damages of Ralph L. Haynes, if any, have or may have been caused, in whole or in part, by his own acts or omissions and other parties over whom Charleston County had no control and for whose acts it is not responsible.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

36. Ralph L. Haynes has failed to join parties under Rule 19, S.C.R.C.P.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

37. The claims of Ralph L. Haynes are barred, in whole or in part, by his negligence.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

38. The claims of Ralph L. Haynes are barred by the doctrine of laches.

27. The allegations contained in the Forty-Sixth Paragraph constitute conclusions of law, requiring no answer. To the extent a response is required Charleston County denies the allegations contained in the Paragraph.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

28. Ralph L. Haynes fails to state facts sufficient to constitute a cause of action for which relief can be granted, and his Crossclaims and Counterclaims should be dismissed in accordance with Rule 12(b)(6), S.C.R.C.P.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

29. Charleston County is a political subdivision of the State of South Carolina, a governmental entity, and as such is immune from liability for losses in accordance with the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq. In addition, Charleston County is immune from an award of attorney's fees, costs and disbursements for any actions as alleged in the Crossclaims and Counterclaims of Ralph L. Haynes.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

30. Ralph L. Haynes lacks standing to complain of the allegations contained in the Crossclaims and Counterclaims.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

31. There has been no dedication of property for public use and no acceptance of such property by the public.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

39. The claims of Ralph L. Haynes are barred by the doctrine of unclean hands.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

40. Ralph L. Haynes and Francis O. Johnson would be unjustly enriched at the expense of Charleston County and the citizens-taxpayers of Charleston County if this Court grants judgment against Charleston County in an amount of the diminution in value of their properties, if any.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

41. Ralph L. Haynes fails to properly plead his cause of action asserted against Charleston County.

BY WAY OF FURTHER ANSWER  
AND AS AN AFFIRMATIVE DEFENSE

42. Ralph L. Haynes fails to satisfy the requirements for an award of attorney's fees and costs; therefore, his request should be denied.

**WHEREFORE**, the Crossclaim Defendant Charleston County, a political subdivision of the State of South Carolina, answering the Amended Answer of Ralph L. Haynes/Ralph L. Haynes, IRA and Crossclaims and Counterclaims Against Mason C. Heyward, Crossclaim Plaintiff and Charleston County, Crossclaim Defendant, prays that the same be dismissed together with costs and disbursements of this action, and for such other and further relief as this Honorable Court deems just and proper.

**CROSSCLAIM DEFENDANT CHARLESTON  
COUNTY, A POLITICAL SUBDIVISION OF THE  
STATE OF SOUTH CAROLINA**



**JOSEPH DAWSON, III**, County Attorney  
**BERNARD E. FERRARA, JR.**, Deputy County Attorney  
**AUSTIN A. BRUNER**, Assistant County Attorney  
**BRADLEY A. MITCHELL**, Assistant County Attorney  
CHARLESTON COUNTY ATTORNEY'S OFFICE  
Lonnie Hamilton, III Public Services Building  
4045 Bridge View Drive  
North Charleston, South Carolina 29405  
(843) 958-4010

**ATTORNEYS FOR CROSSCLAIM DEFENDANT**

Charleston, South Carolina  
November 18, 2011

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

Francis O. Johnson, )  
 )  
Plaintiff, )

vs. )

Mason C. Heyward, Berkeley )  
Electric Cooperative, Inc., and )  
Clementine Ravenel, )  
 )  
Defendants. )

---

Mason C. Heyward, )  
 )  
Crossclaim Plaintiff, )

vs. )

Francis O. Johnson and )  
Charleston County, a political )  
Subdivision of the State of South )  
Carolina, )  
 )  
Crossclaim Defendants, )

and )

Ralph L. Haynes, )  
 )  
Crossclaim Defendant )  
and Counterclaimant. )

IN THE COURT OF COMMON PLEAS )  
FOR THE NINTH JUDICIAL CIRCUIT )  
CASE NO. 2008-CP-10-1054 )

2011 NOV 21 PM 12:55  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED


**CERTIFICATE OF SERVICE**

I certify that I served the **Amended Answer of Crossclaim Defendant Charleston County, a political subdivision of the State of South Carolina**, on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on November 18, 2011, addressed as follows:

Harold A. Oberman, Esquire  
OBERMAN & OBERMAN, LLC  
104 Church Street  
Charleston, South Carolina 29401  
Attorney for Crossclaim Defendant and Counterclaimant Ralph L. Haynes

John E. Robinson, Esquire  
MCDOWELL LAW OFFICES  
36 Broad Street  
Charleston, South Carolina 29401  
Attorney for Defendant and Crossclaim Plaintiff Mason C. Heyward

John B. Williams, Esquire  
WILLIAMS & HULST, LLC  
209 East Main Street  
Moncks Corner, South Carolina 29461  
Attorney for Defendant Berkeley Electric Cooperative, Inc.



---

**JACINTA M. DEJESUS**  
CHARLESTON COUNTY ATTORNEY'S OFFICE



CHARLESTON COUNTY ATTORNEY'S OFFICE  
Lonnie Hamilton, III Public Services Building  
4045 Bridge View Drive  
North Charleston, South Carolina 29405-7464  
Telephone. 843.958 4010  
Facsimile. 843 958.4017  
bferrara@charlestoncounty.org

**BERNARD E. FERRARA, JR.**  
CHIEF DEPUTY COUNTY ATTORNEY

November 18, 2011

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, South Carolina 29401

Re: Francis O. Johnson vs. Mason C. Heyward, et al.  
Case No. 2008-CP-10-1054

Dear Ms. Armstrong:

Enclosed please find for filing the original and one copy of the Amended Answer of Crossclaim Defendant Charleston County, a political subdivision of the State of South Carolina, and Certificate of Service in the above-referenced matter. Kindly file the original and return the date-stamped copy to me in the enclosed envelope. By copy of this letter, I am serving the same on all counsel of record.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE

  
Bernard E. Ferrara, Jr.

BEFJR/jd  
Enclosures

cc: Harold A. Oberman, Esquire  
John E. Robinson, Esquire  
John B. Williams, Esquire

Defendant Heyward's Motion to Alter or Amend of July 15, 2015

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
FRANCIS O. JOHNSON, )  
) )  
Plaintiff, )  
vs. )  
MASON C. HEYWARD, et. al., )  
) )  
vs. )  
) )  
CHARLESTON COUNTY, a political )  
Subdivision of the State of South )  
Carolina, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2008-CP-10-1054  
(Referred to Master-in-Equity)

**FILED**  
2015 JUL 15 PM 4:46  
JULIE J. ARMSTRONG  
CLERK OF COURT

**NOTICE OF MOTION AND MOTION  
TO ALTER AND AMEND JUDGMENT,  
FOR A NEW TRIAL, AND FOR RELIEF  
FROM JUDGMENT**  
(Rules 52, 59, and 60, SCRCP)

**YOU WILL PLEASE TAKE NOTICE** that the Defendant, Mason C. Heyward, (“Heyward”) by and through the undersigned counsel, will move before the Hon. Mikell Scarborough, Master-in-Equity for Charleston County, ten (10) days from the date this Motion was filed, or as soon thereafter as can be heard, for an Order granting a new trial in the above-referenced matter, and/or for relief pursuant to Rules 52, 59 and Rule 60 (a-b) all inclusive, South Carolina Rules of Civil Procedure, South Carolina Code of Laws of 1976, as amended. Before the time of the hearing, Defendant will supplement this motion with a motion memorandum citing to the record in the case. Heyward incorporates the trial transcript of the case into this Motion, as well as the proposed findings of fact and conclusions of law submitted by his client to this Court previously.

**PROCEDURAL BACKGROUND**

The Plaintiff commenced this action with the filing of a Summons and Complaint on February 25, 2008. Defendant filed his Answer and Counterclaim on initial Answer and Counterclaim thereafter. Subsequently, pleadings were amended by Defendant Heyward’s crossclaims against the County of Charleston, which in turn answered and appeared in this action. A series of hearings have been held in this case, including testimonial hearings on

January 19 and 20, 2010, and most recently, on January 14-18, 2013. The Court issued its order on June 30, 2015 and Defendant Heyward's counsel received written receipt of a copy of the Final Order on July 6, 2015. Defendant Heyward has timely filed this motion. Because of the extent and volume of testimony over several years, Defendant Heyward begs leave of Court to supplement the grounds for his Motion herein with information contained in the final trial transcript of this matter, which Heyward has requested.

## **APPLICABLE LAW AND ARGUMENT.**

### **I. RULE 52 MOTION TO ALTER OR AMEND JUDGMENT AND ORDER**

As a threshold matter, Defendant Heyward files this Motion out of an abundance of caution, as it appears that certain matters contained in the Final Order reserve the possibility of further findings of fact, conclusions of law. Defendant requests that the Court supplement the record, change the findings in the Order, or at a minimum, amend its Order to address these issues for purposes of appellate review. Defendant may supplement requests for amendments in their memorandum. The Defendant respectfully requests that the Court reconsider, alter, and amend the following specific matters contained in the Final Order or matters of law contained in Defendant's proposed Order that are not ruled on:

1. The Final Order signed by the Court states that Heyward may receive compensation or damages (*see* Paragraph 31) for the "radish patch" taken from him by operation of the Order. At a previous hearing of this case, Thomas Hartnett, expert witness for Heyward testified as to the approximate acreage and condemnation value of this property. The Final Order does not reference or incorporate any findings of fact regarding this testimony. The Final Order does not provide a specific amount of compensation or a mechanism for him to be paid for his damages. Additionally, the Final Order suggests, but does not require, Heyward to receive a grant of unused land located in the 25' purported dedicated Right of Way shown on the "Exhibit Showing the Physical Location of Resurrection Road Located on Johns Island, Charleston

County, South Carolina” by George A. Z. Johnson, Jr., Inc., dated Oct. 31, 2011”, introduced as Exhibits “1” and “1-A” at the Final Hearing (*see* conclusory Paragraph “SIXTH” on p. 22 of the Final Order). Lastly, the Final Order does not expressly call for the County to deed the property back to Heyward, and it would have no reason for doing so if the easement was in fact dedicated in 1996. Heyward requests that the Court alter or amend the judgment to state the procedural mechanism for providing Heyward relief, the concrete relief if any, he is to receive, and an opportunity to be heard on updated damages, if monetary damages are to be awarded, given the age of the case. Additionally, if compensation is to be given for the acreage to be used, Heyward requests that the Court rule on whether the compensation must come from the Plaintiffs or Defendant County of Charleston. If it is the former, on information and belief, there is an error of law as there is no private right of condemnation in South Carolina. If it is the latter, Heyward’s rights under the Takings Clause of the United States Constitution are invoked, and he is entitled to due process and a formal condemnation hearing. The Court raised the Constitutional issue of an exaction or “stealth taking” without compensation *sua sponte* at one or more hearings in this case. Heyward believes that the relief proposed in the Final Order would constitute a stealth taking from Heyward by the County. “(T)he Fifth Amendment is violated when land use regulation ‘does not substantially advance legitimate state interests or denies an owner economically viable use of his land.’ ” Sea Cabins v. City of North Myrtle Beach 548 S.E.2d 595 (S.C. 2001) at 601 *citing* Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1016, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992).

2. Heyward filed a statutorily-compliant action for abandonment of a public road pursuant to S.C. Code Ann. Section § 57-9-10. While the Final Order discusses the unique nature of Charleston County Community roads, the Order does not expressly address Heyward’s legal right to statutory abandonment based on the fact that he filed such an action, perfected service, and at least in its pleadings, the County acquiesced to this relief. At the last hearing of the case, counsel for Johnson and counsel for Charleston County attempted to amend the pleadings and over the objection of

Heyward, reverse their position of acquiescence on abandonment of the easement. Heyward had no notice that the County would attempt to amend its pleadings; moreover the County did not, in fact, amend its pleadings, and therefore the issue should not have been tried or considered over Heyward's objection. Issues not raised in the pleadings cannot be a basis for relief at trial where not tried by the implied consent of the parties. Dunbar v. Carlson, 533 S.E.2d 913, 341 S.C. 261 (S.C.App. 2000). Heyward desires to alter or amend the judgment in such a manner as to correct this mistake as Heyward believes this attempt to amend the pleadings and try the issues was improper and should not have been incorporated into any findings of fact or conclusions of law.

3. The remedies provided to all parties by the Court are in some respects ambiguous. Plaintiff contends the Resurrection Road dirt travel way is a public road. While the Final Order requires or suggests that a 25' road be created by merger of the existing Resurrection Road path and the 25' dedicated Right of Way, the Order does not establish who shall bear the cost and/or burden of improving the road in the future beyond creation of the initial survey. While the Order states that legal 25' access is to be provided by the servient tenement, the Order does not state whether practical (real) access must be given by Heyward, and if so, who bears the costs for road improvement, now or in the future. As was demonstrated to the Court through ample testimony, the areas outside of the Resurrection Road dirt path contain grand trees and swamp. The actual road bed narrows to 12-14 feet in some areas. Presumably costs of improvement of the road have prevented Charleston County or anyone else from improving the road in the past. If the Order is intended to have the ameliorative effect of giving 25' legal access that is not intended to be converted into actual access or use, the Order should so state plainly. The Order also does not indicate what responsibility, if any, the County has for making such improvements or paying for the costs of the same. It is inequitable that Heyward should bear such costs, because he is alleged to have dedicated land to the County, which they are alleged to have accepted, yet presumably as the owner of the servient tenement he

will now be burdened, financially and otherwise by any required improvement of the Resurrection Road travel path by the dominant landowners or the County. While the Final Order as signed states that Heyward is not being presently burdened, the effect of this Order is to judicially estop him from complaining or seeking redress when he is burdened if he is compelled to widen the road to 25' as a practical improvement.

4. Because the property is identified as a "Community Road" and the Final Order presently states that the County accepted dedication of this property, Heyward must presume the County is required to maintain and improve the proposed new road unless the Court expressly states otherwise. Heyward requests that the Court clarify who has the obligation to maintain the current and proposed paths.
5. Heyward contests the contention in the Final Order that the County of Charleston expressly accepted dedication of a right of way or easement from Mason Heyward, or that it did so by implication, or that this has been proven to the Court by the standard required at law. Heyward contends that the Plaintiffs and County did not meet their burden of proof under applicable law to find dedication of an easement. The mere fact the County approves a plat (which is all it did in the Craven letter of 1996, as opposed to expressly stating it *accepted* a right of way) does not constitute an acceptance of the proposed public dedication. *See S.C. Code Ann. § 6-7-1070 (1976)*. At trial, James Neal, witness for Charleston County, testified that Public Works' system was intended to bring the roads into the system by unanimous consent of landowners after residents developed consensus. The standards introduced into evidence and testimony indicate that the County would have to seek condemnation of roads if landowners did not consent, or withdraw the road from County maintenance. Testimony established that other roads (Possum Trail and Feldman Road) previously in the Community Roads system have recently been designated private roads by consensus of the affected landowners, and that others have been designated public. In spite of County's allegation that maintenance of the roads makes them "public", testimony demonstrates Charleston County has acquiesced in abandoning roads, or in the alternative, has allowed landowners to change previously "public" roads into

“private” roads without going through statutory abandonment processes. Moreover, County witnesses testified that at least for some portion of time they expressly abandoned maintenance at the request of unidentified landowners. Heyward seeks a definitive ruling on whether Resurrection Road (the actual path or the 25’ right of way) is a public or private road and further requests that the Court reject the contention that there was a dedication of way to the County, express or implied, in conformity with the County’s Answer which provided that the 25’ Right of Way be considered abandoned. The Final Order states that the equitable maxim of “equity regarding as done that which out to have been done”. Problematically, the Plaintiffs were not parties to Mason Heyward’s agreement with Charleston County, and assuming *arguendo*, that there was a dedication, then the County must be obligated to apply this maxim as well and do what it allegedly agreed to do; be prepared to build a road in an expressly-dedicated right of way.

6. As a matter of substantive law, the Final Order is contradictory in that it attempts to combine an alleged expressly-granted easement with a prescriptive easement, but then appears to give the option of returning land dedicated by express easement back to Heyward. In Paragraph 10 of the Final Order, the Court states “coup(ling) it with the 25 feet that’s there” and those decision are within the equitable powers of this Court.” While Heyward does not question the plenary equitable powers of the Court, he requests a ruling on the applicable law allowing “merger” of easements and/or dedicated rights of way. Heyward requests a ruling with a basis in law or statute for a reverse-grant from a governmental body, other than abandonment, which Heyward insists he has achieved through proper legal process, and a ruling providing certainty on the process for getting his land back if this is the chosen remedy of the Court. If implemented, the Final Order has the effect of “giving” the County the Resurrection Road travel path which they did not condemn as required by law.
7. Heyward believes that the Final Order improperly expands the scope of an existing prescriptive easement in direct contradiction to Marlow v. Marlow, 325 S.E.2d 703, 284 S.C. 155 (S.C.App. 1984). In Marlow, the Court of Appeals ruled that a future,

desired use (specifically residential subdevelopment) was beyond the scope of what the law requires for the granting of an easement of ingress and egress. Heyward respectfully contends that the law provides where an existing easement provides necessary ingress and egress, the minimum requirements of equity and the law are met, and this is all the law affords the party seeking to use or expand the easement. Heyward believes this is vital to his case, because presumably he will be burdened with any practical expansion of the existing Resurrection Road travel path.

8. Heyward believes that the Final Order improperly moves an existing prescriptive easement to benefit parties other than the public (the Plaintiffs), and that if actually dedicated, the 25' right of way could not or should not be moved. In Goodwin v. Johnson, (357 S.C. 49, 591 S.E.2d 34 (S.C. App. 2003)), the South Carolina Court of Appeals ruled on the novel issue of the relocation of a prescriptive easement or easement by necessity. Applying the Restatements on Property and Servitudes, as well as the Maryland case of Hancock v. Henderson, 236 Md. 98, 202 A.2d 599 (1964), the Court allowed the relocation of an easement where, effectively, the old road used to access the property had ceased to function as such. The Court ruled that “in the absence of agreement, the trial court ‘should exercise jurisdiction in locating an adequate right of way over the servient tenement in a manner so as to permit ingress and egress of vehicular traffic, but also in a manner *least* burdensome to the servient tenement.’” Goodwin v. Johnson *citing Hancock v. Henderson*, 236 Md. 98, 202 A.2d 599 (1964) at 603. (italics added). “A Court using its equity powers may relocate an easement when the relocation will not “(a) significantly lessen the utility of the easement, (b) increase the burdens on the owner of the easement in its use and enjoyment, or (c) frustrate the purpose for which the easement was created” (Goodwin v. Johnson at p. 38 *citing Restatement (Third) of Property: Servitudes Section 4.8*). Heyward showed at trial that the existing Resurrection Road dirt travel path, which is the undisputed access path used by the dominant tenements on the road, does not lessen the utility of the road or burden the owners by restricting any present use. The Order suggests in part that there is a road widening necessary of

four-and-a-half feet or more. Additionally, the Johnson plat shows areas where as a practical matter the existing road is only 12-14 feet wide. Respectfully, Heyward believes that the Court erred in both moving *and* expanding an existing prescriptive easement.

Heyward respectfully requests that the Court alter and amend the Final Order, after a hearing on the issues raised herein.

## **II. RULE 59 MOTION FOR NEW TRIAL**

A party may request a new trial in an action on the basis for any of the reasons for which rehearings have been granted in the Courts of the State of South Carolina. See Rule 59(a). The motion must be made within ten (10) days of receipt of written entry of judgment. See Rule 59(b). This motion is therefore timely. The timely following of this Motion tolls the time limit for filing an appeal. See Rule 59(f).

Heyward requests a new trial on the basis of the specific objections and requests for amendment recited in Section I, above as to any issue in which there is not a clear factual record, where additional testimony is necessary and warranted, and where the judgment should be amended in light of Heyward's objections and requests. Specifically, Heyward believes that additional testimony by the parties or clarification of statements made by the parties at trial will either aid the Court in altering its decision or clarify the record for appeal. Defendant may supplement requests for amendments in their memorandum.

## **III. RULE 60 MOTION FOR RELIEF FROM JUDGMENT**

Rule 60 (b) provides that a judgment may be set aside on the grounds of mistake or inadvertence. In this case, for the reasons cited in Section I, Heyward believes there have been inadvertent mistakes in the record which should be corrected through further testimony,

clarification of the record, and the Court's specific address to the objections raised herein and at trial. If these omission(s) were not intended by the Court, Defendant's motion to correct mistake or inadvertence by the Court is proper, and should therefore be granted to conform with the record in the case.

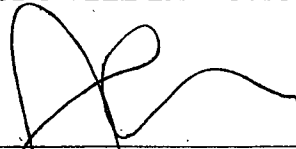
Defendant may supplement requests for amendments in their memorandum.

### CONCLUSION

For the foregoing reasons and arguments, Defendant respectfully requests that the parties be granted a new trial, and/or that the judgment be amended, and/or that the Final Order be amended pursuant to Rule 60 correct the mistakes therein. Heyward requests a hearing on which he may be heard on all the issues recited herein.

Respectfully Submitted,

MCDOWELL LAW OFFICES



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John E. Robinson  
36 Broad Street  
Charleston SC, 29401  
Telephone: (843) 723-5152  
Fax: (843) 577-4570

*Attorney for Defendant*

Charleston, South Carolina  
July 15, 2015

08-CR-10-1054

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of DEFENDANT HEYWARD'S  
MOTION FOR RULE 52, 59, and 60 RELIEF in this matter was served on July 15, 2015,  
to:

VIA HAND DELIVERY

Hon. Mikell Scarborough  
Master-in-Equity for Charleston County  
100 Broad St., Charleston SC 29401

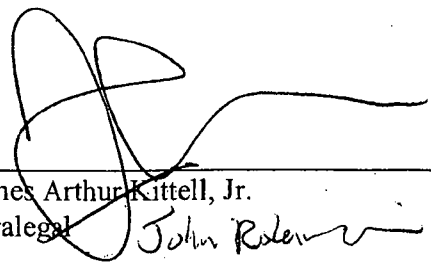
Marvin Oberman  
Oberman & Oberman,  
104 Church Street,  
Charleston, South Carolina 29401

VIA FIRST CLASS US MAIL

John B. Williams, Esquire  
Williams & Hulst, LLC  
Attorneys at Law  
209 East Main Street  
Moncks Corner, SC 29461

Bernard E. Ferrara, Jr., Esquire  
Deputy County Attorney  
County of Charleston  
4045 Bridge View Drive  
North Charleston, SC 29405

FILED  
2015 JUL 15 PM 4:46  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

  
\_\_\_\_\_  
James Arthur Kittell, Jr.  
Paralegal

*McDowell Law Offices*

*Attorneys at Law  
36 Broad St.  
Charleston, SC 29401  
(843) 723-5152  
(843) 577-4570 fax*

*July 15, 2015*  
~~June 3, 2010~~

**VIA FIRST-CLASS MAIL**

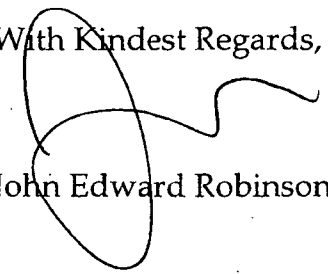
Hon. Mikell R. Scarborough  
Master-In-Equity for Charleston County  
100 Broad Street  
Charleston, SC 29401

Re: Johnson v. Heyward, CA No. 2008-CP-10-1054

Dear Judge Scarborough,

Enclosed herewith please find a Motion for New Trial, Motion to Alter and Amend, and Motion for Rule 60 relief, responsive to the Court's Order of June 30, 2015. This Order was received by our office on June 6, 2015, and so we are filing within the required ten (10) days.

With Kindest Regards,

  
John Edward Robinson

Cc: Marvin Oberman, Esq.  
Jack Williams, Esq.  
County of Charleston c/o Bernard Ferrara, Esq.

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

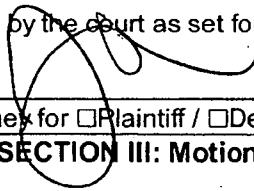
IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 08-CP-10-1054

FRANCIS O. JOHNSON,  
Plaintiff,

vs.

MASON C. HEYWARD, et al.  
Defendant.

MOTION INFORMATION  
AND COVER SHEET

Plaintiff's Attorney: Marvin Oberman Address: 104 Church St, Charleston, SC 29401 phone: 843-577-7010 fax: 843-722- 7359e-mail: obermanlaw@bellsouth.net	Defendant's Attorney: John Edward Robinson Address: 36 Broad St. Charleston, SC 29401 phone: 843-723-5251 fax: 843-577-4570e-mail: gsimms@charlestonlawoffice.com
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Rule 52, 29, and 60 Motion for New Trial, Amendment of Order or Other Relief Estimated Time Needed: 1 hour Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 _____ Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted	
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order	_____ JUDGE
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	Date Filed: _____

Ralph Haynes' Amended Answer and Crossclaims and Exhibit 2

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 FRANCIS O. JOHNSON, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 MASON C. HEYWARD, BERKELEY )  
 ELECTRIC COOPERATIVE, INC., and )  
 CLEMENTINE RAVENEL, )  
 )  
 ) Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO. 08-CP-10-1054

FILED  
 2011 NOV 10 AM 10:15  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

MASON C. HEYWARD, )  
 )  
 ) Crossclaim Plaintiff, )  
 )  
 vs. )  
 )  
 FRANCIS O. JOHNSON and )  
 CHARLESTON COUNTY, a political )  
 Subdivision of the State of South Carolina, )  
 )  
 ) Crossclaim Defendants, )  
 )  
 ) and )  
 )  
 RALPH L. HAYNES, )  
 )  
 ) Crossclaim Defendant and )  
 Counterclaimant. )

AMENDED ANSWER OF RALPH L. HAYNES/  
 RALPH L. HAYNES, IRA AND  
 CROSSCLAIMS AND COUNTERCLAIMS  
 AGAINST MASON C. HEYWARD,  
 CROSSCLAIM PLAINTIFF AND  
 CHARLESTON COUNTY, CROSSCLAIM  
 DEFENDANT

Ralph L. Haynes as and for his Amended Answer to the Crossclaim Plaintiff, Mason C. Heyward, and his Counterclaims to the Crossclaim Plaintiff, Mason C. Heyward, and the Crossclaim Defendant, Charleston County, would show unto this Honorable Court that:

FIRST: This Crossclaim Defendant/Crossclaimant, Ralph L. Haynes, was the former partner of The Nautilus Group, a South Carolina partnership, the Trustee of Atlanta Respiratory Care, P.C., and the sole beneficiary and real party in interest of a Trust set up in Equity Trust Company, FBO Ralph L. Haynes, IRA; Ralph L. Haynes and Equity Trust Company, FBO Ralph L. Haynes, IRA as are all hereinafter collectively shown as Ralph L. Haynes.

SECOND: This Defendant/Crossclaimant was in his representative capacity the owner of a parcel of property of approximately 12 acres (TMS No. 204-00-00-017), which parcel is to the north of and is bounded on the south by Resurrection Road in the County of Charleston, State of South Carolina; that parcel (Parcel 17) is bounded to the west by property of Mason C. Heyward (TMS No. 204-00-00-018) and to the east on property of Louise Donny Bennett (TMS No. 204-00-00-016), all of which will more fully appear by reference to a survey and plat by George A.Z. Johnson, Jr., Inc. dated April 15, 2010, revised September 23, 2010 and again revised October 31, 2011<sup>1</sup>, attached hereto collectively as Exhibit "1A", and a Charleston County Tax Map Aerial of the properties in question and attached hereto as Exhibit "1B".

THIRD: Haynes, heretofore, submitted his pro se Answer dated October 8, 2010 (Exhibit "2") and this within Amended Answer, Crossclaims, and Counterclaims (collectively) are now submitted and served to amend and more fully supplement that Answer of October 8, 2010.

FOURTH: That between April 29, 1996 and May 7, 1996, Mason C. Heyward appeared before and sought the approval of the Charleston County Planning Board and the Charleston County Council

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<sup>1</sup>The survey and plat of October 31, 2011 has been broken into separate sheets. The full sized plat measuring 30" x 42" will be filed with the Court and a copy of the same will be available to all interested parties at the offices of Oberman & Oberman at 104 Church Street, Charleston, SC.

for the subdivision of Lot J into Lot J-1 containing 1.30 acres, approximately 5.0 acres of the residual tract and a **0.51 acre R/W** (Exhibit "3"). (emphasis added)

FIFTH: As will appear by reference to Agenda of April 29, 1996-#16467-Lands of Mason Heyward-the Defendant/Crossclaim Plaintiff agreed to provide a 25' road right-of-way in lieu of the county standard (at that time) for a road of 50' and asserted to Charleston County Council that **"Resurrection Road serves as access to the approximately 25 acres of property with high development potential."** (emphasis added)

SIXTH: Charleston County Council acted on the application of Mason Heyward and by letter of May 8, 1996, to E.M. Seabrook, the County Planning Department and Mason Heyward notified those parties that County Council "granted APPROVAL of a 25' road right-of-way being dedicated to the public. Resurrection Road serves as access to approximately 25 acres of property with high developmental potential."

SEVENTH: The Plaintiff/Crossclaim Defendants, Francis O. Johnson and Ralph L. Haynes were, during the period April 29, 1996 to May 8, 1996, members of the public and owners of a large portion of the twenty-five acres of property with high developmental potential and which parcels were most directly impacted by the 25' road right-of-way dedicated to the public.

EIGHTH: A survey and plat showing the 0.51 acre right of way and the center line of Resurrection Road dated January 18, 1996, revised February 27, 1996 is shown as the approved final plat on May 7, 1996 and said plat was recorded on May 20, 1996 in Plat Book DA, page 789, RMC Office for Charleston County. (Exhibit "4")

NINTH: When Dr. Haynes purchased the property, its initial and current value were predicated upon having a road of ingress/egress between the said parcel 17 and Betsy Kerrison Boulevard. When the

said parcel was deeded by The Nautilus Group by its sole remaining partner of Atlanta Respiratory Care, PC Profit Sharing Plan to Ralph L. Haynes, as Trustee of Atlanta Respiratory Care, PC Profit Sharing Plan by deed dated April 22, 1999 and recorded on May 5, 1999 in Book U-325, page 436, RMC Office for Charleston County, the Grantor and Grantee relied upon the ingress/egress of the 0.51 acre right of way depicted on the survey and plat of E.M. Seabrook and recorded in Plat Book DA, page 789 on May 20, 1996 and the instrument entitled "Confirmation and Grant of Access Easement" dated April 29, 1999 from Mason C. Heyward granting and confirming unto William L. Kerrison, his successors and assigns, a perpetual, permanent, assignable, commercial, non-exclusive easement appurtenant to lot 16 for the purpose of pedestrian and motor vehicle ingress/egress on, over, and across that portion of Resurrection Road crossing lot 18 in the location where it currently exists, shown and designated as "center line Resurrection Road" and over that portion of lot 18, shown and designated as Resurrection Road 25' right of way on a plat entitled "Plat of Subdivision of Lot J Owned by Mason C. Heyward Into Lot J-1 Containing 1.30 Acres and Approximately 5.0 Acre Residual Tract and a 0.51 Acre Right of Way" by Louis E. Seabrook, Civil Engineer and Land Surveyor dated January 18, 1996, revised February 27, 1996, and recorded May 20, 1996 in Plat Book DA, page 789, RMC Office for Charleston County.

TENTH: That Confirmation and Grant of Access Easement was given by Mason C. Heyward for valuable consideration to him in hand paid.

ELEVENTH: The aforesaid Confirmation and Grant of Access Easement further stated that the easement granted herein over any portion of Resurrection Road currently lying outside the area shown and designated as Resurrection Road 25' right of way on the said plat shall expire in the event

the road is relocated so as to lie wholly within [sic] the area shown and designated as "Resurrection Road 25' Right of Way" on said plat.

TWELFTH: By instrument entitled "Confirmation and Grant of Access Easement" dated March 30, 1999 and recorded April 30, 1999 in Book N-325, page 744, RMC Office for Charleston County, Dr. Haynes granted a perpetual, permanent, assignable, commercial, and non-exclusive easement appurtenant to lot 16 for the purposes of pedestrian and motor vehicle ingress/egress on, over, and across a strip of land 25' in width beginning at the southwest corner of lot 17 as shown on the plat referenced in Schedule A and running along the southern-most boundary line of parcel 17 of Dr. Haynes.

THIRTEENTH: The said twenty-five (25') foot strip was intended to and did combine with the twenty-five (25') foot easement of ingress and egress granted by Mason Heyward to the public.

FOURTEENTH: Through the laws of prescription and the recorded documents, surveys and plats, there exist an easement of ingress/egress, 25' in width commencing at Betsy Kerrison Parkway, traversing the properties of Clementine Ravenel, Mason C. Heyward, Francis O. Johnson, and Ralph L. Haynes, M.D. approximately 1900 feet in length<sup>2</sup> terminating on TMS No. 204-00-00-016, as will appear by reference to the plats of Johnson and the maps and aerials of the County of Charleston, State of South Carolina.

FIFTEENTH: Dr. Haynes has relied on the Grant of Easement by Mason Heyward, the acceptance of the Grant of Easement by the County of Charleston for the benefit of the public, and the surveys and tax maps, all showing that easement for the valuation of his property as an investment to be

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<sup>2</sup>The property line of Ralph L. Haynes makes up approximately nine hundred (900') feet of the northern boundary line of that easement.

occupied at retirement or sell, subdivide, or otherwise provide resources for the retirement of Dr. Haynes.

SIXTEENTH: Mason C. Heyward, has waived his rights to reclaim the 0.51 acre R/W that he dedicated to the public by his actions in April/May, 1996, his Confirmation and Grant of Access Easement by recorded instrument dated April 29, 1999, and his actions for a period of more than fifteen years.

SEVENTEENTH: Mason C. Heyward is estopped by his actions and the passage of time from seeking the abandonment of the 0.51 acre right of way to the detriment of the number of abutting land owners—members of the public—to whom the ingress/egress easement was granted.

EIGHTEENTH: The conduct by Mason C. Heyward, if he is allowed to reclaim the granted right of way, would amount to a false representation and concealment of material facts; Mason C. Heyward intended that such conduct would be acted upon by other parties and they, with lack of information and/or a means of the knowledge of the truth, relied upon that misconduct of Mason C. Heyward to their financial detriment and prejudicial change in the position of those parties.

NINETEENTH: Ralph L. Haynes has easements of ingress and egress, twenty-five (25') feet in width, to his property by grant, deed, plat, estoppel, implication, prescription, and/or necessity.

**AS AND FOR COUNTERCLAIMS AGAINST MASON C. HEYWARD, DEFENDANT/  
CROSSCLAIM PLAINTIFF, AND CHARLESTON COUNTY, CROSSCLAIM  
DEFENDANT**

Ralph L. Haynes in his individual capacity and as sole beneficiary and real party in interest of the Trust, FBO Ralph L. Haynes, IRA, as and for his Counterclaims against Mason C. Heyward,

Defendant/Crossclaim Plaintiff, and Charleston County, Crossclaim Defendant, would show unto this Honorable Court that:

TWENTIETH: This Crossclaim Defendant, Ralph L. Haynes, restates and realleges, on the part of his Counterclaims, all statements and allegations contained in the above paragraphs First through Nineteenth.

TWENTY-FIRST: There is and was for many years a prescriptive right of way for ingress and egress between Betsy Kerrison Parkway to and from the parcel shown as TMS No. 204-00-00-016, shown to be owned by Louise Donny Bennett, all as will more fully appear by reference to the testimony and order in the case of Francis O. Johnson, Plaintiff v. Mason C. Heyward, Berkeley Electric Cooperative, Inc., and Clementine Ravenel.

TWENTY-SECOND: The width of the roadbed travel path in making up that prescriptive easement varied from a width of 24.3' at its entrance/termination on Betsy Kerrison Parkway down to 13.5' at a midway point of Parcel J-1 owned by Mason C. Heyward.

TWENTY-THIRD: The prescriptive easement of ingress/egress varies physically so that in places between the easternmost boundary line of the property of Mason C. Heyward (Parcel No. 204-00-00-018) it becomes no more than a wagon or foot path.

TWENTY-FOURTH: That as will more appear by the allegations in paragraphs Fourth through Eleventh, inclusive above, by his grant entitled "Confirmation and Grant of Access Easement" dated April 29, 1999, Mason C. Heyward agreed to and had confirmed that he had provided a 25' road right of way; had previously sought and received the approval of Charleston County Council; and recorded his plat, with the approval of Charleston County Council, dated January 18, 1996, revised February

27, 1996, and recorded in Plat Book DA, page 789, RMC Office for Charleston County showing the 25' road right of way.

TWENTY-FIFTH: By instrument dated April 29, 1999 and entitled "Confirmation and Grant of Access Easement," the said Mason C. Heyward for valuable consideration in hand paid granted and confirmed to the then owner of Parcel 16, his successors and assigns, a perpetual, permanent, assignable, commercial, non-exclusive easement for the purpose of pedestrian and motor vehicle ingress/egress on, over, and across that portion of Resurrection Road crossing 18 in the location where it currently exists, shown and designated as center line "Resurrection Road" over that portion of Lot 18 shown and designated as Resurrection Road 25' right of way on a plat entitled "Plat of Subdivision of Lot J Owned By Mason C. Heyward Into Lot J-1 Containing 1.3 Acres and an Approximate 5 Acre Residual Tract and a 0.51 Right of Way" by Louis E. Seabrook, Engineer and Land Surveyor dated January 18, 1996, revised February 27, 1996, and recorded May 20, 1996 in Plat Book DA, page 789, RMC Office for Charleston County. That 25'--0.51 acre--right of way terminates on the southwesterly corner of Parcel 17 owned by this Crossclaim Defendant and provides the only 25' wide easement of ingress/egress to and from Betsy Kerrison Parkway, all as will more fully appear by reference to the survey and plat of George A.Z. Johnson, Jr., Inc. and the aerial for the County of Charleston.

TWENTY-SIXTH: Dr. Haynes relied upon the plat drawn at the direction of Mason C. Heyward and the application for and approval of that 25' road right of way by Charleston County being dedicated to the public.

TWENTY-SEVENTH: Dr. Haynes is a member of the public as are the other landowners abutting said 25' right of way.

TWENTY-EIGHTH: The County of Charleston approved that dedication and allowed that survey and plat to be recorded in its RMC Office.

TWENTY-NINTH: The County of Charleston on its many tax maps and aerial photographs showed the said 25' right of way.

THIRTIETH: The County of Charleston sought and did have placed a street sign showing the granted easement of ingress/egress as "Resurrection Road" and has from time to time maintained the road for the benefit of the property owners abutting and adjoining said road.

THIRTY-FIRST: Owners of properties abutting said Resurrection Road are members of the public to whom Resurrection Road was dedicated.

THIRTY-SECOND: Neither Mason C. Heyward nor the County of Charleston can abrogate the dedicated right of way and renege on the dedication of said road, which road has been depended upon, accepted, and used by those members of the public.

THIRTY-THIRD: Mason C. Heyward has waived his rights to reclaim the 0.51 acre right of way that he dedicated to the public by his actions of May, 1996, his Confirmation and Grant of Access Easement by recorded instrument dated April 29, 1999, and his actions for a period of more than fifteen (15) years; Mr. Heyward is estopped by his actions, motives, and the passage of time from seeking the abandonment of the 0.51 acre right of way to the detriment of the great number of abutting landowners—members of the public—to whom he granted the ingress/egress easement.

THIRTY-FOURTH: Mason C. Heyward sought to subdivide his properties to allow him to build a home valued in the millions of dollars. As a condition of that subdivision, Charleston County demanded dedication of the 25' ingress/egress easement known as Resurrection Road to the public.

That dedication was duly noted by recorded plat and instruments.

THIRTY-FIFTH: The Plaintiff/Crossclaim Defendant, Francis O. Johnson, and Ralph L. Haynes have and had every right to rely upon the conduct of Mason C. Heyward and the conduct and public records of the County of Charleston; they had no reason or knowledge that the dedication was in fact false and each of those parties, as well as other abutting landowners, relied upon what Heyward and the County of Charleston have said and did and changed their position to their detriment.

THIRTY-SIXTH: Mason C. Heyward, Defendant and Crossclaim Plaintiff, and Charleston County, a Crossclaim Defendant, have conspired together to reverse and renege on the duly dedicated easement to the public, and accepted by members of the public, through a course of action (he sought reversal and renegeing) that is illegal and unjust.

THIRTY-SEVENTH: As will appear by the records of the County of Charleston, State of South Carolina, Louise Donny Bennett, is the owner of the parcel of property adjoining the property of Ralph L. Haynes said to contain 1.98 acres and shown as Parcel TMS No. 204-00-00-016, located at the easternmost end or terminus of Resurrection Road.

THIRTY-EIGHTH: Louise Donny Bennett is, upon information and belief, the wife of Julian Sidi Limehouse and they reside in a home on that parcel 16.

THIRTY-NINTH: The Defendant and Crossclaim Plaintiff, Mason C. Heyward, has attempted to purchase the property of the Plaintiff and Crossclaim Defendant, Francis O. Johnson.

FORTIETH: Julian Sidi Limehouse has and is acting on behalf of Louise Donny Bennett and is the agent of Louise Donny Bennett.

FORTY-FIRST: Louise Donny Bennett, acting by and through her agent, Julian Sidi Limehouse, and Julian Sidi Limehouse have been leasing and has offered to purchase the property of Ralph L. Haynes, the Crossclaim Defendant and Counterclaimant in the within litigation.

FORTY-SECOND: Julian Sidi Limehouse and Louise Donny Bennett, acting in concert with Mason C. Heyward, the Defendant and Crossclaim Plaintiff, and Charleston County, a Crossclaim Defendant, have conspired together to create a choke point on the ingress/egress serving the properties of Ralph L. Haynes and the property of Francis O. Johnson, so as to render the two parcels of property inaccessible by necessary and proper ingress/egress.

FORTY-THIRD: These two individuals, Julian Sidi Limehouse and Louise Donny Bennett, have conspired together with Mason C. Heyward, Defendant and Crossclaim Plaintiff, and Charleston County, a Crossclaim Defendant, to reverse and renege on the duly dedicated easement to the public and accepted by members of the public so as to create a choke point on the ingress/egress easement to and from the properties of Francis O. Johnson and Ralph L. Haynes.

FORTY-FOURTH: Such a resulting choke point on the ingress/egress easement through a reversal by Charleston County of the duly dedicated easement to the public, would drastically impact the value of the properties of Johnson and Haynes.

FORTY-FIFTH: Upon information and belief, Heyward and Limehouse/Bennett desire to buy the properties of Haynes and Johnson at a greatly reduced price and then develop the same for their financial benefit and to the detriment of Haynes and Johnson, all through their actions that are illegal and unjust.

FORTY-SIXTH: The within matter—the subject matter and all parties—are bound by the Maxims of Equity, including but not limited to:

1. Equity will not suffer a wrong to be without a remedy
2. Equity is equality - Equality is equity

3. Equity regards as done that which ought to be done/Equity imputes an intension to fulfill an obligation
4. Equity regards substance rather than form
5. Equity looks to the Intent rather than form
6. Equity disfavors forfeitures
7. One who seeks equity must do equity
8. One who comes to equity must come with clean hands

WHEREFORE, this Crossclaim Defendant and Counterclaimant would pray that this Court find that:

1. There exist, through prescription, grant, plat, estoppel, implication, or necessity a 25' ingress/egress easement to and from Betsy Kerrison Parkway to the property of Ralph L. Haynes—Parcel TMS No. 204-00-00-017.

2. A finding that Mason C. Heyward and the County of Charleston, with the participation of Julian Sidi Limehouse and Louise Donny Bennett, have acted in concert to reverse—to renege—the dedication of the easement shown on the approved final plat recorded on May 20, 1996 in Plat Book DA, page 789, RMC Office for Charleston County.

3. If the Court allows such reversal/renegeing, the Court determine the resulting diminution in value of the properties of Ralph L. Haynes and Francis O. Johnson and determine those damages, including attorneys' fees and costs, and grant judgment against Mason C. Heyward and Charleston County, in a monetary amount found to be fair and equitable.

OBERMAN & OBERMAN, LLC



Marvin I. Oberman  
ATTORNEYS FOR THE CROSSCLAIM  
DEFENDANT/COUNTERCLAIMANT  
104 Church Street  
Charleston, SC 29401  
(843) 577-7010

Charleston, South Carolina

November 9, 2011.

f:\obj\johnson-heyward758\haynes\pleading\answer.cc

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 08-CP-10-1054

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 10<sup>th</sup> day of November, 2011, a true and correct copy of the Amended Answer of Ralph L. Haynes/Ralph L. Haynes, IRA and Crossclaims and Counterclaims Against Mason C. Heyward, Crossclaim Plaintiff and Charleston County, Crossclaim Defendant was hand delivered by courier to:

**FILED**

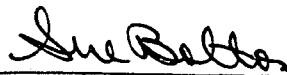
NOV 10 2011

**JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.**

John Edward Robinson, Esquire  
McDowell Law Offices  
Attorneys at Law  
36 Broad Street  
Charleston, SC 29401  
Attorney for the Defendant and Crossclaim Plaintiff,  
Mason C. Heyward

John B. Williams, Esquire  
Williams & Hulst, LLC  
Attorneys at Law  
209 East main Street  
Moncks Corner, SC 29461  
Attorney for the Defendant, Berkeley Electric Cooperative, Inc.

Bernard E. Ferrara, Jr., Esquire  
Deputy County Attorney  
County of Charleston  
4045 Bridge View Drive  
N. Charleston, SC 29405  
Attorney for the Crossclaim Defendant, Charleston County



Charleston, South Carolina.

f:\obj\johnson-heyward758\pleading\all.cs

**OBERMAN & OBERMAN, LLC**  
ATTORNEYS AND COUNSELLORS AT LAW  
104 CHURCH STREET  
CHARLESTON, SOUTH CAROLINA 29401

MARVIN I. OBERMAN  
HAROLD A. OBERMAN

November 10, 2011

TELEPHONE (843) 577-7010  
FACSIMILE (843) 722-7359  
EMAIL: obermanlaw@bellsouth.net

Honorable Julie J. Armstrong  
Clerk, Charleston County Court of  
Common Pleas  
100 Broad Street  
Charleston, SC 29401

BY COURIER

RE: Francis O. Johnson v. Mason C. Heyward, Berkeley Electric Cooperative, Inc., and  
Clementine Ravenel, et al.  
Case No. 08-CP-10-1054

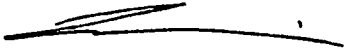
Dear Julie:

I enclose the original and one copy of the Amended Answer of Ralph L. Haynes/Ralph L. Haynes, IRA and Crossclaims and Counterclaims Against Mason C. Heyward, Crossclaim Plaintiff and Charleston County, Crossclaim Defendant in the above-captioned matter.

Would you be so kind as to have a member of your staff file the original and return one clocked-in copy to me.

With warmest personal regards, I remain

Yours very truly,

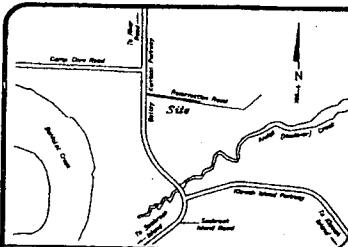
  
Marvin I. Oberman

MIO/shb

Enclosures

cc: John Edward Robinson, Esquire (w/enclosure) (BY COURIER)  
John B. Williams, Esquire (w/enclosure) (BY COURIER)  
Bernard E. Ferrara, Jr., Esquire (w/enclosure) (BY COURIER)

f:\obj\johnson758\Utr\armstrong k10



- NOTES:**
- 1) ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
  - 2) AREA DETERMINED BY COORDINATE METHOD.
  - 3) THE BEARINGS SHOWN HEREIN ARE MAGNETIC AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION.
  - 4) THE PRESENCE OR ABSENCE OF U.S. ARMY CORP OF ENGINEERS SURVEYING MARKERS IS NOT BINDING AS OF THE DATE OF THIS SURVEY.
  - 5) TREE SPACES SHOWN HEREIN ARE OUR OPINION ONLY AND HAVE NOT BEEN MEASURED BY A CERTIFIED ARBORIST PRIOR TO ANY DEVELOPMENT OF THIS RESURVEY. TREE SPACES SHALL BE MAINTAINED.
  - 6) THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY, AND IS NOT THE RESULT OF A TRUE SURVEY.
  - 7) THIS PROPERTY IS LOCATED IN FLOOD ZONE AC ELEVATION 14, AS PER FLOOD MAP COMMUNITY-PANEL NO. 45841 DATED 11/20/09. IT IS THE OWNER'S SUBJECT'S RESPONSIBILITY TO VERIFY THE FLOOD ZONE WITH LOCAL AUTHORITIES PRIOR TO BUILDING.
  - 8) DECLARATION IS MADE TO THESE PURPOSES FOR WHICH THIS PLAT WAS PREPARED, IT IS NOT CONSIDERABLE TO SUBSEQUENT OWNERS. THIS DECLARATION IS AN INSTRUMENT OF SERVICE AND IS THE SOLE PROPERTY OF GEORGE A.Z. JOHNSON, JR., INC. IT SHALL NOT BE REPRODUCED OR USED IN ANY MANNER, UNLESS SOLELY BY THE WRITTEN PERMISSION OF GEORGE A.Z. JOHNSON, JR., INC. SEE HIS 2008 COPYRIGHT © JOHN T. SIMON ARCHITECT.
  - 9) USE OF UNLASED COPIES OF THIS DOCUMENT IN ANY COURT PROCEEDING OR LAND TRANSACTION OF RECORD WITH ANY PUBLIC AGENCY OR OFFICE IS UNAUTHORIZED USE AND IS A VIOLATION OF FEDERAL COPYRIGHT LAWS.
  - 10) "SURVEY INSPECTIONS" OR "VALIDITY" OF THIS MAP ARE PROHIBITED.
  - 11) THESE CERTIFICATIONS ARE NOT CONSIDERABLE TO ADDITIONAL INSTRUMENTS OF SUBSEQUENT OWNERS.

**General Property Survey**

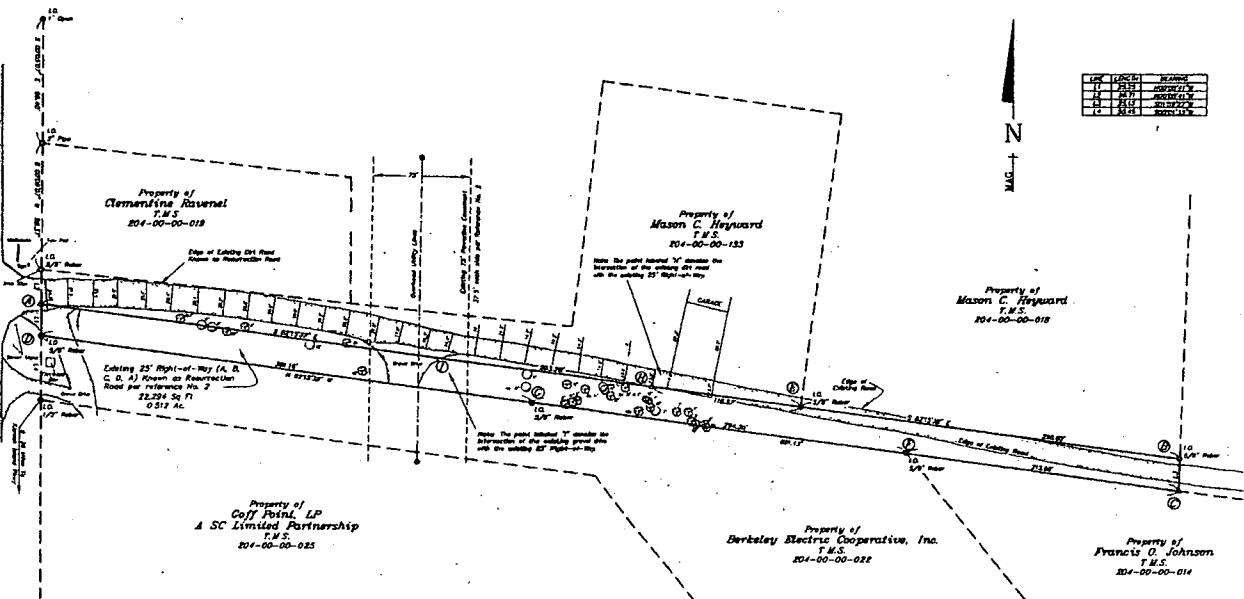
J. F. Simon, Johnson, a Registered Professional Land Surveyor, on the State of South Carolina, hereby certifies that this plat was prepared and is correct in accordance with the requirements of the Professional Land Surveyor Act of the State of South Carolina, and that the same is a true and correct representation of the land surveyed and is a true and correct representation of the land surveyed and is a true and correct representation of the land surveyed.

**Professional Seal:** J. F. Simon, Johnson, R.L.S., No. 12000, State of South Carolina, Commission Expires 12/31/2011.

- LEGEND:**
- 10. BENCH PIN OLD
  - 11. PUMP PIN NEW (1/4" HEAD)
  - 12. CONCRETE MONUMENT FOUND
  - 13. CALCULATED POINT
  - 14. PUMP PIN
  - PROPERTY LINE
  - ADJACENT LINE
  - FENCE
  - EXISTING POWER
  - EXISTING CULVERT
  - 15. OAK TREE
  - 16. MISTLETOE TREE
  - 17. OAK TREE
  - 18. HAWTHORNE TREE

- REFERENCES:**
- 1) T.M.S. 204-00-00
  - 2) PLAT BY E. H. SEAROCK, JR., INC. DATED JANUARY 12, 1988. PLAT BOOK 88 PAGE 202. PLANNING BOARD NO. 58487. INC. CHARLESTON COUNTY.

Betsy Kerstison Parkway 115' Right-of-Way



LINE	LENGTH	BEARING
1	115.00	S 89° 58' 00" W
2	115.00	S 89° 58' 00" W
3	115.00	S 89° 58' 00" W
4	115.00	S 89° 58' 00" W

**EXHIBIT SHOWING**  
 THE PHYSICAL LOCATION OF  
 RESURRECTION ROAD, AS IT RELATES TO THE  
 25' RESURRECTION ROAD RIGHT-OF-WAY  
 LOCATED ON JOHNS ISLAND  
 CHARLESTON COUNTY, SOUTH CAROLINA

DATE: APRIL 15, 2010 SCALE: 1" = 40'  
 REVISED DATE: SEPT. 23, 2010



**GEORGE A.Z. JOHNSON, JR., INC.**  
 ENGINEERS · PLANNERS · LAND SURVEYORS

6171 SAVANNAH HIGHWAY  
 RAYENHILL, SOUTH CAROLINA 29470  
 (843) 889.1482 Charleston No. 783 3353 Potomac No. 889.1485  
 Fax No. (843) 889.1054

ND

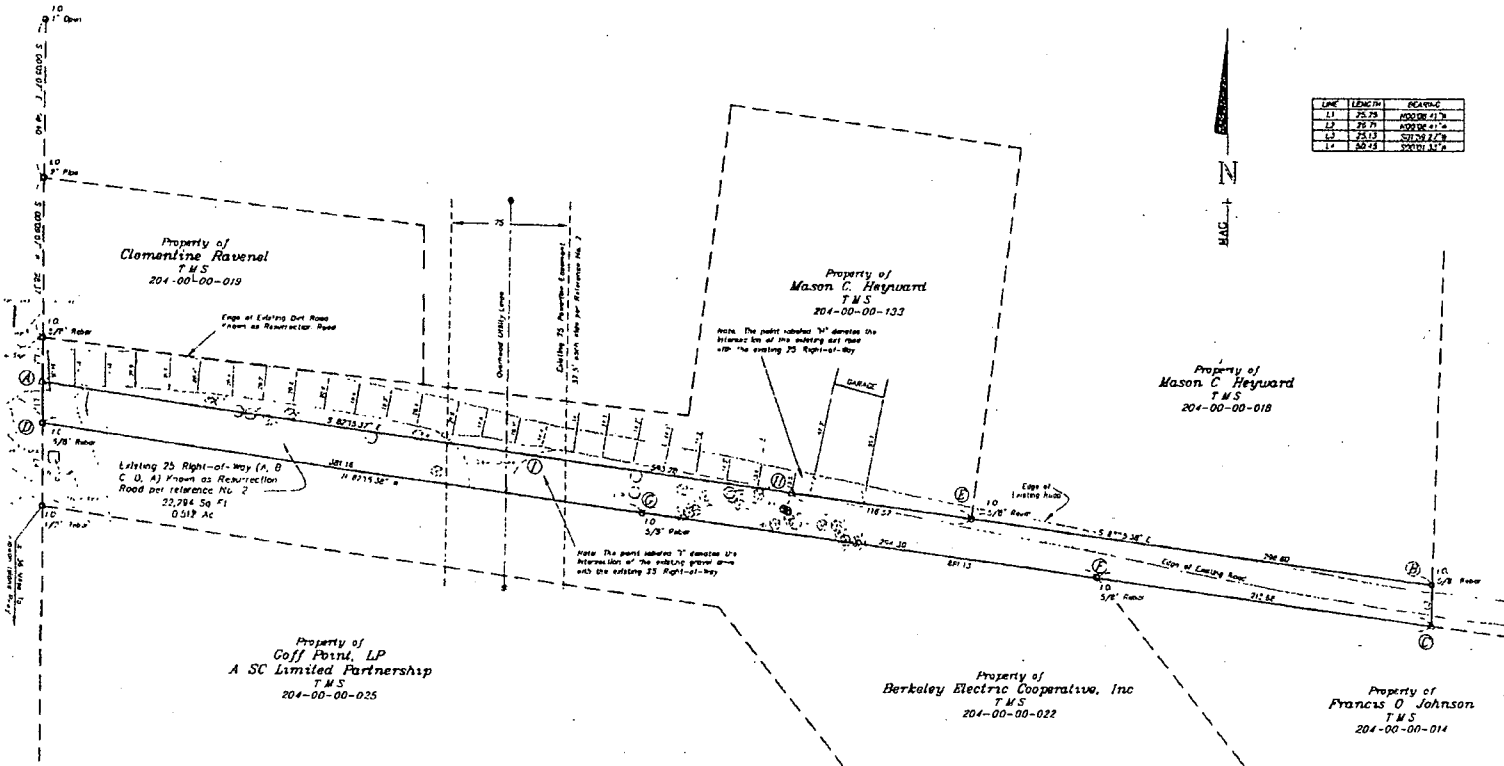
IRON PIN OLD  
 IRON PIN NEW (S/A REBAR)  
 CONCRETE WORKMENT FOUND  
 CALCULATED POINT  
 POWER POLE  
 PROPERTY LINE  
 ADJACENT LINE  
 FENCE  
 EXISTING POWER  
 EXISTING EASEMENT

CA OAK TREE  
 CD HICKORY TREE  
 CE OAK TREE  
 CH HAWTHORN TREE

REFERENCES

- 1) TMS 204-00-00
- 2) PLAT BY C. M. STASBROOK, P. INC.  
 DATED JANUARY 18, 1996  
 PLAT BOOK DA PAGE 709  
 PLANNING BOARD No. 16417  
 PWC CHARLESTON COUNTY

For Official Use Only



146

EXHIBIT SHOWING  
 THE PHYSICAL LOCATION OF  
 RESURRECTION ROAD, AS IT RELATES TO THE  
 25' RESURRECTION ROAD RIGHT-OF-WAY  
 LOCATED ON JOHNS ISLAND  
 CHARLESTON COUNTY, SOUTH CAROLINA

DATE APRIL 15, 2010 SCALE 1" = 40'  
 REVISED DATE SEPT. 23, 2010



**GEORGE A.Z. JOHNSON, JR., INC.**  
 ENGINEERS · PLANNERS · LAND SURVEYORS

6171 SAVANNAH HIGHWAY  
 RAVENEL, SOUTH CAROLINA 29470  
 (843) 889 1492 Charleston No 722 3892 Edisto No 869.1496  
 Fax No (843) 889 1054

LINE	LENGTH	BEARING
L1	25.25	N00°08'41" W
L2	26.71	N00°08'41" W
L3	25.13	S01°39'27" W
L4	50.43	S00°02'31" W



**GEORGE A.Z. JOHNSON, JR., INC.**  
 ENGINEERS PLANNERS LAND SURVEYORS  
 6171 Derwentham Highway  
 Myrtle Beach, South Carolina 29576  
 (843) 889-1428 Charleston No. 723-2822 State No. 689-1496

**REFERENCES**

- 1) T.M.S. 204-00-00-
- 2) PLAT BY E. M. SEABROOK, JR., INC. DATED JANUARY 18, 1996 PLAT BOOK DA PAGE 789 PLANNING BOARD No. 16467 RMC CHARLESTON COUNTY
- 3) PLAT BY W. L. GALLARD DATED AUGUST 15, 1982 PLAT BOOK AW PAGE 16 PLANNING BOARD No. 9585 RMC CHARLESTON COUNTY
- 4) PLAT BY A. L. GLEN DATED JUNE 1945 DEED BOOK V45 PAGE 173 RMC CHARLESTON COUNTY

Betsy Kerrison Parkway 115' Right-of-Way

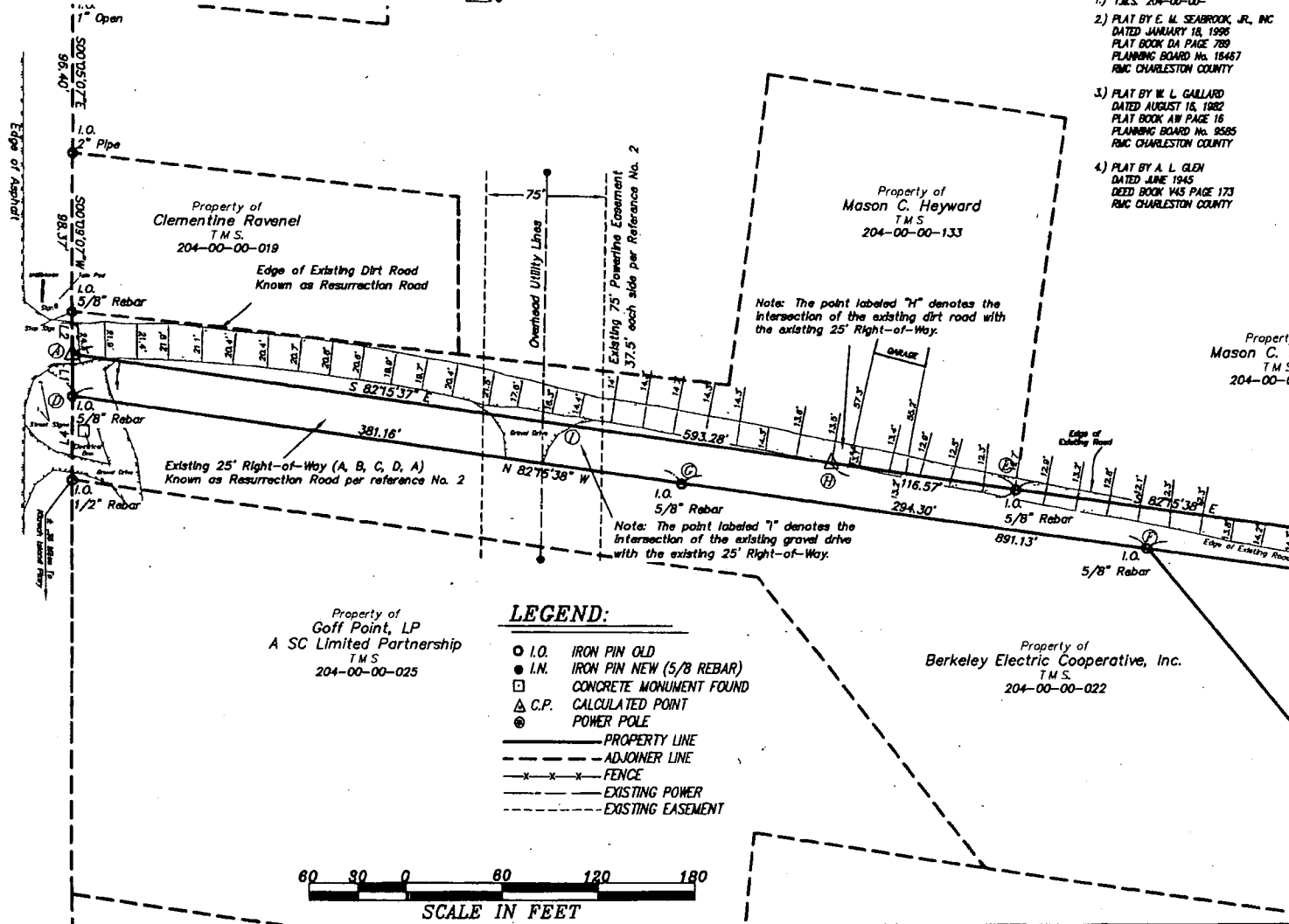
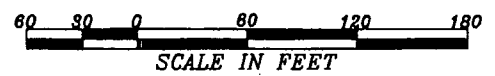


EXHIBIT SHOWING  
 THE PHYSICAL LOCATION  
 OF RESURRECTION ROAD  
 LOCATED ON JOHNS ISLAND  
 CHARLESTON COUNTY, SOUTH CAROLINA

DATE: OCTOBER 31, 2011  
 SHEET 1 OF 3

**LEGEND:**

- I.O. IRON PIN OLD
- I.N. IRON PIN NEW (5/8 REBAR)
- CONCRETE MONUMENT FOUND
- △ C.P. CALCULATED POINT
- ⊙ POWER POLE
- PROPERTY LINE
- - - ADJOINER LINE
- x x x FENCE
- - - EXISTING POWER
- - - EXISTING EASEMENT



LINE	LENGTH	BEARING
L1	25.25	N00°04'41" W
L2	25.71	N00°04'41" W
L3	25.13	S01°55'27" W
L4	30.45	S07°01'31" W



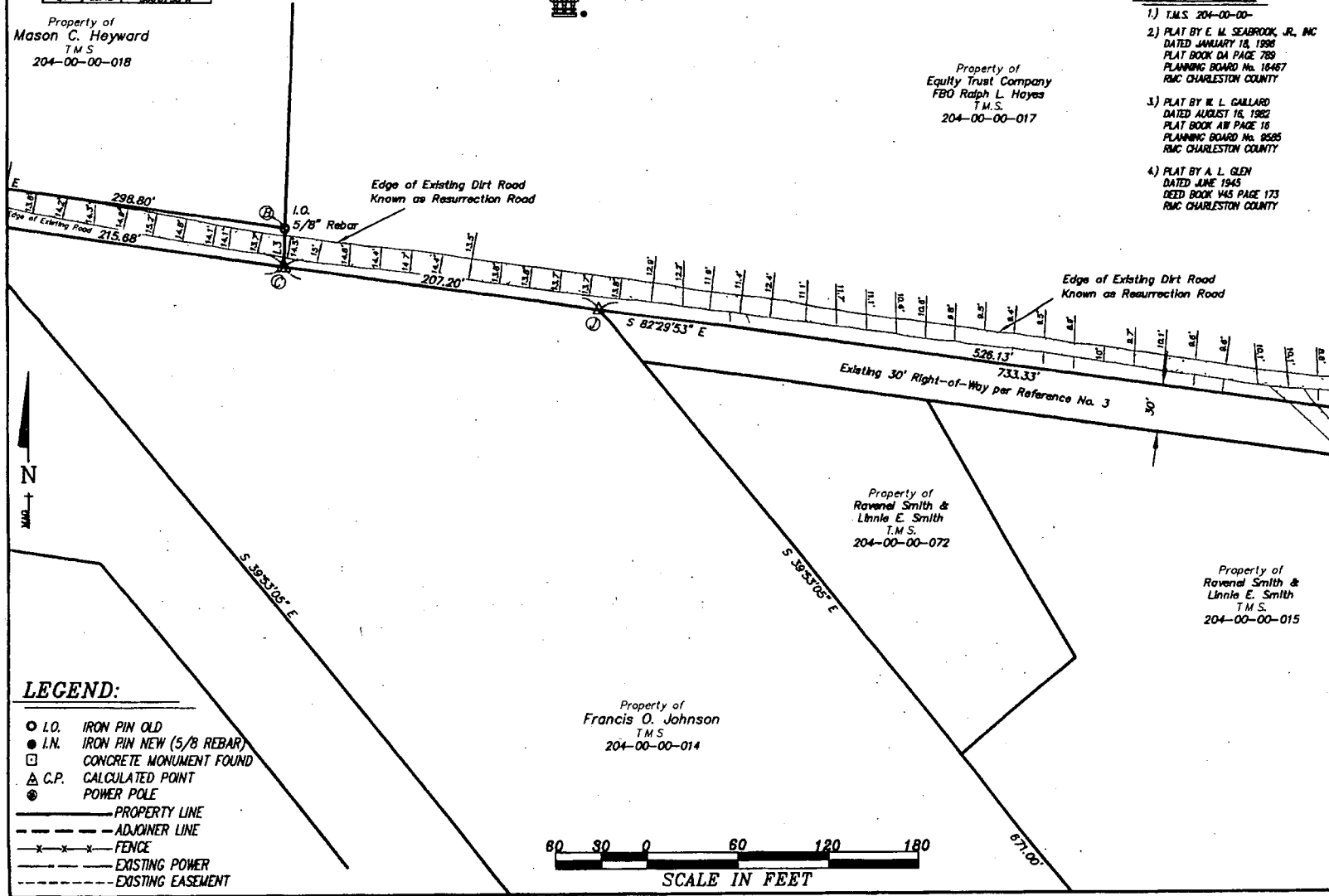
**GEORGE A.Z. JOHNSON, JR., INC.**  
**ENGINEERS PLANNERS LAND SURVEYORS**  
 6771 Sawtooth Highway  
 Ravenel, South Carolina 29470  
 (843) 880-1402 Charleston No. 728-0282 Atlanta No. 880-1400

**REFERENCES**

- 1.) T.M.S. 204-00-00-
- 2.) PLAT BY E. M. SEABROOK, JR., INC.  
 DATED JANUARY 18, 1986  
 PLAT BOOK DA PAGE 789  
 PLANNING BOARD No. 18467  
 RMC CHARLESTON COUNTY
- 3.) PLAT BY W. L. GALLARD  
 DATED AUGUST 16, 1982  
 PLAT BOOK AW PAGE 16  
 PLANNING BOARD No. 8585  
 RMC CHARLESTON COUNTY
- 4.) PLAT BY A. L. GEN  
 DATED JUNE 1945  
 DEED BOOK WAS PAGE 173  
 RMC CHARLESTON COUNTY

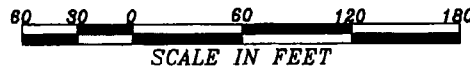
Property of  
**Mason C. Heyward**  
 T.M.S.  
 204-00-00-018

Property of  
**Equity Trust Company**  
**FBO Ralph L. Hayes**  
 T.M.S.  
 204-00-00-017



**LEGEND:**

- I.O. IRON PIN OLD
- I.N. IRON PIN NEW (5/8 REBAR)
- CONCRETE MONUMENT FOUND
- △ C.P. CALCULATED POINT
- ⊕ POWER POLE
- PROPERTY LINE
- - - ADJOINER LINE
- x - x - FENCE
- - - - EXISTING POWER
- - - - EXISTING EASEMENT



**EXHIBIT SHOWING**  
**THE PHYSICAL LOCATION**  
**OF RESURRECTION ROAD**  
 LOCATED ON JOHNS ISLAND  
 CHARLESTON COUNTY, SOUTH CAROLINA

LINE	LENGTH	BEARING
L1	25.23	N020E41°W
L2	25.71	N020E41°W
L3	25.13	S01°52'27"W
L4	50.45	S01°01'11"W

**REFERENCES**

- 1) T.M.S. 204-00-00-
- 2) PLAT BY E. M. SEABROOK, JR., INC.  
DATED JANUARY 18, 1998  
PLAT BOOK DA PAGE 789  
PLANNING BOARD No. 18487  
RMC CHARLESTON COUNTY
- 3) PLAT BY M. L. GALLARD  
DATED AUGUST 16, 1982  
PLAT BOOK AW PAGE 16  
PLANNING BOARD No. 8525  
RMC CHARLESTON COUNTY
- 4) PLAT BY A. L. GLEN  
DATED JUNE 1945  
DEED BOOK WAS PAGE 173  
RMC CHARLESTON COUNTY



**GEORGE A.Z. JOHNSON, JR., INC.**  
ENGINEERS PLANNERS LAND SURVEYORS  
6171 Remount Highway  
Brevard, South Carolina 29610  
(843) 859-1482 Charleston No. 722-9522 Idaho No. 859-1406

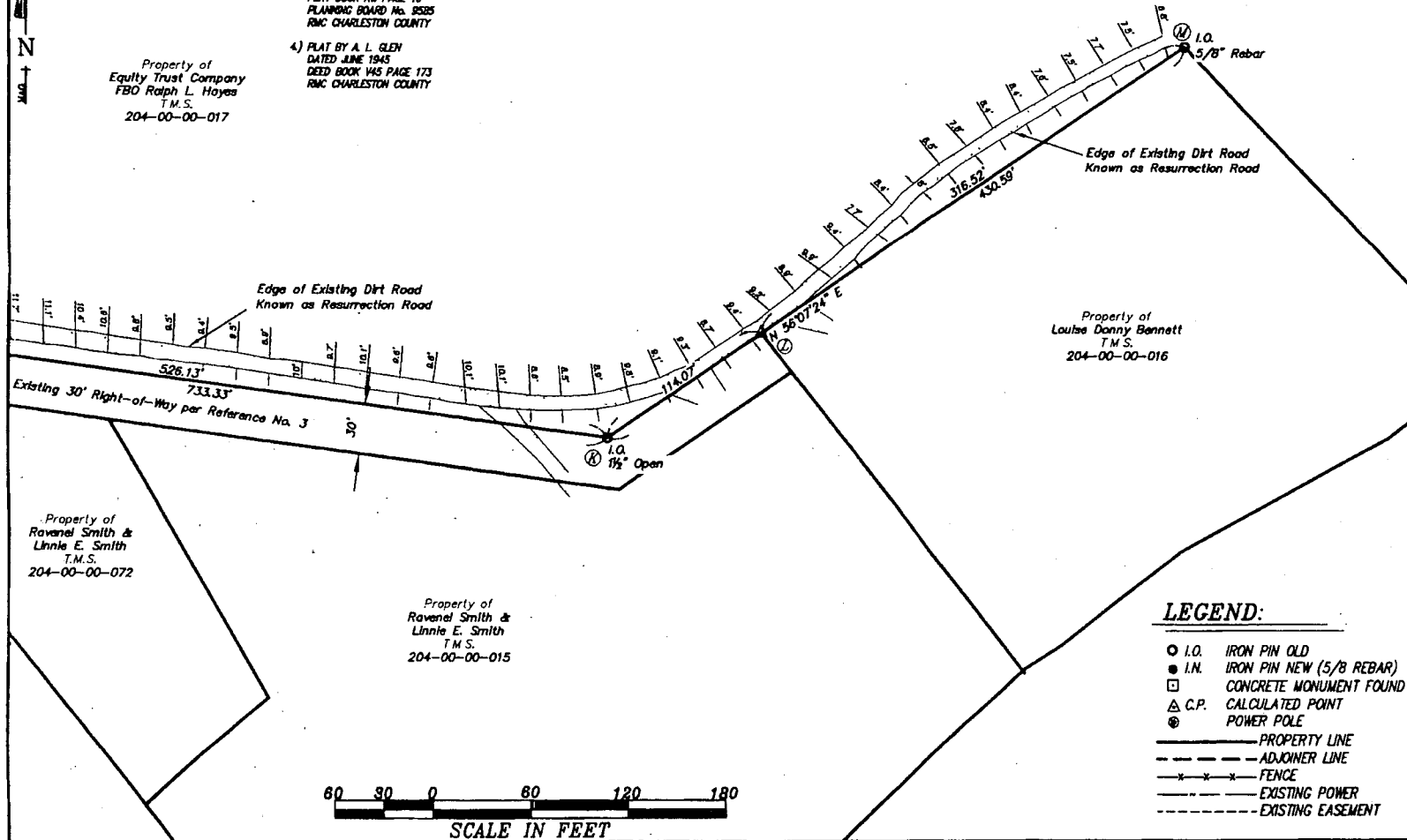


Property of  
Equity Trust Company  
FBO Ralph L. Hayes  
T.M.S.  
204-00-00-017

Property of  
Louise Denny Bennett  
T.M.S.  
204-00-00-016

Property of  
Ravenel Smith &  
Linnie E. Smith  
T.M.S.  
204-00-00-072

Property of  
Ravenel Smith &  
Linnie E. Smith  
T.M.S.  
204-00-00-015

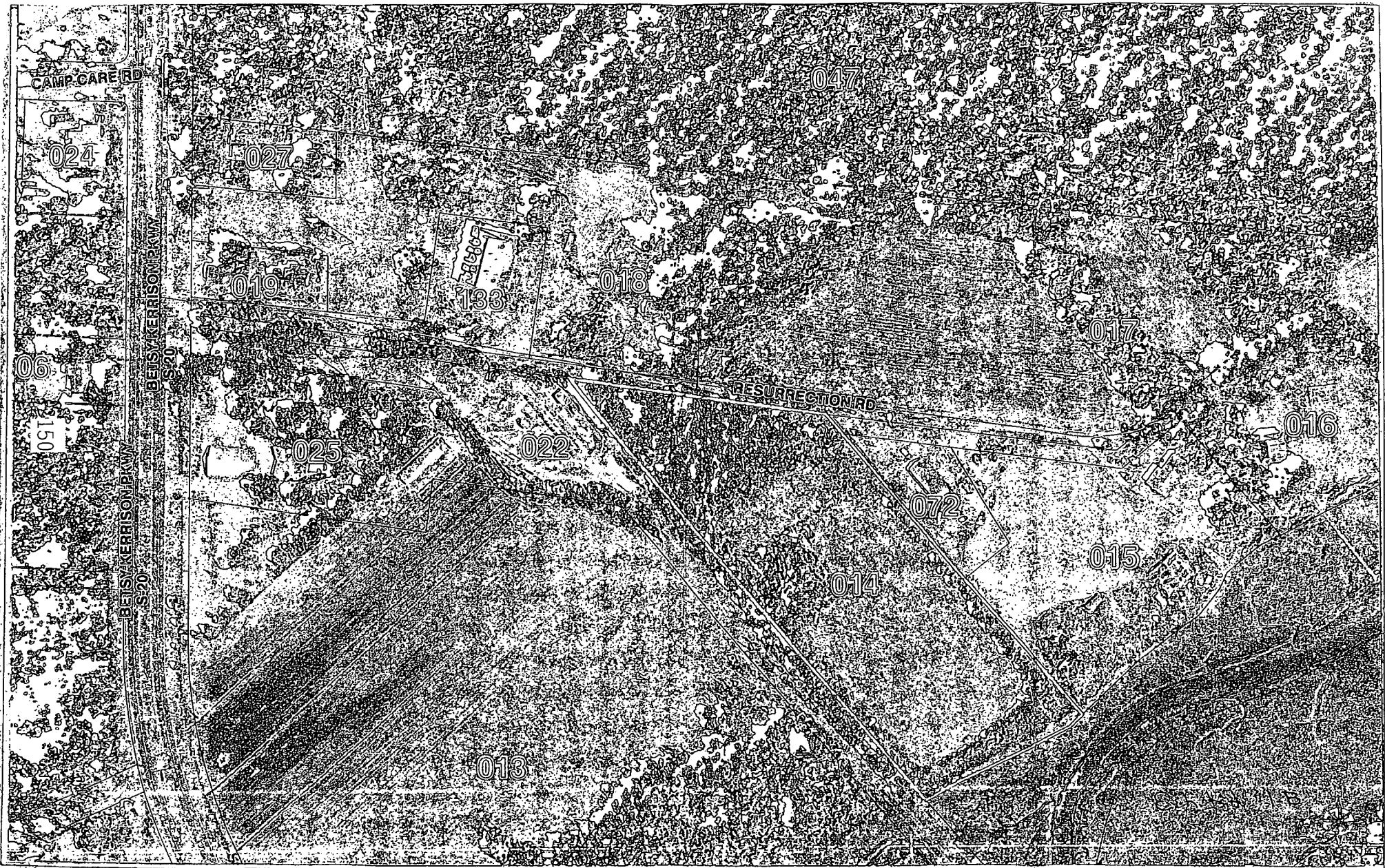


**LEGEND:**

- I.O. IRON PIN OLD
- I.N. IRON PIN NEW (5/8 REBAR)
- CONCRETE MONUMENT FOUND
- △ C.P. CALCULATED POINT
- ⊙ POWER POLE
- PROPERTY LINE
- - - ADJOINER LINE
- × × × FENCE
- · - · - EXISTING POWER
- · - · - EXISTING EASEMENT

**EXHIBIT SHOWING**  
THE PHYSICAL LOCATION  
OF RESURRECTION ROAD  
LOCATED ON JOHNS ISLAND  
CHARLESTON COUNTY, SOUTH CAROLINA

DATE: OCTOBER 31, 2011  
SHEET 3 OF 3



CAMP CARE RD

024

027

047

019

133

018

017

06

150

RESURRECTION RD

016

025

022

072

015

014

013

BETSY KERRISON Pkwy  
S20

DEPARTMENT OF THE ARMY  
LANDSTUHL REGIONAL MEDICAL CENTER  
CMR 402  
APO AE 09180-0402

8 October 2010

Judge  
Superior Court of Charleston County  
Charleston, SC 29402

Subject: Johnson v. Hayward, CA No 2008-CP-10-1054

Dear Sirs:

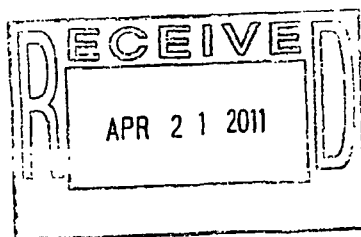
I have been notified by Mr. Edward Robinson of McDowell Law Offices of the above suit, which seeks to establish that the right-of-way to my property, Resurrection Road, has been abandoned by the county; Mr Hayward seeks to regain title of that right-of-way which leads to my property.

I wish to protest any abandonment of the county's right-of-way on the basis that it markedly affects the value of my 12 +/- acres (TMS 204-00-00-017) that borders on the marsh of Haulover Creek. When I purchase this land over 15 years ago, I envisioned it as an investment to either occupy on retirement or to sell, subdivide, or otherwise provide resources for my retirement. Accordingly, it is owned by my IRA. Its initial and current value are predicated upon having County Road access and right-of-way For the county to abrogate such right-of-way in effect disfranchises those relying on such county Road assess. The injustice of positioning Mr. Hayward to control access to his neighbors along the Resurrection Road right-of-way is far more profound than his assertion that the county has abandoned its claim to this right-of-way.

Please take these views and considerations into your deliberations on this matter

Sincerely,

Ralph L. Haynes, M.D.  
CMR 402 box 1617  
APO AE 09180



FILED  
2010 Oct 21 PM 1:45  
Clocked in date  
JULIE J. ANDERSON  
CLERK OF COURT  
Canceled

CHARLESTON COUNTY PLANNING DEPARTMENT  
SUBDIVISION TRANSMITTAL  
COVER SHEET

MEETING DATES:

Planning Board-April 29, 1996  
Planning & Public Works Committee-May 2, 1996  
County Council Meeting-May 7, 1996

-----  
#15655-A LANDS OF LOUIS MILES (JOHNS ISLAND)

VOLE:

RECOMMENDATIONS:

3-APP 0-DIS PLANNING COMMITTEE---APPROVAL  
8-APP 0-DIS PLANNING BOARD-----APPROVAL (Stipulations #1,5,6,9)

\*\*\*\*\*

Planning Department-----APPROVAL  
Public Works Department---APPROVAL  
Health Department-----APPROVAL

-----  
#16255 LANDS OF HFLS (NORTH AREA)

VOLE:

RECOMMENDATIONS:

3-APP 0-DIS PLANNING COMMITTEE---APPROVAL  
8-APP 0-DIS PLANNING BOARD-----APPROVAL

\*\*\*\*\*

Planning Department-----APPROVAL  
Public Works Department---APPROVAL  
Health Department-----APPROVAL

-----  
#16347 LANDS OF ELLIAH JOHNSON (WADMALAW ISLAND)

VOLE:

RECOMMENDATIONS:

3-APP 0-DIS PLANNING COMMITTEE---APPROVAL  
8-APP 0-DIS PLANNING BOARD-----APPROVAL (Stipulations #1,4,5,6)

\*\*\*\*\*

Planning Department-----APPROVAL  
Public Works Department---APPROVAL  
Health Department-----APPROVAL

-----  
Exhibit "3"

#16448 LANDS OF BYAS GLOVER (JOHNS ISLAND)

VOTE:

RECOMMENDATIONS:

3-APP 0-DIS PLANNING COMMITTEE---APPROVAL  
8-APP 0-DIS PLANNING BOARD-----APPROVAL (Stipulation #5)

\*\*\*\*\*

Planning Department -----APPROVAL  
Public Works Department ---APPROVAL  
Health Department -----APPROVAL

#16488 LANDS OF THE BIBLE ASSEMBLY DELIVERANCE CHURCH  
(ST. ANDREWS)

VOTE:

RECOMMENDATIONS:

3-APP 0-DIS PLANNING COMMITTEE---APPROVAL  
8-APP 0-DIS PLANNING BOARD-----APPROVAL (Stipulations #4,5,6)

\*\*\*\*\*

Planning Department --- --APPROVAL  
Public Works Department - APPROVAL  
Health Department --- --APPROVAL

#16492 LANDS OF STACKPOLE, LTD (CHRIST CHURCH)

VOTE:

RECOMMENDATIONS:

3-APP 0-DIS PLANNING COMMITTEE---APPROVAL  
8-APP 0-DIS PLANNING BOARD-----APPROVAL

\*\*\*\*\*

Planning Department- --- --APPROVAL  
Public Works Department---APPROVAL  
Health Department-----APPROVAL

#16498 LANDS OF JAMES WILLCUTT (ST. PAULS)

VOTE:

RECOMMENDATIONS:

3-APP 0-DIS PLANNING COMMITTEE---APPROVAL  
8-APP 0-DIS PLANNING BOARD-----APPROVAL (Stipulations #3,7)

\*\*\*\*\*

Planning Department- --- --APPROVAL  
Public Works Department- APPROVAL  
Health Department -----APPROVAL

#16545 LANDS OF NATIONAL BANK OF SC (CHRIST CHURCH)

VOLE

RECOMMENDATIONS:

3-APP 0-DIS PLANNING COMMITTEE---APPROVAL  
8-APP 0-DIS PLANNING BOARD-----APPROVAL (Stipulations #3,6)

\*\*\*\*\*

Planning Department----- APPROVAL  
Public Works Department---APPROVAL  
Health Department----- APPROVAL

#16467 LANDS OF MASON HEYWARD (JOHNS ISLAND)

VOLE

RECOMMENDATIONS

3-APP 0-DIS PLANNING COMMITTEE---APPROVAL  
8-APP 0-DIS PLANNING BOARD-----APPROVAL

\*\*\*\*\*

Planning Department-----DISAPPROVAL  
Public Works Department---DISAPPROVAL  
Health Department-----APPROVAL

AGENDA  
April 29, 1996

#16467 - Lands of Mason Heyward

Johns Island  
E. M. Seabrook

Lots: 1  
Acres: 1.30

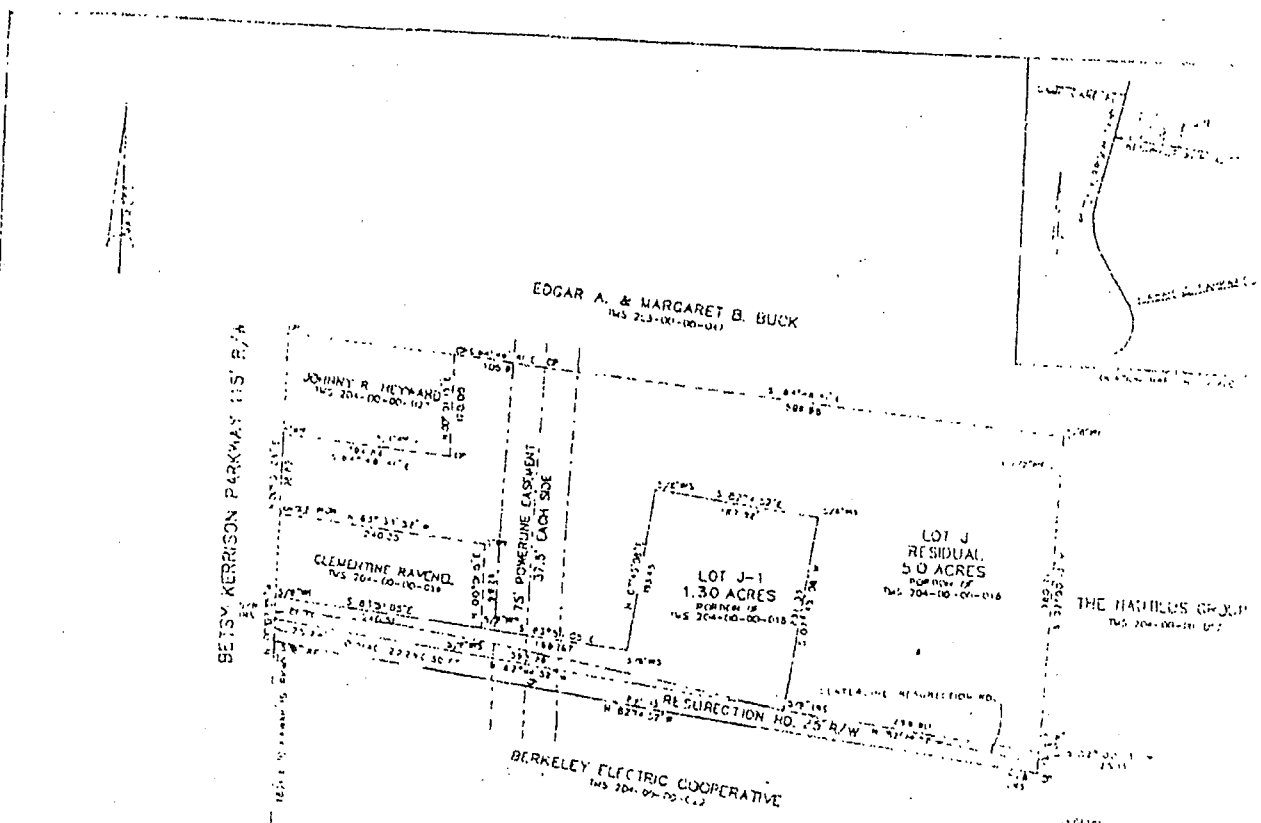
Planning Staff and Public Works Department recommend **DISAPPROVAL**.

Planning Staff and Public Works Department have requested that the applicant dedicate 50' of right-of-way for the existing roadway known as Resurrection Road. The applicant will only provide a 25' road right-of-way. The road bed of Resurrection Road is located completely upon this property.

Public Works Department has indicated that the minimum width right-of-way necessary to construct a county standard road is 50'. The adjacent property which is owned by Berkeley Electric Cooperative contains electrical transformers located approximately 10' from the property line, therefore, acquiring additional right-of-way from that property would not be feasible.

Resurrection Road serves as access to the approximately 25 acres of property with high development potential.

Health Department recommends **APPROVAL**.

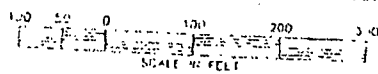


JOHNS ISLAND  
CHARLESTON COUNTY, S. C.

PLAT OF THE SUBDIVISION OF LOT J  
OWNED BY MASON C. HEYWARD INTO  
LOT J-1 CONTAINING 1.30 ACRES AND  
AN APPROXIMATELY 5.0 ACRE RESIDUAL TRACT  
AND A 0.51 ACRE R/W

SCALE: 1"=100'

JANUARY 18, 1986  
REVISED FEB. 27, 1996



I hereby certify that to the best of my knowledge, information and belief, the survey and plat hereon are made in accordance with the requirements of the Statutes of this State and that the same are correct and true in accordance with the requirements for a State Survey of approved maps.

*[Signature]*  
Surveyor



E. M. SEABROOK, JR., INC.  
ENGINEERS - SURVEYORS

REF. PLATS  
1. PLAT BY SOUTH EASTERN CIVIL ENGINEERS, INC. DATED 02/27/86  
REVISED 02/27/86 PLANNING BOARD # 04-27-116-0001  
2. PLAT BY MASON C. HEYWARD DATED 02/27/86  
3. PLAT BY SOUTH EASTERN CIVIL ENGINEERS, INC. DATED 02/27/86  
REVISED 04/27/86 PLANNING BOARD # 04-27-116-0001  
4. PLAT BOOK CH. 100, 31  
5. PLAT BY SOUTH EASTERN CIVIL ENGINEERS, INC. DATED 02/27/86  
REVISED 04/27/86 PLANNING BOARD # 04-27-116-0001  
6. PLAT BOOK CH. 100, 31

Barrett S. Lawhorne, Chairman  
Anne T. Alford  
John C. Carlson  
Ruth C. Glover  
Thomas F. Maa  
Timothy F. Scott  
Michael M. Smith  
Charles F. Wallace, M.P.  
Charles C. Wannamaker, M.P.



Beverly T. Craven, Clerk  
(803) 724-6772  
1-800-524-7532  
FAX (803) 724-2654

CHARLESTON COUNTY COUNCIL  
O.T. WALLACE COUNTY OFFICE BUILDING  
2 COURTHOUSE SQUARE  
CHARLESTON, SOUTH CAROLINA  
29433

May 8, 1996

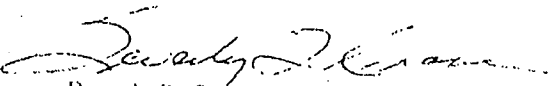
E. M. Scabrook  
P. O. Box 96  
Mt. Pleasant, SC 29465

Re: #16467 - Lands of Mason Heyward

Dear Mr. Scabrook:

County Council at their meeting on May 7, 1996 granted APPROVAL of a 25' road right-of-way being dedicated to the public. Resurrection Road serves as access to approximately 25 acres of property with high developmental potential.

Very truly yours,

  
Beverly T. Craven  
Clerk of Council

BTC/slw  
cc: planning and cdlr

cc. County Planning Department  
Public Works Department  
Mason Heyward

CHARLESTON COUNTY PLANNING BOARD  
TWO COURT HOUSE SQUARE  
CHARLESTON, SOUTH CAROLINA

MINUTES

APRIL 29, 1996

A meeting of the Charleston County Planning Board was held on Monday, April 29, 1996 at 4:00 P.M., in the Chambers of Charleston County Council, Room 402.

Members in attendance were: Mikell Scarborough, Chairman, Raymond Tumbleston, Vice-Chairman; Rinehardt Brown, Sol Morse, Terry Seabrook, Ronnie Tyler, Kurt Wassen and David Wheeler

Staff in attendance were: Karen McNamara, Planning Division Manager, Larry Kennerty, Subdivision Administrator, Bill Turner, Landscape Architect, Christopher Morgan, Planner I, and Sharon Whaley, Secretary

Others in attendance were:

Matt Rennhaek-Representing Public Works Department  
Sandy Hines-Representing Health Department  
Nancy Bloodgood, Deputy County Attorney  
Joel Ford & Liz Boyles-Director of Mt. Pleasant Planning Department  
Jonathan Yates & Amy Richardson- Representing Conditional Use Permits #1225-P  
Alva Washington- Opposed to Conditional Use Permit #1225-P  
Rosalie Coaxum-Opposed to Conditional Use Permit #1225-P  
Julia Gathers-Opposed to Conditional Use Permit #1225-P  
W. E. Strokes-Representing Conditional Use Permit #1234-P  
Fred Hoffbeck-Opposed to Conditional Use Permit #1234-P  
Lewis Hay-Opposed to Conditional Use Permit #1234-P  
George Miller-Opposed to Conditional Use Permit #1234-P  
Mason Heyward-Representing Subdivision Application #16467

The meeting was called to order by the Chairman, Mikell Scarborough at 4:00 P.M. Mr. Wheeler made a motion, seconded by Mr. Tumbleston to approve the minutes of the April 8<sup>th</sup> Planning Board Meeting.

Karen McNamara stated Conditional Use Permit #1224-P concerning the cellular tower on Johns Island will be heard at the next meeting.

Planning Board Minutes  
Page Ten  
April 29, 1996

Subdivision requests recommended for **APPROVAL** by the staff were presented collectively as follows:

1. #15655-AA Lands of Louis Miles
2. #16255 Lands of HFLS
3. #16347 Lands of Elijah Johnson
4. #16448 Lands of Byas Glover
5. #16488 Lands of The Bible Assembly Deliverance Church
6. #16492 Lands of Stackpole, LTD
7. #16498 Lands of James Willett
8. #16545 Lands of National Bank of SC

Members voted unanimously for **APPROVAL**.

**RECOMMENDATION: APPROVAL**

Subdivision request recommended for **DISAPPROVAL** by the staff was presented as follows:

1. #16467 Lands of Mason Heyward

Larry Kennerty explained to the Board that Planning Staff and Public Works Department requested a 50' road right-of-way but the applicant will only give 25' of right-of-way. Mr. Kennerty explained that the property across Resurrection Road is an electrical sub-station owned by Berkeley Electric Coop and that the transformers are directly on the property line. Therefore we have asked for the 50' road right-of-way to come from Mr. Heyward's property.

Mr. Tyler questioned if there is any one else that has access to this road. Mr. Kennerty replied yes, there are 3 or 4 house at the end of the road.

Mr. Kennerty informed the Board, Mr. Heyward owns the entire 50' strip, but he is only willing to give us 25' of right-of-way. There are landlocked properties behind him, it is the County's obligation to provide access to these landlocked properties.

Mason Heyward was present to answer any questions from the Board. When his house was destroyed by fire last year he waited approximately 6 months before applying for permits to rebuild. That is when he found out he did not have an approved recorded plat of his property. Mr. Mason stated that when Mrs. Betsy Kerrison asked him to name the road, he was concerned by naming the road, it would take 30' away from his property, she told him no. He stated if the people in the rear would like access to the property let them pay him for the additional 25' of right-of-way.

Planning Board Minutes  
Page Eleven  
April 29, 1996.

Members of the Board questioned why Mr. Heyward had to subdivide the property when he owns the entire 6.00 acre parcel and the right-of-way exists. Mr. Kennerly replied that the right-of-way is not there, it is a community road. He stated even if the applicant did not cut out this parcel, he would still be asked to dedicate the road right-of-way.

Mr. Heyward stated he did not quite understand what was being done, therefore Ms. McNamara informed him that once this property (Lot J-1) is approved and recorded he will not be able to place a mobile home or house on the residual (Lot J) until the residual is platted and recorded.

Members of the Board suggested that Mr. Heyward talk with the surveyor and have him resurvey the property back into one large parcel instead of two separate lots which will require more time.

A lady spoke (did not give name) stated she has known Mr. Heyward for a long time, and says he has given up quite a bit since he has lost his house. She stated he was told that he could not replace his house unless he gave up the right-of-way. If the people at the end of the road would like the road then they should pay Mr. Heyward for his property.

Mr. Heyward was concerned with the time period if he withdraws this application and comes back with another. Mrs. McNamara replied it may take a couple of months.

Members voted unanimously for APPROVAL.

#### RECOMMENDATION: APPROVAL

The Rules and Procedures Committee have finally made their decision. Mr. Tyler stated the committee met with Nancy Bloodgood, Deputy County Attorney, and she suggested the following item should be added to the minutes section:

- C Meetings of the Board shall be recorded on audio tape which shall be retained as a permanent record of each meeting.*

Mr. Tyler then explained several other changes: Sec. 2 "Meetings" show the SC Code for the Freedom of Information Act. Sec. 4 "Voting" and from Sec. 8 B-E "Officers" remove the wording "read off the list of members and"; Section Sec. 6 A "Minutes" remove the wording "official".

The members agreed with the changes.

**AGENDA  
CHARLESTON COUNTY PLANNING BOARD  
APRIL 29, 1996**

- I. APPROVAL OF THE MINUTES OF THE APRIL 8TH PLANNING BOARD MEETING.
- II. DIRECTOR'S TIME
- III. CONDITIONAL USE PERMITS:
  - 1. #1214-P Cellular Transmission Tower, Johns Island
  - 2. #1225-P Cellular Transmission Tower, East Cooper
  - 3. #1234-P Private Airstrip, Wadmalaw Island
- IV. ZONING CHANGE REQUESTS:
  - 1. #2703-C Mt Pleasant Highway Corridor Overlay
- V. SUBDIVISION REQUESTS:
  - A. RECOMMENDED FOR APPROVAL

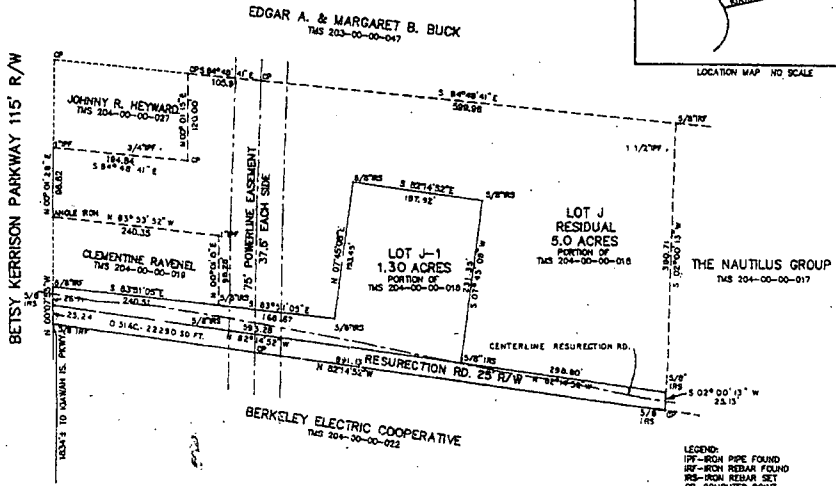
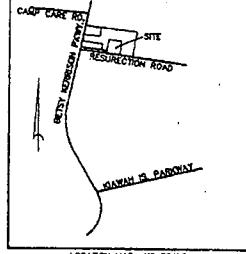
		<u>PG</u>
1	#18655-AA Lands of Louis Miles	1
2	#16255 Lands of HFLS	2
3	#16347 Lands of Elijah Johnson	3
4	#16448 Lands of Byas Glover	4
5	#16488 Lands of The Bible Assembly Deliverance Church	5
6	#16492 Lands of Stackpole, LTD	6
7	#16498 Lands of James Wilcutt	7
8	#16545 Lands of National Bank of SC	8
  - B. RECOMMENDED FOR APPROVAL

		<u>PG</u>
1	#16467 Lands of Mason Heyward	9
- VI. VOTE & DISCUSSION OF RULES & PROCEDURES
- VII. NEXT MEETING DATE: MAY 13, 1996

DA 789

FIG 269P6298

Charleston, South Carolina  
 Office of Register Marine Conveyances  
 This recorded this 19th day of May, 1996, at  
 4:55 o'clock in the Book 228 page 207, and tracing cloth  
 copy filed in File 2, Town of Folly, District 22, Drawing  
 No. 167. Original plan in (State's Office) delivered  
 to Charles C. Seabrook  
 Register Marine Conveyances



WARNING! APPROVAL OF THIS PLAT BY THE PLANNING BOARD AND/OR COUNTY COUNCIL DOES NOT IMPLICATE APPROVAL NOR ADJUDICATE TITLE OF THE ACCESS OR RIGHT-OF-WAY SHOWN HEREON. (THIS NOTE TO BE PLACED ON PLAT).

THIS APPROVAL IN NO WAY OBLIGATES THE COUNTY OF CHARLESTON TO GRANTER THIS RIGHT-OF-WAY UNTIL IT HAS BEEN CONSTRUCTED TO COUNTY STANDARDS.

LEGEND:  
 (P) - IRON PIPE FOUND  
 (R) - IRON REBAR FOUND  
 (S) - IRON REBAR SET  
 (C) - COMPUTED POINT

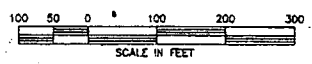
REF. PLATS:  
 1. PLAT BY SOUTHEASTERN SURVEYING, INC. DATED 02/05/91 REVISED 03/29/93 PLANNING BOARD # 04708 RECORDED IN PLAT BOOK ON PAGE 23  
 2. PLAT BY SOUTHEASTERN SURVEYING, INC. DATED 03/21/91 REVISED 04/27/92 PLANNING BOARD # 04733 RECORDED IN PLAT BOOK ON PAGE 23  
 3. PLAT BY SOUTHEASTERN SURVEYING, INC. DATED 03/21/91 REVISED 04/27/92 PLANNING BOARD # 04734 RECORDED IN PLAT BOOK ON PAGE 23

JOHNS ISLAND  
 CHARLESTON COUNTY, S. C.

PLAT OF THE SUBDIVISION OF LOT J OWNED BY MASON C. HEYWARD INTO LOT J-1 CONTAINING 1.30 ACRES AND AN APPROXIMATELY 5.0 ACRE RESIDUAL TRACT AND A 0.51 ACRE R/W

SCALE: 1"=100'

JANUARY 18, 1996  
 REVISED FEB. 27, 1996



APPROVED FINAL PLAT  
 CHARLESTON COUNTY REGISTER  
 WILLIAM W. WALTER  
 DIRECTOR OF PLANNING  
 CHARLESTON COUNTY PLANNING BOARD  
 DATE MAY 7, 1996  
 PB# 16767

THIS LOT DOES MEET MINIMUM HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUB-SURFACE DISPOSAL SYSTEM ONLY.

I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein.

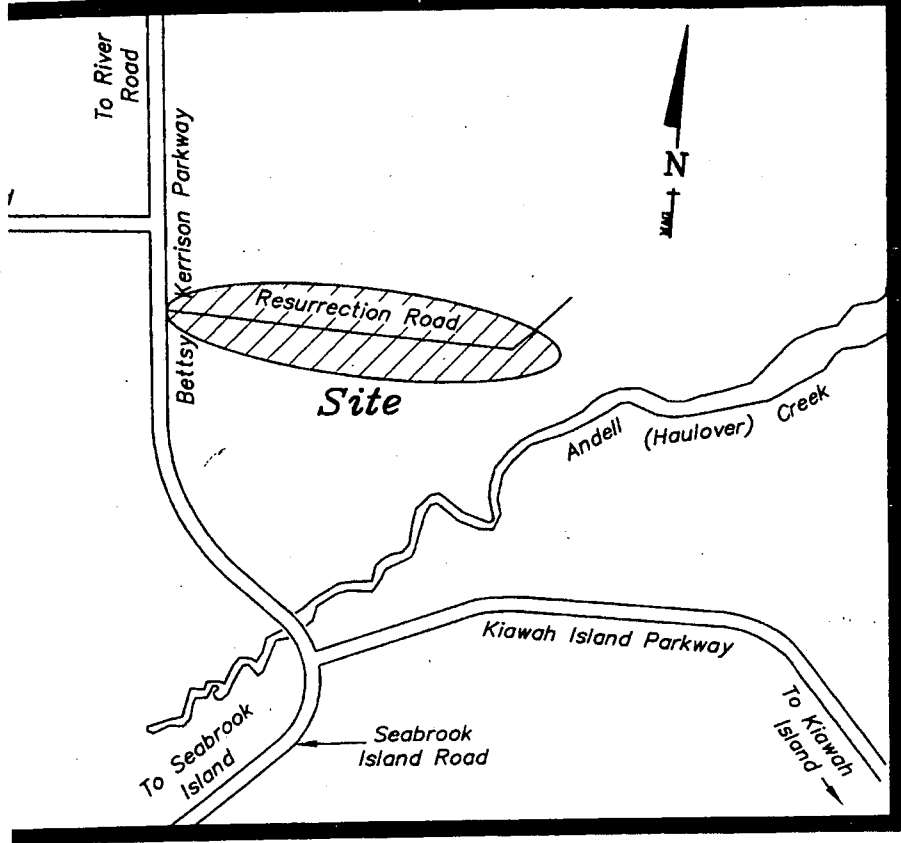
Lewis E. Seabrook  
 LEWIS E. SEABROOK  
 CIVIL ENGINEER & LAND SURVEYOR  
 S. C. REG. NO. C8560  
 P. O. BOX 98  
 410, PLEASANT, S. C. 29463  
 (803)284-4490



E. M. SEABROOK, JR., INC.  
 ENGINEERS - SURVEYORS - PLANNERS

Exhibit "A"

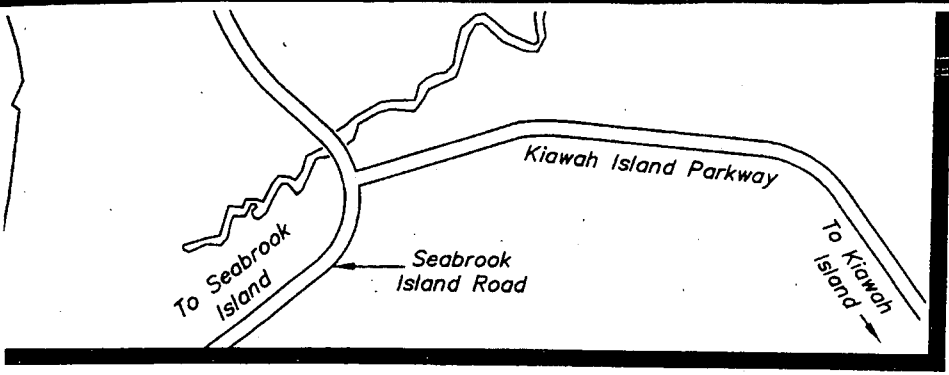
Exhibit "B"



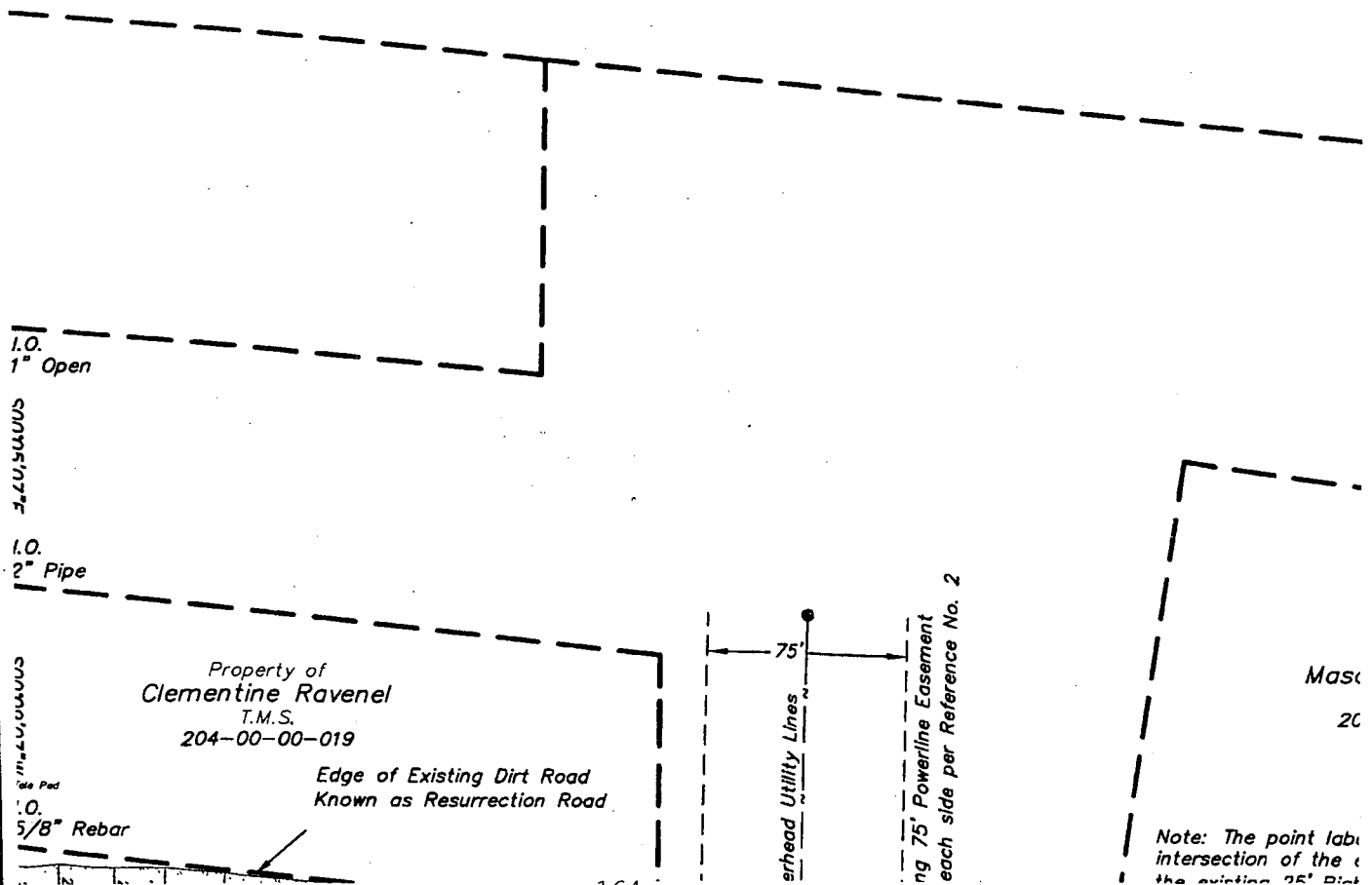
**LEGEND:**

- I.O. IRON PIN OLD
- I.N. IRON PIN NEW (5/8 REBAR)
- CONCRETE MONUMENT FOUND
- △ C.P. CALCULATED POINT
- ⊙ POWER POLE
- PROPERTY LINE
- ADJOINER LINE
- X-X- FENCE
- ~ - EXISTING POWER
- - - EXISTING EASEMENT

**LOCATION MAP**



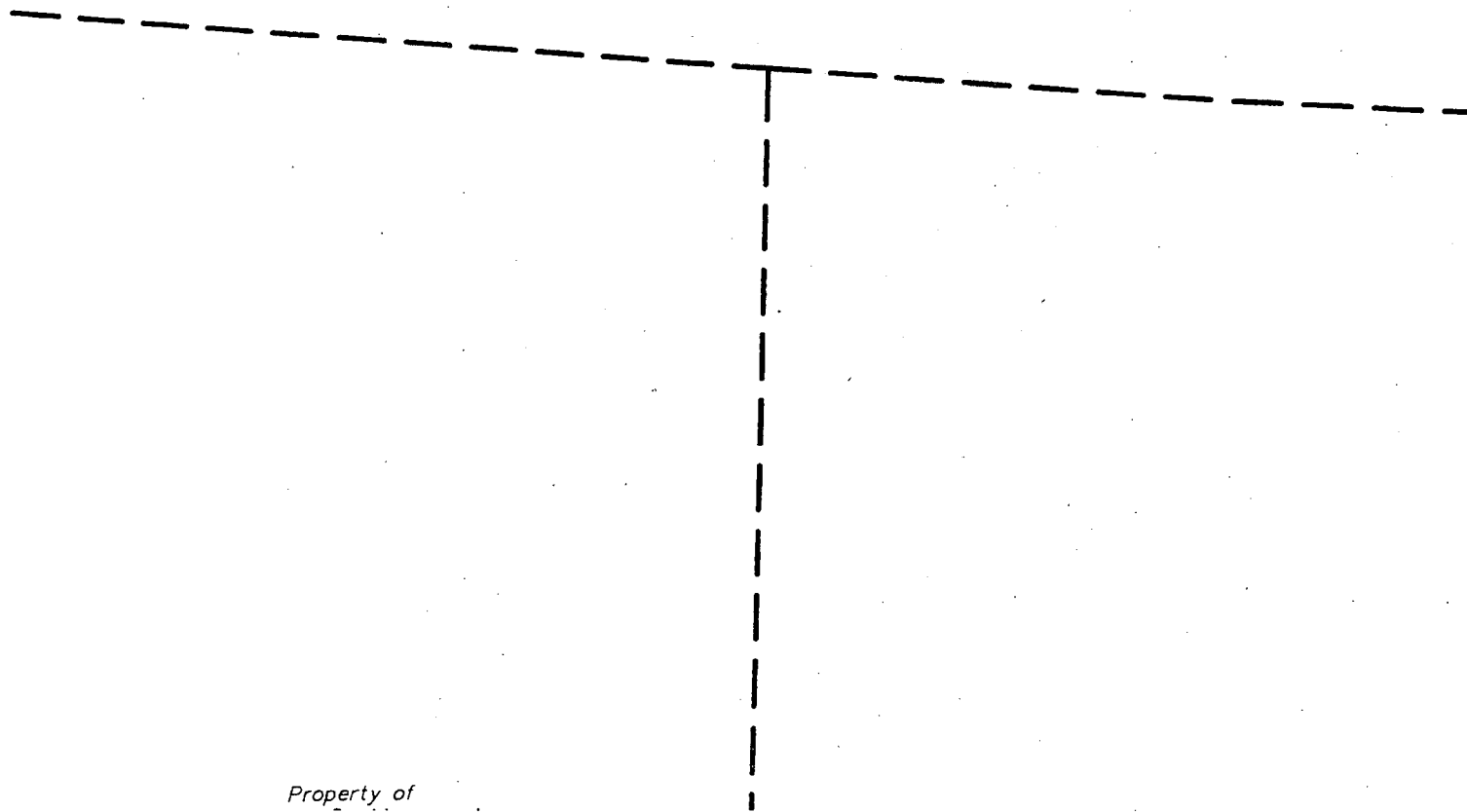
**LOCATION MAP**



REFERENCES

- 1.) T.M.S. 204-00-00-
- 2.) PLAT BY E. M. SEABROOK, JR., INC  
DATED JANUARY 18, 1996  
PLAT BOOK DA PAGE 789  
PLANNING BOARD No. 16467  
RMC CHARLESTON COUNTY
- 3.) PLAT BY W. L. GAILLARD  
DATED AUGUST 16, 1982  
PLAT BOOK AW PAGE 16  
PLANNING BOARD No. 9585  
RMC CHARLESTON COUNTY
- 4.) PLAT BY A. L. GLEN  
DATED JUNE 1945  
DEED BOOK V45 PAGE 173  
RMC CHARLESTON COUNTY

7



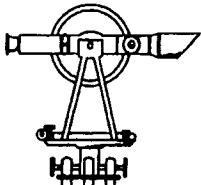
Property of

*Property of*  
**Equity Trust Company**  
**FBO Ralph L. Hayes**  
*T.M.S.*  
**204-00-00-017**

LINE	LENGTH	BEARING
L1	25.25	N00°08'41"W
L2	26.71	N00°08'41"W
L3	25.13	S01°59'27"W
L4	50.45	S00°01'33"W



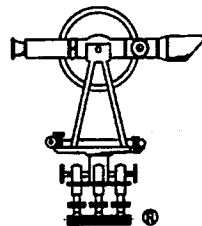
168



GEORGE A.Z. JOHNSON, JR., IN  
ENGINEERS · PLANNERS · LAND SURVEYORS

6171 SAVANNAH HIGHWAY  
RAVENEL, SOUTH CAROLINA 29470

BEARING
N00°08'41"W
N00°08'41"W
S01°59'27"W
S00°01'33"W



**GEORGE A.Z. JOHNSON, JR., INC.**  
**ENGINEERS · PLANNERS · LAND SURVEYORS**

6171 SAVANNAH HIGHWAY  
 RAVENEL, SOUTH CAROLINA 29470  
 (843) 889.1492 · Charleston No. 722.3892 · Edisto No. 869.1495

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5/8" Rebar  
Technical Bar  
Gravel Drive  
I.O.  
1/2" Rebar

Existing 25' Right-of-Way (A, B, C, D, A)  
Known as Resurrection Road per reference No. 2

381.16'

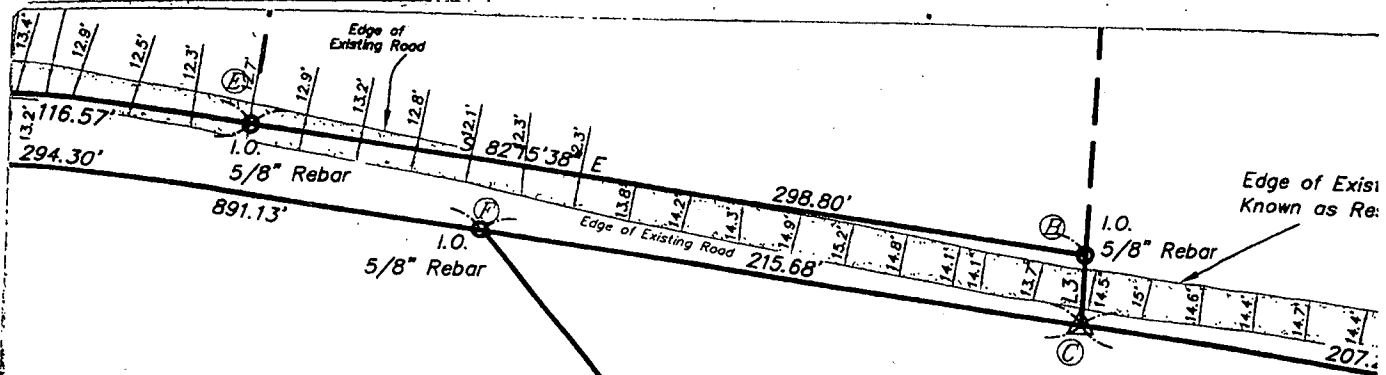
N 82°15'38" W

593.28'

I.O.  
5/8" Rebar

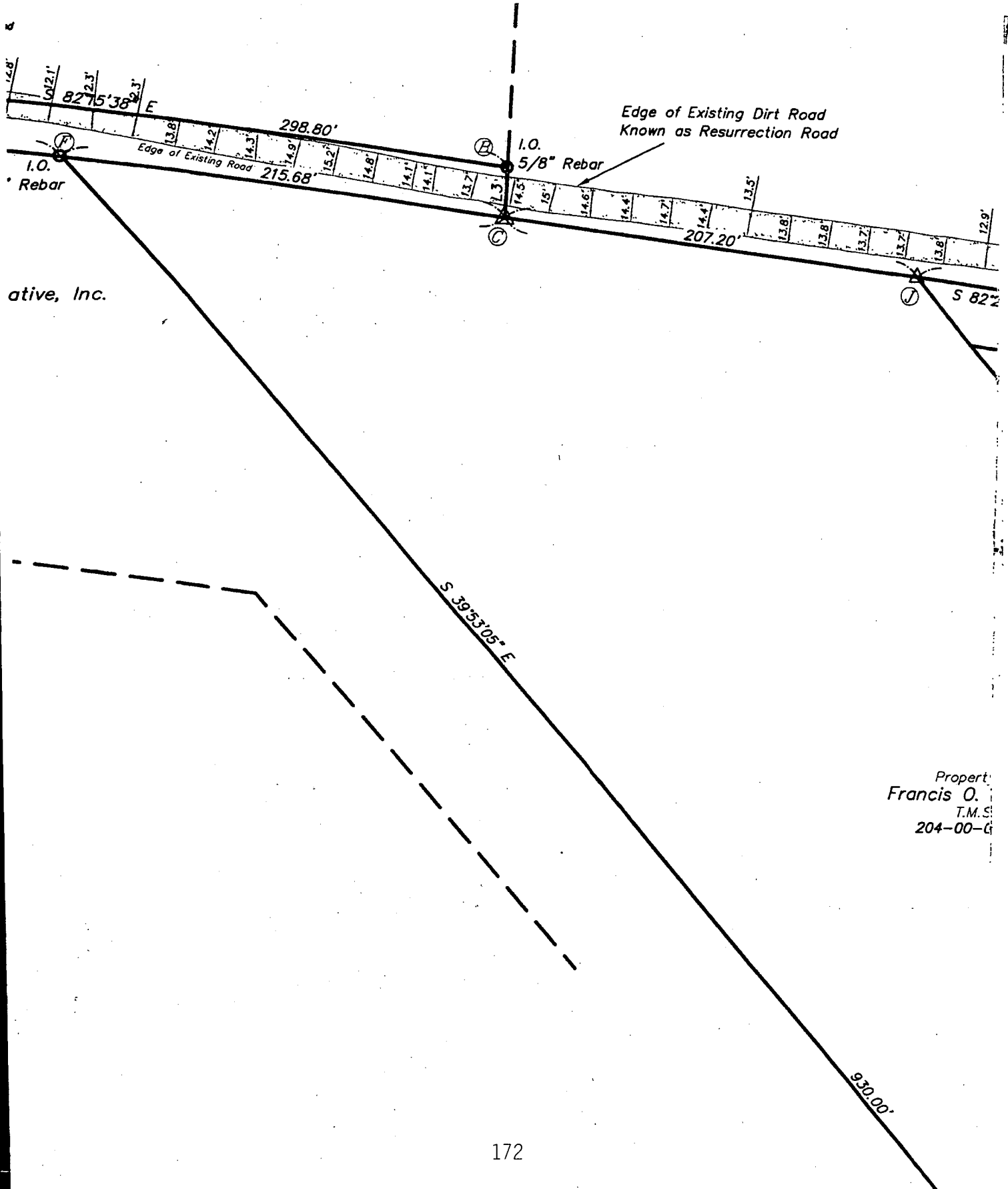
Note: The point labeled "1" denotes the intersection of the existing gravel drive with the existing 25' Right-of-Way.

Property of  
Goff Point, LP  
A SC Limited Partnership  
T.M.S.  
204-00-00-025



Property of  
 Berkeley Electric Cooperative, Inc.  
 T.M.S.  
 204-00-00-022

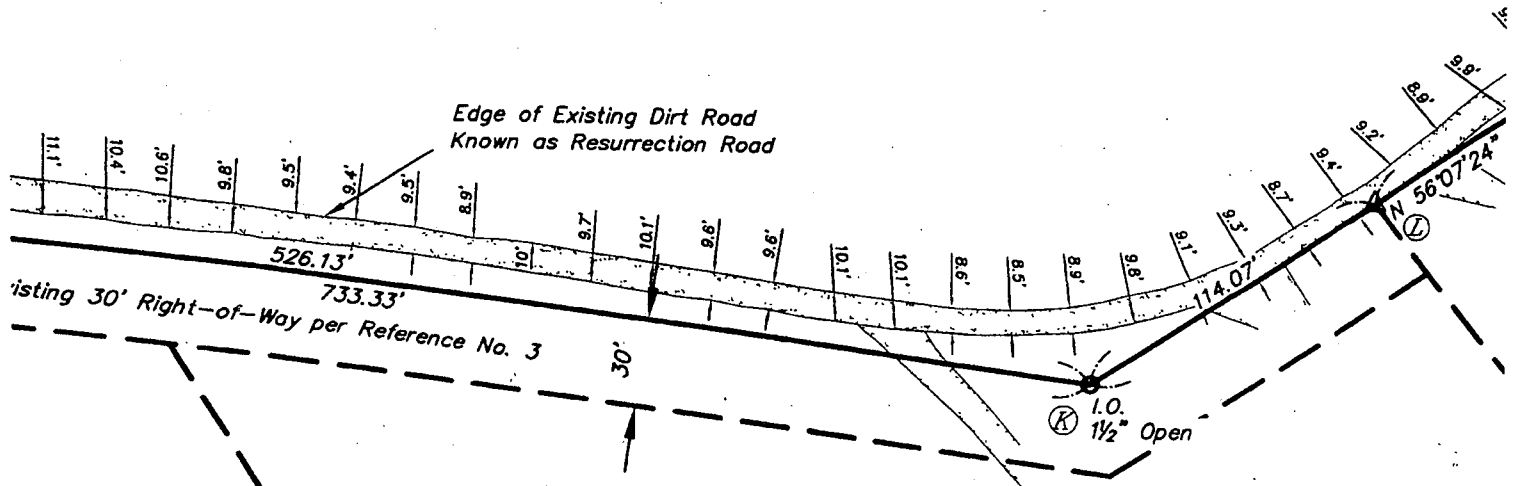
S 39°53'05" E



ative, Inc.

Property of  
 Francis O.  
 T.M.S.  
 204-00-G

Engineering Company  
FBO Ralph L. Hayes  
T.M.S.  
204-00-00-017

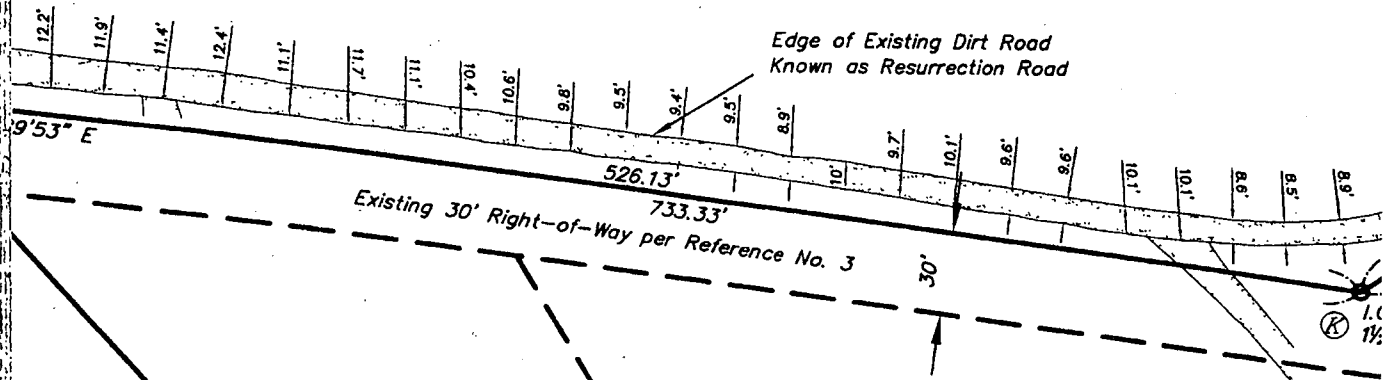


Property of  
Ravenel Smith &  
Linnie E. Smith  
T.M.S.  
204-00-00-072

Property of  
Ravenel Smith &  
Linnie E. Smith  
T.M.S.  
204-00-00-015

671.00'

~~Survey and Mapping Company~~  
FBO Ralph L. Hayes  
T.M.S.  
204-00-00-017



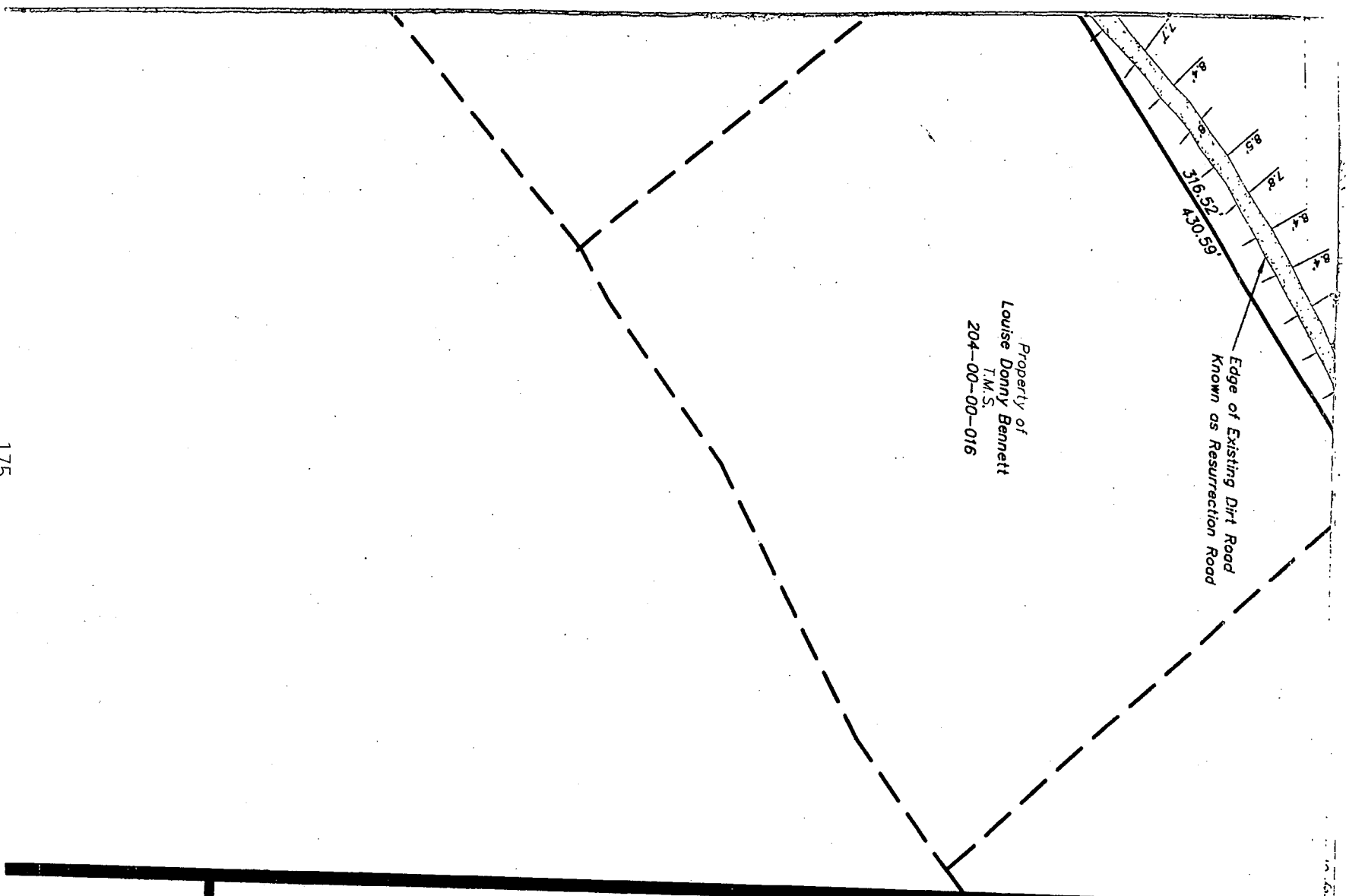
Property of  
Ravenel Smith &  
Linnie E. Smith  
T.M.S.  
204-00-00-072

Property of  
Ravenel Smith &  
Linnie E. Smith  
T.M.S.  
204-00-00-015

of  
Johnson  
0-014

S 39°53'05" E

671.00'



**EXHIBIT SHOWING**  
**THE PHYSICAL LOCATION**  
**OF RESURRECTION ROAD**

Part of Existing Dirt Road  
shown as Resurrection Road

City of  
New Bennett  
M.S.  
1-00-016

EXHIBIT SHOWING  
THE PHYSICAL LOCATION  
OF RESURRECTION ROAD  
LOCATED ON JOHNS ISLAND  
CHARLESTON COUNTY, SOUTH CAROLINA

176

180

1-A"

Defendant Heyward's Motion for Stay of Proceedings of October 11, 2019

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 FRANCIS O. JOHNSON, )  
 )  
 Plaintiff, )  
 vs. )  
 MASON C. HEYWARD, et. al., )  
 vs. )  
 CHARLESTON COUNTY, a political )  
 Subdivision of the State of South )  
 Carolina, )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 CASE NO. 2008-CP-10-1054  
 (Referred to Master-in-Equity)

**NOTICE OF MOTION AND  
 EMERGENCY MOTION FOR STAY OF  
 PROCEEDINGS TO ENFORCE JUDGMENT  
 or SUPERSEDEAS BOND and  
 TO IMPOSE BOND, IF ANY, ON HEYWARD**

FILED  
 2019 OCT 11 PM 3:23  
 CLERK OF COURT  
 MICHAEL J. ARMSTRONG

TO: MARVIN OBERMAN, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, Mason C. Heyward, (hereinafter "Heyward"), by and through his below-counsel and pursuant to Rule 62(f) of the South Carolina Rules of Civil Procedure, and Rule 241(c) of the South Carolina Appellate Court Rules, will move before the Honorable Mikell R. Scarborough, Charleston County Master in Equity, at such time, date and place as counsel may be heard, for an *Emergency Order for Stay of Proceedings to Enforce Judgment* or alternatively to grant a *Supersedeas Bond*, and to preclude Plaintiff entering encroaching, altering, or damaging the property of Mason C. Heyward during the pendency of his appeal. This motion is based on the appeal taken by Heyward of the judgment filed on June 13, 2019, attached hereto as Exhibit A.

Rule 62(b), SCRCP, which provides, in relevant part: "[w]hen an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay ... the bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be, The stay is effective when the supersedeas bond is approved by the Court."

While Heyward disputes that the limited exceptions to Rule 241 generally staying enforcement of a judgment during an appeal are implicated in this matter, Heyward's counsel was advised by telephone by Paul Tinkler, Esq., co-counsel for Plaintiff Francis Johnson, and then Heyward himself on October 11, 2019, that parties affiliated with Plaintiff were marking his property, including trees, in what is assumed to be preparation work for road cutting or land clearing. Out of an abundance of caution, Heyward moves to stay any acts by Johnson or his agents during pendency of the appeal as it relates to any rights-of-way or easements.

Section 18-9-170 of the South Carolina Code states:

“If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking.....

S.C. Code Ann. § 18-9-170(emphasis added).

S.C. Code Ann. § 18-9-170 and 18-9-160, providing statutory exceptions to general stays of orders subject to appeal, appear to contemplate orders of conveyance, foreclosure sales, partitions, or possession of the whole of a tract of property, and as of filing, Heyward's counsel could not find a South Carolina case where supersedeas bond was required just as to an easement. Nonetheless, in order to prevent irreparable harm to Heyward and Heyward's property, Heyward files this motion to protect his interests during pendency of the appeal. Heyward requests that the bond, if any, be nominal, as Plaintiff still has access to his unimproved property, and this has not been impeded by Heyward.

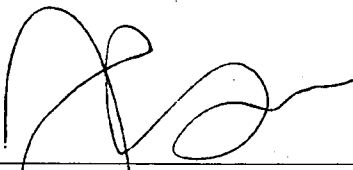
Rule 241(c)(3) of the South Carolina Appellate Court Rules states that “the granting of a supersedeas ... under this Rule, may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking as the lower court .... may deem appropriate.”

Accordingly, Heyward seeks the Court impose a supersedeas bond if the Court deems that S.C. Code Ann. §§ 18-9-160 and/or -170 apply to the facts in the instance case (an easement or right of way, as opposed to possession, partition, or sale of real estate *in toto*); to give Heyward a reasonable time to post the bond, if any be imposed; and for such other and further relief as the Court may deem just and proper.

Pursuant to Rule 11, SCRPC, the undersigned has communicated with opposing counsel prior to the filing of this motion.

Respectfully submitted,

(signature page to follow)



---

John Edward Robinson  
SC Bar No. 75919  
36 Broad St.  
Charleston, SC 29401  
Tel: 843-723-5152  
Fax: 843-577-4570  
Attorney for Mason C. Heyward

October 11, 2019  
Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within *Notice of Motion and Emergency Motion for Stay of Proceedings to Enforce Judgment, or Supersedeas Bond* upon all parties to these matters by depositing a true copy of the same in the U.S. mail, proper postage prepaid, addressed to counsel of record as follows:

**Via U.S. Mail**

Harold Alan Oberman  
60 Markfield Dr., Ste. 2  
Charleston, SC 29407

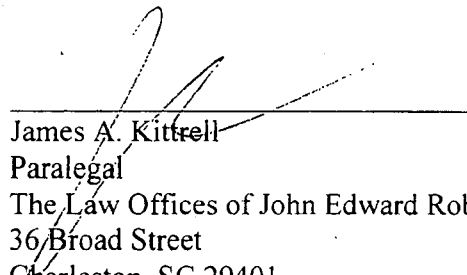
Paul E. Tinkler  
154 King St., 3rd Floor  
Charleston SC 29401

John B. Williams  
P.O. Box 1288  
Moncks Corner, SC 29461

J. Jay Hulst  
P.O. Box 1288  
Moncks Corner, SC 29461

Bernard E. Ferrara, Jr.  
4045 Bridgeview Dr.  
N. Charleston, SC 294057464

G. Simms McDowell, III  
68 Legare St.  
Charleston, SC 29401



---

James A. Kittrell

Paralegal

The Law Offices of John Edward Robinson

36 Broad Street

Charleston, SC 29401

(843) 723-5152

October 11, 2019  
Charleston, South Carolina

# EXHIBIT "A"

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 Francis O. Johnson, )  
 Plaintiff, )  
 vs. )  
 Mason C. Heyward, et al., )  
 vs. )  
 Charleston County, )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 CASE NO. 2008-CP-10-1054

FILED  
 2019 JUN 13 PM 4:38  
 CLERK OF COURT

**ORDER DENYING  
 MOTION TO RECONSIDER,  
 NEW TRIAL AND RULE 60 RELIEF**

This matter came before me on April 10, 2019, for a hearing on Heyward's motion to reconsider this court's order of June 30, 2015. This case involves the location and scope of a roadway known as Resurrection Road on Johns Island in Charleston County, South Carolina.

After hearing arguments from counsel for both Plaintiff and Defendants, I hereby deny Petitioner's motion to reconsider on the grounds that Defendant Heyward seeks a ruling on matters either already ruled upon, not tried or for an advisory ruling on matters not yet ripe for consideration by the court.

First, the court should note that the Motion to Alter and Amend Judgment, for a New Trial and for Relief from Judgment was timely filed on July 15, 2015. The court held a hearing on November 10, 2015 at which all parties were present. At the conclusion of the hearing, the court was informed the parties were working to resolve the issues involved with this easement dispute. Thereafter the parties were

unable to resolve their dispute; however, no notice of this breakdown was given the court until March 2019 when this matter was brought back before the court.<sup>a</sup>

Notwithstanding this delay, the court addresses the issues as presented below:

1. The issue of the amount of compensation was clearly ruled on in Paragraphs 32 and 33 and in Conclusion #6 on pages 22-23.
2. While Heyward contends the County acquiesced in his position that the road had been abandoned, that issue was also clearly ruled upon in paragraphs 34-43 as the court found dedication and acceptance of the road.
3. At the outset of the case, the County moved to amend its pleadings to reflect this change and the case was tried on that basis; accordingly, I find the pleadings conformed to the proof at trial. Rule 15(b), SCRCP.
4. Heyward seeks the court's clarification on certain rulings; however, I find that the issue of who is going to make the desired improvements to the road was not an issue tried before this court and therefore not yet ripe for determination. The record clearly shows the county has accepted the road into its system by its continued use and maintenance.
5. Heyward seeks a "definitive ruling" on whether or not Resurrection Road is a public or private road. Again, this issue was clearly ruled upon as Heyward's 1996 plat dedicated his 25 foot right of way to the public. Furthermore the county has accepted the road into its road system as it has continued to maintain and scrape the road over the years.

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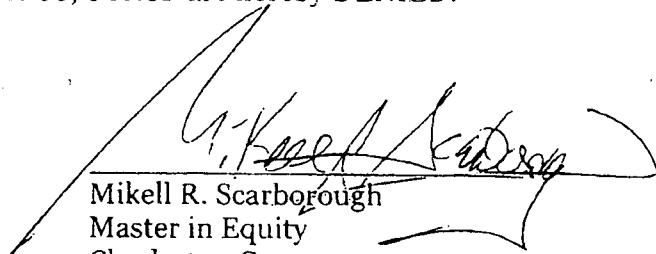
<sup>a</sup> The court apologizes to the parties and their counsel for this long delay as it was under the impression the parties resolved their dilemma. Furthermore, Petitioner was to supplement the motion with a memorandum citing to the record in this case but this was never presented to the court.



6. On Heyward's argument that the court has "merged the easements," this court used its equitable powers to clarify the location and scope of the easement. The court is not allowed to alter or amend an express easement. If ultimately so determined, the court would rule the express easement should be added to the Prescriptive easement found to exist by the court.
7. Finally, Heyward contends the court erred "in both moving and expanding an existing prescriptive easement" and, apparently, in creating an express easement for the future use of the public and cites to Goodwin v. Johnson, 357 SC 49, 591 SE 2d 34 (SC App. 2003) for authority. This case presents the opposite corollary of Goodwin however, as here, the dedicated road was not used to the extent of the pre-existing easement. In its decree, this court sought to lessen the burden on Heyward by reducing the location of the express easement and moving it away from his home; however, if not agreeable to Heyward, the court finds that both the express and implied (prescriptive) easements should be allowed to stand with the result that a wider easement shall exist on Heyward lands.

For the reasons set forth, It IS HEREBY ORDERED and ADJUDGED that the Petitioner's motions for Reconsideration under Rule 52, New Trial per Rule 59 and Relief from the Judgement under Rule 60, SCRPC are hereby DENIED.

AND IT IS SO ORDERED!



Mikell R. Scarborough  
Master in Equity  
Charleston County

June 10, 2019  
Charleston, SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
9<sup>th</sup> JUDICIAL CIRCUIT

CASE NO.: 08 -CP-10 - 01054

FRANCIS D. JOHNSON  
Plaintiff, )

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

vs. )

MASON C. HEWARD, ET AL  
Defendant. )

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>JOHN E ROBINSON</u> _____, Bar No. <u>75919</u> Address: <u>36 BROAD ST. CHARLESTON, SC</u> <u>29401</u> Phone: _____ Fax <u>843-723-5152</u> E-mail: _____ Other: _____
---	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**  
Nature of Motion: STAY OF PROCEEDINGS  
Estimated Time Needed: 30 MIN Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**  
 Written motion attached  
 Form Motion/Order  
I hereby move for relief or action by the court as set forth in the attached proposed order.  
Signature of Attorney for  Plaintiff /  Defendant Date submitted \_\_\_\_\_

**SECTION III: Motion Fee**  
 PAID - AMOUNT: \$ 25.00  
 EXEMPT: (check reason)  
 Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRCP)  
 Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

**CLERK'S VERIFICATION**  
Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

Deposition of Ralph L. Haynes on November 26, 2012

Deposition of RALPH L. HAYNES, M.D.

1 IN THE COURT OF COMMON PLEAS  
 2 FOR THE STATE OF SOUTH CAROLINA  
 3 CHARLESTON COUNTY  
 4 CASE NO: 08-CP-10-1054

5 TELECONFERENCE DEPOSITION OF RALPH L. HAYNES, M.D.

6 FRANCIS O. JOHNSON,  
 7 PLAINTIFF,  
 8 vs.  
 9 MASON C. HEYWARD, BERKELEY ELECTRIC COOPERATIVE,  
 10 INC., and CLEMENTINE RAVENEL,  
 11 DEFENDANTS.

12 -----  
 13 MASON C. HEYWARD,  
 14 CROSSCLAIM PLAINTIFF,  
 15 vs.  
 16 FRANCIS O. JOHNSON and CHARLESTON COUNTY, a  
 17 political subdivision of the State of South  
 18 Carolina,  
 19 CROSSCLAIM DEFENDANTS,  
 20 and  
 21 RALPH L. HAYNES,  
 22 CROSSCLAIM DEFENDANT and  
 23 COUNTERCLAIMANT.

24 -----  
 25 WITNESS: RALPH L. HAYNES, M.D.  
 DATE: NOVEMBER 26, 2012  
 TIME: 3:30 P.M. CET  
 LOCATION: LANDSTUHL MEDICAL CENTER  
 Dr. Hitzelberger Strasse  
 Landstuhl, GR 66849

26 -----  
 27 REPORTED BY:  
 28 WANDA S. BUCKNER  
 29 NCRA Registered Professional Reporter  
 30 NCRA Certified Realtime Reporter  
 31 CLARK & ASSOCIATES  
 32 P.O. Box 73129  
 33 North Charleston, SC 29415  
 34 (843) 762-6294

1 EXAMINATION

2 RALPH L. HAYNES, M.D.

3 BY MR. OBERMAN 4. 96

4 BY MR. ROBINSON 50. 102

5 BY MR. FERRARA 78

6 Certificate of Reporter 105

7 Deponent's Correction Sheet 106

8

9

10

11

12

13 EXHIBITS

14 Haynes Exhibit No. 1 9

15 Haynes Exhibit No. 2 11

16 Haynes Exhibit No. 3 12

17 Haynes Exhibit No. 4 14

18 Haynes Exhibit No. 5 14

19 Haynes Exhibit No. 6 15

20 Haynes Exhibit No. 7 20

21 Haynes Exhibit No. 8 22

22 Haynes Exhibit No. 9 23

23 Haynes Exhibit No. 10 24

24 Haynes Exhibit No. 11 27

25 Haynes Exhibit No. 12 27

Haynes Exhibit No. 12A 29

Haynes Exhibit No. 13 31

Haynes Exhibit No. 14 32

Haynes Exhibit No. 15 91

Haynes Exhibit No. 15A 32

Haynes Exhibit No. 16 39

Haynes Exhibit No. 17 39

Haynes Exhibit No. 18 48

1 APPEARANCES

2 (all present in Charleston, South Carolina)

3

4 FOR THE CROSSCLAIM PLAINTIFF:

5 BY: JOHN EDWARD ROBINSON  
 6 MCDOWELL LAW OFFICES  
 7 36 Broad Street  
 8 Charleston, SC 29401  
 9 (843) 723-5152

10 FOR THE DEFENDANT BERKELEY ELECTRIC COOPERATIVE:

11 BY: JOHN B. WILLIAMS  
 12 WILLIAMS & HULST, LLC  
 13 209 East Main Street  
 14 Moncks Corner, SC 29461

15 FOR THE CROSSCLAIM DEFENDANT CHARLESTON COUNTY:

16 BY: BERNARD E. FERRARA, JR.  
 17 CHARLESTON COUNTY ATTORNEYS OFFICE  
 18 4045 Bridge View Dr.  
 19 North Charleston, SC 29405  
 20 (843) 958-4043

21 FOR THE CROSSCLAIM DEFENDANT/COUNTERCLAIMANT HAYNES:

22 BY: MARVIN I. OBERMAN  
 23 OBERMAN & OBERMAN  
 24 104 Church St.  
 25 Charleston, SC 29401  
 (843) 577-7010

1 MR. OBERMAN: And now we are seeing each

2 other. I have introduced you to the other

3 gentlemen here in the room. Wanda, would you

4 swear Dr. Haynes in?

5 RALPH L. HAYNES, M.D.,

6 being first duly sworn or affirmed, testified as

7 follows:

8 EXAMINATION

9 BY MR. OBERMAN:

10 Q Dr. Haynes, we are taking your deposition

11 de bene esse, which is opposed to an informational

12 type deposition. Since you can't be here for the

13 trial, the transcript of this testimony will be

14 either read into the record for the judge, or he

15 will just be given a copy of it and this will be

16 your testimony.

17 The opposing attorneys, particularly

18 Mr. Robinson, will, I am sure, object to some of my

19 questions during this deposition. He will not give

20 speaking objections. He will just object to the

21 form and we will move ahead; in other words, I would

22 expect you to answer and then if he objects to any

23 certain question and your answers, that can be taken

24 before the judge ahead of time and stricken from the

25 transcript. With that, would you state your full

1 name, sir?

2 A Yes, sir. I am Ralph Lewis Haynes.

3 Q Are you a physician?

4 A I am.

5 Q Can you give us a short background of your  
6 personal information? Where were you born?

7 A I was born in Germany on 23 December 1942  
8 and had German parents. So I wound up with an  
9 American stepfather when my mother remarried and was  
10 brought to the States when I was about five years  
11 old in '48.

12 He then stayed in the Army or got drafted  
13 back in the Army for the Korean War so I became an  
14 Army dependent and spent the next 12 years of school  
15 in 12 different schools, pretty much all over the  
16 Eastern seaboard and over in Germany again.

17 So I wound up graduating from high school  
18 in Munich, Germany, in '61, then going off to the  
19 college at West Virginia University where I  
20 graduated in 1966 with a Bachelor's in chemistry and  
21 zoology and minor's in Russian and English.

22 I then went off to medical school where I  
23 graduated from Emory in 1970 with a medical degree.  
24 Went off after that to Boston for internship and  
25 then the military for a few years of active duty,

1 reasonable to take a job over here at the Army

2 Hospital that might receive any casualties from Iraq,  
3 and Afghanistan as opposed to worrying about it in  
4 Atlanta.

5 So I left St. Joseph's Hospital in Atlanta  
6 in summer of 2009 and have been here for the past  
7 three-plus years where my current position is that  
8 of a pulmonary specialist, critical care specialist,  
9 and sleep specialist at this US Army Hospital in  
10 Landstuhl, Germany, where I am right now and where  
11 this VTC is taking place.

12 Over those years, I have acquired  
13 obviously a wife who is a gynecologist and who is  
14 also part-time employed here. That is Patricia  
15 Haynes. And we have six children, the youngest of  
16 which graduated from Georgia Tech about a year ago  
17 and is now gainfully employed like all of the rest  
18 of them, in -- although she is in Washington, D.C.

19 So that is kind of a thumbnail sketch of a  
20 lot of time.

21 Q All right, sir. So you say that your wife  
22 is in Washington or she is --

23 A No. My youngest child is in Washington.  
24 after she graduated from Georgia Tech this past  
25 summer. My wife is here at Landstuhl in Germany

1 then I stayed in the military as a reservist until I  
2 finally retired from the military.

3 But further training was in Boston and the  
4 military and at Emory. And then I left Boston and,  
5 the Harvard training system in June of 1976 to go to  
6 Grady Hospital in Atlanta where I was chief, and  
7 actually only Indian, of the pulmonary service as a  
8 pulmonary specialist there. I got recruited away  
9 from there to St. Joseph's Hospital in Atlanta,

10 although I continued on the Emory faculty and am  
11 still on it and still had teaching responsibilities  
12 down at Grady until the time I left Atlanta in 1979.

13 So between '77 when I left full-time at  
14 Grady and went to St. Joseph's, and '79 when I left  
15 St. Joseph's, I was in pulmonary practice, critical  
16 care medicine, and finally in sleep medicine as  
17 well, and then became the chief medical officer and  
18 senior vice president for St. Joseph's Health System  
19 in Atlanta.

20 In about 2009 when my last child was off  
21 in college, my wife and I decided it might be wise  
22 to do something different. Since we had our  
23 youngest son graduating from the military academy at  
24 West Point and becoming an infantry officer, we knew  
25 where he was going and we both felt it would be more

1 working part-time as a gynecologist and enjoying it  
2 very much.

3 Q All right. Did I -- have you discussed  
4 this matter with me, as your attorney, over the  
5 months?

6 A Yes.

7 Q All right.

8 A Yes. Of course, I have. This has turned  
9 out to be a whole lot more complicated than I  
10 originally expected.

11 Q Did you see and review depositions and  
12 pleadings and such prior to this deposition?

13 A I did, yes, sir.

14 Q Have you reviewed those depositions and  
15 pleadings?

16 A Yes, sir. There is quite a lot of them,  
17 but I have.

18 Q I think you mentioned that you were  
19 surprised to see that Sidi Limehouse had been a  
20 guest of the United States Government for a period  
21 of time.

22 A Yes. I have known of him peripherally  
23 since I started buying fruit there years ago  
24 because, again, I had a beach house on the Isle of  
25 Palms and I have been coming to the Charleston area

1 for 25, 30 years. I first got to know Sidi at his  
2 fruit stand or so, and I heard he was a colorful  
3 character. But in reading through his deposition I  
4 recognized there were more dimensions to his past  
5 than I had known.

6 Q All right, sir. You have been coming to  
7 Charleston and you have a Charleston connection  
8 through your home on the Isle of Palms?

9 A I sold that a few years ago, but again, my  
10 parents lived there for many years, from retirement  
11 from the military until they died. So I have been  
12 going to Charleston for nearly 30 years.

13 Q Were you kind enough to prepare for us a  
14 curriculum vitae?

15 A Yes, sir.

16 Q CV. I am referring to Exhibit 1. Is that  
17 a copy of your curriculum vitae?

18 A That is, sir.

19 MR. OBERMAN: Wanda, we would like to mark  
20 that as Haynes Exhibit 1.

21 (Haynes Exhibit No. 1 was marked for  
22 identification.)

23 Q Sir, how did you get involved in this  
24 lawsuit?

25 A Well, I initially had received a letter

1 the assent of Mason Heyward. close quote.

2 Q Sir, do you have Exhibit 2 there, the  
3 Heyward's First Amended Answer and Crossclaim?

4 A Yes, sir, I do.

5 Q If you would give that to the court  
6 recorder and have her mark that as Haynes Exhibit 2.  
7 (Haynes Exhibit No. 2 was marked for  
8 identification.)

9 A That leads me to the next item here which  
10 was Exhibit 3 which is my letter in response to the  
11 26th July, 2010 letter, of Mr. Edward Robinson of  
12 McDowell Law Office who had notified me of a suit  
13 that seeks to establish that the right-of-way of my  
14 property, Resurrection Road, had been abandoned by  
15 the County and that Mr. Heyward seeks to regain  
16 title to that right-of-way which leads to my  
17 property. So that is --

18 Q Did that cause you concern?

19 A It did. And that resulted in my letter of  
20 protest that is now Exhibit 3, and that protested  
21 any abandonment of the County's right-of-way on the  
22 basis that it markedly affects the value of my  
23 12.8-plus acres, TMS204-00-00-017, I think you call  
24 that lot or Tract 17. That borders on the marsh of  
25 Haulover Creek.

1 dated 26 July, 2010, addressed to Golf Point, LP,  
2 with a copy to me as well as five other people  
3 advising of this suit. At the time I didn't take a  
4 whole lot of note about it because it didn't seem to  
5 pose any particular threat to the land that I had.

6 But I subsequently became aware of Exhibit  
7 Number 2 which is Mason Heyward by his Amended  
8 Answer and Counterclaim dated October 29, 2010, in  
9 which the defendant, that is Mason Heyward, joined  
10 with the County of Charleston and asked that the  
11 Court either, one, declare the dedicated 25-foot  
12 right-of-way to be abandoned and returning the  
13 ownership and control of that property to Defendant  
14 Heyward; or, two, declare that the dedicated 25-foot  
15 right-of-way is not abandoned and that the County be  
16 required to develop and maintain that express  
17 right-of-way for the benefit of the residents of  
18 Resurrection Road, closing the existing Resurrection  
19 Road and returning those lands to Heyward.

20 And further, quote -- this is what got my  
21 particular attention -- that any easement or  
22 right-of-way of the plaintiff be limited to access  
23 reflective of the status of Resurrection Road as a  
24 private road with rights of access bound by the  
25 rights-of-way and easements expressly granted with

1 I noted in that letter that when I  
2 purchased this land over 15 years ago I had  
3 envisioned it as an investment to either occupy in  
4 retirement or to sell, subdivide, or otherwise  
5 provide resources for my retirement. And  
6 accordingly, it has always been owned by my  
7 retirement plans. Its initial and current value are  
8 predicated upon having county road access and  
9 right-of-way.

10 For the County to abrogate such  
11 right-of-way, in effect, disenfranchises those  
12 relying on such county road access. And I thought  
13 that the injustice of positioning Mr. Heyward to  
14 control access to his neighbors along Resurrection  
15 Road right-of-way is far more profound than his  
16 assertion that the County has abandoned its claim to  
17 that right-of-way. I heard nothing more from any  
18 party.

19 Q Hold on. That is Exhibit 3.

20 (Haynes Exhibit No. 3 was marked for  
21 identification.)

22 A I heard nothing more from any party and  
23 might note that I spent a week at the Isle of Palms  
24 over the 4th of July 2011 holiday during which time  
25 I visited Resurrection Road property, my

1 Resurrection Road tract, and was surprised to find  
2 all kinds of stuff accumulated there including some  
3 Conexes that were huge and filled with materials:  
4 abandoned trucks, trailers, a Cadillac that had been  
5 abandoned there, a metal dock and a vast amount of  
6 piping.

7 So, that again was the 4th of July weekend  
8 2011, it had been there a while. So I called Sidi  
9 Limehouse who was renting my tract and complained  
10 about the Conex trucks, vans, trailer, et cetera,  
11 parked on my land. And some of those obviously  
12 required an 18-wheeler tractor-trailer to get those  
13 items to my property along Resurrection Road.

14 In the course of that conversation with  
15 Sidi, he asked -- and that again is in October -- is  
16 in July of 2011 -- whether I might be interested in  
17 selling the land and my response, I was a little  
18 taken aback, but my response was, well, that is  
19 always a matter of price, of course.

20 Then in October 2011 I became aware of  
21 more elements of this suit and how it would affect  
22 my 12.8-acre valuation, and engaged you,  
23 Mr. Oberman, to represent my interests.

24 Q All right, sir. Did I, in fact, put a  
25 pleading in for you?

1 risk of losing reasonable and appropriate access to  
2 my Lot 17.

3 Q Sir, I am going to take you back to the  
4 purchase by you of the property in 19, I believe it  
5 was '99. Of course, we will talk about the survey  
6 and plat drawn by I believe Johnson Surveying team.  
7 You have a copy of Exhibit 6, I see?

8 A Yes, sir, it fills the tabletop here.

9 MR. OBERMAN: This will be Haynes  
10 Exhibit 6, Wanda.

11 (Haynes Exhibit No. 6 was marked for  
12 identification.)

13 Q Since I don't have a large tabletop, I  
14 would ask you to -- it's dated October 2011 --  
15 October 31, 2011.

16 A Yes, sir. The part, of course, that  
17 interests me most is Tract 17 which is the largest  
18 tract here. It represents my tract. But not shown  
19 on Parcel 17 or Tract 17 is the eastern edge of that  
20 off to the right which should have 611-foot frontage  
21 on the marsh as well as a connection to the Hope  
22 Plantation at the golf club. Those are important  
23 features since they give a great deal of value to  
24 this particular Tract 17.

25 What Exhibit 6, I believe you called it,

1 A Yes, sir, you did. That is I think  
2 Exhibit 4 here and entitled an Amended Answer of  
3 Ralph Haynes, et cetera, and it is dated 11-9-11 and  
4 filed 11-10-11.

5 MR. OBERMAN: Wanda, mark that as Haynes  
6 Exhibit 4.

7 (Haynes Exhibit No. 4 was marked for  
8 identification.)

9 Q Was there a response by the County of  
10 Charleston?

11 A There was. And that is entitled an  
12 Amended Answer of Charleston County dated 11-18-11.  
13 And that contains the critical phrase in paragraph  
14 31, page 6. It states, quote: There has been no  
15 dedication of property for public use and no  
16 acceptance of such property by the public.

17 That statement I found stunning in view of  
18 my 15-plus year history of ownership of Tract 17.

19 Q What did you think the County was  
20 attempting to do by that?

21 MR. OBERMAN: Yes, I realize that, sir.  
22 We will put that in as Exhibit 5.

23 (Haynes Exhibit No. 5 was marked for  
24 identification.)

25 A Well. It sounded to me as though I was at

1 also shows is a relationship of Mason Heyward's two  
2 properties and a right-of-way as well as the  
3 Resurrection Road going from Betsy Kerrison into my  
4 Tract 17 and continuing on to the property of Louise  
5 Donny Bennett, Tract 16.

6 Q All right, sir. What does it show the  
7 width to be of the easement there, Betsy Kerrison  
8 Parkway?

9 A That appears to be 25 feet, sir.

10 Q Does it show the existing right-of-way  
11 with the 25 feet in width being south of that  
12 specific easement?

13 A Yes. That is along line A-B and D-C,  
14 which is --

15 Q Now, your property -- I'm sorry, sir.

16 A Then there is the additional prescriptive  
17 easement which is a tad north of that for some of  
18 the way.

19 Q The 25-foot prescriptive easement ends  
20 where on your property? Which line is that?

21 A Looks like B-C.

22 Q Yes, sir, that is correct. That  
23 terminates on your property?

24 A It does. Yes. It gives me access to  
25 Betsy Kerrison.

1 Q The prescriptive easement, would you  
2 describe its relationship to the 25-foot dedicated  
3 easement.

4 MR. FERARRA: I am going to object to the  
5 form of the question.

6 A Yes. I see that the two are coincident  
7 beginning point 8 and completely coincident at point  
8 B-C.

9 Q Is it fair to say then that the  
10 prescriptive easement runs within the dedicated  
11 easement for a distance of some 400 or so feet?

12 A It appears so on the basis of this plat.

13 Q Have you viewed the prescriptive easement  
14 and dedicated easement going to and from your  
15 property?

16 A Yes, multiple times.

17 Q Have you seen county activity on that  
18 easement, sir?

19 A Yes, it appears to have been reasonably  
20 well maintained, although it is not asphalted, but  
21 it, as I mentioned before, must have been adequate  
22 even for a tractor-trailer to haul a huge Conex back  
23 to my Tract 17.

24 Q I am going to --

25 MR. OBERMAN: Wanda, did you put that in

1 Betsy Kerrison Parkway, if I have my directions  
2 properly.

3 Q On the eastern side?

4 A Yes.

5 Q But to the west?

6 A Correct, yes.

7 Q And on -- where does it terminate on the  
8 east?

9 A On the east, it looks like it goes all the  
10 way to Lot 16.

11 Q 25-foot dedicated easement.

12 MR. FERARRA: Madam Court Reporter, can  
13 you hear me?

14 COURT REPORTER: Yes.

15 MR. FERARRA: I am going to object to that  
16 question. And I am just going to put on the  
17 record a continuing objection to any reference  
18 to a 25-foot dedicated right-of-way, dedicated  
19 easement or dedicated road of any type.

20 (Reporter interruption.)

21 MR. FERARRA: I am making a continuing  
22 objection because the County of Charleston  
23 contends there is no dedicated right-of-way or  
24 dedicated easement or dedication of any sort;  
25 therefore, I want to continue to make the

1 as Haynes Exhibit 6?

2 COURT REPORTER: Yes, I did.

3 MR. OBERMAN: Thank you.

4 Q Doctor, I refer you to Exhibit 7.

5 A Yes, sir.

6 Q Can you tell me, to your knowledge, what  
7 that is?

8 A This is an aerial photo of the land  
9 surrounding mine and showing Betsy Kerrison Parkway  
10 to the west with Parcel 16 to the east, Parcel 14 to  
11 the south of Resurrection Road, and Parcels 18, 133  
12 and 19 to the north.

13 I have been informed that this is from  
14 Charleston County. And my parcel, of course, is  
15 Parcel 17 which is connected to Kerrison Parkway via  
16 Resurrection Road on this map.

17 Q And Betsy Kerrison Parkway is clearly  
18 delineated?

19 A It is indeed.

20 Q And is the access easement that you used  
21 to get to your property clearly delineated?

22 A It is.

23 Q Does it terminate on the west of Betsy  
24 Kerrison Parkway?

25 A It looks like it terminates on the east of

1 objections to the form of the question using  
2 the word dedicated easement or dedicated  
3 right-of-way or dedicated road, is that clear?

4 COURT REPORTER: Yes, thank you.

5 MR. FERARRA: Thank you.

6 Q Doctor, I am going to refer you back to  
7 Exhibit 6.

8 A Yes, sir.

9 (Haynes Exhibit No. 7 was marked for  
10 identification.)

11 Q On Exhibit 6, do you see the line B-C?

12 A I do.

13 Q Do you see the terminology there existing  
14 25-foot right of right-of-way, A, B, C, D, K, known  
15 as Resurrection Road -- I can't read it upside  
16 down -- reference number two there within that  
17 25-foot right of right-of-way at Betsy Kerrison?

18 A I do see that.

19 Q All right, sir. And you said that that  
20 easement, prescriptive easement and dedicated  
21 easement, the existing 25-foot easement terminates  
22 on Betsy Kerrison and it terminated on -- what line  
23 does it terminate on?

24 A B-C.

25 Q B-C, all right. That is on your property?

1 A It is.

2 (Off-the-record.)

3 Q I am going to refer you to what we will  
4 mark as Exhibit 8. Do you have that in front of  
5 you?

6 A I do.

7 Q Can you tell the Court what that is?

8 A Yes, sir. Exhibit 8 --

9 MR. FERARRA: Objection.

10 A -- represents the deed that transferred  
11 this property, which was then a partnership, South  
12 Carolina partnership called Nautilus Group,  
13 transferred that -- that partnership which was then  
14 owned by my profit-sharing plan to the  
15 profit-sharing plan without the Nautilus Group; that  
16 is, it was basically a means of dissolving Nautilus  
17 Group, which required annual reports to South  
18 Carolina and the federal government as a  
19 partnership.

20 So this was a deed to dissolve that  
21 Nautilus Group and to place its assets into my  
22 retirement plan. And that was executed on April 22,  
23 1999, recorded May 5 of that year, it looks like in  
24 Book U235, Page 436.

25 Q This is where you acquired the property,

1 Q When was that recorded, sir? Do you have  
2 that?

3 A Yes. It appears to have been recorded on  
4 January 12, 2010, in Book 102, Page 15.

5 (Haynes Exhibit No. 9 was marked for  
6 identification.)

7 Q Sir, back in April 1999, did you have a  
8 means of ingress or egress to your property,  
9 Number 17?

10 A Of course. There is a road going all the  
11 way from Betsy Kerrison Parkway west past my Parcel  
12 17 all the way to Parcel 16. That road had been  
13 there for a long while. It was clearly old and it  
14 was clearly being used by all of the property  
15 owners. And it appeared to be at least 20 foot wide  
16 at Betsy Kerrison on the ground.

17 Q 20 or 25, sir?

18 A 25.

19 Q Had you been using that road, sir?

20 A Ever since then, yes. Many times a year.  
21 Since I have moved from Atlanta, obviously, I don't  
22 get there except for family vacations on the Isle of  
23 Palms. But every time I am in the area I go, and as  
24 I explained earlier in this deposition, I was  
25 surprised by all of the stuff that had been

1 is that correct, by Exhibit 8?

2 A That is when I acquired the complete  
3 property of Nautilus Group which consisted of this  
4 17 -- Lot 17, Tract 17.

5 (Haynes Exhibit No. 8 was marked for  
6 identification.)

7 Q Sir, I will refer you to Exhibit 9. Do  
8 you have that in front of you?

9 A I do.

10 Q Tell us what that was.

11 A Well, at the time in 2009 I was interested  
12 in simplifying estate planning and reporting  
13 requirements. And I had been informed by my  
14 accountant that in order to eliminate the ERISA  
15 requirements reporting for a PSP, that is a  
16 profit-sharing plan, I would be best advised to  
17 transfer the assets -- to close the profit-sharing  
18 plan and to transfer all of its assets before the  
19 end of the year into a plain old IRA which is what  
20 this Quit Claim Deed of Gift represents. That,  
21 again, was executed on December 30, 2009.

22 So it, in effect, transferred all of the  
23 assets of my profit-sharing plan into a simpler IRA  
24 to avoid excessive paperwork of the ERISA  
25 requirements.

1 accumulated on it by Sidi Limehouse.

2 Q Sir, I am going to refer you to -- I'm  
3 sorry -- Exhibit 10. Do you have that in front of  
4 you?

5 A I do.

6 Q Can you tell us what you infer from this  
7 Exhibit 10?

8 A Again, it demonstrates Lot 17, which is  
9 mine off to the right of this plat. But this was  
10 the result of Mason Heyward going to the County  
11 Planning Department, the Public Works Department,  
12 and the County Council seeking to subdivide lot J1,  
13 1.3 acres from lot J, and providing a .51-acre  
14 right-of-way about 1997, 1996 it looks like.

15 Q All right, sir.

16 A I might add that I received a copy of this  
17 plat, Exhibit 10 now, about 1999 when I fully  
18 acquired Tract 17 in the Nautilus Group.

19 Q Did you depend on this access and this  
20 plat?

21 A I found it very comforting, yes.

22 (Haynes Exhibit No. 10 was marked for  
23 identification.)

24 Q Sir, I would ask you to refer back to that  
25 if you get it back from Wanda.

1 A Yes, sir.  
 2 Q Would you look and see what it says as to  
 3 the right-of-way?  
 4 A 25-foot right-of-way, Resurrection Road.  
 5 Q And that showed it terminating on your  
 6 property on the east?  
 7 A At my property line, yes, sir.  
 8 Q All right, sir. Did you have occasion to  
 9 review how this survey and plat came about?  
 10 A Yes. Among --  
 11 Q Did you -- I'm sorry, go ahead.  
 12 A Please, you go ahead.  
 13 Q Do you have Exhibit 11 there, sir?  
 14 A I do indeed.  
 15 Q Can you tell us what that is?  
 16 A Yes. I regard this as very important.  
 17 That is a letter dated May 8, 1996, to Mr. Seabrook  
 18 and a copy to the County Planning Department, Public  
 19 Works Department and Mason Heyward.  
 20 And it states: Dear Mr. Seabrook, County  
 21 Council, after a meeting of May 7, 1996, granted  
 22 approval -- in capital letters -- of a 25-foot  
 23 right-of-way being dedicated to the public, period.  
 24 Resurrection Road serves as access to approximately  
 25 25 acres of property with high developmental

1 right-of-way?  
 2 A It certainly sounds very official to me.  
 3 Q Let's talk -- yes.  
 4 (Haynes Exhibit No. 11 was marked for  
 5 identification.)  
 6 Q Was this road right-of-way very important  
 7 to you in the ownership of Parcel 17?  
 8 A Absolutely.  
 9 Q Tell us why it was important to you.  
 10 A Well, the primary value of my 12.8 acres  
 11 and its role in my retirement planning is dependent  
 12 upon access to the Kerrison Parkway. And that  
 13 letter seemed to establish that with -- by any  
 14 reasonable person reading it.  
 15 Q Have you had occasion to read or review  
 16 what we will mark as Haynes Deposition Number 12?  
 17 A I have.  
 18 (Haynes Exhibit No. 12 was marked for  
 19 identification.)  
 20 Q Can you tell us what you gleaned from  
 21 reading the exhibit?  
 22 A Well, that document demonstrates the  
 23 dedication was accomplished by due process as  
 24 evidenced by the minutes of the April 29, 1996,  
 25 meeting of the Charleston County Planning Board.

1 potential.  
 2 When I looked at this, it seems to me the  
 3 obvious to any reasonable person that the first and  
 4 second sentences there have to be connected in that  
 5 the approval of a 25-foot right-of-way dedicated to  
 6 the public must refer to the Resurrection Road which  
 7 serves as access to approximately 25 acres of  
 8 property with high developmental potential.  
 9 Q That was not --  
 10 A At least 12 of those, actually nearly  
 11 13 acres of that property with high developmental  
 12 potential represents my Tract 17.  
 13 Q Look at that first sentence again, sir,  
 14 and see if you did not leave out a word when you  
 15 read it.  
 16 A County Council, at their meeting of May 7,  
 17 1996, granted approval of a 25-foot right-of-way  
 18 being dedicated to the public, period.  
 19 Q You did it again, sir. Look at the word  
 20 before "right-of-way"?  
 21 A 25-foot road right-of-way.  
 22 Q Very good, sir.  
 23 A Correct, my apologies.  
 24 Q Did you depend on what the County Council  
 25 had done in the dedication of that road

1 And that shows that Mason Heyward, representing  
 2 Subdivision Application 16467 was present where  
 3 eight subdivision requests were recommended by  
 4 approval and were approved, and only one subdivision  
 5 request was recommended for disapproval by the staff  
 6 and that was Number 16467, the land from Mason  
 7 Heyward.  
 8 Q All right, sir. Who initiated, to your  
 9 knowledge, this request for the road right-of-way?  
 10 A The County of Charleston, as nearly as I  
 11 can determine.  
 12 Q Who went before the County Council?  
 13 A Mason Heyward.  
 14 Q I am going to next call your attention to  
 15 Exhibit 12A. Do you have that in front of you?  
 16 A I do.  
 17 Q Would you tell us what Exhibit 12 and 12A  
 18 brought to your attention?  
 19 A This is a portion of the planning board  
 20 minutes of April 29, 1996, pages 10 and 11, that in  
 21 summary indicate that Larry Kennerty, who was a  
 22 member of the County Council, explained that: It is  
 23 the County's obligation to provide access to the  
 24 otherwise landlocked properties, that -- I should  
 25 put that in quotes. He explained that -- he, quote,

1 explained that it is the County's obligation to  
 2 provide access to, bracket, the otherwise, end of  
 3 bracket, landlocked properties, close quote.  
 4 And Mason Heyward was there and stated  
 5 that, quote: If the people in the rear would like  
 6 access to their property, let them pay for the  
 7 additional 25-foot right-of-way. And it was unclear  
 8 to me whether that additional right-of-way was  
 9 additional to the prescriptive easement or not, but  
 10 that is the quote.

11 MR. OBERMAN: Wanda, that would be  
 12 Exhibit 12A.

13 (Haynes Exhibit No. 12A was marked for  
 14 identification.)

15 Q Now, sir, I think you explained here why  
 16 you purchased Parcel 17 in April 1999, what the  
 17 purpose of that was?

18 A I did. Again, in summary, I purchased  
 19 that Parcel 17 over 15 years ago as an investment  
 20 based on access to that property. It appears that  
 21 Mason Heyward went before the County in 1996 and he  
 22 and his surveyor-engineer did everything by proper  
 23 procedure and dedicated 25-foot access easement to  
 24 the public.

25 I clearly would never have purchased a

1 road right-of-way -- I correct myself there --  
 2 dedicated to the public, and that Resurrection Road  
 3 served as access to approximately 25 acres of  
 4 property with high developmental potential.  
 5 Again, those two sentences are clearly  
 6 interconnected and related and refer to the same  
 7 easement and event. So the County of Charleston had  
 8 accepted the dedication by its actions as listed  
 9 above and has further evidenced that acceptance by  
 10 at least the following actions, and I have here a  
 11 picture of the sign that the County has put up and  
 12 maintained and that had been present for over 23  
 13 years, which is this sign.

14 Q Which is Exhibit 13.

15 (Haynes Exhibit No. 13 was marked for  
 16 identification.)

17 A The County is showing Resurrection Road on  
 18 its aerial photos and maps nearly too numerous to  
 19 name that are -- the sum of which are in this pile.

20 MR. OBERMAN: That would be Exhibit 14,  
 21 Wanda.

22 A Containing a plat from 1977,  
 23 February 1967, 2004, 2007, and 1997.

24 Q Are those aerial photographs?

25 A They are. And then, of course, we have

1 property had it been at risk of being landlocked. I  
 2 noted in my original letter, which was an answer in  
 3 October 8, 2010, that I vigorously opposed the  
 4 abandonment of Resurrection Road by the County of  
 5 Charleston. And noted that any proposed abandonment  
 6 would markedly affect the value of my property and  
 7 would make it essentially worthless as well as  
 8 abrogating the right -- abrogating the right-of-way  
 9 would disenfranchise those who were relying on such  
 10 county road access.

11 Also, the County of Charleston had  
 12 accepted the dedication. The County had acquired a  
 13 25-foot right-of-way. The County had stamped the  
 14 plat approved final plat, quote, unquote, which  
 15 approval was assigned by Beverly Craven, Clerk of  
 16 the County Council, and William Miller, Director of  
 17 Planning in accordance with Exhibit 10, and recorded  
 18 the plat in book BA, page 298, in the public  
 19 records.

20 Further, the County Council, by its letter  
 21 of May 8, 1996, informed E.M. Seabrook, who was  
 22 Mason's surveyor-engineer as well as the County  
 23 Planning Department, the Public Works Department,  
 24 and Mason Heyward that the County, at their meeting  
 25 on 7 May, 1996, had granted approval of a 25-foot

1 the County of Charleston by the sworn testimony of  
 2 James Neal, its Director of Public Works, stating  
 3 that Resurrection Road had been maintained by the  
 4 County of Charleston.

5 (Haynes Exhibit No. 14 was marked for  
 6 identification.)

7 Q You said Mr. Neal said it was maintained  
 8 by the County of Charleston. I refer you to  
 9 Exhibit 15A.

10 (Haynes Exhibit No. 15A was marked for  
 11 identification.)

12 Q Can you tell us what pages of the  
 13 deposition you refer to?

14 A The blading, leveling and shaping of the  
 15 road for at least 30 years is referred to on pages  
 16 10 and 11 of this deposition of Mr. Neal. And the  
 17 letter of March 27, 2012, stating that the owners  
 18 had allowed lengthy public use of the road and the  
 19 County had performed long-term, continuous  
 20 maintenance of the road of 20-plus years or more is  
 21 on page 31. And the comments that -- well, that --  
 22 I think that exhausts Exhibit 15A.

23 Q All right, sir. Do you have copies of the  
 24 second deposition of Mr. Neal?

25 A I do.

1 Q What does he say in that second sworn  
 2 deposition as to Resurrection Road?  
 3 A That Resurrection Road had been maintained  
 4 for -- I guess this all comes from the same exhibit,  
 5 15A -- that it had been maintained for 34 years. It  
 6 was in Council District 8, adjacent-properties 9,  
 7 travelway, 30 feet, no turn-around at end, no  
 8 drainage.

9 He notes the ongoing maintenance of  
 10 Resurrection Road and he notes that between July 16,  
 11 2009, and April 10, 2012, the department had  
 12 completed 12 acts of maintenance of that road. And  
 13 that is on page 34 of that deposition.

14 Again on page 34 of that deposition is the  
 15 repeated comments that Charleston County has 34  
 16 years of continuous maintenance on Resurrection  
 17 Road.

18 (Off-the-record.)

19 Q I understand that these pages you have  
 20 read are from the sworn deposition of Mr. Neal?

21 A From the piles and piles of depositions,  
 22 yes, sir.

23 Q Okay. I believe you stated that there was  
 24 ongoing maintenance on Resurrection Road?

25 A Yes. That seems to be clearly

1 because you have allowed the public to use your  
 2 property for 20 years and the County has no record  
 3 of your refusing maintenance and/or improvement  
 4 efforts. The County is planning to improve this  
 5 road's condition.

6 I found that comforting. Arabic numeral  
 7 two says: Although Charleston County seeks to  
 8 improve this road, it must be understood that the  
 9 road may or may not be constructed to the  
 10 specifications of one of the four existing road  
 11 categories in Charleston County Road Codes.

12 Arabic paragraph three: For future  
 13 improvement, additional right-of-way may be  
 14 required.

15 Arabic number four, unless you notify the  
 16 County in writing at the above listed address within  
 17 30 calendar days from the date of this letter --  
 18 which again, was March 23, 2012 -- that you disagree  
 19 and/or oppose these actions, the County will proceed  
 20 with its continued maintenance and improvements  
 21 under its public roads maintenance system. In  
 22 addition, the County will survey the right-of-way  
 23 and record a plat in the Charleston County Register  
 24 of Mesne Conveyance, RMC office, which will alter  
 25 the boundary of your property reflecting this public

1 established.

2 Q How many acts of maintenance between  
 3 July 15 and the end of 2012? Do you have that?

4 A According to the deposition, 12 acts of  
 5 maintenance on the road during that period of time.  
 6 That was listed on page 34 of that deposition.

7 Q Sir, have you read through what was  
 8 previously marked as Neal's Deposition Number 6  
 9 which appears to be the records of Charleston

10 County? If you look and see -- I think look at the  
 11 last portion and see if it is on there.

12 A Is that 15A?

13 Q It's an administrative report to Council.

14 A Yes, I have that.

15 Q You have that? Down at the bottom  
 16 right-hand corner it is shown as Neal 6?

17 A It is.

18 Q On the second page there is a letter dated  
 19 March 23, 2012. Did you receive a like letter?

20 A I did.

21 Q What does that say?

22 A Well, it was addressed to me as well as to  
 23 other property owners. And it states that,  
 24 paragraph -- Arabic paragraph number one: The  
 25 County believes that this road is a public road

1 road.

2 If you disagree and/or oppose this action,  
 3 the County may, at its discretion, decide to  
 4 continue -- discontinue all maintenance and  
 5 improvement of the road.

6 Q You received a like letter, did you not?

7 A I did.

8 Q Did you tell the County you did not want  
 9 them to continue their maintenance?

10 A I found this letter to be very comforting  
 11 and I made no response to it.

12 Q Do you know if anyone made a response to  
 13 it?

14 A I am not aware of any such response, sir.

15 Q Sir, can we say that these are all records  
 16 of the Charleston County Maintenance Department that  
 17 were attached to Mr. Neal's deposition.

18 MR. FERARRA: I object to the form.

19 A It appears to be that on the data I  
 20 received.

21 Q Sir, would you characterize the  
 22 attachments and such to Neal 6 yourself -- so that I  
 23 don't have an objection to my question -- what would  
 24 you characterize this to be?

25 A Repeat that question again, please.

1 Q In your own words, how would you  
2 characterize this package of Neal 6 with  
3 attachments?

4 A I initially thought that this was a  
5 resolution of the problem that I had envisioned.

6 Q Thank you, sir. Would you -- did you have  
7 occasion to receive and review Exhibit 16?

8 A I did.

9 Q Can you tell us what that is?

10 A This is from the appearance of you and  
11 Mr. Robinson at the court that presented the opinion  
12 and the ruling of the judge dated, I gather --

13 Q Look on the first page, sir. I think that  
14 will give you a date.

15 A It says January 20, 2010. Whether that  
16 was the date of the -- that appears to be the date  
17 of the ruling and this is the ruling of Judge  
18 Scarborough.

19 Q What did Judge Scarborough rule by this,  
20 as appears on this copy?

21 A It states that: Resurrection Road is made  
22 up of a long existing prescriptive easement of  
23 ingress and egress per the Judge's findings and  
24 order from the bench on January 20, 2010, and, the  
25 25-foot dedicated right-of-way of May 7, 2000 -- or

1 exhibit. Mason C. Heyward executed his, quote,  
2 confirmation and grant of access easement, unquote,  
3 to William L. Kerrison. Its -- bracket, sic, end of  
4 bracket -- successors and assigns by which he  
5 granted a perpetual, permanent, assignable  
6 commercial nonexclusive easement pertinent to Lot  
7 TMS Number 204-00-00-016 and by which he confirmed  
8 his previous grant of the 25-foot easement to be  
9 used by the public.

10 (Haynes Exhibit Nos. 16 and 17 were marked  
11 for identification.)

12 Q Sir, tell us what your opinion and  
13 knowledge would be as to the maintenance by the  
14 County of Charleston of Resurrection Road.

15 A I think it is fairly clear from all of the  
16 depositions and records that the Resurrection Road  
17 has been maintained by the County of Charleston and  
18 that the present Director of Public Works testified  
19 under oath on October 1 that he thought, quote, we  
20 had had 34 years of continuous maintenance of  
21 Resurrection Road, unquote, as is indicated by pages  
22 34 and 36 of the supplemental deposition of James  
23 Neal in Exhibit 15A.

24 Q Sir, you have testified that you bought  
25 the Parcel 17 for investment purposes. Had you

1 rather 1996 in accordance with Exhibits 11, 12, 12A  
2 of this deposition.

3 It also notes that the prescriptive  
4 easement runs parallel to the 25-foot right-of-way  
5 and then enters the 25-foot right-of-way at point H  
6 on the Johnson plat which I believe was Exhibit 6 of  
7 this deposition.

8 It notes that the prescriptive easement  
9 from point H becomes incorporated into the 25-foot  
10 dedicated easement some 400 foot to line B-C, which  
11 is the corner of my property as we have discussed  
12 before.

13 Q All right, sir. I am going to ask you to  
14 look at Exhibit 17. Do you have that in front of  
15 you?

16 A I do.

17 Q Can you tell us the title on that?

18 A Exhibit 17 is titled Confirmation and  
19 Grant of Access Easement.

20 Q Who is that executed by?

21 A It is Mason Heyward.

22 Q Does it say when? When is it dated and  
23 recorded?

24 A So in April 29, 1999, recorded in book  
25 N325, page 750, as is indicated on the top of this

1 placed on it, with limited access to Betsy Kerrison  
2 Roadway, in other words, ingress, egress, from your  
3 parcel to the Betsy Kerrison Parkway?

4 A Yes, sir, I did. Seabrook Island Realty,  
5 a number of years ago, was interested in marketing  
6 it for a net value to me of not less than \$1 million  
7 and I declined that at that time figuring that,  
8 given its situation and relationship to the golf  
9 club and the marsh and Seabrook, that it might in  
10 due time be worth more than that. I was in no hurry  
11 to retire, so I figured that the way property was  
12 going, it could only improve from there.

13 Q Have you had any duty to have the Parcel  
14 17 appraised if the County of Charleston, Mason  
15 Heyward and Sidi Limehouse are able to block your  
16 access?

17 MR. ROBINSON: I object to the form. You  
18 may answer.

19 A Yes, sir. Yes, I have. That was actually  
20 done for other purposes, but I did have it appraised  
21 and paid 500 or \$700. I forget which, for a formal  
22 appraisal within this past year, and got that back,  
23 and I believe I sent you a copy of that.

24 Q All right, sir. That has been sent but I  
25 would have to check to see if it has been received

1 here. I will show that as exhibit, I believe it is  
2 18?

3 A Yes, sir.

4 Q I will give the attorneys here each a copy  
5 of that if it has arrived at this conference room.

6 What was the appraisal with the restricted  
7 access?

8 A The appraisal, considering the legal  
9 issues currently unresolved, was \$270,000.

10 Q All right. Sir, do you know if Mason  
11 Heyward has sought compensation for that access from  
12 other individuals?

13 A That is my understanding from prior  
14 depositions, yes, sir.

15 Q All right. And that goes all the way back  
16 to where he thought he should get compensation  
17 before the County Council, right?

18 A That's correct.

19 Q Did Sidi Limehouse or have you been  
20 approached by Sidi Limehouse about the purchase of  
21 your property?

22 A I was, and I alluded to that earlier in  
23 this deposition when over a year ago, during the  
24 July 2011 family vacation on the Isle of Palms, I  
25 had occasion to talk to him about the stuff I found

1 A Yes. That I find also inexplicable.

2 because although it allowed the easement in 1996 and  
3 has maintained the same for approximately 34 years,  
4 it now seems explicitly joined with Heyward and  
5 Limehouse to allege that it never accepted the  
6 dedicated easement.

7 Q Do you know how far -- I say Sidi, it  
8 actually belongs to Ms. Bennett, too, the connecting  
9 property, is from your line back to their property?

10 A 840 feet is what appears on that tract of,  
11 I guess, Exhibit 6.

12 Q So that while he had 25-foot right-of-way  
13 as indicated on the plat of 1996, did that have any  
14 effect on the property of Sidi/Louise Bennett?

15 A They clearly depend on the same access.

16 Q Correct. But would there be a 25-foot  
17 road in front of Sidi/Bennett's property?

18 A No.

19 Q Sir, I guess you have talked about the  
20 value of your property with access as per the  
21 appraisal and then previous appraisals. What effect  
22 would the denial of access to your property have on  
23 the value of your property?

24 A It would markedly diminish it, obviously.  
25 I think that is clear that its value is entirely

1 on the lot. And again, at that point, I was not  
2 involved in any suit and did not anticipate that we  
3 would be here talking about this today. But on that  
4 occasion, in July 2011, Sidi indicated an interest  
5 in purchase of the property.

6 Q Did you refuse his interest?

7 A I kind of chuckled and told him that the  
8 price would always determine the decision. And he  
9 responded with something to the effect of, well, I  
10 would like to be the -- I would like to have the  
11 right of first refusal or something to that effect.

12 Q Do you know if Sidi Limehouse appeared at  
13 the first hearing to object to your access?

14 MR. ROBINSON: I object to the form.

15 A Well, it is clear that Sidi has, combined  
16 with Mason Heyward, testified in court that he wants  
17 a road within that 25-foot easement to remain narrow  
18 and wooded. I find that particularly interesting in  
19 view of the fact that he had used that same road  
20 with apparently tractor-trailers to get all of that  
21 stuff back on my lot that I was complaining about in  
22 July of 2011.

23 Q Sir, do you know if the County of  
24 Charleston indicated it had to renege on the  
25 dedicated easement?

1 dependent upon reasonable and appropriate access  
2 which I thought I had when I bought the place, and I  
3 had thought that I have had all these years until  
4 this issue has come up.

5 Q Is it fair to say that you depended on  
6 that access when you bought the place?

7 A Absolutely. I would have been very  
8 foolish to buy anything that was at risk of being  
9 landlocked.

10 Q Is it fair to say that if they landlock  
11 your property or decrease the ingress-egress  
12 substantially, that you would suffer damages?

13 A Unquestionably.

14 Q How much damage would you suffer, sir?

15 A The developmental potential would go  
16 immediately, it would be lost immediately. So as a  
17 rough estimate, three-quarters or more of its value  
18 would disappear. And in dollar terms, that is  
19 probably a million dollars or more.

20 Q Did the County of Charleston note the  
21 developmental potential of this property in making  
22 its decision?

23 A Absolutely. That was very clear in that  
24 two-line notice from the County to Mr. Heyward and  
25 the other parties addressed to in that letter.

1 Q Do you remember Mr. Kennerty went into the  
2 developmental potential?

3 A He did.

4 Q Did Mr. Kennerty have an opinion as to the  
5 equity of landlocking those properties?

6 A He made that very clear in that  
7 memorandum.

8 Q What did he make clear, sir?

9 A Let me find the exact quote. He, again,  
10 as discussed in Exhibit 12A. Larry Kennerty, quote,  
11 he explained that it is the County's obligation to  
12 provide access to landlocked properties, unquote.

13 That was his role as member of the County  
14 Council.

15 Q Sir, that's all the questions I have  
16 unless you want to give me some medical opinions at  
17 this time.

18 I will ask you, what type of medical-work  
19 are you doing there in Germany?

20 A I specialize in three areas of medicine.  
21 One is I have long been a critical care doctor which  
22 is taking care of the folks in the intensive care  
23 unit. And at this hospital those are primarily shot  
24 and blown-up soldiers from Afghanistan, and  
25 thankfully no longer from Iraq, that are airlifted

1 So that, in a nutshell, is what I have  
2 been doing for the past three years here.

3 Q Is it fair to say that you are treating  
4 both male and female soldiers?

5 A Absolutely. This hospital is the largest  
6 US hospital, governmental hospital outside the US.  
7 And our primary function is to treat war casualties  
8 and all US federal government employees in Europe,  
9 Africa, Southeast Asia.

10 We are the referral hospital for this part  
11 of the world for military personnel and federal  
12 civil employees and their dependents, so, we have  
13 women and children and entire families as well as  
14 soldiers who -- to be responsible for.

15 Q Is it fair to say that you are attempting  
16 to save lives?

17 A That is the purpose of being here, sir,  
18 yes. At least in the critical care environment.  
19 And in that area at this hospital, its medical  
20 personnel have been remarkably successful because  
21 anyone that manages to get here has about a  
22 98 percent chance of survival and going on to a  
23 better state of health.

24 Q I think it is referred to as medical --

25 A Yeah.

1 to us typically within 24 or 48 hours of their  
2 injuries in the war zones. So I do that one week a  
3 month.

4 Then the other weeks of the month I serve  
5 as a pulmonary doctor, that is taking care of lung  
6 problems and any kind of respiratory issues; asthma,  
7 emphysema, cancer, pneumonia, so forth.

8 And sleep problems, which is becoming  
9 increasingly common in the American public as well  
10 as in our soldiers. Those are sleep apnea,  
11 narcolepsy; there are 84 different disorders in  
12 sleep medicine which is a fairly new specialty that  
13 I do that here, too. We have a sleep laboratory and  
14 that gives me a little bit of change of pace from  
15 the stress of the intensive care unit to where I can  
16 do this.

17 Not too many people do critical care  
18 full-time for many, many years as I have done it  
19 unless they have safety valve to decompress. In my  
20 case it was Army Reserves, the Army, for many years,  
21 and that has -- since I retired from the Army, that  
22 has now become sleep medicine. So it is not nearly  
23 as stressful as seeing young kids that could be my  
24 own son with three limbs missing and gunshot wounds  
25 to the head and so forth.

1 Q Sir, are you hands-on working with these  
2 critically injured individuals to save their lives?

3 A Absolutely. My field is dealing with the  
4 critically injured in the intensive care unit on  
5 ventilator support and requiring high intensity  
6 measures, yes.

7 MR. OBERMAN: I believe that's all the  
8 questions I have. I might have some after,  
9 Mr. Robinson, I am sure, will have some  
10 questions for you. And these other two  
11 gentlemen might also have some questions. With  
12 that, I would suggest that we take a short  
13 biological break.

14 (A recess was taken.)

15 MR. OBERMAN: I want to, with you  
16 gentlemen's permission, go back on the record  
17 and give to each of you, the attorneys, a copy  
18 of the appraisal that you had mentioned that  
19 you had done showing somewhat of a decrease in  
20 value of your property without access.

21 We will mark this, with Wanda's  
22 permission, as Exhibit -- Haynes Exhibit 18.

23 I will get this all to you, Wanda,  
24 for attachment.

25 (Haynes Exhibit No. 18 was marked after

1 deposition for identification.)

2 Q I think I have introduced you earlier to  
3 Mr. Robinson?

4 A Yes, sir.

5 Q He has. I am sure, only a few questions.

6 EXAMINATION

7 BY MR. ROBINSON:

8 Q Dr. Haynes, it is a pleasure to be with  
9 you today. My name is John Robinson. I believe  
10 sometime back on maybe one or more occasions we  
11 actually talked by telephone. I know I received at  
12 least one letter from you some years ago and  
13 certainly before you were involved in this  
14 litigation.

15 As I said before the deposition, it is  
16 nice to have a face with the name. Thank you for  
17 being here today. I will do my best to be  
18 respectful of your time. I do understand you have  
19 more important things to do.

20 At the same time, because you are not  
21 going to be here for purposes of trial, it is very  
22 important that I have accurate facts and opinions  
23 from you regarding what you would say had you been  
24 able to be at trial. So please bear with me as I  
25 try to work through those issues.

1 And I am a Department of the Army civilian in this  
2 capacity stationed overseas in a US military  
3 facility. Is that clear?

4 Q That is a very thorough answer. Would it  
5 be also fair to say that you don't plan to retire or  
6 retire permanently to Germany?

7 A Correct, yes. I had planned -- I am  
8 looking around for a nice place in the states within  
9 two years.

10 Q Would one of those possible places be this  
11 piece of property on Johns Island?

12 A Well, Hurricane Hugo got my attention.  
13 But, yes, it could be, but I think over the years it  
14 has been more something that I viewed as an  
15 investment as opposed to a place where I would  
16 settle down. It kind of depends on where the six  
17 kids are, and if they are nowheres around  
18 Charleston, then that is not a likely place where we  
19 would settle permanently.

20 Q What time is it in Germany right now? You  
21 are, what, eight or nine hours ahead of us?

22 A Six. It is 5:20 p.m.

23 Q Okay. Just wanted to see how late it was  
24 for you. Several times, or at least two times, I  
25 found in your previous statements with Mr. Oberman

1 A couple of brief notes. Everything  
2 Mr. Oberman says still applies for purposes of my  
3 cross-examination. We will try to limit our  
4 discussion to things that he has talked about in his  
5 examination of you, and really try to clarify a few  
6 issues.

7 Two questions Mr. Oberman did not ask you  
8 that are kind of beginning, perfunctory questions  
9 for me that I still think are important for the  
10 record are, number one, what is your current legal  
11 address?

12 Let me ask you this. Let me ask a better  
13 question. What do you consider to be your home  
14 address?

15 A Atlanta, Georgia.

16 Q Okay.

17 A I still have my house in Sandy Springs in  
18 Atlanta, Georgia. That is 250 River Road Court,  
19 Atlanta, Georgia, 30328.

20 My mailing address here in Germany is CMR  
21 402 Box 1617, APO, 09180, which is a US military  
22 Postal Service over here in Germany.

23 So my legal address as far as my residency  
24 in Georgia is still Sandy Springs, although I am  
25 obviously not resident in Georgia. I am over here.

1 you used the term or definition "reasonable and  
2 appropriate access" to describe what it is that you  
3 believe that you have or had previously had  
4 regarding what I refer to as Lot 17. We will refer  
5 to that as Lot 17 to keep it brief. You used the  
6 term "reasonable and appropriate access." What does  
7 that term mean to you personally?

8 A Well, I bought the land thinking and  
9 assuming that that was 25 foot, but hoping that at  
10 some point I could expand that because I understand  
11 that ideal access or reasonable and appropriate  
12 could be more than that. But the minimum I would  
13 think is 25 foot and I thought that the land would  
14 be marketable at 25 foot, even though that wouldn't  
15 be ideal. So, that would be the minimum that could  
16 be regarded as reasonable and appropriate, in my  
17 view.

18 Q Okay. When you just mentioned something  
19 to the effect of an ideal width or an ideal  
20 measurement for the width of the road, what is your  
21 basis for saying that? Is that your personal  
22 opinion or is that based on information you have  
23 received from some other person?

24 A Some of the depositions that I have gone  
25 through and some of the documents that I have seen

1 from Charleston County have a variety of road widths  
2 that Charleston regards as minimum for certain kind  
3 of roads. And that is where I have seen up to 50 or  
4 even longer, but obviously this road is not a  
5 highway. But it appears to me as though 25 still is  
6 kind of a minimum. The newer developments expect  
7 more.

8 Q Okay. Do you have personal knowledge of  
9 what the minimum required right-of-way by Charleston  
10 County for a development is?

11 A At this point, no.

12 Q Just to get this matter out of the way so  
13 I don't forget, Mr. Oberman produced for us today  
14 this appraisal as Exhibit 18, an appraisal done by  
15 Williams and Williams dated October 1, 2012. You  
16 have already been kind enough to identify it. Did  
17 you commission this appraisal --

18 A Yes.

19 Q -- or did the attorney?

20 A Actually, it was my intention -- I did  
21 that a year ago, it had to be updated for that date.  
22 The reason had nothing to do with this lawsuit. It  
23 actually had to do with my deciding that a Roth IRA  
24 was advantageous and to move some of the IRA assets  
25 into a Roth IRA.

1 reflected the concerns about access.

2 Q Okay. Dr. Haynes, in your previous  
3 statements for Mr. Oberman this morning, I think you  
4 referred to, at least one occasion, to a golf course  
5 access for this property. Could you explain that  
6 for me?

7 A Not sure I said access. I said it  
8 bordered on.

9 Q Okay.

10 A And that border is on the marsh side of  
11 the eastern boundary of my property which is  
12 adjacent to the golf club.

13 Q Okay. Just probably to make sure we are  
14 very clear on the record for the Court when this  
15 testimony is introduced, if you could get Exhibit 18  
16 from the court reporter, the appraisal?

17 A Yes.

18 Q Oh, she doesn't have it and you don't have  
19 it. I would note that it appears that the color  
20 print of your appraisal in the middle of the package  
21 shows the entirety of your lot, which has been cut  
22 off in some of the plats we have previously reviewed  
23 together. And it would appear to show the border on  
24 that marsh. So I am just adding that for the record  
25 to clarify since we don't have a previous

1 So in order to move an asset from the IRA  
2 to a Roth IRA, I was advised by my estate planner  
3 that I needed to have a formal appraisal that would  
4 meet federal scrutiny. That is why this was done,  
5 although it turned out to be useful to answer other  
6 questions as well.

7 Q And so you said it was commissioned over a  
8 year ago. You commissioned it over a year ago.  
9 Could you estimate the time frame you asked the  
10 appraiser to perform the appraisal?

11 A I initially did it, I think, about a year  
12 ago, and simultaneously tried to get the paperwork  
13 for the Roth IRA done. That took so long to get  
14 done that it wasn't accomplished until, I believe,  
15 October, at which point they refused to accept the  
16 old appraisal of a year ago. So this was an update  
17 of that appraisal.

18 Q And Dr. Haynes, can you recall -- you may  
19 have said this earlier and I am -- when you say the  
20 previous appraisal over a year old, was the value of  
21 that appraisal approximately the same as the 270,000  
22 here, or was that for an amount higher, say the  
23 million dollars that had been spoken to previously?

24 A It wasn't a million dollars, no. It was  
25 pretty much the same order of magnitude and still

1 description --

2 A Um-hum.

3 Q -- of the entire lot.

4 Did you have any interest in Lot 17 prior  
5 to April of 1999?

6 A Yes, yes. Up until 1999, this was a South  
7 Carolina partnership and it had been formed by, as I  
8 understand it, Greg Bullock who has subsequently  
9 died. And it must have had 10 units of limited  
10 partnership interest. And I believe he was a  
11 general partner.

12 So prior to that time, I had bought, I  
13 think two of these units. And I believe his dad  
14 owned a few and he owned the rest. And over the  
15 years he sold me increasing parts of Nautilus Group.  
16 But by 1999, I had owned the entire thing and  
17 decided that it was time to get rid of this entity  
18 which really had no purpose for me, Nautilus Group,  
19 and was merely an expense.

20 Q Can you recall the first time you had any  
21 form of ownership interest in the property, perhaps  
22 the two shares you just described?

23 A That may have been as early as 1988 or  
24 '89.

25 Q Okay.

1 A At that time, I was assured it was 25-foot  
2 right-of-way along Resurrection Road and went and  
3 looked at it and saw the sign and it seemed to me to  
4 be an appropriate investment.

5 Q When you say you were assured of 25-foot  
6 right-of-way, who or what made those assurances to  
7 you?

8 A There was a plat at that time that showed  
9 Resurrection Road.

10 Q Okay. You have described traveling to  
11 this property, and obviously you have been out there  
12 and made some notes about what is on the property,  
13 some of which you do not like. Do you recall the  
14 first time you ever visited this property?

15 A It would have been more than 15 years ago.

16 Q Can you recall approximately how many  
17 times you have been out to visit the property  
18 personally?

19 A On average, at least twice a year.

20 Q In earlier statements to Mr. Oberman you  
21 said that, words to the effect, that it was obvious  
22 to you, maybe a better word is evident to you, that  
23 the County was doing maintenance on this road from  
24 your personal observations. Did you ever actually  
25 see County road crews working on this road?

1 A Yes.

2 Q Who was that, to your recollection?

3 A That may have been Scroggins in Atlanta,  
4 in Sandy Springs.

5 Q So that was a Georgia attorney?

6 A Yes.

7 Q At the time that you received the interest  
8 in the property and -- let me rewind and ask you  
9 this. Are you familiar with title insurance or what  
10 title insurance is?

11 A Yes.

12 Q Okay. Do you know if you have a title  
13 insurance policy that applies or protects this piece  
14 of property?

15 A Not that I am aware of.

16 Q Do you know if the attorney, Mr. Scroggins  
17 or whomever did the work on this, issued or offered  
18 to issue you a title insurance policy?

19 A I don't recall.

20 Q Do you know if Scroggins performed a title  
21 examination or had someone else perform a title  
22 examination on your behalf?

23 A Probably not, because it was reasonably  
24 presumed that Nautilus Group which encompassed all  
25 of the lots here and the entire Tract 17 had

1 A No. I would usually be there on weekends  
2 and County workers are typically not there then.

3 Q At the time that you received the two  
4 shares in the partnership you have described and I  
5 think you gave a date of approximately 1986?

6 A No, 1988, I believe.

7 Q 1988, thank you. Did you receive a deed  
8 at that time or were you merely given shares in the  
9 partnership?

10 A Shares in the partnership.

11 Q Okay. At the time that you bought the  
12 shares in the partnership, did you personally or did  
13 your attorney examine the title to the property?

14 A Not that I recall. That has been a while.

15 Q Okay. I would like to fast forward  
16 because your explanation is very good regarding how  
17 you accumulated the remainder of this property. A  
18 few minutes ago you and Mr. Oberman walked us  
19 through two quit claim deeds, one from Nautilus  
20 Group, one from its successors, Atlanta Respiratory.  
21 It quit claimed all of the interest in the property  
22 using previous partnership, either existing or  
23 defunct at the time.

24 At the time you received those quit claim  
25 deeds, did an attorney participate in that closing?

1 undergone that as part of its due diligence of  
2 acquisition of this lot.

3 Q Did you ever receive any paperwork, either  
4 prospectus, appraisals, any other legal documents at  
5 the time you made initial or subsequent investment  
6 in this property that you believe shows this due  
7 diligence?

8 A That is quite a while ago. I was  
9 obviously convinced that the property and its legal  
10 basis had been -- had been properly developed.

11 Q Dr. Haynes, on this 4th of July weekend in  
12 2011 and your subsequent conversations with  
13 Mr. Limehouse -- let me ask you this. When is the  
14 first time you leased the property to Mr. Limehouse?

15 A It was a number of years before 2011.  
16 Actually, it was before I went to Germany, so it  
17 would have been before 2008.

18 Q Okay. How did you reach the agreement,  
19 the contract, for Mr. Limehouse to lease the  
20 property? Can you give me the context as to when  
21 and where, what was negotiated between the two of  
22 you?

23 A My recollection -- well, my recollection  
24 is that he was interested or someone had told me he  
25 was interested in renting the property or a neighbor

1 was poaching on the property. I think that is my  
2 recollection is a neighbor was poaching on the  
3 property. And in order to avoid that, I sought  
4 someone who would rent it for agriculture purposes.  
5 My intention there was not so much to receive any  
6 significant rent but to establish that it remain  
7 agricultural property for taxation purposes.

8 Q Prior to July 4, 2011, thereabouts, did  
9 you have any complaints with Mr. Limehouse's use of  
10 your property?

11 A No. Just one, and that was a year or two  
12 earlier. I found a deer blind on it with some bait  
13 around it in the middle of the field which struck me  
14 as not very humane. My daughter was outraged and  
15 insisted that I do something about that.

16 Q And so you addressed the issue with  
17 Mr. Limehouse?

18 A I may have sent him a letter, so, he was  
19 always very tough to get hold of.

20 Q Do you know if the deer blind was  
21 subsequently removed?

22 A It was not there in July 2011 and had been  
23 replaced by the things that I mentioned.

24 Q Do you believe that Mr. Limehouse is  
25 currently using the property for agricultural

1 relationship with Mr. Limehouse as a cordial one?

2 A Yes.

3 Q I would like to turn your attention,

4 Dr. Haynes, to an exhibit, you should have, that is  
5 Exhibit 16.

6 A Yes. Those are the rulings of the judge.

7 Q Yes, sir. If I could, I would like to  
8 refer you to page three of Exhibit 18 (sic) starting  
9 at line 13 and, if you would, read from line 13 to  
10 line 19, you don't have to read it aloud, but read  
11 it to yourself and let me know when you are  
12 finished.

13 MR. OBERMAN: I am going to object to the  
14 form of the question. The transcript speaks  
15 for itself. And the good doctor is not an  
16 attorney, so you are asking for a legal opinion  
17 from what the judge says.

18 Q Dr. Haynes, are you finished with that?

19 A I am.

20 Q Okay. On line 19, could you read the only  
21 full sentence on line 19?

22 A It says: There is a prescriptive  
23 easement.

24 Q Okay. You previously stated, I believe,  
25 to Mr. Oberman in his examination of you, that you

1 purposes?

2 A Yes, that was clear. It was, at least in  
3 July 2011, it had been planted and harvested.

4 Q Okay. Just to be clear, you are not aware  
5 of anyone using that piece of property for  
6 residential purposes, are you?

7 A There was a trailer on the property that  
8 could well have been a residence. In July of 2011,  
9 the trailer had evidence of having been lived in at  
10 some point recently. It was the kind of trailer you  
11 would hitch up to the back of a big pickup truck.  
12 maybe this was 15-, 20-foot long trailer.

13 So there may have been someone living  
14 there. I don't think they were at the time in  
15 July 2011, but that was one of the things I wanted  
16 him to remove.

17 Q Okay. Other than these items you have  
18 described that you would like removed and dealt  
19 with, abandoned, I guess is the legal word for it,  
20 do you have any problem with Mr. Limehouse's  
21 continued use of the property for agricultural  
22 purposes?

23 A None whatever.

24 Q Okay. Would you describe, again, other  
25 than these issues, would you describe your

1 understood this to be the ruling of Judge  
2 Scarborough in this case, correct?

3 A That is correct. There was the initial  
4 ruling that I am aware of.

5 Q Okay. I am going to assume a hypothetical  
6 with you for a moment. If Judge Scarborough had  
7 ruled that there is a prescriptive easement in this  
8 case that is on the existing dirt road, does that  
9 resolve your concern about access to this property?

10 MR. OBERMAN: I am going to object to the  
11 form of the question.

12 A I think that if that prescriptive easement  
13 encompasses the 25-foot right-of-way, then that  
14 would resolve my issues.

15 Q Dr. Haynes, you said in your testimony  
16 with Mr. Oberman words to the effect of you had  
17 looked at one time at possibly moving to this  
18 property or developing this property for investment  
19 purposes?

20 A Correct.

21 Q Is that correct? Fair assessment?

22 A It is.

23 Q Could you tell me what steps you have  
24 undertaken, be they hire a consultant, drawing  
25 plats, speaking to investors, regarding your efforts

1 or desires to develop this property, to put in a  
 2 subdivision?  
 3 A I haven't had any urgency in doing that.  
 4 And clearly for the past three or four years the  
 5 real estate market is not robust enough to make such  
 6 a venture. Prior to that, I was much further from  
 7 retirement and my view has been that the longer one  
 8 holds on to appreciating property, the more it  
 9 appreciates.  
 10 Q And in sum, from that question, have you  
 11 hired anyone to assist you in the process of  
 12 developing this property, other than obviously --  
 13 other than Mr. Oberman?  
 14 A Not at this point.  
 15 Q Do you have any idea of how many lots you  
 16 would attempt to subdivide the property into or what  
 17 kind of buildings or structures you would put on it?  
 18 A It could be as little as one horse farm or  
 19 someone who wished to have something like that, or  
 20 it could have a number of lots on the marsh with  
 21 other elements closer in. So there is a wide  
 22 variety of options as I see it for this. That  
 23 would, of course, always be subject to various  
 24 zoning requirements.  
 25 Q When you first invested in the partnership

1 A No.  
 2 Q Okay. Your initial investment in this  
 3 property was prior to the recording of this  
 4 document, correct?  
 5 A That's correct.  
 6 Q Okay.  
 7 A My initial investment, that's correct.  
 8 Q Yes, sir. It preexists the quit claim  
 9 deed from 1999, we can all agree on that?  
 10 A Yes.  
 11 Q Mr. Oberman asked you to refer to  
 12 Exhibit 6. I am not going to fold it all the way  
 13 out, but if you would be so kind as to do that for  
 14 me. It is the very large plat. Dr. Haynes, can you  
 15 still hear me?  
 16 A Yes.  
 17 Q I know there is a lot of rattling around  
 18 going on. You previously identified the A, B, C, D  
 19 box which I think we agreed encompasses what is  
 20 stated to be or what is shown on this document to be  
 21 the Resurrection Road 25-foot right-of-way, correct?  
 22 A That is as stated here, yes.  
 23 Q Okay. And I have mine upside down, but if  
 24 you coordinate yourself so that north is at the top  
 25 of the page you are looking at, can you see a dirt

1 of this property and got, I believe you said two  
 2 shares in approximately 1988, did the plat recorded  
 3 by the County of Charleston exist? Well, is it fair  
 4 to say -- let me get rid of that.  
 5 Is it fair to say in 1996 the 25-foot  
 6 right-of-way had not been placed on this plat?  
 7 A I don't recall.  
 8 Q I will take you back to the exhibit.  
 9 Dr. Haynes, I would refer you back to Exhibit 10.  
 10 A Yes.  
 11 Q Now, this is a document obviously prior to  
 12 today's deposition that you have had the opportunity  
 13 to review, correct?  
 14 A Correct.  
 15 Q All right. I would represent to you that  
 16 the date of this document is, depending on whether  
 17 you look at the original or revision, either  
 18 January 18, 1996, or February 27, 1996. Do you see  
 19 that information --  
 20 A I do.  
 21 Q -- on this document?  
 22 A I do.  
 23 Q Do you have any dispute as to the date  
 24 that is on this document, any reason to believe that  
 25 that is not truthful and correct?

1 road to the north of the 25-foot right-of-way?  
 2 A I do.  
 3 Q Would it be fair to state that that dirt  
 4 road varies in width on its length?  
 5 A That is as indicated on this plat, yes.  
 6 Q Yes, sir. As a matter of fact, if one  
 7 looks at it from approximately Point A or just there  
 8 on the Betsy Kerrison Parkway, one can see that it's  
 9 listed as 24.5 feet wide at that point, correct?  
 10 A Yes.  
 11 Q And then at the segment of the dirt road  
 12 passing through B-C, it would appear that nearest  
 13 width mark at that point is 14.5 feet, correct?  
 14 A Yes.  
 15 Q When you have traversed this road in your  
 16 visits to the property, have you ever viewed any  
 17 more of the road than the dirt road bed?  
 18 A I certainly have run off the dirt road bed  
 19 in several places many times, but -- and I have  
 20 never been understanding as why the dirt road varies  
 21 except I assume that that was a result of usage as  
 22 opposed to it being a specific surveyor limitation.  
 23 Not being a surveyor or architect or so, my  
 24 knowledge is fairly limited.  
 25 Q Okay. Do you know if the -- what is

1 represented or shown to be the 25-foot right-of-way  
2 was created for the first time in 1996?

3 A That would seem to be indicated by the  
4 documents that have been discussed today.

5 Q Yes, sir. And if that 25-foot  
6 right-of-way did not exist prior to 1996, would it  
7 be fair to say that the access to all of the  
8 property on Resurrection Road was limited to the  
9 proximity of the dirt road there?

10 A Again, my understanding was that that was  
11 a 25-foot right-of-way, even though the dirt road  
12 might have been in places considerably less than  
13 that.

14 Q Okay. Referring you back to the County  
15 exhibit, specifically Exhibit 11?

16 A Yes.

17 Q I believe that is a one-page letter dated  
18 May 8, 1996, that which previously discussed with  
19 Mr. Oberman?

20 A Correct.

21 Q Do you know or do you believe that there  
22 is a distinction between the words approval and  
23 acceptance?

24 A I was not aware that there is a  
25 distinction. It would seem artificial, but you are

1 question. These documents speak for  
2 themselves.

3 Q You can answer the question, if you can.

4 A The statement is somewhat confusing.

5 Q Okay. It is fair to say there is a lot of  
6 legalese in there, correct?

7 A Correct.

8 Q And would the same be true for that second  
9 stamp, the one that starts out: This approval in no  
10 way obligates?

11 A That is true, but I thought that that had  
12 been superseded by the stamp on the top of this  
13 Exhibit 10 that says: Charleston County Office of  
14 Registrar Mesne Conveyance which postdates those two  
15 statements as of -- and is dated, oh, what, the 2nd  
16 day of May, 1996, which is clearly after January 18,  
17 1996, or revised date of February 27, 1996.

18 So I thought a reasonable interpretation  
19 of this, as a nonexpert, would be that that approval  
20 final plat stamp here on the bottom right of this  
21 same plat saying "approval final plat" and the stamp  
22 on the top dated May 1996 superseded those two  
23 preceding stamps. That may have been incorrect. If  
24 so, I apologize.

25 Q No apology needed. That is a very

1 the lawyer.

2 Q And going back to Exhibit 10, the one --  
3 the smaller plat, the 1996 plat, I would represent  
4 to you that -- let me give you a minute so you can  
5 get to it.

6 A Got it.

7 Sorry, I am getting over bronchitis.

8 Q I am having a cold, too, so if you have  
9 difficulty hearing me or I am screaming, I  
10 apologize. It is not intended.

11 A No. I just have this urge to cough every  
12 now and then, so excuse me.

13 Q Take your time. And if you need to take a  
14 break, please let me know. I want to direct your  
15 attention to the two stamps that are kind of in  
16 bold, all caps at the center of the page. One  
17 starts out: Warning, approval of this plat by  
18 Planning Board and/or County Council does not  
19 indicate approval nor adjudicate title of the access  
20 or right-of-way shown hereon. Do you see that  
21 statement?

22 A I do.

23 Q Can we agree that the word acceptance, by  
24 accept, is not used in that?

25 MR. OBERMAN: I object to the form of the

1 thorough explanation. Just to clarify something you  
2 said earlier, did you see in this document, have  
3 access to these document prior to the quit claim  
4 deed deeding the property in 1999?

5 A Yes. I believe I got -- I got to see this  
6 or have a copy of this as part of the files of  
7 Nautilus Group when I acquired all of that and  
8 wanted to get rid of Nautilus Group as a  
9 partnership.

10 Q Okay. Again, that was part and parcel of  
11 the closing that was performed by the personal  
12 Georgia attorney for you in Atlanta, correct?

13 A No. That may have been part and parcel of  
14 the transference of Nautilus Group from Greg Bullock  
15 to me. I don't remember the details.

16 Q Okay. Dr. Haynes, have you ever met Mason  
17 Heyward?

18 A No.

19 Q You have not spoken to him by telephone or  
20 had any written communication with him?

21 A No, not to my recollection.

22 Q Okay. Have you ever met Sidi Limehouse in  
23 person?

24 A Yes.

25 Q On about how many occasions?

1 A Two or three, primarily at his fruit  
 2 stand, or maybe once or twice, but more than once.  
 3 I guess more than once. Not more than three times.  
 4 Q Okay. Either from your previous statement  
 5 it was obvious there would not be a occasion where  
 6 you would have seen Mason Heyward and Sidi Limehouse  
 7 together, to your knowledge?  
 8 A No. Again, my trips there were short.  
 9 brief, focused on Resurrection Road, and usually on  
 10 weekends when most people are out fishing.  
 11 Q Have you ever attended a meeting of the  
 12 Charleston County Zoning Board or Charleston County  
 13 Planning Board?  
 14 A No.  
 15 Q Have you ever attended a meeting of  
 16 Charleston County Council?  
 17 A No.  
 18 Q I will represent to you that Mr. Oberman,  
 19 in his Amended Answer which he filed on your behalf,  
 20 alleges that a civil conspiracy exists between Sidi  
 21 Limehouse, Mason Heyward, who is my client, and  
 22 Charleston County.  
 23 Other than the depositions, exhibits and  
 24 materials that you have gone through -- and you  
 25 described them earlier, it is copious, I understand

1 someone who is intending to have this available as a  
 2 retirement asset, that access may not be.  
 3 Q I understand. That is a fair observation.  
 4 Returning one last time to Exhibit 10, I  
 5 hope it will be the last time, that is the plat from  
 6 1996. I would represent to you that the  
 7 Resurrection Road 25-foot right-of-way is shown on  
 8 that document, correct?  
 9 A It is.  
 10 Q And I will represent to you that there is  
 11 a broken line initially if you are going from west  
 12 to east on the western side of the plat adjacent to  
 13 Betsy Kerrison Parkway, that road line behind runs  
 14 north of Resurrection Road 25-foot R/W. And then  
 15 headed towards the east, it moves into Resurrection  
 16 Road 25-foot R/W. Do you see that?  
 17 A I do.  
 18 Q On the plat, without giving the outside  
 19 dimensions of the road, I will represent to you it  
 20 says, centerline Resurrection Road. Do you see  
 21 that?  
 22 A Where are you seeing centerline -- oh.  
 23 yes, I do. I got it, um-hum.  
 24 Q I'm sorry. There is a lot of stuff on  
 25 here.

1 that -- do you have any personal firsthand knowledge  
 2 of a conspiracy between Charleston County,  
 3 Mr. Heyward or Mr. Limehouse?  
 4 A I have the presumption based on the  
 5 circumstances as reviewed in the deposition today  
 6 that that is a distinct possibility.  
 7 Q Okay. Do you think it is true that if  
 8 Mason Heyward prevents the expansion of Resurrection  
 9 Road by the pleading process, do you think that will  
 10 have an adverse effect on all of the properties that  
 11 are behind his on the road?  
 12 A It would have that potential.  
 13 Q So in other words, your personal damage  
 14 would not be unique if Mr. Heyward was somehow able  
 15 to restrict access to the other residents of  
 16 Resurrection Road?  
 17 A It would depend. The answer to that  
 18 question is that -- the statement would depend on  
 19 whether the other parties are interested in  
 20 marketing their properties or in staying where they  
 21 are.  
 22 Q Okay.  
 23 A That is if Mr. Limehouse, where he  
 24 currently lives, is content with that for the next  
 25 20 years, then minimal access is adequate. For

1 A Yes.  
 2 Q If you look at the plat or Exhibit 6 which  
 3 is that bigger plat, it has outside boundaries of  
 4 the road. Do you know or have any knowledge of the  
 5 impact widening this road would have on Mason  
 6 Heyward?  
 7 A I imagine it would depend on which side of  
 8 the road would be widened, wouldn't it?  
 9 Q Very much would. We can agree based on  
 10 your personal observations of this property that  
 11 Resurrection Road's 25-foot R/W does not, for its  
 12 entirety, coincide with the existing dirt road.  
 13 correct?  
 14 A Correct.  
 15 Q If the existing dirt road were done away  
 16 with and given to Mason Heyward and the 25-foot  
 17 right-of-way was developed to give him a road, would  
 18 that not give you the 25-foot road that you have  
 19 previously said is reasonable and appropriate  
 20 access?  
 21 A Under the conditions you just mentioned,  
 22 absolutely.  
 23 Q Okay.  
 24 A If it were developed.  
 25 Q All right. I am almost finished. I

1 appreciate your patience. In referring you to  
2 Exhibit 2, if you look on the third to last page.  
3 you previously read this so you don't need to read  
4 it into the record, under item C, prayer for relief.  
5 does Mr. Heyward not offer as one of his  
6 propositions to move the road into that 25-foot  
7 right-of-way?

8 A I think his intention here is a reflection  
9 of the difficulty that that would cause to the  
10 County of Charleston in removing all of the trees  
11 and doing the grading and whatnot that would be  
12 incident to that suggestion, so that that, in  
13 effect, is a Trojan horse.

14 Q In your previous testimony with  
15 Mr. Oberman, you said that you believed that or had  
16 the opinion that Mr. Limehouse had used. I believe  
17 you said a tractor-trailer, flatbed trailer, to move  
18 equipment onto your property?

19 A What I was referring specifically to was a  
20 trailer of the kind hauled by 18-wheelers which was  
21 parked way back there on my land and could have only  
22 gone there by Resurrection Road.

23 Q I see. So there is like a whole 40-foot  
24 trailer that simply was pulled by an 18-wheeler that  
25 is somewhere back on that property?

1 wouldn't be in these documents before you today. Do  
2 you recall receiving your reassessment notice?

3 A I get notices all of the time for -- from  
4 Charleston County. Whether that was the one you are  
5 referring to or not, I am not sure, but I think the  
6 last notice I received was an agricultural  
7 reassessment.

8 Q All right. And is the property that is  
9 the subject matter of this lawsuit, is that zoned  
10 residential or agricultural or do you know what the  
11 zoning classification is for your property?

12 A It is currently, to the best of my  
13 knowledge, agricultural.

14 Q And do you recall if you did receive the  
15 reassessment notice from Charleston County, what the  
16 value was for the property placed upon it by the  
17 Charleston County assessor?

18 A I don't have that information at my  
19 fingertips, no. But obviously it was -- would have  
20 been in the range or less than what the appraisal is  
21 as agricultural property.

22 Q When you say in the range of the  
23 appraisal, are you referring to the appraisal that  
24 was submitted to the lawyers today?

25 A Yes.

1 A Yeah. It was in July of 2011.

2 Q Do you know if it has a chassis with  
3 wheels on it or is it just a container box?

4 A One was just a container, and then as I  
5 recall, there was one with wheels, too.

6 Q Okay.

7 A And in either instance, it would have  
8 taken a huge piece of machinery to get either one of  
9 those back there.

10 MR. ROBINSON: I think that's all the  
11 questions I have. Okay. Those are all of the  
12 questions I have for the time being. Thank you  
13 for your patience.

14 THE WITNESS: You are welcome.

15 EXAMINATION

16 BY MR. FERRARA:

17 Q Dr. Haynes?

18 A You are the fellow with the exotic name.

19 Q Thank you. My father was a physician.  
20 You may have known him, Bernie Ferrara, surgeon in  
21 Charleston.

22 A Oh, yes, um-hum.

23 Q I am going to ask you some questions. I  
24 want to start off, did you receive your reassessment  
25 notice from Charleston County for tax year 2011? It

1 Q Done by the Guerry Group?

2 A Yes. The last assessment, I recall, was  
3 somewhere in that order of magnitude.

4 Q All right. In that order of magnitude is  
5 somewhere in the \$270,000 range, is that correct?

6 A That might be.

7 Q I want to talk about that appraisal and I  
8 don't think you have it in front of you, but I am  
9 going to represent to you -- before I make any  
10 representations, I want to recall -- ask you to  
11 recall your testimony. I am going to -- I

12 understood your testimony was that the appraisal  
13 took into consideration this pending litigation.  
14 Did you testify to something like that earlier in  
15 the morning?

16 A Yes.

17 Q Okay. I will represent to you, I have the  
18 appraisal in front of me. I'll read from that  
19 appraisal some of the comments made by the  
20 appraiser. And in his appraisal, looks like it is  
21 on page seven, these are hypothetical conditions, he  
22 says: The client has provided evidence that the  
23 subject property does not have permanent legal  
24 access. Research does not identify any comparable  
25 sales that reflected same condition; therefore, the

1 following appraisal report sets forth the estimated  
2 market value of the subject property under the  
3 hypothetical condition that the property does have  
4 permanent access.

5 So my question to you is really a basic  
6 question. I understand that statement to mean that  
7 the appraiser appraised your property as if it had  
8 permanent legal access. Do you concur with that?

9 A No. Because I made it clear to the  
10 appraiser when I asked for a redo of it, to update  
11 things. I was aware at that point of the pending  
12 legal issues. I asked him specifically to take into  
13 account the questions about access, so I did not  
14 provide any evidence. That I suspected his wording.

15 boilerplate wording from appraisers, because I did  
16 not provide any evidence. I merely pointed out that  
17 there is this controversy that I would like him to  
18 take into account in arriving at a current,  
19 immediate sales kind of valuation for Roth IRA  
20 purposes.

21 Q So is it your testimony that your  
22 appraiser didn't follow your instructions in that  
23 regard?

24 A He may have misunderstood.

25 Q Okay. I am going to turn to page eight of

1 A I don't know.

2 Q What if I represent to you that Johns  
3 Island is not a municipality, is your appraiser  
4 misinformed in that regard as well?

5 A I don't know.

6 Q He uses the word jurisdiction of Johns  
7 Island municipality twice. I will represent to you  
8 I don't know what that means. Do you know what that  
9 means?

10 A No. That has no bearing on -- I was  
11 interested in the bottom line figure, not the  
12 boilerplate verbiage that might accompany the  
13 appraisal.

14 Q I understand. He uses the term community  
15 road. Do you know what that term means?

16 A It is one of the four classes of roads of  
17 Charleston County, but, again, that seems to be in  
18 dispute in this case.

19 Q How would you define community road?

20 MR. OBERMAN: I will object of the  
21 question. You do not have an attorney or judge  
22 to rule to be able to define that.

23 Q You can go ahead and answer the question,  
24 Dr. Haynes.

25 A How I define a community road might be

1 the appraisal under site description  
2 characteristics. The appraiser says, I will read it  
3 to you: The appraiser contacted Charleston County  
4 Public Works and was informed by them that  
5 Resurrection Road is considered a community road  
6 under the jurisdiction of Johns Island municipality.  
7 Johns Island municipality has responsibility to  
8 maintain the road and Charleston County will provide  
9 maintenance if Johns Island does not have funding  
10 for such. There are no unsalable site conditions  
11 immediately apparent to the appraiser other than  
12 some junked cars on the site.

13 Do you know what a municipality is?

14 A Yes. Vaguely.

15 Q Is the City of Charleston a municipality?

16 A Yes.

17 Q Is Rock Hill a municipality?

18 A I don't know.

19 Q How about the town of Kiawah?

20 A I believe so.

21 Q How about the town of Seabrook?

22 A I believe so.

23 Q How about Atlanta?

24 A It is.

25 Q What about Johns Island, do you know?

1 quite different than the definition appropriate to  
2 this case. But it seems clear from the  
3 documentation in this case that it had been in the  
4 past a community road.

5 Q What does that mean to you?

6 A Well, that Charleston County is seeking to  
7 abrogate that designation.

8 Q I am going to point to you Exhibit 16  
9 which I understand is the judge's ruling before the  
10 County got involved in this case. On page three,  
11 those same lines 13 through 19. I think you read it  
12 to yourself earlier.

13 In fact, summarizing, would the judge --  
14 did the judge find that this was evidently referred  
15 to as the old road, community road, Captain Bill's  
16 Road.

17 MR. OBERMAN: I object to the form of the  
18 question.

19 Q I haven't asked a question yet but do you  
20 see that there, Dr. Haynes?

21 A Of course.

22 Q Did you read his ruling?

23 A I did.

24 Q Did you understand what the judge ruled  
25 when he used the term community road?

1 MR. OBERMAN: I object to the form to the  
2 form of the question. The judge's words speak  
3 for themselves. He is not either a judge nor  
4 attorney.

5 A The statement here says what evidently was  
6 referred to as an old road, community road, and so  
7 forth. That does not rise to the level of a  
8 statement of what it was, in my view or in my  
9 interpretation. But again, I have no pretenses of  
10 being an attorney.

11 Q I understand. But it does preface that  
12 paragraph with: As to the existence of the  
13 easement, I find that there is a prescriptive  
14 easement --

15 A That is correct.

16 Q -- which has existed for many, many years  
17 and that exists for the purpose. What evidently was  
18 referred to as an old road, community road, Captain  
19 Bill's Road, I heard it referred to by Mr. Limehouse  
20 today.

21 When you read this order, did you, in your  
22 mind, have any questions as to what the word  
23 "community road" meant?

24 MR. OBERMAN: Object to the form of the  
25 question. The judge's order speaks for itself.

1 A A specific document?

2 Q Yes, sir. I will represent to you it is  
3 not in that stack in front of you.

4 MR. OBERMAN: Objection to the  
5 representation. I think that if the doctor  
6 will look he will find dedication to the  
7 public. At the same time I would refer him to  
8 the letter of Beverly Craven. You will see it  
9 in Exhibit 11.

10 Q Is Exhibit 11 that document? Exhibit 11  
11 is a one-page document, a May 8, 1996 letter from  
12 Beverly Craven, Clerk of Charleston County Council,  
13 to E.M. Seabrook, surveyor of the 1996 plat.

14 Your lawyer suggests that that is the  
15 document that Mason Heyward signed dedicating the  
16 25-foot road right-of-way to Charleston County,  
17 South Carolina, to the public forever. Does that  
18 document say that?

19 MR. OBERMAN: I object to the form of the  
20 question. The lawyer did not say it is signed  
21 by Mason Heyward.

22 Q Let me go back to my original question.  
23 Is there a document signed by Mason Heyward that  
24 says something to the effect, I hereby dedicate a  
25 25-foot right-of-way to Charleston County, South

1 A I was more focused in on the term  
2 "prescriptive easement" than a concatenation of  
3 designations of the prior dirt path.

4 Q Did you consult your attorney and ask him  
5 what that language, community road, meant or  
6 inferred?

7 MR. ROBINSON: Object. Attorney-client  
8 privilege.

9 A I would certainly hope that it meant a  
10 25-foot easement.

11 Q Okay. I am going to go back to Exhibit 10  
12 which is the 1996 plat. I am going to ask you to  
13 take a look at that exhibit, and it is a yes or no  
14 answer. In the copy of the 1996 plat, is there a  
15 statement by Mr. Heyward dedicating 25 feet of road  
16 right-of-way to Charleston County, South Carolina,  
17 to the public forever?

18 A I don't believe I have ever seen that on  
19 any plat.

20 Q All right. Could you direct me to any  
21 document signed by Mr. Heyward that says, I hereby  
22 dedicate a 25-foot right-of-way to Charleston  
23 County, South Carolina, to the public forever?  
24 Point me to a document that says that. Is there a  
25 document that says that?

1 Carolina, to the public forever? Yes or no  
2 question.

3 A There is a document -- there is a document  
4 which is the judge's ruling of January 20, 2010,  
5 page two, line six through eight, that would answer  
6 that question in the affirmative.

7 Q All right. Is there a document showing  
8 some Charleston County Council action accepting a  
9 dedication of a 25-foot right-of-way from  
10 Mr. Heyward to Charleston County, South Carolina?

11 A There may be. I do not have all of the  
12 depositions in front of me from Mason Heyward. They  
13 were fairly extensive.

14 Q Dr. Haynes, do you know what the reason  
15 was for the submittal of the 1996 plat referred to  
16 as Exhibit 10 submitted to Charleston County?

17 A It is my recollection that that had to do  
18 with Mason Heyward's desire to subdivide some of his  
19 property.

20 Q And in fact, Exhibit 12, above the lands  
21 of Mason Heyward, it says: Subdivision request  
22 recommended for this approval by the staff is  
23 presented as follows. So I concur with you that  
24 before Charleston County was a request to subdivide  
25 the property. Do you understand that to be the

1 reason for the submittal of the plat?

2 A It was my understanding.

3 Q All right. Is it your understanding  
4 that -- strike that.

5 I believe Mr. Robinson covered this, but  
6 during your, I believe you testified, 15 years of  
7 ownership, your lawyer asked if you had ever seen  
8 any county activity improving the road. I want to  
9 make clear, have you ever seen Charleston County  
10 maintaining Resurrection Road?

11 A My response to that question earlier was  
12 that my visits are typically on weekends when I  
13 would be surprised to find county employees  
14 improving roads.

15 Q I will take that as a no. You are relying  
16 on Exhibit 11, which is the 1996 letter from the  
17 Clerk of Council, to demonstrate the dedication of  
18 the road right-of-way that is the subject matter of  
19 this litigation?

20 A That was my interpretation of this letter.

21 Q Any other documents that will demonstrate  
22 a dedication of road by Heyward to Charleston  
23 County?

24 A I testified extensively for the past  
25 two-and-a-half or three hours on a number of the

1 A I do not know.

2 Q Well, tell me why you think a community  
3 road may be a public road?

4 A If a road in a community is used by the  
5 public, it is both. A road may be used by a  
6 community within a private development, in which  
7 case it is private.

8 Q All right. Could there be the existence  
9 of a private road under any other circumstances  
10 other than what you just concluded?

11 MR. OBERMAN: Object to the form of the  
12 question. It calls for a legal conclusion.

13 A I would expect there would be all kinds of  
14 designations of different kinds of roads?

15 Q I understand your testimony earlier. Did  
16 you receive a letter from the Charleston County  
17 Public Works regarding your property on Johns  
18 Island, is that correct?

19 A That is quite correct.

20 Q Do you have that letter in front of you?

21 A I do.

22 Q Is that what you are holding in your hand?

23 A It is.

24 (Haynes Exhibit No. 15 was marked for  
25 identification.)

1 other exhibits that I have relied upon to have that  
2 assumption.

3 Q I am going to turn your attention to  
4 Exhibit 15A, line -- first complete paragraph. This  
5 is the Charleston County Public Works director says:  
6 But that was the limits that we were allowed to do  
7 on community roads. Resurrection Road was listed as  
8 a community road.

9 Again, did you consult your lawyer to  
10 determine what community road was on that?

11 MR. OBERMAN: I am going to object to the  
12 form of the question, attorney-client  
13 privilege. I am going to instruct the witness  
14 not to answer that question.

15 Q When you read this document that was I  
16 believe supplied to you by your lawyer, did it raise  
17 any questions in your mind as to what constitutes a  
18 community road?

19 A Certainly the definition appears to be  
20 fairly vague in my mind.

21 Q Is a community road a public road, do you  
22 know?

23 A I would hope so.

24 Q Is a community road a private road, do you  
25 know?

1 Q I am going to ask you to bear with me for  
2 a minute. I am going to ask you to look at  
3 Exhibit 15. It shows the administrative report to  
4 council. I will represent to you the Administrative  
5 Report to Council prompted this letter that you  
6 received along with 3,500 other property owners in  
7 Charleston County regarding the nonstandard road  
8 program. And it says in the first line in the  
9 administrative report: On December 16, 2011, County  
10 Council rescinded the community road policy that has  
11 been in effect since 1965.

12 Then it goes through and lays out how  
13 Charleston County has determined now that those  
14 community roads are now nonstandard roads and are  
15 going to be brought into the Charleston County Road  
16 Standards Program and be deemed a public road. Is  
17 that somewhat your understanding of that report?

18 A Yes, that's correct.

19 Q All right. Now, my question to you, and  
20 I'll try to state it in a nonconvoluted way, but if  
21 Charleston County Council determined on December 6,  
22 2011, that Resurrection Road was a community road,  
23 is it logical to conclude that before December 6,  
24 2011, Charleston County council had determined  
25 Resurrection Road was not a public road?

1 A I would regard that as logical.  
 2 Q Tell me why.  
 3 A The fact that it is designating it on  
 4 December 6 as a community road does not mean that it  
 5 wasn't that prior to that necessarily.  
 6 Q All right.  
 7 A They are simply formalizing for a number  
 8 of different roads here in Charleston County a new  
 9 method of designation and maintenance, as I  
 10 understood it.  
 11 Q All right. Is it your contention that  
 12 before December 6, 2011, that Charleston County  
 13 Council accepted a dedication from Mason Heyward of  
 14 a 25-foot road right-of-way on Resurrection Road to  
 15 Charleston County public forever?  
 16 A That is what was implied by Exhibit  
 17 Number 11.  
 18 Q All right. You said it was implied by  
 19 that exhibit. Is there any express designation by  
 20 Charleston County Council?  
 21 A My interpretation of this letter of May 8,  
 22 1996, which is Exhibit 11, was that that made that  
 23 designation. Those two sentences deal with the same  
 24 issue and the same access.  
 25 Q All right. If Council accepted the roads

1 acceptance of a road is a two-step process.  
 2 So with that in mind, if Resurrection Road  
 3 needed to be dedicated by Mason Heyward and accepted  
 4 by Charleston County Council, why was a letter from  
 5 the Clerk of Council in 1996 saying only that the  
 6 action is approved, that action being, I think, to  
 7 subdivide Mason Heyward's parcels?  
 8 A That legal distinction was not clear to  
 9 me.  
 10 Q All right. Do you understand how a  
 11 dedication of a road right-of-way occurs?  
 12 A No.  
 13 Q Do you understand how acceptance of a  
 14 dedication of a road right-of-way occurs?  
 15 A I thought the two were identical.  
 16 Q All right. Last question. If  
 17 Resurrection Road is and was a private road, would  
 18 that change any of your testimony that you provided  
 19 to the lawyers today?  
 20 A Since I had never thought of it as a  
 21 private road because I had always been under the  
 22 impression that it was a county road and is thus  
 23 open to the public.  
 24 Q That impression, was that your impression  
 25 or was that impression derived from consultation

1 in 1996, why would Charleston County Council accept  
 2 the roads as public roads in 2011?  
 3 MR. OBERMAN: I object to the form of the  
 4 question as to asked and answered.  
 5 A My interpretation was to clarify the  
 6 issues.  
 7 Q Is it because it was not accepted before  
 8 December 2011?  
 9 A Not necessarily.  
 10 Q How do you draw that conclusion?  
 11 A This is a memorandum that dealt with how  
 12 many property owners? And was general in restating  
 13 a number of prior conditions to standardize policies  
 14 and procedures.  
 15 Q All right. Earlier you testified that  
 16 Larry Kennerty was a member of Charleston County  
 17 Council. Would your testimony change if I  
 18 represented to you that Larry Kennerty was not a  
 19 Charleston County Council member but a member of the  
 20 staff of the planning department?  
 21 A My testimony would change to the extent of  
 22 that correction, but clearly his comments were in  
 23 defense of property owners in Charleston County.  
 24 Q If the road -- and I am just going to  
 25 represent to you that dedication of a road and

1 with either lawyers, surveyors or others, or both?  
 2 MR. OBERMAN: Object to the form of the  
 3 question. Lawyer-client privilege.  
 4 A That was based on numerous facts given in  
 5 evidence in this deposition beginning with the  
 6 county road sign there and the long history of this  
 7 road being utilized for the benefit of those going  
 8 in and out.  
 9 Q Was that your impression in 1998?  
 10 A Yes. In 1998, I had no question that that  
 11 was a valid, appropriate access that belonged to the  
 12 County and was being maintained by the County.  
 13 Q What was that impression based upon in  
 14 1998 -- 1988? I'm sorry.  
 15 A Well, in part by the acquisition of a  
 16 limited partnership that had presumably done the due  
 17 diligence as well as the obvious evidence on the  
 18 ground.  
 19 MR. FERRARA: Thank you, Dr. Haynes. I  
 20 appreciate it. I have no more questions.  
 21 EXAMINATION  
 22 BY MR. OBERMAN:  
 23 Q I have a few clarifying questions.  
 24 Dr. Haynes, do you have knowledge of how the 25-foot  
 25 right-of-way came to be?

1 A My impression upon purchasing the property  
2 was the strong presumption in evidence that it was  
3 always there. And as this case has developed, it  
4 appears -- it appeared to me that Mason Heyward  
5 had -- had, in conjunction with Charleston County,  
6 dedicated and deeded that along Resurrection Road.  
7 Q The short answer, who instituted the  
8 procedure by which this came about?  
9 A Mason Heyward.  
10 Q You have gone through the mechanics or  
11 logistics of the institution of that 25-foot  
12 right-of-way?  
13 A Yes.  
14 Q Was there a letter sent out by the County  
15 of Charleston?  
16 A Absolutely.  
17 Q Was that a letter signed by Beverly  
18 Craven, Clerk of Council, Exhibit 11, Doctor?  
19 A Absolutely.  
20 Q Who is the letter addressed to?  
21 A Mr. E.M. Seabrook, who was the surveyor  
22 and engineer for Mr. Heyward.  
23 Q And who was carbon-copied with that  
24 letter?  
25 A The County Planning Department, the Public

1 right-of-way was dedicated to the public?  
2 MR. FERRARA: I object to the form.  
3 A I do not have a law degree, but it  
4 certainly seems to be common sense.  
5 Q I take that as a yes, it was dedicated to  
6 the public?  
7 A Yes, sir.  
8 Q All right. Was it used by the public?  
9 A It was.  
10 Q Did you find evidence that the County of  
11 Charleston accepted that road, quotation marks,  
12 dedicated to the public, end quotation marks, by it  
13 acts?  
14 A Yes, as has been amply testified by me  
15 during the past three hours.  
16 Q Do you want to give us the gist of the  
17 things you base that on, even though we have gone  
18 over it in three hours?  
19 A Yes, I refer again to Exhibits 13 and 14  
20 and 15, all of which provide specific evidence of  
21 that acceptance, without being further redundant.  
22 Q Did you see evidence of their acceptance,  
23 sir, by physical acts?  
24 A I did.  
25 Q Can you name some, if not all?

1 Works Department of Charleston County, and Mason  
2 Heyward.  
3 Q Now, read us the two short sentences said  
4 by Ms. Craven to those individuals?  
5 A County Council, at their meeting of May 7,  
6 1996, granted approval of a 25-foot road  
7 right-of-way being dedicated to the public.  
8 Resurrection Road serves as access to approximately  
9 25 acres of property with high developmental  
10 potential.  
11 Q Now, without repeating myself or you  
12 repeating yourself, who was the road right-of-way  
13 dedicated to?  
14 A The public.  
15 MR. FERRARA: I object to the form of the  
16 question. Go ahead and answer.  
17 A The public.  
18 Q To the public. Do you have any knowledge  
19 or any question that either Mr. Seabrook,  
20 Mr. Heyward, the County Planning Department or the  
21 Public Works Department, objected to the letter or  
22 the contents of that letter?  
23 A No, I do not, and I have not.  
24 Q All right. Again, going to your lawyer  
25 aspect, do you believe that this 25-foot road

1 A At risk of being redundant, the county  
2 street sign that has been there as long as I have  
3 ever traveled down the road, the aerial photos that  
4 we have been through with the Resurrection Road  
5 going from the Kerrison Parkway to Tract 17, the  
6 sworn testimony of the Director of Public Works of  
7 Charleston County stating that it has been  
8 maintained for over 30 years, the ongoing  
9 maintenance as well as the specific maintenance  
10 between July 2009 and April of 2012 of a dozen such  
11 acts of maintenance, all of which occurred, I am  
12 sure, during weekdays which I was not there to  
13 observe and photograph them.  
14 Q Did you see evidence of maintenance?  
15 A I saw that the road was passable and  
16 capable of being driven on, yes.  
17 Q Are you aware of a difference between a  
18 green road sign and a blue road sign?  
19 A I came across that in Exhibit 15-A,  
20 Administrator's Report of Council, but I do not  
21 recall the specifics.  
22 Q Do you know what color road sign there is  
23 on Resurrection Road?  
24 A It is very green.  
25 Q Very green, all right. If I were to tell

1 you that a private road sign is blue. would you be  
 2 able to distinguish whether this is a private road  
 3 or public road by the color of the sign?  
 4 A Since I am not color-blind, yes, sir.  
 5 Q What did that sign tell you, sir?  
 6 A That this is a county road dedicated to  
 7 the public.  
 8 Q Sir, is there any doubt in your mind that  
 9 Mason Heyward, working through E.M. Seabrook, sought  
 10 the approval of a 25-foot road right-of-way  
 11 dedicated to the public?  
 12 A No.  
 13 Q Are you a member of the public?  
 14 A I do hope so, yes.  
 15 Q Do you feel that you are entitled to use  
 16 the dedicated road right-of-way that Mr. Heyward and  
 17 his engineer-surveyor saw?  
 18 A Yes.  
 19 Q Have you seen any document or any  
 20 testimony that reversed that dedicated to the public  
 21 road right-of-way?  
 22 A No.  
 23 Q Have you seen any document or act other  
 24 than the pleading of the County of Charleston  
 25 reneging on the acceptance of that road

1 which is the notes and minutes of the Charleston  
 2 County Planning Board?  
 3 A Yes, sir.  
 4 Q From 1996?  
 5 A Yes, sir.  
 6 Q There has been a lot of talk about Mason  
 7 Heyward and him subdividing his property and what he  
 8 did or didn't do. Do you have any knowledge that  
 9 Mason Heyward's house burned down in 1996?  
 10 A I had heard that, yes.  
 11 Q Okay. Were you aware that he had to  
 12 subdivide his property in order -- to subdivide his  
 13 property on paper in order to rebuild his home, to  
 14 get building permits for his home?  
 15 MR. OBERMAN: I object to the form of the  
 16 question. I don't think that was the case. He  
 17 is a doctor, not a lawyer, not familiar with  
 18 the subject.  
 19 A It was unclear to me why he -- what the  
 20 role and relationship of rebuilding his house and  
 21 subdivision was.  
 22 Q Okay. Would you agree that it is a  
 23 subject of discussion in those minutes from the  
 24 Planning Board here in this document?  
 25 A It appears to be discussed here, yes.

1 right-of-way?  
 2 MR. FERRARA: I object to the form of the  
 3 question.  
 4 A No.  
 5 Q Sir, is there any chance you might be able  
 6 to come from Germany to Charleston in the middle of  
 7 January to testify in person?  
 8 A My schedule here at the hospital has me  
 9 scheduled for the intensive care unit at that time.  
 10 Q If you begged, groveled and pleaded, do  
 11 you think they could reverse that?  
 12 A I don't know.  
 13 Q We will attempt to get you here, sir.  
 14 because frankly, without complimenting you, you make  
 15 a very good witness. And having the judge read your  
 16 testimony will not be as impactful.  
 17 I have no further questions. I'm sorry.  
 18 Mr. Williams?  
 19 MR. WILLIAMS: I don't have any questions.  
 20 EXAMINATION  
 21 BY MR. ROBINSON:  
 22 Q I have one follow-up raised by really what  
 23 Mr. Ferrara said but Mr. Oberman said as well, one  
 24 reflection on one specific document.  
 25 Dr. Haynes, if you look at Exhibit 12

1 MR. ROBINSON: That's all I have. Thank  
 2 you.  
 3 MR. OBERMAN: I have no further questions.  
 4 MR. WILLIAMS: Doctor, I am Jack Williams.  
 5 I represent Berkeley Electric Cooperative. And  
 6 since I have not heard my client mentioned in  
 7 this entire thing, I am going to fight the urge  
 8 to ask any questions. Thank you for your time.  
 9 THE WITNESS: Thank you, sir.  
 10 MR. FERRARA: Thank you for your time as  
 11 well. I appreciate your service to the  
 12 country.  
 13 THE WITNESS: You are quite welcome.  
 14 Thank you.  
 15 (The deposition concluded at 7:00  
 16 P.M. CET.)

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF CHARLESTON )  
3

4 I, Wanda S. Buckner, Registered  
5 Professional Reporter, Certified Realtime Reporter  
6 and Notary Public for the State of South Carolina,  
7 at Large, do hereby certify that the witness in the  
8 foregoing deposition was by me duly sworn or  
9 affirmed to testify to the truth, the whole truth,  
10 and nothing but the truth in the within-entitled  
11 cause; that said deposition was taken at the time  
12 and location therein stated; that the testimony of  
13 the witness and all objections made at the time of  
14 the examination were recorded stenographically by me  
15 and were thereafter transcribed by computer-aided  
16 transcription; that the foregoing is a full,  
17 complete and true record of the testimony of the  
18 witness and of all objections made at the time of  
19 examination; and that the witness was given an  
20 opportunity to read and correct said deposition and  
21 to subscribe to the same.

22 Should the signature of the witness  
23 not be affixed to the deposition, the witness shall  
24 not have availed himself/herself of the opportunity  
25 to sign or the signature has been waived.

26 I further certify that I am neither  
27 related to nor counsel for any party to the cause  
28 pending or interested in the events thereof.

29 Witness my hand, I have hereunto affixed  
30 my official seal, this 4th day of December, 2012, at  
31 Charleston, Charleston County, South Carolina.

32 Wanda S. Buckner  
33 NCRA Registered Professional Reporter  
34 NCRA Certified Realtime Reporter  
35 My Commission Expires:  
36 August 20, 2013

1 DEPONENT'S CORRECTION SHEET  
2  
3 DEPOSITION OF: RALPH L. HAYNES, M.D.

4 TAKEN ON: NOVEMBER 26, 2012

6 PAGE/LINE	CORRECTION
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22  
23  
24 RALPH L. HAYNES, M.D.  
25 WANDA S. BUCKNER, RPR, CRR

Transcript of January 14, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

FRANCIS JOHNSON,

)

Plaintiff,

)

VS.

)

CASE NO.:2008-CP-10-1054

MASON HEYWARD, ET AL,

)

Defendants.

)

 ORIGINAL

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A.

Cali, CSR and Notary Public, on January 14,

2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff Marvin Oberman, Esq.  
Oberman & Oberman, LLC  
104 Church Street  
Charleston, S.C. 29401

For the Defendant: John E. Robinson, Esq.  
McDowell Law Offices  
36 Broad Street  
Charleston, S.C.

For Charleston County: Brad Mitchell, Esq.

For Berkeley Coop: John B. Williams, Esq.

Bernadette Cali, CSR and Notary Public

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1 (Court commences.)

2 THE COURT: We're back on the record in  
3 the long standing case of Johnson versus  
4 Heyward and others, case number  
5 2008-CP-10-1054. This is a matter involving  
6 Resurrection Road and really what we're here  
7 for today about, to start today -- and I think  
8 I've got this case scheduled for most of the  
9 week, gentlemen -- is the scope of the  
10 easement. Is that what we're --

11 MR. OBERMAN: I think that's what it boils  
12 down to, Your Honor.

13 THE COURT: There are some counterclaims  
14 that still exist. Gentlemen, I have not ruled.  
15 My plan, at this point in time, is just to deny  
16 the motion for summary judgment and let the  
17 Defendants go forth with whatever evidence they  
18 want to put up on that issue.

19 MR. ROBINSON: Understood, Your Honor.  
20 Just -- as you're aware, the civil conspiracy  
21 claim is against both Mr. Heyward and the  
22 County and unnamed parties. We can have a  
23 procedural discussion, Your Honor, but the only  
24 thing I would ask to consider is that  
25 Mr. Limehouse is going in for back surgery

1           tomorrow. That would make him unavailable. We  
2           have his deposition, but I would as soon to  
3           have him testify, if the Court would allow that  
4           today, after Mr. Oberman brings you up to speed  
5           on his party being unavailable.

6           THE COURT: All right. Let's do our  
7           little procedural stuff here. I did push this  
8           off until two at your all's request. For the  
9           record, gentlemen, state your name and who you  
10          represent. Let me start with Mr. Oberman on  
11          the Plaintiff's side.

12          MR. OBERMAN: Your Honor, Marvin Oberman.  
13          I represent Frank Johnson, the Plaintiff. I  
14          represent Dr.~Ralph Haynes, who has been  
15          brought in as an additional Plaintiff.

16          THE COURT: You're assisted by your able  
17          assistant, Mr. Harold Oberman?

18          MR. OBERMAN: Maybe just briefly. I may  
19          be just reading a deposition into the record  
20          and --

21          THE COURT: I don't need you to do that.  
22          I know how to read myself.

23          MR. HARVEY OBERMAN: I kind of figured you  
24          might want to proceed that way. I will not be  
25          here that long.

1 THE COURT: All right, Mr. Robinson.

2 MR. ROBINSON: Your Honor, John Robinson  
3 here for Mason Heyward, still the only client I  
4 have who is a party in this action.

5 THE COURT: All right.

6 MR. MITCHELL: Brad Mitchell for  
7 Charleston County and Mr. Dawson is not here at  
8 present, but he's also here for Charleston  
9 County.

10 THE COURT: Thank you Mr. Mitchell. We're  
11 just doing introductions.

12 MR. WILLIAMS: Jack Williams for Berkeley  
13 County.

14 THE COURT: John B.

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: Thank you, sir.

17 MR. OBERMAN: Your Honor, I think we have  
18 an announcement to make that may shorten. That  
19 is, that the Plaintiffs are willing to drop  
20 their conspiracy cause of action against the  
21 County of Charleston. And the County of  
22 Charleston, in turn, and correct me if I'm not  
23 saying it right, will stipulate that  
24 Resurrection Road is a dedicated right-of-way  
25 dedicated to the public, and their position

1 would be there would be both the prescriptive  
2 easement and the dedicated 25-foot  
3 right-of-way.

4 MR. MITCHELL: Your Honor, that would be  
5 our position. Put whatever facts, testimony to  
6 support both the 25-foot right-of-way being  
7 dedicated and accepted by the public and also  
8 the travel way, where the dirt path road goes  
9 through. Because they are two different  
10 distinct areas.

11 THE COURT: I would say so. That's what  
12 got us to this point.

13 MR. MITCHELL: Yes, sir.

14 THE COURT: The County's position would be  
15 that the 25-foot right-of-way which was  
16 dedicated by Mr. Heyward way back whenever it  
17 was --

18 MR. MITCHELL: 1996, Your Honor, yes.

19 THE COURT: -- is in fact a dedicated  
20 right-of-way, accepted into the County's  
21 maintenance system and maintained?

22 MR. MITCHELL: Wouldn't say maintained or  
23 maintenance system, however, because you have  
24 right-of-way doesn't necessarily mean it needs  
25 to be maintained. -- has to be a road bed.

1           There are examples of right-of-ways that are  
2           not necessarily maintained to the road bed  
3           status.

4           THE COURT: Dedicated and accepted.

5           MR. MITCHELL: Yes, Your Honor.

6           THE COURT: That's as far as the County's  
7           willing to go?

8           MR. MITCHELL: Yes, Your Honor.

9           THE COURT: Does that satisfy the  
10          Plaintiff's requirements for dropping the  
11          conspiracy counterclaim?

12          MR. OBERMAN: That does, Your Honor, but I  
13          must say we will have a witness that will say  
14          it has been maintained by the County. Just as  
15          additional icing on the cake.

16          THE COURT: They are not stipulating to  
17          that fact, but there is going to be some  
18          evidence to that fact, is what I'm hearing.

19          MR. OBERMAN: Quite a bit of evidence.

20          THE COURT: All right. As it relates to  
21          that cause of action, then, does that dismiss  
22          the entire conspiracy claim?

23          MR. OBERMAN: No, sir. It still remains  
24          as to Mr. Heyward and as to his actions with  
25          unindicted coconspirator.

1           THE COURT: I'm with you. Okay. You want  
2 to be heard?

3           MR. ROBINSON: Yes, Your Honor. We object  
4 on the basis that the pleadings have not been  
5 amended to reflect that. If the Court  
6 allows -- Your Honor, as it currently reads,  
7 the County of Charleston has cross-claimed  
8 Defendant as -- took two positions. First they  
9 denied there was a dedication, then they said  
10 assuming arguendo that there was a dedication,  
11 the County denies that they accepted the  
12 easement. We have relied on that position  
13 since approximately October of 2011, I believe.  
14 That position changed last week for reasons  
15 that I understand are not within Mr. Mitchell's  
16 control. Nonetheless, we would object to an  
17 amendment of the pleadings at this time and we  
18 would object to testimony or evidence being  
19 tried by consent that would effect our position  
20 that the County has not accepted this  
21 dedication and that the County does not, in  
22 fact -- has not made this a public road.

23           THE COURT: Okay.

24           MR. MITCHELL: Your Honor, if I may?

25           THE COURT: Su225

1           MR. MITCHELL: What Mr. Robinson is  
2           speaking to is an answer by Mr. Ferrara.  
3           Mr. Ferrara in there states in very broad terms  
4           that there was not a dedication acceptance. I  
5           believe what he was speaking to was not --  
6           you're not going to see a stamp on a plat. I  
7           think -- I believe that's what he was speaking  
8           to. Not necessarily whether it's implied  
9           dedication and acceptance or not. So our  
10          position has not changed. We still believe  
11          there is an acceptance -- I mean, dedication  
12          acceptance on both accounts. Just that  
13          belief -- Mr. Ferrara was answering with the  
14          thought in mind was an expressed dedication  
15          that needed that stamp on that plat to be  
16          dedicated.

17          THE COURT: You acknowledge that that  
18          doesn't exist?

19          MR. MITCHELL: I acknowledge that does not  
20          exist, Your Honor.

21          THE COURT: Okay. All right. I'll just  
22          take it under advisement. Let's just move on.

23          MR. ROBINSON: Thank you, Your Honor. I  
24          hate -- just need to get it on the record.

25          THE COURT: That's fine. Mr. Williams,

1 have you got any dog in that fight?

2 MR. WILLIAMS: No, sir.

3 THE COURT: Very good.

4 MR. OBERMAN: One other housekeeping  
5 matter, Your Honor. That is, I've taken the  
6 liberty -- there is an October 31st, 2011 --  
7 2012 survey and plat done by Johnson, A.Z.  
8 Johnson, surveyor, and I've taken the liberty  
9 of putting that on a board, Your Honor, for  
10 ease of use. That is it, Your Honor.

11 THE COURT: October 31, 2012.

12 MR. OBERMAN: Let me make sure I've got  
13 the date right. October 31, 2011.

14 THE COURT: Eleven. All right, sir.  
15 That's by Mr. Johnson, Steve Johnson?

16 MR. OBERMAN: Yes. And I've also taken  
17 the liberty, for the ease of the Court, to put  
18 the plat, the approved final plat on the board.  
19 Final plat.

20 THE COURT: That's the one from --

21 MR. OBERMAN: 1996.

22 THE COURT: Thank you. Okay.

23 MR. ROBINSON: Your Honor, even though Mr  
24 Oberman got these ready today we have no  
25 objection to these exhibits.

1           THE COURT: That's fine. All right. I'm  
2 working off -- I have a list here from  
3 Mr. Robinson. Number 1, October 31, 2011 --  
4 these are numbered but number 1 is October 31,  
5 2011 plat that we just referenced, and number 4  
6 is the 1996 plat.

7           MR. ROBINSON: I'm prepared to introduce  
8 them of my own accord in my case, not knowing  
9 what specific order Mr. Oberman had these in,  
10 but we'll work it out.

11          THE COURT: Very good. I'll try and  
12 accommodate Mr. Limehouse's schedule, since  
13 he's not going to be here. You sit on that  
14 bench for three days you'll be needing some  
15 back surgery. We'll try to get you past that  
16 point and work from there. I don't want to  
17 take your thunder, though, because I see you've  
18 got at least one expert here, and there was  
19 proposed deposition testimony. I can read that  
20 at any time.

21          MR. OBERMAN: Let me say this, Your Honor.  
22 I've also taken the liberty of having your  
23 ruling from the bench, that's 2010,  
24 transcribed. And I thought I would, with your  
25 permission as Plaintiff's Exhibit A -- reason I

1 put A is that --

2 THE COURT: B's and P's are lost in  
3 translation. I've been schooled by my court  
4 reporter.

5 MR. OBERMAN: Those are -- you've got a  
6 copy. Just as a reminder of what your ruling  
7 was on this, Your Honor, back then in which you  
8 charged us with doing --

9 (pause)

10 THE COURT: All right. I've had a chance  
11 to review that.

12 MR. OBERMAN: Yes, sir. That's brought  
13 you back up to date after three years. The  
14 next thing, Your Honor, would be that --

15 THE COURT: Actually, yes, it is three  
16 years. On page 7 I think I was -- I left  
17 you-all with the prospect of coming up to terms  
18 of an agreement. If the not, come back to me,  
19 so here we are three years later. I'm sure you  
20 have not come to an agreement.

21 MR. OBERMAN: We've tried, Your Honor.

22 THE COURT: So the issue is the location  
23 and the extent of the easement. I made  
24 reference to Mr. Johnson. He's here today.  
25 I'm sure that's what<sup>229</sup>that plat is going to do

1 for us. Of course, some discussion about the  
2 dedicated easement and what the status of it  
3 is. So that's in question. All right.

4 MR. OBERMAN: Your Honor, I also have a  
5 pleading that should be in the file. Exhibit  
6 B. That's -- having Dr. Haynes as a party as  
7 opposed to his IRA or whatever it was.

8 (Whereupon Plaintiff's Exhibit B is marked.)

9 THE COURT: Dr. Haynes would be an  
10 individual defendant? Any objection to that?

11 MR. ROBINSON: No objection.

12 MR. OBERMAN: Dr. Haynes is in Germany,  
13 Your Honor. For your information, the reporter  
14 was Wanda, who was here for years and years.  
15 She just happened to be in Lanstue(phonetic),  
16 Germany.

17 THE COURT: At least she can speak the  
18 language around here. All right. Very good.  
19 So that's B. From there we can go on.

20 MR. OBERMAN: Yes. Your Honor, at this  
21 time Dr. Haynes, as would appear from his  
22 deposition, is involved in treating American  
23 soldiers, male and female, for their wounds  
24 received in Iraq and Afghanistan. We tried our  
25 best to have him her230live. We also tried our

1 best to have a video tape deposition, but for  
2 some reason we could not get a video tape  
3 deposition.

4 Your Honor, I have Dr.~Haynes' deposition  
5 and Plaintiff's Exhibits 1 through 18 that go  
6 with the deposition. I'm going to hand the  
7 original to you, Your Honor, with the exhibits.  
8 Your Honor, I know your druthers would be that  
9 you read that at your leisure, but I'm going to  
10 hold out to you that Dr.~Haynes made such an  
11 impact for a witness that I would like to  
12 substitute my partner, Harold Oberman for  
13 Dr.~Haynes. I would like to ask him the  
14 questions and let you hear Dr.~Haynes'  
15 testimony vicariously. Frankly, I feel his  
16 testimony could very well be dispositive of  
17 this case.

18 THE COURT: Well, I appreciate that. You  
19 know -- you want to make this an exhibit as  
20 well? It should be.

21 MR. OBERMAN: Yes. We can make that C but  
22 exhibits 1 through 18 attached to it ---

23 (Discussion off the record.)

24 THE COURT: Let's just make this C.

25 MR. ROBINSON: 231ur Honor, in whole we

1 have no objection to the admissibility of all  
2 of the testimony of Dr. Haynes, be the  
3 questions hearsay, broken, repetitive whatever.  
4 We have but one objection, Your Honor. That is  
5 that Exhibit 18 is an appraisal that was  
6 furnished outside the Scheduling Order. That  
7 was not Mr. Oberman's fault. Also the expert  
8 who provided that report was not named in  
9 discovery, or a supplemental response to  
10 discovery. So we are fine with you either  
11 having -- read it here in the courtroom or  
12 admitting it in whole, but we would not like  
13 the expert's report to be considered for the  
14 accuracy of the information therein or for any  
15 expert purpose that would be used to establish  
16 damages in the case. If the Court does not  
17 accept that I'm going to have to move to  
18 continue, because I need to take his  
19 deposition.

20 MR. OBERMAN: Your Honor, at the time we  
21 took the deposition we did not know of the  
22 person who did the appraisal. That was brought  
23 to my attention by Dr. Haynes at a later time.  
24 It was outside the discovery Scheduling Order.  
25 I immediately gave a copy of that to

1 Mr. Robinson and I really can't see where it is  
2 detrimental to him. He's had it now for  
3 several weeks, and if he had any question about  
4 it he could have called the appraiser or called  
5 me and asked me some questions about it. I  
6 think it's important, Your Honor, in that  
7 Dr. Haynes testified that his property that he  
8 purchased was for his retirement and that the  
9 choke point put on his property, that's  
10 drastically reduced the value of the property,  
11 so it would go to the special damages that are  
12 argued by Mr. Robinson. We don't have a jury  
13 here. We have you, Your Honor, as the finder  
14 of fact. And I cannot see where there would be  
15 any difficulty with using that for what it is.

16 THE COURT: Let me stop you and just cut  
17 right to the chase. Does Mr. -- Dr. Haynes,  
18 does he give an opinion of value in his  
19 deposition?

20 MR. OBERMAN: He did, Your Honor.

21 THE COURT: He has his own opinion of  
22 value?

23 MR. OBERMAN: Yes.

24 THE COURT: Separate and distinct from his  
25 appraiser?

1           MR. OBERMAN: I think it was based on his  
2           appraiser.

3           THE COURT: Well, as a property owner he's  
4           entitled to give an opinion as to what he  
5           thinks the value of the property is. If  
6           you-all want to establish the value of the  
7           property through the appraiser you're going to  
8           have to get that, in order to get that into  
9           evidence, you'll have to bring the appraiser in  
10          here and subject him to cross examination. So  
11          it is a document attached to a deposition which  
12          is here? I'm not going to give it any wait at  
13          all unless the appraiser comes in here and  
14          testifies and justifies the opinion. But to  
15          the extent that Dr. Haynes owns his own real  
16          estate, he's entitled to give his opinion as to  
17          the value and would be a lay-opinion testimony  
18          as opposed to an expert-opinion testimony.

19          MR. ROBINSON: If I may be -- briefly be  
20          heard? I have no objection to what you have  
21          just said or described with the exception of  
22          believing that Mr. Haynes' opinion would be  
23          based almost entirely on that appraisal that he  
24          has. The other thing is, because of issues  
25          that were discovered<sup>234n</sup> the deposition about

1           the appraisal I think some basic misfactual  
2           assumptions -- my purpose in continuing would  
3           not be to delay. It's because I need to have a  
4           rebuttal witness as to the value of the  
5           property if that's really an issue. So I just  
6           add that to the record, with the objection  
7           about any expert testimony for qualifying value  
8           of the property.

9           THE COURT: All right. I'm with you. All  
10          right. For now my -- that would be my ruling,  
11          though, that it's some evidence but he's  
12          entitled to give his opinion. To the extent  
13          that he relies on an expert, then that's going  
14          to go to the weight of his opinion testimony  
15          and not to the admissibility of it. He's  
16          entitled to give his opinion, therefore, it's  
17          admissible evidence as the owner. I'm assuming  
18          he was cross examined on the record about what  
19          his basis was. To the extent it's some third  
20          party expert, that may need to be presented as  
21          proof at the trial of the case.

22          MR. OBERMAN: Yes, sir.

23          THE COURT: All right. Anything else?

24          MR. OBERMAN: No. I take it Your Honor  
25          does not want us to 235 through the reading of

1 the questions and the answers by Mr. Oberman?

2 THE COURT: Not if you want to have a  
3 chance at winning this case.

4 MR. HARVEY OBERMAN: Thank you, Your  
5 Honor.

6 THE COURT: You're in the ball game. All  
7 right. Thank you Mr. Oberman.

8 MR. HARVEY OBERMAN: Thank you. You-all  
9 have a good week.

10 (Mr. Harvey Oberman exits courtroom.)

11 THE COURT: All right. Mr. Oberman, are  
12 you-all prepared to present live testimony?

13 MR. OBERMAN: Yes, we are, Your Honor.

14 THE COURT: All right, sir. It's 2:30.  
15 Let's go ahead and get started.

16 MR. OBERMAN: I will call Mr. Steven  
17 Johnson as the first witness.

18 THE COURT: If it would help you, because  
19 I know it would help the court reporter, if you  
20 would like to sit -- I can tell you're having  
21 issues with your throat. Might just bring you  
22 closer to the microphone. I'm just offering  
23 it. Standard practice in North Carolina. It's  
24 not the standard practice in this state, but if  
25 it helps you to be 236rd by Mr. Johnson and the

1 court reporter, I'm going to encourage you to  
2 do that, although it would be --

3 MR. OBERMAN: For your information, Your  
4 Honor, I also have had trouble with my legs. I  
5 had those roto rooted out up in Chicago.

6 (Discussion off the record.).

7 (Steven A. Z. Johnson, duly sworn, testifies as follows:)

8 DIRECT EXAMINATION BY MR. OBERMAN:

9 MR. OBERMAN: Mr. Johnson has testified in  
10 this case earlier and I presume you'll  
11 stipulate that he is an expert in the surveying  
12 and --

13 MR. ROBINSON: We have no objection. In  
14 our opinion no qualification is needed as to  
15 Mr. Johnson's skills or his qualification as an  
16 expert.

17 THE COURT: I'll find Mr. Johnson is an  
18 expert. You don't even need to object unless  
19 you have a basis to object.

20 MR. MITCHELL: All right.

21 THE COURT: He's testified in this court  
22 many times as an expert. Glad to have you, Mr.  
23 Johnson. All right, Mr. Oberman, you may  
24 proceed.

25 Q Mr. Johnson, are<sup>237</sup> you familiar with

1 Resurrection Road?

2 A Yes, sir, I am.

3 Q How did you become familiar with  
4 Resurrection Road?

5 A Well, I've known about it for years and  
6 years and years. But I've recently been retained by  
7 you, in 2007 I believe, to do some survey plat  
8 overlays for Resurrection Road.

9 Q Did you do -- before 2007, had you done  
10 work on other plats and -- surveys and plats on  
11 Resurrection Road?

12 A Yes, sir, I have.

13 Q I'm going to show to you a plat dated  
14 October 31st, 2011. Do you recognize that plat,  
15 sir?

16 A Yes, sir, I do.

17 Q Was that done by your concern?

18 A Yes, sir.

19 Q Does it show the road bed of Resurrection  
20 Road going from Betsy Kerrison to back behind Lot 16  
21 or TMS number 16?

22 A Yes, sir, it does.

23 MR. OBERMAN: Do you want a copy of that,  
24 Your Honor?

25 THE COURT: No, I'm fine. Go ahead.

1 Q Mr. Johnson, would you tell the Court what  
2 that survey and plat shows?

3 A This is a sketch, an exhibit, showing the  
4 outlines of several parcels of real estate in  
5 Charleston County on Betsy Kerrison right up from  
6 Kiawah Island; very close to that area. It shows a  
7 25-foot right-of-way and also a -- well, it varies,  
8 10, 12, 13 foot road bed that traverses inside and  
9 outside of the right-of-way, then leaves the  
10 right-of-way and continues on to the east serving  
11 properties behind Resurrection Road right-of-way ;  
12 yes, sir.

13 Q Does that road bed -- is that road bed  
14 about 20, 22 feet at the beginning there on Betsy  
15 Kerrison?

16 A Yes, sir; it is.

17 Q It runs back to the -- I presume it's to  
18 the east back towards TMS number 16 with varying  
19 widths?

20 A Yes, sir, it does.

21 Q Can you point out for the Court where the  
22 road bed intersects with the 25-foot right-of-way,  
23 at what letter?

24 A It starts at Betsy Kerrison, going along  
25 the property of Mason C. Hayward, parcel number 133

1 and then be it comes all the way heading eastward  
2 down to the eastern side of Mr. Heyward's property,  
3 Parcel 133, and starts to intersect there and come  
4 back into the 25-foot dedicated right-of-way.

5 Q Is there a point H shown on that survey  
6 plat?

7 A Yes, sir.

8 Q Is that one of the first points of  
9 intersection?

10 A Yes, it is.

11 THE COURT: That's point H as in Harry?

12 A Yes, sir, Your Honor.

13 Q After it intersects at point H, does it go  
14 into the interior of the 25-foot dedicated  
15 right-of-way?

16 A Yes, sir, it does.

17 Q How far back does it then run? Can you  
18 measure that out?

19 A Well, it runs approximately 298 --  
20 probably about 350 feet.

21 Q It terminates on the land of Ralph L.  
22 Haynes; does it not?

23 A The right-of-way terminates; yes, sir.

24 Q 25-foot?

25 A The 25-foot ri<sup>240</sup>-of-way; yes, sir.

1 Q So what you're saying, sir, is that we  
2 have two things here. We have a road bed that  
3 begins at Betsy Kerrison Parkway, and it runs from a  
4 west to east direction past the property of Mason  
5 Heyward, where it then intersects at point H with  
6 the dedicated right-of-way?

7 A That's correct, sir.

8 Q All right.

9 THE COURT: You want to mark that diagram  
10 or -- I've got -- pulled out the one that was  
11 to Mr. -- Dr. Haynes' deposition.

12 MR. OBERMAN: Right.

13 THE COURT: We can mark that one as well.  
14 Whatever suits you.

15 MR. OBERMAN: Let's mark them both.

16 THE COURT: Call it one -- exhibit one  
17 now.

18 (Whereupon Plaintiff's Exhibit 1 and  
19 Plaintiff's Exhibit 1A are marked.)

20 Q Mr. Johnson, are you familiar as to how  
21 the 25-foot dedicated right-of-way came into being?

22 A Yes, sir. I'm familiar with the plat that  
23 created it; yes, sir.

24 Q And I'm going to show to you, in board  
25 form, a copy of that plat?

1 A Yes, sir.

2 Q You're familiar with that?

3 A Yes, sir.

4 Q And can you explain to the Judge and to  
5 the people here how wide that is, the direction it  
6 runs in and the length that it runs?

7 A This is a plat prepared by Lewis Seabrook  
8 in 1996 that represents and shows the subdivision of  
9 lands owned by Mason Heyward and also the creation  
10 of approximately a half acre .518 of an acre of a  
11 25-foot public dedicated right-of-way.

12 Q All right, sir. Can you see the distance  
13 that runs from west to east?

14 A Yes, sir. It runs from Betsy Kerrison  
15 Parkway in an easterly direction 891.13 feet.

16 THE COURT: What was that number again?

17 A 891.13 feet.

18 THE COURT: Got it.

19 Q If you would look, sir, and see where that  
20 property -- I'm sorry -- that dedicated right-of-way  
21 terminates on the eastern side?

22 A Yes, sir. Here.

23 Q Is that -- when you say here, is that  
24 indicated by letters?

25 A Well, not on this one; no, sir. It's

1 indicated by a calculated point, CP.

2 Q CP?

3 A Yes, sir. Computed point.

4 Q Could you look on Exhibit 1A and see if  
5 you've shown that line on 1A?

6 A Yes, sir, I have. It's point C.

7 Q And the line would be point BC?

8 A BC; yes, sir.

9 Q All right. And that terminus is on the  
10 property of Ralph Haynes?

11 A Yes, sir. Parcel number 017; yes, sir.

12 Q And it passes about midway to the property  
13 of Francis O. Johnson?

14 A Yes, sir; that's correct.

15 Q All right.

16 THE COURT: Yes. Let's mark that one as  
17 well.

18 (Whereupon Plaintiff's Exhibit 2 and  
19 Plaintiff's Exhibit 2A are marked.)

20 Q Were you made aware of how this was  
21 dedicated to the County of Charleston?

22 A Yes, sir; I was.

23 Q Would you give us a summary of what was --  
24 what occurred and how it became?

25 A Well, plat wou<sup>243</sup> have been --

1 MR. ROBINSON: Objection, Your Honor.  
2 Hearsay. He can testify to the documents he's  
3 examined.

4 THE COURT: Based on his knowledge.

5 MR. ROBINSON: Yes, sir. But I can't -- I  
6 mean, you can ask him, but if he wasn't there  
7 he wasn't there.

8 THE COURT: I understand. Based on the  
9 record -- I assume it's a public record, is it  
10 not?

11 A Yes, sir; it is, sir.

12 THE COURT: Go ahead and tell me what you  
13 know.

14 A I have a letter here from Charleston  
15 County Council to Mr. E.M. Seabrook. Mike Seabrook  
16 who is Mike and Lewis' father, as you know. Says --  
17 may I read the, Your Honor? Dear Mr. Seabrook,  
18 County Council at their meeting on May 7, 1996  
19 granted approval of a 25-foot road right-of-way  
20 being dedicated to the public. Resurrection Road  
21 serves as access to approximately 25 acres of  
22 property with high development potential. Very  
23 Truly Yours, Beverly T. Craven, Clerk of Council.

24 THE COURT: Okay.

25 A It references 244 plat we're talking

1 about, Your Honor.

2 THE COURT: The date of that again was May  
3 what?

4 A Date of the letter is May 8, 1996.

5 THE COURT: Got it. Okay.

6 Q Can you see who copies of those letters  
7 were sent to?

8 A Yes, sir. They were sent to the  
9 Charleston County Planning Department, the  
10 Charleston Public Works Department and Mr. Mason  
11 Heyward.

12 Q Did you also review the underlying method  
13 of how it resulted in this letter?

14 A Yes, sir; I did.

15 Q Did you review the minutes of County  
16 Council?

17 A I believe I have read those previously;  
18 yes, sir.

19 Q Can you testify as to what the minutes  
20 show?

21 A Well, not without reading them, counselor.  
22 That was a while ago I read those.

23 Q Would you quickly take a look at it and  
24 see what you can determine from that?

25 (pause)

1 THE COURT: Mr. Oberman, hand me the  
2 board, if you would, please. The small board.

3 MR. OBERMAN: Yes, sir.

4 (Hands up document.)

5 THE COURT: Thank you.

6 A I have them, sir.

7 Q At whose request was the dedicated  
8 easement -- what resulted in that dedicated  
9 easement?

10 A Planning Board committee recommended  
11 approval and Planning Committee recommended  
12 approval.

13 Q Does it give you an idea of who made the  
14 request?

15 A I would say Mr. Mason Heyward.

16 Q Does it say why Mr. Heyward made the  
17 request?

18 (pause)

19 A No, sir. Not specifically. Other than it  
20 was in an effort to facilitate his subdivision,  
21 which is shown on Mr. Seabrook's plat.

22 Q So this dedicated easement?

23 A Right-of-way, sir.

24 Q Right-of-way, I apologize, Right-of-way,  
25 to your knowledge was made<sup>246</sup>at the request of Mr.

1 Heyward?

2 A Yes, sir.

3 Q And it was made through the help of  
4 Mr. E.M. Seabrook?

5 A Yes, sir.

6 Q And Mr. Seabrook went before these various  
7 county offices to request this?

8 A Yes, sir.

9 Q Going back to Exhibit 1A, can you tell how  
10 far down the road TMS number 16 is from the terminus  
11 point of that dedicated easement?

12 A Yes, sir. We have 207 -- approximately  
13 about 825 feet to the beginning of 16.

14 Q So that --

15 THE COURT: Starting from where?

16 A Starting from the terminus, Your Honor, of  
17 the Resurrection Road public right-of-way, which  
18 would be at point CB.

19 MR. OBERMAN: BC.

20 A BC; yes, sir.

21 Q So 16 is, you said, about eight hundred?

22 A Approximately. I'm adding that in my  
23 head.

24 Q Eight hundred feet down?

25 All right, 247 sir. Have you been,

1 personally, on Resurrection Road on occasions?

2 A Many times; yes, sir.

3 Q Is there evidence that it's being  
4 maintained by the County of Charleston?

5 A It's evidence it's being maintained,  
6 scraped and graded.

7 Q Is there a street sign for Resurrection  
8 Road?

9 A Yes, sir; there is.

10 Q Do you have a copy there?

11 A Yes, sir; I do.

12 Q What color is that street sign?

13 A It's green.

14 Q Does the county use a different street  
15 sign for a private roadway?

16 A It's always been my experience that the  
17 blue road signs were indicating a private road and  
18 the green were the public roads.

19 Q Do you have a copy of the blue -- a blue  
20 sign, sir?

21 A Yes, sir; I do. Yes, sir; I have it.

22 Q You have it there?

23 A Sir?

24 Q You have it in front of you?

25 A Yes, sir; I do 248

1 Q And what does that blue sign indicate?

2 A It's indicating Copperhead Trail.

3 Q And it is definitely blue as opposed to  
4 green?

5 A Yes, sir; it's blue.

6 Q Would you -- let's submit the green sign.  
7 Put these two in. Plaintiffs 3A and 3B would be the  
8 green signs.

9 (Whereupon Plaintiff's Exhibits 3A  
10 and 3B are marked.)

11 Q I hand to you what would be Plaintiff's  
12 Exhibit 4A and B.

13 (Whereupon Plaintiff's Exhibit 4 is  
14 marked.)

15 Q Mr. Johnson, does Ms. Craven's letter  
16 indicate the width of the right-of-way?

17 A Yes, sir; it does.

18 Q What does it say?

19 A 25 feet.

20 Q And is that 25-foot width shown on the  
21 survey and plat, that was recorded at the RMC Office  
22 of Charleston County?

23 A Yes, sir; it does.

24 MR. OBERMAN: That's all the questions I  
25 have of this witness. 249 You may ask, of course.

1 THE COURT: Let me give counsel an  
2 opportunity first.

3 MR. OBERMAN: I'm sorry, sir.

4 THE COURT: Mr. Robinson.

5 CROSS EXAMINATION BY MR. ROBINSON:

6 Q Mr. Johnson, thank you for being here  
7 today.

8 A You're welcome, sir.

9 Q Mr. Johnson, are you familiar with a new  
10 program that I would represent to you that's been  
11 created by Charleston County called the  
12 Nonconforming Community Road Standard?

13 A More or less; yes, sir.

14 Q Do you know how many roads in the County  
15 are subject to that standard?

16 A No, sir. I do not.

17 Q Do you know what the criteria are for  
18 whether a road is on that list or not?

19 A No, sir. I do not.

20 Q Have you performed any investigation of  
21 the number of signs in Charleston County that may  
22 have been misallocated, roads that are green that --  
23 roads that are blue that are public, green that are  
24 private?

25 A No, sir. I ha<sup>250</sup>1't.

1 Q Is it possible that there is error in the  
2 designation of those roads?

3 MR. OBERMAN: Your Honor, I'll object to  
4 the form of the question. Anything is  
5 possible, including the moon crashing into the  
6 earth.

7 THE COURT: He's on cross. He testified  
8 about blue and green. He can go into it.  
9 Overruled.

10 Q I'm sorry. Mr. Johnson, I can never  
11 remember my question exactly, but have you done any  
12 personal inspection to determine whether any roads  
13 have been misappropriated or misidentified as green  
14 or blue when presumably we are told a green road  
15 would be public and a blue road would be private?

16 A No, sir. I haven't.

17 Q Have you done any evaluation to determine  
18 if there are any errors in Charleston County as to  
19 whether a road has been misassigned based on the  
20 color of a road sign?

21 A No, sir. I haven't.

22 Q Based on your experience have you ever  
23 seen a private road marked with a sign that was  
24 presumably provided by Charleston County?

25 A I actually have, yes, sir.

1 Q How many times would you say you've seen  
2 that?

3 A Once that comes to recent memory.

4 Q Do you know -- could you tell us --

5 A It was on Edisto.

6 Q Can you recall whether it was a problem  
7 with the sign color or just that a road was -- you  
8 had found a road was identified as public that  
9 should have been identified as private?

10 A Well, it was labeled as public. It was a  
11 green sign and it was obviously a private road.

12 Q What do you say made it obvious?

13 A I did the survey and it's a private road.

14 Q I would like to return you back to Exhibit  
15 1A which you have ably testified about. I would  
16 like to return you to the dimensions of the 25-foot  
17 right-of-way. You're familiar with where that box  
18 is on there?

19 A Yes, sir.

20 Q Just for the record, what are the corner  
21 marks, letter designations on that box?

22 A They start at A and go to B, then C all  
23 the way back to A. I mean -- sorry. To D then to  
24 A.

25 Q So it makes a <sup>252</sup>tangle?

1           A     Yes, sir.

2           Q     You have also previously identified the  
3 existing dirt path of Resurrection Road that people  
4 drive on?

5           A     The traveling surface; yes, sir.

6           Q     Traveling surface. I think that's a good  
7 term. As a matter of fact, you measured the widths  
8 of that road on one or more occasions; right?

9           A     Yes, sir; I have.

10          Q     Can you tell me on the lands in the box  
11 that we have described what the variance of the  
12 width of the road is over that distance?

13          A     It is from about 14 and a half feet to  
14 12 feet to 13 feet to 20 feet to 24 feet at Betsy  
15 Kerrison.

16          Q     Can you identify, just for the record for  
17 me, any road measurement width that is fully outside  
18 the 25-foot right-of-way that is less than 25 feet?

19          A     Less than 25; yes, sir.

20          Q     And would it be a fair representation to  
21 say there are a series of those points?

22          A     Yes, sir.

23          Q     Whose lot would those abut on?

24          A     They abut on Christine -- Clementine  
25 Ravenel and they travers:253ason C. Heyward.

1 Q So there are spots on that road that are  
2 less than 25 feet wide; correct?

3 A Yes, sir.

4 Q I have a follow-up question. Based on  
5 your able drawing of where the existing travel lane  
6 is and where the right-of-way is, are there a gap  
7 where those two do not converge?

8 A Yes, sir.

9 Q And on whose lands is that the case?

10 A That would be on Mason Heyward's land.

11 Q Do you -- again, using your skills as an  
12 expert surveyor and thumb-nailing things for lack of  
13 a better term, could you estimate either the  
14 distance or the square footage of the area that  
15 constitutes the gap between the lands of -- between  
16 the travel lane and the right-of-way described by  
17 box ABCD?

18 A I would estimate 240 feet by probably 8 or  
19 9 feet in that little crescent moon. That's  
20 guessing.

21 Q All right. Now, Mr. Johnson, there are  
22 spots on this plat, this survey, where the dirt road  
23 does converge into the 25-foot right-of-way;  
24 correct?

25 A Yes, sir. 254

1           Q     For the record, could you identify the  
2 parcel on which that occurs?

3           A     It comes into, originally, the -- at the  
4 intersection point of point H on the public  
5 right-of-way. Then comes into the property also of  
6 Mason C. Heyward, parcel 18 adjoining, I guess, his  
7 subdivided lot; his residual portion.

8           Q     And for that section, where it passes into  
9 what you have just described as the residual  
10 portion, I would represent to you where the dirt  
11 road leaves this lot at line BC?

12          A     Yes, sir.

13          Q     You see where I'm pointing you?

14          A     Yes, sir.

15          Q     Does the width of the dirt lane travel-way  
16 traverse the entire 25-foot right-of-way?

17          A     No, sir.

18          Q     You've personally examined this property;  
19 correct?

20          A     Yes, sir.

21          Q     Been on it a few times?

22          A     Yes, sir.

23          Q     If I were to go into the right-of-way  
24 marked in the box ABCD, maybe towards the end marked  
25 AD, what would I find in the right-of-way?

1 A A lot of trees.

2 Q Any of them --

3 A Berm. Yes, some big trees.

4 Q Berm?

5 A A berm; yes, sir.

6 Q Do you know if there are any marshy areas?

7 A I think I did a survey, counselor, that  
8 showed those low areas.

9 THE COURT: You want to show him this,  
10 have him identify it? I think this is it.

11 MR. ROBINSON: Thank you, Your Honor.

12 THE COURT: If you don't ask him I will.

13 Q Let me show you this one the Judge is kind  
14 enough to hand up. Do you recognize this survey?

15 A Yes, sir; I do.

16 Q When did you do this survey?

17 A In April of 2010 and then revised it again  
18 in September of 2010.

19 Q Using the exhibit, which may refresh your  
20 memory, could you identify some of the natural  
21 landmarks one would find in the ABCD box?

22 A There are 13-inch trees, there are double  
23 14-inch trees, there are 12-inch standing -- lots of  
24 trees.

25 Q Using your experience -- have you done any

1 surveying work to aid in the preparation or building  
2 of roads?

3 A Yes, sir; I have.

4 Q In your experience with this, would the  
5 box containing ABCD be an ideal place to place a  
6 road?

7 A Ideal, counselor?

8 Q Yes, sir.

9 A Anything can be cleared and grubbed and  
10 graded.

11 Q You could build a road there?

12 A I can; yes, sir.

13 Q County of Charleston presumably could?

14 A Presumably.

15 Q If the existing dirt travel lane, which I  
16 represent to you appears to be represented by green  
17 shading --

18 A Yes, sir.

19 Q You would agree with that?

20 A Yes, sir.

21 Q All right. If that road was to be widened  
22 out to 25 feet can you identify any natural  
23 landmarks or obstructions that would have to be  
24 removed to widen that?

25 MR. MITCHELL: Objection, Your Honor.

1 He's offered as an expert to be a surveyor not  
2 an engineer.

3 MR. ROBINSON: Your Honor, he can testify  
4 based on where the landmarks are as to whether  
5 he thinks one would have to be moved or not to  
6 build a road.

7 MR. MITCHELL: The way Mr. Robinson  
8 characterizes the question, it asked him to be  
9 an engineer and not a surveyor.

10 THE COURT: What kind of background have  
11 you got in that, Mr. Johnson?

12 A Plan and proposals for 40 years.

13 THE COURT: I think he's qualified.

14 Q Mr. Johnson, the question was if you  
15 widened sections of that road to 25 feet based on  
16 your own survey, are there natural landmarks or  
17 obstructions you could identify that you would have  
18 to remove to widen the road to 25 feet?

19 A Yes, sir.

20 Q Can you identify any of them with  
21 particularity, for the sake of the record?

22 A . 22-inch trees; 11, 12-inch trees, eight  
23 and a half -- a lot of trees.

24 Q Okay.

25 (Discussion off the record )

1           A     It would depend on which side you wanted  
2     to widen, the little traveling surface, to the north  
3     or the south as to what you would encounter. If you  
4     came to the south you would encounter a lot of  
5     trees; as I recall a berm and some low areas.

6           Q     But the County's right-of-way is to the  
7     south?

8           A     That's correct; yes, sir.

9           Q     If you lived to the north would you be  
10    encroaching further onto the land of Mason Heyward?

11          A     Oh, yes, sir.

12          Q     As a matter of fact, in some places, if I  
13    direct you to the road width marked just north of  
14    point I identified on the plat?

15          A     Yes, sir.

16          Q     You see where it says that road width is  
17    14.4 feet?

18          A     Yes, sir.

19          Q     If you took the difference to make up  
20    25 feet on the north side of that road, do you have  
21    any estimate as to whose lot that would come onto?

22          A     That would come onto Mason C. Heyward and  
23    this residual parcel behind it.

24          Q     So that's not just one but two lots?

25          A     Yes, sir.           259

1 Q Okay.

2 MR. ROBINSON: Court's indulgence for just  
3 one moment, Judge.

4 Q Mr. Johnson, not to put too fine a point  
5 on it, earlier Mr. Oberman asked you a question  
6 whether it appeared the road had been maintained by  
7 the county. I believe you have said there was  
8 evidence of the road being maintained. Is that a  
9 yes?

10 A Yes, sir.

11 Q But do you have any first-hand personal  
12 knowledge that the actual road bed is being  
13 maintained by the county?

14 A I have never seen a county machine on the  
15 road; no, sir.

16 Q Okay.

17 MR. ROBINSON: Those are all the questions  
18 I have, Your Honor.

19 THE COURT: Mr. Mitchell.

20 CROSS EXAMINATION BY MR. MITCHELL:

21 Q You testified that you've done some  
22 profiling for road beds and that sort?

23 A Yes, sir.

24 Q Is it unusual when you have a 25-foot  
25 right-of-way to put a road bed that's 25 feet?

1 A No, sir. Absolutely not.

2 Q Are there times where the road bed is  
3 narrower than the --

4 A Speak up, please, sir.

5 Q Are there times when the road bed is  
6 actually narrower than the right-of-way itself?

7 A Yes, sir.

8 Q There are times where the -- there will be  
9 right-of-way where there is no road bed; is that  
10 correct?

11 A That's correct.

12 MR. MITCHELL: Thank you, Your Honor.

13 MR. WILLIAMS: No questions, Your Honor.

14 THE COURT: Mr. Oberman.

15 MR. OBERMAN: Yes, sir.

16 REDIRECT EXAMINATION BY MR. OBERMAN:

17 Q Mr. Johnson in your investigation did you  
18 determine at whose request the 25-foot right-of-way  
19 was made?

20 A My investigation, from the review of the  
21 documents that I have in my possession, would  
22 indicate that it was done by Mr. Mason Heyward.

23 Q All right. He was the man who said the  
24 25-foot right-of-way would be between points ABC and  
25 D, I believe it is?

1           A     Yes, sir.

2           Q     Sir, in looking at the survey and plat in  
3 the red and green, I don't have a number on this --

4           THE COURT: We didn't mark that? We  
5 better.

6                     (Whereupon Defendant's Exhibit A is  
7 marked.)

8           Q     Mr. Johnson, you testified that there was  
9 some residual between the road bed and the 25-foot  
10 dedicated right-of-way?

11          A     Yes, sir.

12          Q     And I think you testified it was about  
13 8 feet wide?

14          A     Yes, sir.

15          Q     And 200 and some --

16          A     Some odd feet long.

17          Q     All right. Would that be of any use to  
18 Mason Heyward if that was incorporated into a  
19 25-foot right-of-way?

20          A     I don't see any benefit to Mr. Heyward;  
21 no, sir.

22          Q     That's a piece of residual that's just  
23 sticking out there with no connection to Mr.  
24 Heyward's property?

25          A     It's connected<sup>262</sup> cause it's on his

1 property, but it's more or less land locked; outside  
2 of the road bed.

3 Q All right, sir. And going to point H?

4 A Yes, sir.

5 Q Does it show the distance between the  
6 25-foot right-of-way and Mr. Heyward's home?

7 A It shows from his garage to the northern  
8 side of the existing traveling surfaces to  
9 dimensions to the front of his garage.

10 Q So there is dimensions of the existing  
11 travel road and it shows 57.3 feet to the west; does  
12 it not?

13 A No, the north; yes, sir.

14 Q I apologize. And then the other corner is  
15 55.2?

16 A That's correct. sir.

17 Q So increasing that travel lane into the  
18 25-foot dedicated right-of-way would not encroach  
19 further into Mr. Mason Heyward?

20 A No further into his property; no, sir.

21 Q Than it is now?

22 A That's correct, sir.

23 Q All right, sir. And even if it did  
24 encroach it would still be some 50, 55 feet away  
25 from his garage?

1 A At least yes, sir.

2 MR. OBERMAN: That's all the questions I  
3 have at this time.

4 THE COURT: Okay. Let me -- I think I'm  
5 clear on that. Let me throw one more thing  
6 into the pictures, might be worth while. Mr.  
7 Oberman would you hand him this photograph,  
8 aerial photograph of that area? Let's mark  
9 that. You want to mark that Defendant's B. Is  
10 that A, you've got B.

11 MR. ROBINSON: Fine Your Honor.

12 THE COURT: It's number 7 to Dr.~Haynes'  
13 deposition is what it is. So if it's intended  
14 to come in that way we can do -- number it that  
15 way.

16 MR. OBERMAN: Let's show it Exhibit 7 to  
17 Dr.~Haynes, now as additionally when we say C  
18 to --

19 THE COURT: That's Defendant's A. Let's  
20 make that Defendant's B.

21 (Whereupon Defendant's Exhibit B is  
22 marked.)

23 THE COURT: What we've handed you, Mr.  
24 Johnson, is what's been marked as Defendant's  
25 B. That's an aeri<sup>a</sup> photograph of that

1 Resurrection Road area.

2 A Yes, sir.

3 THE COURT: And I don't know when that  
4 photograph was taken. I can't answer that. I  
5 don't have any evidence for it. But what I ask  
6 you -- what I'm asking about is it has to do  
7 with the road itself, and you testified from  
8 the Defendant's A there were trees along the  
9 roadway.

10 A Yes, sir.

11 THE COURT: Is there any -- do you see  
12 those trees in what would be Resurrection Road?

13 A Oh, yes, sir.

14 THE COURT: And how far back do those  
15 trees run? Do they run to point H or further  
16 past that?

17 A Yes, sir. They run all the way up to F  
18 and beyond.

19 THE COURT: Okay.

20 A Which is past Mr. Heyward's property.

21 THE COURT: They run on past Mr. Heyward's  
22 property.

23 A Yes, sir.

24 THE COURT: Past B and C?

25 A There is some spotty trees there; yes,

1 sir.

2 THE COURT: Okay. Well, Mr. Johnson's  
3 property starts at point F as in Frank.

4 A Yes, sir.

5 THE COURT: Are there trees in that  
6 dedicated 25-foot right-of-way called  
7 Resurrection Road?

8 A Yes, sir.

9 THE COURT: To that point?

10 A Yes, sir.

11 THE COURT: Any indication those trees  
12 have been removed or altered or a roadway built  
13 in that section of the roadway?

14 A Not that I can tell from this, Your Honor.

15 THE COURT: All right. So the  
16 improvements that took place would have been  
17 north of that side of the dedicated  
18 right-of-way.

19 A Yes, sir.

20 THE COURT: All right. And then -- so  
21 let's go past F and let's go to C which looks  
22 to be in the middle of Mr. Johnson's property  
23 and ask -- let me ask you the same question.  
24 Are there trees in that section?

25 A Yes, sir.

1 THE COURT: Have they been altered or  
2 moved in any way you can see from the  
3 photograph?

4 A Not that I can see from the photo; no,  
5 sir.

6 THE COURT: Any roadway built in that  
7 section?

8 A No, sir. Not in the right-of-way part.  
9 The little dirt road does continue on, the little  
10 traveling surface.

11 THE COURT: I can see -- I can't recall  
12 exactly where it was but the entire maintained  
13 roadway fits within the 25-foot right-of-way  
14 somewhere along in that area, if I'm not  
15 mistaken. Somewhere between F and BC; correct?

16 A Yes, sir. At B and C; yes, sir. It's all  
17 inside the right-of-way.

18 THE COURT: Clearly inside the  
19 right-of-way.

20 A Yes, sir.

21 THE COURT: And from there on out there  
22 are no further problems with trees or roadways  
23 or berms or marsh or anything like that?

24 A No, sir. Not that I noticed.

25 THE COURT: Okay. But having both been on

1 the ground out there and based on that aerial  
2 and then your representation from Exhibit A,  
3 Defendant's A, no evidence of any change or  
4 alteration to the landscape from Betsy Kerrison  
5 roadway back to, basically, point BC.

6 A No, sir.

7 THE COURT: Okay. All right. Thank you.  
8 That's all I've got. You-all are welcome to  
9 inquire further.

10 MR. OBERMAN: I have no further questions,  
11 Your Honor.

12 MR. ROBINSON: I have none, Your Honor.

13 MR. MITCHELL: I have none, Your Honor.

14 THE COURT: All right. Mr. Williams.

15 MR. OBERMAN: Can Mr. Johnson be excused?

16 THE COURT: I would bet he would like to.  
17 Mr. Johnson, see if you can't go make a living.

18 A Thank you, sir.

19 THE COURT: Let's take about two minutes  
20 and then the court reporter needs to take a  
21 break. It's 3:15. Let's take about a five  
22 minute break. We'll come right back.

23 (Short break.)

24 (Julien Sidi Limehouse, III, 3205 Resurrection Road, Johns  
25 Island, S.C. 29455, duly sworn, testifies as follows:)

1 THE COURT: Mr. Oberman.

2 DIRECT EXAMINATION BY MR. OBERMAN:

3 Q Mr. Limehouse, I think we're on a first  
4 name basis now, so you don't mind if I call you  
5 Sidi?

6 A That would be fine.

7 Q I believe we took your deposition some  
8 months ago; is that correct?

9 A Yes, sir.

10 Q Mr. Limehouse, you do not own the property  
11 at tax map number 16; do you?

12 A No.

13 Q That property is a good quarter to a half  
14 mile down the road from where the dedicated  
15 right-of-way ends; is it not, sir?

16 A That's a little far. It's probably closer  
17 to a quarter of a mile.

18 Q All right, sir. And so for two reasons  
19 you don't have much interest in this lawsuit; do  
20 you?

21 A Oh, yes.

22 Q You don't own the property, you are far  
23 removed from what we're talking about. What  
24 interest do you have in whether Dr. Haynes has a  
25 right-of-way or Mr. John<sup>269</sup> has a right-of-way?

1           A     I don't have any interest at all in that.  
2     But I have an interest in where I live. That's  
3     where I live.

4           Q     You've been interested in buying  
5     Dr.~Haynes' property; have you not?

6           A     No, sir.

7           Q     You've not approached Dr.~Haynes and said  
8     if you want to sell this property --

9           A     Let me explain something to you.

10          Q     Oh, yes. Go right ahead, sir.

11          A     I rent Dr.~Haynes' property. I plant  
12     crops on it. And we talk. He's in Germany. He's  
13     been there for years. He's been in Germany as long  
14     as I've been on that property. Okay? He's a  
15     general in the Army. A general in the -- some  
16     hospital, probably runs the hospital. I don't  
17     really know. But I do know this. We have a cordial  
18     relationship. All right?

19                     Because he comes by there and the  
20     three, four times he's been there and he's commented  
21     about something that I might have on the property,  
22     like I had an 18-wheeler trailer. Commented about  
23     that. He didn't have any problem with that. One  
24     time I had some debris piled up to burn. He  
25     commented about that. He didn't have any problem

1 about that. He had a very low place in one of the  
2 fields and I filled it in with dirt, and he was  
3 appreciative of that, so we've had a good  
4 relationship.

5 And one day I was talking to him. I  
6 said, if you ever want to get rid of this place let  
7 me know. Because it's around the yard where I live.  
8 The property I live on is bordered by his property.  
9 And anybody would have an interest in keeping, as a  
10 farmer, keeping it from being whatever. Just it's  
11 right there at my driveway. That's the only -- I've  
12 never -- I wouldn't have the money anyway. Doesn't  
13 really matter if he wanted to sell it. Somebody  
14 could buy it. But that was -- just casually asked  
15 him if he was going to sell it, to let me know.

16 Q Dr. Haynes did have some objections to the  
17 18-wheelers you had on his property; did he not?

18 A No.

19 Q He's never mentioned to you that he rented  
20 it to you to farm not to store derelict trailers and  
21 such?

22 A They are not derelict trailers. You're a  
23 lawyer, I'm a farmer, okay? We have things to  
24 store. Baskets, containers and stuff, and the  
25 trailer was there. The trailer was there, is there

1 and he has never said anything about it. He asked  
2 me what was in it, or -- whatever. I don't remember  
3 exactly what he said. It was not animosity at all.  
4 Did not ask me to move the trailer. Did not say it  
5 was unsightly on his property because, actually, the  
6 trailer is right next to my house.

7 Q How did you get that trailer onto that  
8 property, Mr. Limehouse?

9 A Pulled it with a tractor.

10 Q So you pulled a trailer down that road  
11 with a tractor?

12 A Yes.

13 Q The road was wide enough for you to get  
14 the tractor down there and get that trailer down  
15 there?

16 A It's wide enough, yes.

17 Q All right, sir. And the point of  
18 contention that we're talking about, the entrance to  
19 his property at line BC is a good quarter of a mile  
20 away from where you live?

21 A It's some distance. I don't know what it  
22 is.

23 Q So going onto his property at line BC  
24 would have no adverse effect on your property; would  
25 it, sir?

1           A     I don't know where you're going but, no,  
2     it would have no adverse effect on my property. I  
3     don't exactly know where his property starts. I  
4     just rent the twenty acres from him. I think it's  
5     about twenty acres which I gave him -- I give him  
6     minimal about \$20 an acre a year for it, and he just  
7     wants to keep it agricultural so he doesn't have to  
8     pay --

9           Q     I'm going to show you line BC on what has  
10    been marked as Plaintiff's Exhibit 1A. Do you see  
11    that line BC?

12          A     Yes, sir.

13          Q     That would be the end of the 25-foot  
14    dedicated right-of-way; would it not, sir?

15          A     See, I don't know anything about that.  
16    You're talking to somebody who uses the road. There  
17    is a dirt road, one-lane dirt road and when I bought  
18    that piece of property in the back I knew I had to  
19    come through M.C. Heyward's property and I knew that  
20    I had an agreement between Betsy Kerrison and M.C.  
21    Heyward that I could use that road. And other than  
22    that I didn't have any interest at all. I don't  
23    care where this line is, where that line is, where  
24    this stops where this -- I know that I plant these  
25    fields. I plant these f273.ds, and I know

1 approximately where Mr. Johnson's property is and --

2 Q All right, sir.

3 A That's it.

4 Q Follow me. Line BC is, as we say in  
5 Charleston; right chere(phonetic). If you go from  
6 line BC down to point K, that looks like a  
7 733.33 feet; is that correct, sir?

8 A I don't have any idea how long it is. If  
9 you say it's that, I'll agree with you.

10 Q Then you would have a jag off of some  
11 114.7 feet?

12 A Yes.

13 Q So your property or actually the property  
14 of Ms. Bennet is a good 800 feet away from the end  
15 of the 25-foot right-of-way; is that correct, sir?

16 A I could take you there now and I could ask  
17 you, Mr. Oberman, show me B and C. And I defy you,  
18 you couldn't do it. Okay? Because there is nothing  
19 there that says this point on the ground is B and C.  
20 I can see on this map about where it is. You know,  
21 sure. But --

22 Q You don't think Mr. Johnson put in any  
23 survey markers at BC, is that what you're saying?

24 A I'm sure he put survey markers there, but  
25 I don't know where they are. There is no flags or

1 anything visible that I know of.

2 Q So you've taken it upon yourself to come  
3 in and object to Mr. Johnson here developing his  
4 property, which is further down, a thousand feet  
5 away?

6 A No, no, no, no. You're going off on -- in  
7 the wrong direction.

8 Q All right, sir.

9 A I come here supporting my friend.

10 Q Your friend is?

11 A Mr. Heyward.

12 Q Mr. Heyward. All right.

13 A Also come here supporting the road as it  
14 is. Because my understanding was -- my  
15 understanding still is that the road goes through  
16 Mr. Heyward's yard, and I have to have permission  
17 and I have permission to drive through his yard.

18 Q Now, you're here to support Mr. Heyward,  
19 Mason Heyward; are you not?

20 A Yes, sir.

21 Q And you and he got together to try and buy  
22 Mr. Johnson's property; did you not?

23 A If you were a younger man I would come off  
24 of this stand.

25 Q Yes, sir.

1           A     Okay? What the hell are you saying? Are  
2 you accusing me of getting together -- I've never  
3 talked to Heyward about that. All right?

4           Q     All right, sir.

5           A     Never talked to Mr. Johnson about it. I'm  
6 not -- I'm a farmer. I'm not into the land stealing  
7 business or the land development business or any of  
8 those things. What are you getting at? Are you  
9 trying to -- you know, you shouldn't do that. I'm  
10 telling you right up.

11          Q     Tell me when you're finished, sir.

12          A     I'm finished.

13          Q     You're finished. All right, sir.

14                     It's your testimony here today that  
15 your testimony at a previous hearing and your  
16 testimony here today is to support your friend Mason  
17 Heyward?

18          A     Not entirely, no.

19          Q     All right, sir. To?

20          A     It's also to protect Ms. Bennet's land.

21          Q     Who, sir?

22          A     Ms. Bennet's land.

23          Q     Ms. Bennet's land is number 16; right?

24          A     Correct.

25          Q     And we think we aid a quarter of a mile

1 away from the point of entry to Dr.~Haynes'  
2 property. Sound about right, sir?

3 A Sounds about right.

4 Q All right, sir. You feel that Dr.~Haynes  
5 has a right to use his property, as a landowner?

6 A My understanding -- I don't know.  
7 Dr.~Haynes obtained the land from Ms. Becket. And  
8 she had the same right to use the road as I did. So  
9 Dr.~Haynes has the same right to use the road as I  
10 do.

11 Q What is your understanding of your right  
12 or Ms. Bennet's right to use the road, sir?

13 A To come and go.

14 Q Do you know the difference between an  
15 easement in gross and an easement appertinent?

16 A Quite frankly, no.

17 Q All right, sir. Do you know that  
18 Ms. Bennet does not have an easement to use that  
19 road, a written easement?

20 MR. ROBINSON: Objection. Calls for legal  
21 conclusion.

22 A I think she has that, sir.

23 THE COURT: What's the purpose? Where are  
24 we going?

25 MR. OBERMAN: T<sub>277</sub> purpose is that

1 Ms. Bennet is land locked and --

2 THE COURT: I don't know if I agree with  
3 that. There is some sort of right-of-way out  
4 there that's dedicated across somebody named  
5 Smith property. Resurrection Road doesn't  
6 touch that either. I guess that's another  
7 lawsuit for another day.

8 MR. OBERMAN: That dead ends in  
9 Mr. Johnson's property.

10 THE COURT: Mr. Johnson's and Ms. Bennet's  
11 property.

12 MR. OBERMAN: Correct. And the easement  
13 that he's depending on is an easement given to  
14 a Mr. Kerrison.

15 THE COURT: Wasn't there some written  
16 easement agreement we discussed at the previous  
17 trial of this thing?

18 MR. OBERMAN: That is correct, Your Honor.

19 MR. ROBINSON: There is, and to the extent  
20 the Court needs the information, all this has  
21 been in the record and, I think, the specific  
22 testimony Mr. Oberman is seeking to elicit  
23 calls for a legal conclusion about the  
24 definition of easement, scope of easement,  
25 whatever. I would <sup>278</sup> he can show him the

1 document if that would be helpful.

2 MR. OBERMAN: I'd be glad to show him the  
3 document, Your Honor, but I'm not going too far  
4 with this. All I'm saying is that  
5 Mr. Limehouse has taken it upon him to ally  
6 himself with Mr. Mason Heyward which is a part  
7 of the cause of action for a conspiracy, Your  
8 Honor.

9 THE COURT: I understand.

10 MR. OBERMAN: And that he's under the  
11 misconception, as is Ms. Bennet, that she  
12 somehow got grandfathered into the personal  
13 easement in gross given to Mr. Kerrison.

14 THE COURT: I think that calls -- I think  
15 that does call for a legal conclusion. All  
16 right.

17 MR. OBERMAN: I will go into that further  
18 with her.

19 THE COURT: All right.

20 Q Mr. Limehouse, this whole thing is about  
21 money; is it not?

22 A Maybe your part is about money. Mine is  
23 not.

24 Q Do you know that Mr. Mason Heyward has  
25 always wanted money or compensation for the use of

1 that dedicated easement and that prescriptive  
2 easement?

3 A He's never mentioned it to me. No.

4 Q All right, sir. Aren't you helping him to  
5 squeeze money out of Mr. Johnson?

6 A You baffle me. What's he doing? Telling  
7 Johnson if you want to cross my property you pay me?  
8 Is this what he's doing?

9 Q That's part of what he's doing, yes.

10 A I don't know anything about that, if he's  
11 doing that. That's between you and somebody else.  
12 Not me.

13 Q All right, sir. Have you talked with  
14 Mr. Frank Johnson about buying his property?

15 A No, sir.

16 Q Would you want to buy his property?

17 A No, sir.

18 Q Why is that, sir?

19 A It's poor land.

20 Q I see.

21 A If I want to buy a piece of property it's  
22 got to be suitable for agricultural crops. His --  
23 the majority of his land is not.

24 Q But you object to him building houses on  
25 his land?

1           A     I don't object to him building houses on  
2 his land. But I do object to where I see this  
3 going, okay? Taking the road, and on five acres of  
4 land back in there, putting eleven houses, is what I  
5 understand, and you know more about this than I do,  
6 because the person who is trying put to in eleven  
7 houses is probably paying your bill, not Mr.  
8 Johnson. Some developer is probably paying this  
9 bill. That's fine. Things happen. But eleven  
10 houses on five acres with all the infrastructure,  
11 with sewage, being septic tanks, what do you think  
12 it's going to do to the value of any of that  
13 property back there? These are not mansions.

14           Q     Mr. Heyward's house is a mansion; isn't  
15 it?

16           A     It's a mighty big house.

17           Q     I think he's testified that it's worth  
18 between 2 million and four million dollars. Does  
19 that sound about right?

20           A     I would say if he had to build that house  
21 today it would probably cost you a little more than  
22 that.

23           Q     More than four million?

24           A     No. He's right across the creek. They  
25 get -- you go see what th<sup>281</sup> get a square foot

1 building a house on Kiawah and it's right across the  
2 creek.

3 Q I see.

4 A He's got a mighty big house. I don't know  
5 how many square feet it is, but it's --

6 Q So any houses built on the property of  
7 Francis O. Johnson would have little to no effect on  
8 your property or Ms. Bennet's property; would it?

9 A Oh, sure it would.

10 Q And why is that, sir?

11 A Because you can't put eleven houses back  
12 in there without putting a county road in there,  
13 okay? And expanding, whatever it is, 25 feet,  
14 50 feet. I don't know what's the requirement for a  
15 subdivision. That's what you're talking about, a  
16 subdivision. All right? Sure it would effect it.

17 Q His property is not near your property, is  
18 it, or Ms. Bennet's property?

19 A What do you call near? It's not near --  
20 it's near my property on Johns Island, but if it was  
21 downtown it wouldn't be near, okay? Near is one of  
22 these nefarious words.

23 Q Can we agree that a quarter of a mile is  
24 an estimate we can live with?

25 A No, it's not that far.

1 Q It's not that far?

2 A Because of the lay of the land it's not  
3 that far.

4 MR. OBERMAN: I think that's all the  
5 questions I have of this witness.

6 CROSS EXAMINATION BY MR. ROBINSON:

7 THE COURT: All right, Mr. Robinson.

8 MR. ROBINSON: Thank you, Your Honor.

9 Q Mr. Limehouse, I don't want to rehash your  
10 previous testimony with the Court, but I want to ask  
11 you some questions about the road and the nature of  
12 the area.

13 What is -- how would you describe the  
14 property access by Resurrection Road?

15 A A country road.

16 Q Would you describe the nature of the  
17 property abutting onto it as agricultural?

18 A Yes.

19 MR. OBERMAN: Your Honor, I'll object.  
20 This is his witness.

21 MR. ROBINSON: Mr. Oberman had wide  
22 latitude to ask leading questions. I'm merely  
23 trying to do this for brevity sake.

24 THE COURT: Keep it short. We'll go  
25 forward.

1 MR. ROBINSON: Yes, sir.

2 Q How long have you been familiar with  
3 Resurrection Road?

4 THE COURT: Don't open up that can of  
5 worms. I'm going to object to that one.

6 (Laughter)

7 THE COURT: He ain't going there.

8 A I'll say 50 years.

9 Q How long have you lived on the property at  
10 the end of that road?

11 A Twelve years.

12 Q What's your relationship with Ms. Bennet?

13 A We've been together for 45 years.

14 Q Fair to say that you are concerned about  
15 issues effecting her property?

16 A Sure.

17 Q Is it your opinion that building a sub  
18 development on this property would change the nature  
19 and character of the area?

20 A 100%.

21 Q How's that?

22 A Well, it would degrade the property. I'm  
23 a farmer. And she is a farmer. And part of the  
24 land we farm is all around us. We farm everybody's  
25 land in there but Mr. Joh<sup>284</sup>n's, because his is

1 grown up and trees and bushes and stuff.

2 Q Is it called -- have you done any analysis  
3 to look and see if it would cost you more to buy  
4 Dr.~Haynes land as opposed to rent Dr.~Haynes land?

5 A I would much rather rent it. I pay \$20 an  
6 acre which is about --

7 THE COURT: Put that little thing on the  
8 end of it. That will help.

9 (Discussion off the record.)

10 A It's 20 acres and I pay him \$20 an acre  
11 which is 400 a year. Of course if he --

12 Q Cheaper than a mortgage payment, than if  
13 you bought that property; right?

14 A And I'm not of an age to make a mortgage  
15 payment anyway. I have no interest in buying the  
16 land. Only reason I asked him about it, casually --

17 THE COURT: One minute.

18 MR. OBERMAN: I object on two basis'.  
19 Number one, I tried very hard not to go back  
20 into testimony that previously was before you.  
21 And I tried very hard not to ask leading  
22 questions. And I would ask --

23 MR. ROBINSON: I'll work on the leading,  
24 Your Honor, but this, Mr. Haynes' property, was  
25 not subject to your previous rulings.

1 THE COURT: All right. Go ahead. You can  
2 object again. Take me right back to where you  
3 want to be, Mr. Robinson. Take me right there.

4 Q Have you done any analysis to give your  
5 lay opinion as to what the property, Dr.~Haynes'  
6 property is worth?

7 A No. Really, I know what it's worth  
8 agriculturally but I don't know what it's worth to a  
9 developer or somebody who -- I -- that's just not my  
10 area of expertise.

11 Q Now, to quote what -- something you said  
12 to Mr. Oberman earlier. Did you approach Dr.~Haynes  
13 about buying his lot from him?

14 A Absolutely not.

15 Q Did you have a discussion with him about  
16 buying the lot if it ever came up for sale?

17 A I told him if he ever -- it ever came up  
18 for sale I would be interested in talking to him  
19 about it.

20 Q You didn't make him an offer?

21 A No, sir.

22 Q Did you obtain a realtor?

23 A No, no.

24 Q Did you obtain an appraisal on his  
25 property?

1           A     No, sir. It was just a casual  
2 conversation. It was just -- that's all it was;  
3 bottom line.

4           Q     Do you recall when that was?

5           A     Four, five years ago. I mean, I just -- I  
6 don't know. I don't have any idea.

7           Q     How often do you talk to Mr. Haynes?

8           A     Once or twice a year.

9           Q     I believe you said earlier you described  
10 your relationship with Dr. Haynes as cordial?

11          A     Yes.

12          Q     Ever had a conflict with him?

13          A     No, sir.

14          Q     Do you bear any personal malice towards  
15 him?

16          A     No.

17          Q     How long have you known Mason Heyward?

18          A     Fifty years. Well, seventy.

19          (Laughter)

20          Q     Have you been served with any pleadings in  
21 this action?

22          A     What do you mean?

23          Q     Has anyone served you with a Summons and  
24 Complaint in this?

25          A     Oh, yes, yes.

1 Q Summons and Complaint or subpoena?

2 A I'm a farmer.

3 MR. OBERMAN: Your Honor --

4 A I got a letter in the mail said I had to  
5 come to court. I had to go to, what do you call it,  
6 a deposition.

7 THE COURT: I think it's a matter of  
8 judicial notice. He is not a party to the  
9 action.

10 MR. ROBINSON: Just ask --

11 THE COURT: He's here today and I assume  
12 he gave a deposition previously. That might  
13 have taken a subpoena.

14 Q Have you ever had any conversation with  
15 Mason Heyward about purchasing the property of Ralph  
16 Haynes?

17 A No.

18 Q How about the property of Frank Johnson?

19 A No, absolutely not.

20 Q Have you ever appeared at a County Council  
21 or other governmental meeting to protest the  
22 development of Resurrection Road?

23 A No.

24 Q Do you recall receiving a letter in March  
25 of 2012 from Charleston County about something

1 called the Community Nonconforming Road Standard?

2 A Yes, sir.

3 Q Do you recall what that letter asked you  
4 to do or not do?

5 A The letter asked me to -- the purpose of  
6 letter was to -- the County was trying, I assume,  
7 trying to lower their financial obligation to take  
8 care of roads, and they were trying to take some of  
9 the roads out of their jurisdiction, at least  
10 clarify whether they were or not being taken care of  
11 by the county.

12 Q I show you a copy of what I represent to  
13 be a similar form letter, even though this one  
14 wasn't sent.

15 MR. MITCHELL: May I have a chance to take  
16 a look at what's purported to be a County  
17 writing?

18 THE COURT: Sure.

19 (pause)

20 Q Does that letter look familiar to you?

21 A Yes, sir.

22 Q Is that the same or similar to a letter  
23 that you received?

24 A Yes, sir.

25 Q All right. And the letter, does the

1 letter say if you object to the Community Road  
2 Standard -- well, direct your attention to paragraph  
3 4. Could you read the first sentence of that  
4 statement?

5 A Unless you notify the County in writing at  
6 the above listed address within 90 calendar days  
7 from the date of this letter that you disagree and  
8 are opposed to these actions, the County will  
9 proceed with this contingent maintenance and  
10 improvements under its public roads maintenance  
11 system.

12 Q Did you respond to that letter?

13 A Yes, sir.

14 Q How did you respond to that letter?

15 A I responded that I would take care of the  
16 road myself.

17 MR. ROBINSON: This is Defendant's 8  
18 marked out of sequence.

19 THE COURT: Is that Mr. Heyward or Equity  
20 Trust?

21 MR. ROBINSON: This one is Equity Trust.  
22 Defendant's 7.

23 (Whereupon Defendant's Exhibit 7 is  
24 marked.)

25 Q Mr. Limehouse, 290w did you respond to this

1 letter?

2 A I don't remember exactly how I responded  
3 to them but I talked to M.C. and I had talked -- I  
4 think I talked to you and I talked to all of the  
5 neighbors on the road, which there are three or four  
6 others, and we all agreed that we would take care of  
7 the road ourselves, and I maintain it anyway. I  
8 mean, I will maintain. I have been maintaining it  
9 forever, since I've been there. I've put in  
10 culverts, haul dirt, and the county has done work  
11 there, too, but I would say the road is in really  
12 excellent condition, because I take care of it.

13 Q Now, you received this letter even though  
14 Mr. Oberman says you don't live on the Resurrection  
15 Road right-of-way; correct?

16 A Yes.

17 Q Would the County's determination of what  
18 to do with Resurrection Road effect you?

19 A Yes.

20 Q How would it effect you?

21 A Well, if they came in there and widened  
22 the road and made it a public road it would  
23 certainly open it up to all kinds of traffic which  
24 nobody has any right to come down there. But you  
25 know, that's --

1 Q Is there any difference in your mind  
2 between Mr. Johnson developing and widening this  
3 road and the County developing and widening this  
4 road?

5 A I guess not. I mean, you know, it's -- I  
6 guess you have to own the road before you have at  
7 least a right-of-way before you can expand it or  
8 take it into a subdivision. You know?

9 Q You said in your testimony to Mr. Oberman  
10 that you were here to help your friend; is that  
11 correct?

12 A Yes.

13 Q That was Mason Heyward?

14 (Witness nods affirmatively.)

15 Q Have you had any meetings with Mason  
16 Heyward to discuss this case?

17 A We pass in the road sometimes and -- no,  
18 no meetings, none whatsoever.

19 Q Just to be clear, have you had any  
20 meetings with Mr. Heyward about buying Mr. Johnson's  
21 or Mr. Haynes' land?

22 A Absolutely not.

23 Q Have you ever appeared at a -- at any  
24 meeting or undertaken any legal proceeding on Mr.  
25 Heyward's behalf?

1 A No.

2 Q Have you ever been an agent or power of  
3 attorney for Mr. Heyward?

4 A No, sir.

5 Q Are you attempting to damage the value of  
6 Ralph Haynes' property?

7 A The economy has done that, no.

8 Q You don't bear Mr. Haynes any ill will?

9 A No, none whatsoever.

10 Q Do you desire to take any of Mr. Haynes'  
11 rights from him?

12 A No.

13 Q Have you undertaken any acts to take  
14 Mr. -- Dr. Haynes' rights from him?

15 A No.

16 Q How about Frank Johnson?

17 A No.

18 Q Mr. Oberman alluded to your previous  
19 appearance in this case of 2010. I represent to you  
20 you voluntarily appeared in that case because you  
21 were not served with a subpoena. Why did you  
22 voluntarily appear at that case?

23 A Because I was interested in the case, and  
24 I was interested in resolving the whole thing in Mr.  
25 Heyward's favor.

1 Q Did you do that because you wanted to  
2 violate the rights of Mr. Johnson or Mr. Haynes?

3 A No, no.

4 Q Even if the property value of Dr. Haynes  
5 was diminished do you believe you're in financial  
6 circumstances to be able to buy his property?

7 A No.

8 Q How about Mr. Johnson's?

9 A No. If I was 25, 30 years old I might  
10 look at it differently, but at my age I ain't buying  
11 nothing.

12 Q Recently your stand relocated; correct?

13 A Yes, sir.

14 Q Did you have the option to buy a new piece  
15 of property to place your stand on?

16 A I had several people talk to me about  
17 putting a stand on their property. Yes, I had --  
18 eight or ten really.

19 Q Did you buy a piece of property to put  
20 your stand on?

21 A No.

22 Q Why not?

23 A Well, it was not in the right location and  
24 it was a matter of finances.

25 Q If further development along Resurrection

1 Road is undertaken, residential development, would  
2 it be fair to say that would impact your  
3 agricultural production?

4 A Oh, yes, yes.

5 MR. OBERMAN: Your Honor, do I have to  
6 have a continuing objection to leading  
7 questions?

8 Q What do you plant on Dr. Haynes' property?

9 A I have black berries, a black berry grove.  
10 I planted squash. I planted tomatoes, corn, and  
11 green beans and the dairy-all (phonetic) beans some.

12 Q I have one final question following up  
13 what you said earlier. When you had your  
14 conversation with Dr. Haynes about being interested  
15 in purchasing the property if ever it came up for  
16 sale, do you recall if that was before this lawsuit  
17 was filed?

18 A I'm pretty certain it was. But, you know,  
19 I can't be exact about that, but it was just one of  
20 those things. You know, you don't think about it.  
21 It was a long time ago, I know that.

22 Q Okay. You would not use your testimony to  
23 mislead the Court?

24 A No, sir.

25 MR. ROBINSON: That's all I have.

1 THE COURT: Mr. Mitchell.

2 CROSS EXAMINATION BY MR. MITCHELL:

3 Q Thank you, Your Honor. Mr. Limehouse, I  
4 don't think we've met. My name is Brad Mitchell I'm  
5 Assistant County Attorney. I just have a few  
6 questions for you.

7 A Sure.

8 Q You've testified you have lived down that  
9 road for how many years?

10 A Ten or 12.

11 Q But you've known about the road for 50  
12 years; is that correct?

13 A Well, yes, I knew the road was there.

14 Q Did you go up and down that road  
15 previously?

16 A Yes. Because I farmed over there where  
17 actually Hope Plantation is now. I farmed that and  
18 sometimes take a short cut. Johns Island there are  
19 a lot of little roads because -- and in the olden  
20 times people had horses and wagons and carts. You  
21 just cut through the woods and cut through the woods  
22 and cut through the woods and after a while that was  
23 a road.

24 Q So other people other than residents have  
25 driven down Resurrection<sup>296</sup>ad; is that correct?

1 A Occasionally, yes.

2 Q Including yourself before you moved there  
3 12 years ago; correct?

4 A Yes.

5 Q You farm. Is it just -- is this the only  
6 plot of land you farm or other parcels?

7 A Other parcels.

8 Q Do you have a vegetable stand or fruit  
9 stand you sell from?

10 A Yes, sir.

11 Q How many hours a day do you spend at that  
12 fruit stand?

13 A I spend very little there. Ms. Bennet  
14 runs that.

15 Q So the rest of your time is there on  
16 Resurrection Road, other places?

17 A I sit on the tractor. Wherever the  
18 tractor is, I am.

19 Q During daylight hours or evening hours?

20 A Pushing evening. All daylight hours or  
21 pushing evening.

22 Q You mention county maintains on  
23 Resurrection Road?

24 A Yes.

25 Q Does that include times you witnessed them

1 while you were on your tractor?

2 A Sure.

3 Q How often do they come around? Once a  
4 month, once every two months?

5 A I don't think it's that frequent. I would  
6 say it might be once every two months. And it  
7 depends on how much bad weather we've had. If they  
8 don't -- they don't just come to do Resurrection  
9 Road. There is a number of roads on Johns Island on  
10 that end of Bohicket Road that when it rains a lot  
11 they get muddy and they rut up and people call. And  
12 they send the road scraper out, scrape it up. And  
13 so it might be six months. We've had a couple very  
14 dry years so the roads have been not unpassable.  
15 Like what -- you know, just depends on the weather  
16 more than anything else, when they come.

17 Q Had you ever called the county to come --  
18 to come fix ruts in the road?

19 A No.

20 Q You know other people have?

21 A No.

22 Q You just testified that other people --

23 A On other roads.

24 Q What about Resurrection Road?

25 A I don't think anybody, because there is

1 nobody back there but me and one guy and he works  
2 for the county.

3 Q But you have seen county maintenance crews  
4 out there after rain storms; is that correct?

5 A No, I would say that they are there  
6 periodically and maybe after a rain storm. They  
7 don't come specifically to do this road because of  
8 rain storm, because I keep it in such condition that  
9 they don't need to do that. I'm talking about roads  
10 that are bad, people getting stuck in. You never  
11 get stuck in Resurrection Road.

12 Q But you've seen county employees  
13 maintaining Resurrection Road on Resurrection Road;  
14 correct?

15 A Yes, because you know what? One lives  
16 there.

17 Q Excuse me?

18 A One lives there. Guess what he drives?  
19 He drives a dump truck, a tractor and sometimes the  
20 road scraper.

21 Q Have you seen other county employees out  
22 there, whoever this person is?

23 A Yes.

24 Q So there has been other county employees  
25 other than this other per<sup>299</sup>?

1 A Sure.

2 Q Now, you don't claim to own any part of  
3 this road; correct?

4 A No.

5 Q Then why would you respond back to a  
6 letter from the County saying that you own portions  
7 of this road?

8 A Did I say that?

9 Q You said that you responded to a letter  
10 from the County?

11 A Yes.

12 Q Why did you respond if you did not own  
13 portions of Resurrection Road?

14 A Because I use it. I'm one of the main  
15 users of the road. Why wouldn't I respond? I don't  
16 own any of the road. Don't claim to. But I use it.

17 Q Now the letter you were shown, and I can't  
18 remember what exhibit number it was but that was --

19 A Seven.

20 Q It was to a different person other than  
21 you; is that correct?

22 A Correct.

23 Q Do you know if they responded?

24 A I think M.C. did. I don't know if the two  
25 Smiths did, but I talked 300 them and they indicated

1 to me that they didn't, you know, didn't want the  
2 County taking care of it any more. They were going  
3 to -- because it said right in there that we could  
4 come pave it. I mean that was part of the letter.  
5 And we all objected to that. Maybe not paved but  
6 maybe improve it, which could imply paving.

7 Q Do you know about county maintenance on  
8 that road before 12 years ago?

9 A You have to understand politics and I'm  
10 sure you are since you're a county attorney and  
11 guess what, who lives back there? In the house?  
12 That I live in now?

13 Q Sir, maybe I didn't ask the question  
14 correctly.

15 A No, you did.

16 Q You don't know about county maintenance  
17 prior to 12 years before when you moved there;  
18 correct?

19 A Yes.

20 Q You don't know if county been maintaining  
21 that property?

22 A Let me answer you this way.

23 Q Sir, I'm not here --

24 THE COURT: Let him answer the question.

25 A Betsy Kerrison <sup>301</sup>lived there. So, sure.

1 Things being as they are, you know, she had a little  
2 bit of power, so I'm sure she got well taken care  
3 of.

4 MR. MITCHELL: Thank you. That's all I  
5 have.

6 MR. WILLIAMS: Just a couple.

7 CROSS EXAMINATION BY MR. WILLIAMS:

8 Q Mr. Limehouse, I'm Jack Williams with  
9 Berkeley Coop. You are presently operating the  
10 flowers and fruit stand, whatever the animals you  
11 have there. I think, is it called Rosebank Farms?

12 A Yes, sir.

13 Q Are you still operating there?

14 A Yes, sir.

15 Q You said something about relocating?

16 A No, we had to -- Jack, let me go back. We  
17 had to change locations a couple of years ago  
18 because we lost our lease on the place right next to  
19 the Berkeley's land there.

20 Q Yes, sir?

21 A You-all owned that whole strip all the way  
22 to the creek.

23 Q Correct.

24 A Okay. We had to move from there, and so  
25 we moved closer to the traffic circle at Kiawah.

1 Q Resurrection Road goes in from Betsy  
2 Kerrison, you're going down Resurrection Road, you  
3 were right there on that corner?

4 A Right.

5 Q Are you still there?

6 A No.

7 Q That's what I was trying to get straight.  
8 You're further down toward Kiawah and Seabrook?

9 A With the stand. But I rent some land that  
10 is right next to your substation on --

11 Q Right off of Resurrection and kind of off  
12 of Betsy Kerrison and you farm that land or  
13 whatever?

14 A Right, sir.

15 Q Thank you very much. Thank you, sir.

16 MR. OBERMAN: I have a few follow-up.

17 REDIRECT EXAMINATION BY MR. OBERMAN:

18 A Be kinder.

19 MR. OBERMAN: I'm sorry?

20 A Be kinder.

21 Q Sidi, you do not own parcel 16; do you?

22 A No, sir.

23 Q Ms. Bennet owns parcel 16?

24 A Yes.

25 Q You did not get letter from the County

1 of Charleston; did you, sir?

2 A Yes, sir.

3 Q Addressed to you? Was the letter  
4 addressed to you or --

5 A 3205 Resurrection Road, that's where I  
6 live.

7 Q Was it addressed to Ms. Bennet or  
8 addressed to you, sir?

9 A You know, I can't answer that question  
10 honestly. How would I know that? I know it came to  
11 3205 Resurrection Road, and that's where I live.

12 Q You have now testified that you put in an  
13 answer to that letter?

14 A Yes, sir.

15 Q Do you have a copy of your answer?

16 A No, sir.

17 Q Do you know that Ms. Bennet testified  
18 under oath that she let the time pass?

19 A Yes. No, I don't know, but she did  
20 mention to me that she had let the time pass.

21 Q After that did she put in a letter?

22 A I have no idea.

23 Q So you have no proof that you put in a  
24 letter of complaint?

25 A No, sir.

1 Q And you have no proof that she put in a  
2 letter of complaint?

3 A I have no proof that I did or I did not;  
4 neither one.

5 Q Where is that letter? This is a letter to  
6 Equity Trust Company. Have you seen this letter  
7 before?

8 A Five minutes ago.

9 Q Other than five minutes ago, sir?

10 A No. Who is Equity Trust Company.

11 Q That's Dr. Haynes, sir.

12 A I didn't even know that.

13 Q All right. The first paragraph says, the  
14 County believes that this road is a public road  
15 because you have allowed the public to use your  
16 property for over 20 years and the County has no  
17 record of your refusing maintenance and improvement  
18 efforts. The County is planning to improve this  
19 road's condition.

20 Did you read that paragraph, sir,  
21 paragraph one?

22 A Yes, I read it. Want me to read it again?

23 Q No, just do you agree with that?

24 A No, I don't agree with it.

25 Q You don't agree with it?

1           A     I don't agree with -- the County believes  
2     this road is a public road because you have allowed  
3     the public to use your property for over 20 years.  
4     No, I don't agree with that.

5           Q     You don't agree with that?

6           A     No, not that part.

7           Q     And other than that you didn't write the  
8     County and say I don't agree that or Ms. Bennet  
9     didn't write the County and say I don't agree with  
10    that. That's incorrect. Is that not true?

11          A     What is incorrect? What are you saying?

12          Q     You didn't say, sir, that your paragraph  
13    one is incorrect?

14          A     Oh, no, no, no, I did not. No, I did not.  
15    It was just -- see all those Charleston County seeks  
16    to improve this road must be understood the road may  
17    or may not be constructed to specifications  
18    (reading) Charleston County Road. For future  
19    improvements additional right-of-way may be  
20    required. You know, I just objected to all of that.

21          Q     But you objected to yourself; did you not?  
22    Who did you object to, sir?

23          A     I don't know. I guess I objected to this  
24    Mr. Neal or whoever wrote this letter. And it says  
25    here somewhere, I think, that if -- I should have

1 called these people but I know I didn't call them.

2 Q Sir, before your testimony was that you  
3 wrote them and we've got Mr. Neal here and we're  
4 going to ask him if he received a letter from you  
5 objecting to that letter, sir.

6 A Okay. Let me put it this way. I may have  
7 said I wrote to him. But I may not have written to  
8 him. And I'm being honest with you, okay? May have  
9 been one of those things that just gets by you. But  
10 I viewed it as very important, and I may have even  
11 have talked to my lawyer about it. Not my lawyer  
12 but M.C.'s lawyer and I talked to several people  
13 about this and whether I actually wrote him or  
14 called the department or took any action about this,  
15 I'm not sure. I'm really not sure. Certainly my  
16 intention to.

17 Q I think it's important, sir, that we peg  
18 this down. To the best of your recollection you did  
19 not write Mr. Neal in response to this letter?

20 A I would say to the best of my  
21 recollection, yes, I can't possibly honestly say  
22 that I wrote him a letter.

23 Q Sir, I'm asking you a relatively simple  
24 question, yes or no. Did you write Mr. Neal and say  
25 I object to what you have<sup>307</sup> that letter?

1 MR. ROBINSON: Your Honor, asked and  
2 answered.

3 MR. OBERMAN: It's not been answered, sir.

4 THE COURT: I think he said to the best of  
5 his recollection he doesn't recall.

6 A I can't -- I'm sorry.

7 Q All right, sir. To the best of your  
8 recollection you didn't call Mr. Neal and verbally  
9 object to it; is that correct, sir?

10 A That's correct.

11 Q You did talk to Mr. Mason Heyward's  
12 attorney; is that correct?

13 A Yes. But I don't know what time I talked  
14 to him. Because, you know --

15 Q Did you ask him to take any steps, sir?

16 A I don't recall. I really don't recall.

17 Q All right, sir. Did Ms. Bennet tell you  
18 that she had not responded to this letter?

19 A She apologized to me for not responding to  
20 the letter.

21 Q So the answer to that is, yes, she didn't,  
22 did not respond to the letter?

23 A Yes.

24 Q Paragraph 4 of the -- paragraph 4 of the  
25 letter, sir, says unless <sup>308</sup> you notify the County in

1 writing at the above listed address within 90  
2 calendar days from the date of this letter that you  
3 disagree and/or oppose these actions the County will  
4 proceed with its continued maintenance and  
5 improvements under its public roads maintenance  
6 system. And, in addition, the County will survey  
7 the right-of-way and record a plat in the Charleston  
8 County Register of Mesne Conveyances, RMC, which  
9 will alter the boundary of your property reflecting  
10 this public road. If you disagree or oppose this  
11 action the County may, at its discretion, decide to  
12 discontinue all maintenance and improvements on the  
13 road.

14 That's pretty plain; isn't it, sir?

15 A Yes.

16 MR. OBERMAN: That's all the questions I  
17 have, Your Honor.

18 CROSS EXAMINATION BY MR. ROBINSON:

19 MR. ROBINSON: Brief follow-up on  
20 testimony Mr. Mitchell elicited.

21 Q Mr. Limehouse, I'm going to show you  
22 what's been marked as Plaintiff's Exhibit 1A. I  
23 would represent to you that this is a survey done by  
24 Mr. Johnson of both the Resurrection Road  
25 right-of-way and the Resurrection Road dirt path.

1 From looking at this document are you able to  
2 identify from your familiarity with it, with the  
3 property, where the dirt road is?

4 A Yes.

5 Q Can you give us some indication that you  
6 understand where the dirt road is?

7 A Dirt goes from Betsy Kerrison right up to  
8 my house.

9 Q What is in the area that shows where the  
10 dirt road is?

11 A It's just lined with trees on this side  
12 which I planted. It's lined with trees on this side  
13 where Mr. Smith, who lives here, planted.

14 Q So you're saying the dirt road is lined on  
15 each side with trees?

16 A On one side for all of it and other side  
17 for about half of it.

18 Q Draw your attention to this side of the  
19 plat where it says Betsy Kerrison Parkway 115-foot  
20 right-of-way. You see that?

21 A Yes, sir.

22 Q Do you see or can you identify the turn  
23 out for Resurrection Road?

24 A Yes, sir.

25 Q Where is that? 310

1           A     Right here.

2           Q     If you look closely at it with your  
3 glasses can you identify, help us identify a mark  
4 near it?

5           A     I see five eighths rebar. Couple signs  
6 there but, you know, you can't really tell.

7           Q     Do you see an area on the plat where it  
8 says existing 25-foot right-of-way ABCD A. I'll  
9 direct you to it.

10          A     Okay, yes, sure.

11          Q     It's got an arrow pointing to the A box;  
12 right?

13          A     Yes.

14          Q     Now, do you know if there is a road in  
15 that portion of the right-of-way?

16          A     No, there is just trees there. This --  
17 there is trees there and then there is Berkeley  
18 Coop's right-of-way up to --

19          Q     So Berkeley Coop's land would be to the  
20 south?

21          A     Yes.

22          Q     And if the road is to -- if the  
23 right-of-way is to the north of that does the county  
24 maintain the property inside that right-of-way?

25          A     No, sir.

1 Q Have you ever seen county worker's out  
2 there maintaining that part of the right-of-way?

3 A No, because it's in the woods. They would  
4 have no reason to.

5 Q Okay.

6 MR. ROBINSON: That's all I have.

7 MR. MITCHELL: I have nothing else, Your  
8 Honor.

9 MR. WILLIAMS: Nothing further, Your  
10 Honor.

11 MR. OBERMAN: Just to clarify.

12 BY MR. OBERMAN:

13 A This is Berkeley's property?

14 Q Yes.

15 A Property right there, he's talking about.

16 Q I'm going to ask you, sir, do you see line  
17 BC?

18 A Yes.

19 Q If you would go to east of line BC, do you  
20 see where the travel lane is within the 25-foot  
21 dedicated right-of-way?

22 A See, I can't -- let me look at this  
23 closely.

24 Yes, it's in part of it. Then the  
25 other part of it.

1 Q It runs in the middle of it down there;  
2 doesn't it, sir?

3 A Right at the very end.

4 Q When you say right at the very end, it  
5 starts at line J -- let me find it for you. I'm  
6 sorry -- point H, does it not, sir? Can you see  
7 point H?

8 A Yes, point H. It's not in the middle  
9 there.

10 Q That's where it starts running into the  
11 25-foot dedicated right-of-way?

12 A Yes, yes, yes.

13 Q The County of Charleston has maintained  
14 that area within that 25-foot right-of-way; has it  
15 not, sir?

16 A No.

17 Q It has not?

18 A No. That's woods. The road is over here.  
19 This is the road. This is all woods.

20 Q Farther down to H, sir?

21 A This is the existing road and this is the  
22 right-of-way. And that's heavily wooded.

23 Q I'm talking about the other area, sir,  
24 from H to the west. You see point H?

25 A Yes.

1 Q You see where the road bed runs into the  
2 25-foot right-of-way?

3 A Yes, starts right here.

4 Q It goes all the way down to line BC?

5 A Yes.

6 Q You see that?

7 A Kind of gets -- only place that's in the  
8 middle of the right-of-way.

9 Q Now my question is, has the County of  
10 Charleston maintained the area from point H down to  
11 line BC?

12 A I would have to say yes.

13 Q It has maintained that area?

14 A Somebody's maintained it. I maintain it.  
15 I mean, I had -- I spent \$750 and put in eight, ten  
16 inch culvert here and then one down here. Just,  
17 that was the raw cost of the culvert.

18 Q But to your knowledge, Mr. Limehouse, the  
19 County of Charleston has used road scrapers or other  
20 machinery from line -- from point H down to line BC  
21 to maintain that area of that 25-foot right-of-way?

22 A They maintain it from here to here and  
23 that part is in the road, so naturally they maintain  
24 it.

25 Q All right. Now, <sup>314</sup> let me interpret what you

1 just said. They have maintained the whole length of  
2 Resurrection Road from Betsy Kerrison down to point  
3 M which is --

4 A I wouldn't say they maintain it. I would  
5 say we maintain it. I and the County, because I do  
6 most of the work. This road you could drive on it,  
7 you could drive on it seventy miles an hour because  
8 I keep it the way it should be.

9 Q But you would agree that the County at  
10 least contributes to that?

11 A Oh, they contribute, yes.

12 Q All right, sir. Mr. Limehouse, do you  
13 know that there is a street sign at the intersection  
14 of Betsy Kerrison and Resurrection Road?

15 A Yes, sir.

16 Q What does that street sign say?

17 A Resurrection Road.

18 Q Who put that street sign up?

19 A James.

20 Q I'm sorry?

21 A James and James works for the County.

22 Q So the County of Charleston put that  
23 street sign up?

24 A Yes. I helped him, actually.

25 Q Good.

1 A Yes.

2 Q And it got crooked for awhile?

3 A It was a little crooked.

4 Q When the PGA tournament came, did they  
5 come and straighten that sign up?

6 A I actually straightened it up. When the  
7 PGA came they came and put up a new sign because the  
8 County didn't want any old signs up there.

9 Q So they put up a new sign?

10 A Yes.

11 Q And it said Resurrection Road?

12 A Yes.

13 Q And do you know what color the sign was?

14 A It was green.

15 Q It was green. And do you know that there  
16 is a difference between a green county sign and a  
17 blue county sign?

18 A I learned that here today.

19 Q I'm glad to be of service.

20 A Thank you.

21 (Laughter)

22 Q Do you know what the green County sign  
23 stands for, what does it designate?

24 A I know what it's supposed to stand for.

25 Q What is it supposed to stand for?

1           A     It's supposed to say that this is a public  
2 road. And a blue one says this is a private road.

3           Q     That's all the questions --

4           A     Sometimes they mixed up and they put the  
5 blue ones on the green sign and the green ones on  
6 the white sign. Now, I'm sure that hardly ever  
7 happens but it does happen.

8           Q     That leads to the next question, sir. Did  
9 you ever write to County of Charleston and say  
10 you've got the wrong durn sign up there?

11          A     Oh, no.

12          Q     Did you ever call anyone and say --

13          A     No.

14               MR. OBERMAN: That's all --

15          A     You call them, you can't talk to anybody.

16          Q     Are you saying Mr. Neal wouldn't talk with  
17 you?

18          A     Everything is -- you know what I'm talking  
19 about. Talk to a machine.

20               MR. OBERMAN: That's all the questions I  
21 have of this gentleman.

22               MR. ROBINSON: Very briefly, one question.

23               BY MR. ROBINSON:

24          Q     Mr. Limehouse, you have twice testified on  
25 the stand that a neighbor, friend who works for

1 the County, has done work on that road?

2 A Right.

3 Q Do you know if he was doing that work  
4 officially or unofficially?

5 A I don't think we want to go there.

6 Q Why is that?

7 A Well, I don't want to get the guy in  
8 trouble.

9 Q Is it possible you don't want to get him  
10 in trouble because maybe he was doing that without  
11 the County's permission?

12 MR. OBERMAN: Your Honor, this is his  
13 witness that he's leading him like James  
14 Stuart.

15 A He's not leading me. I know what he wants  
16 me to say, but I'm not going to say it. Okay?

17 MR. ROBINSON: Okay.

18 THE COURT: So there is a County employee  
19 that lives on that road? He would have an  
20 interest in making sure the road was passable;  
21 right? Just as simple as that.

22 A Just as simple as that.

23 THE COURT: I got it. I understand. All  
24 right. Good enough. All right. Anybody else  
25 want to beat up on Sid? Ms. Bennet, this

1           might be your chance.

2           (Laughter)

3           THE COURT: I'll let him step down. Thank  
4           you, sir.

5           A       Thank you.

6           MR. ROBINSON: We would ask he be excused,  
7           Your Honor. With best wishes for his surgery.

8           THE COURT: Good luck to you tomorrow.

9           A       I might want to hang around. This is  
10          getting good.

11          (Discussion off the record.)

12          THE COURT: If you want to get Ms. Bennet,  
13          go ahead and get her done. That would be my  
14          request. If you-all want to call her. I'm  
15          assuming you're going to be with him tomorrow.  
16          He has back surgery tomorrow.

17          MR. BELL: I'll be at the hospital

18          tomorrow --

19          (Discussion off the record.)

20          (Louise Donny Bennet, 3205 Resurrection Road, Johns Island,  
21          S.C. 29455, duly sworn, testifies as follows:)

22          DIRECT EXAMINATION BY MR. OBERMAN:

23          (pause)

24          MR. OBERMAN: I'll go ahead and waive it,

25          Your Honor. I don't <sup>319</sup> have her deposition here.

1 Has the witness been sworn?

2 THE COURT: She's ready.

3 Q Ms. Bennet, would you state your full  
4 name?

5 A Louise Donny Bennet.

6 Q Middle name?

7 A Donny.

8 Q D-O-N-N-I-E?

9 A D-O-N-N-Y.

10 Q You are the domestic partner of  
11 Mr. Limehouse?

12 A Yes.

13 Q How long have you and he been domestic  
14 partners?

15 A I guess about 40 years.

16 Q Did you have occasion to buy property at  
17 the west end of -- I'm sorry, east end of  
18 Resurrection Road?

19 A Yes.

20 Q How many acres did you buy?

21 A Approximately two. I think it might be a  
22 little less.

23 Q Was there a house on there?

24 A Yes.

25 Q Who did you buy it from?

1 A Melanie Miller.

2 Q How did you get to the property?

3 A On Resurrection Road.

4 Q You drove up and down the road?

5 A Yes.

6 Q Other people drove up and down the road?

7 A How many people?

8 Q I said other people.

9 A Only the residents, primarily, and their  
10 guests.

11 Q Did you ever have occasion to deny driving  
12 privileges up and down that road to someone who was  
13 not a resident?

14 A No.

15 Q Did you know that it was a publicly  
16 dedicated road?

17 A I guess, not really.

18 Q Did you ever discuss it with Council as to  
19 how you would get up and down that road?

20 A No.

21 Q You had an attorney when you bought this  
22 property; did you not? Did you have an attorney?

23 A When I bought the property? Yes.

24 Q Did you think you were land locked when  
25 you bought that property?321

1 A No.

2 Q Did you discuss the ingress and egress  
3 with Mr. Limehouse?

4 A We did not discuss it. I mean, Ms. Miller  
5 told us that we had ingress and egress.

6 Q And did you see any written instrument by  
7 which she granted you that right of ingress and  
8 egress?

9 A What was the first part of your question?  
10 I'm sorry, I'm very hard of hearing.

11 Q I apologize.

12 A I'm sorry.

13 Q I'll try again. Did you and Mrs. Miller  
14 discuss --

15 A No, we did not discuss it. She said we  
16 had ingress and egress.

17 Q Did you see a written instrument saying  
18 you had ingress and egress?

19 A I honestly don't remember.

20 Q Have you had contact with Frank Johnson?

21 A No.

22 Q Have you had contact with Dr. ~Ralph  
23 Haynes?

24 A No.

25 Q Do you have any<sup>322</sup> reason to want to deny

1 Frank Johnson or Ralph Haynes ingress and egress to  
2 their property?

3 A No.

4 Q Do you have any reason to deny me the  
5 right to drive on Resurrection Road?

6 A You to drive on it?

7 Q Yes.

8 A No.

9 Q You have no reason to deny any member of  
10 the public to drive on that road; is that correct?

11 A That's correct.

12 Q To your knowledge it is a public road, is  
13 it not?

14 A I guess I have learned that, yes.

15 Q And it's designated by the County of  
16 Charleston by a green sign saying Resurrection Road;  
17 is it not?

18 A Yes.

19 Q And it is maintained by the County of  
20 Charleston; is it not?

21 A Yes, sporadically.

22 Q Have you ever called the County of  
23 Charleston to complain that it's not being  
24 maintained?

25 A No.

1 Q Did you receive a letter from a Mr. Neal  
2 at the County of Charleston in March of 2012?

3 A I did.

4 Q Do you know the contents, what that  
5 letter --

6 A Yes.

7 Q What did it say?

8 A Said that it was a public road and the  
9 County would have the right to change it or improve  
10 it as they wished and if I wished to disagree I was  
11 to verbalize my option.

12 Q You say verbally or in writing?

13 A Well, verbalization can be written or in  
14 voice.

15 Q Did it say oral or written?

16 A I believe it said written.

17 Q And I'll hand to you what's been marked as  
18 I think it's Defendant's 7 and ask you if this is  
19 identical to the letter you received?

20 A It is very similar.

21 Q Other than being addressed to someone  
22 else, is there any difference, that you can tell the  
23 Court, in the body of the letter?

24 A No.

25 Q Did you complain to Mr. Neal?

1 A No.

2 Q Did you ever complain to Mr. Neal?

3 A No.

4 Q Weren't you given the chance at that  
5 deposition to complain even though it was out of the  
6 90-day period?

7 A What was the second part of your question?  
8 The deposition did I not --

9 Q At the deposition the question was asked  
10 would Mr. Neal take your objection, either it was  
11 past the 90-day, do you remember that question?

12 A I said I procrastinated and I did not  
13 write the letter.

14 Q Then the question was asked could you  
15 write the letter after the period of  
16 procrastination? Do you remember that?

17 A No, I don't remember that, but I did not  
18 write the letter.

19 Q All right. So it's fair to say that the  
20 contents of this letter are correct; is that  
21 correct?

22 A Yes.

23 Q Have you seen County maintenance trucks on  
24 the road?

25 A Trucks, no. 325

- 1 Q Vehicles of any type?
- 2 A No.
- 3 Q Men of any type?
- 4 A A road scraper or a road plow but no  
5 trucks.
- 6 Q And was that scraper or plow scraping the  
7 road?
- 8 A Yes.
- 9 Q Was that scraper putting down rock or  
10 dirt?
- 11 A Rock, no.
- 12 Q I said or dirt?
- 13 A Dirt, yes.
- 14 Q Dirt was to fill in pot holes that had  
15 formed?
- 16 A No, there were no pot holes to fill.
- 17 Q No pot holes to fill. Even after rain had  
18 made it runway smooth?
- 19 A There are two places where water collects,  
20 but they are not pot holes.
- 21 Q Was dirt put in those two places that were  
22 not pot holes, to level that off?
- 23 A Sidi has done that, yes.
- 24 Q Did the County do that?
- 25 A The County recently did some at the far

1 end where Betsy Kerrison intersects with  
2 Resurrection Road. That was very recently.

3 Q And over the past, let's say, 24 months  
4 have they done other filling of --

5 A No.

6 Q They have not.

7 I'm going to ask you, you taught  
8 English; did you not?

9 A Yes.

10 Q Would you read, starting with paragraph  
11 numbered Arabic numeral one, read that out loud.

12 A The County believes that this road is a  
13 public road because you have allowed the public to  
14 use your property for over 20 years. And the County  
15 has no record of you refusing our maintenance and/or  
16 improvement efforts. The County is planning to  
17 improve this road's condition.

18 Q Do you disagree with that paragraph?

19 A There is nothing virtually to disagree  
20 with. It's a statement.

21 Q It's a statement. Is it a true statement?

22 A I guess.

23 Q Well?

24 A I mean, I don't know if the County is  
25 planning to improve it re327ly or not. They say they

1 are.

2 Q Let's go to Arabic II, numeral II. Would  
3 you read that?

4 A Although Charleston County seeks to  
5 improve this road it must be understood that the  
6 road may or may not be constructed to the  
7 specifications of one of the four existing road  
8 categories in the Charleston County road code.

9 Q Anything in Arabic numeral II that you  
10 disagree with?

11 A No.

12 Q Let's go to III. Read III.

13 A III?

14 Q III.

15 A For future improvements additional  
16 right-of-way may be required.

17 Q Do you disagree with that?

18 A No.

19 Q Is there an Arabic numeral IV. Read that.

20 A I believe this has been read before but,  
21 unless you notify the County in writing at the above  
22 listed address within 90 calendar days from the date  
23 of this letter, that you disagree, agree and/or  
24 oppose these actions, the County will proceed with  
25 this continued maintenance and improvements under

1 its public roads maintenance system. In addition,  
2 the County will survey the right-of-way and record a  
3 plat in the Charleston County Register of Mesne  
4 Conveyance, RMC Office, that will alter the boundary  
5 of your property reflecting this public road. If  
6 you disagree and/or oppose this action the County  
7 may, at its discretion, decide to discontinue all  
8 maintenance and improvement of the road.

9 Q You were given the opportunity to  
10 disagree, to oppose whatever, and, as you said, you  
11 did not, you procrastinated; is that correct?

12 A That is correct.

13 MR. OBERMAN: That's all the questions I  
14 have of this lady.

15 CROSS EXAMINATION BY MR. ROBINSON:

16 Q Ms. Bennet, assuming Mr. Oberman is  
17 correct in what he's represented to you, that you  
18 and Mr. Limehouse in fact don't have access to your  
19 property, do you know why the County would send you  
20 a letter asking you if you would acquiesce in the  
21 use of -- your allowing the County to use your road?

22 A Repeat it; a little ridiculous.

23 Q Or a public road. Is it your road or a  
24 public road?

25 A It's a public r329l according to the

1 County.

2 Q What is your opinion?

3 A In my opinion? I don't know. I guess  
4 this is a moot question. According to definition,  
5 the part that says you have allowed lengthy public  
6 use of your property, that is not true. The public  
7 does not use the road.

8 Q Why do you say that?

9 A Because the road goes nowhere.

10 Q So it's -- the road doesn't loop around to  
11 another road?

12 A No.

13 Q The road ends adjacent to your property;  
14 correct?

15 A It ends in, I guess, Mr. Haynes --  
16 Dr. Haynes' field.

17 Q Yet you say you received a letter that is  
18 similar to the one you've been presented with --

19 A Yes.

20 Q -- that said that you had allowed the  
21 County the use your road; right?

22 A Yes.

23 Q In the years that you have used  
24 Resurrection Road has anyone who lived on the road  
25 or anyone otherwise represented that you didn't have

1 the right to use the road?

2 A No.

3 Q Before Mr. Oberman, in either the  
4 deposition or today, told you that you didn't have a  
5 right to use the road, did you believe that you  
6 didn't have a right to use the road?

7 A No.

8 Q When the road sign was knocked down  
9 recently or tipped over recently, do you recall  
10 that?

11 A I remember it was leaning.

12 Q Do you recall if the road sign was  
13 switched from one side of the road to the other?

14 A It has been switched, yes.

15 Q Do you recall what timeframe?

16 A No.

17 Q You and your -- do you and your husband  
18 have a good relationship?

19 A Yes.

20 Q You communicate regularly?

21 A Most of the time.

22 Q You live under the same roof?

23 A Yes.

24 Q Have you ever talked to your husband about  
25 buying Ralph Haynes' prop<sup>331</sup>erty?

1 A No.

2 Q Ever talked to your husband about buying  
3 Mr. Johnson's property?

4 A No.

5 Q Have you ever talked to your husband about  
6 diminishing the value of Mr. Haynes' property?

7 A No.

8 Q Ever talk to your husband about  
9 diminishing the value of Mr. Johnson's property?

10 A No.

11 Q Have you ever talked with your husband  
12 about denying access to the property of Mr. Johnson  
13 or Mr. Haynes?

14 A No.

15 Q Have you ever talked with Mason Heyward  
16 about denying Dr. Haynes', Mr. Johnson's access to  
17 their property?

18 A No.

19 Q Have you ever talked with Mason Heyward  
20 about buying the property of either Mr. Johnson or  
21 Mr. Haynes?

22 A No.

23 Q Have you ever appeared at any public  
24 function or governmental meeting to advocate on  
25 behalf of either Mr. Haynes - on behalf of Mr.

1 Heyward or yourself to impair the rights of  
2 Mr. Haynes or Mr. Johnson?

3 A No.

4 Q Do you have any interest in purchasing  
5 Dr. Haynes' property?

6 A Not really.

7 Q How about Mr. Johnson's?

8 A No.

9 Q Why is that?

10 A To both questions?

11 Q Yes, ma'am, if you don't mind.

12 A Probably to Dr. Haynes', probably I am not  
13 financially able to. And at my age I don't know if  
14 I'm interested in buying property anyway. And  
15 Mr. Johnson's property does not interest me as a  
16 viable piece of real estate for me.

17 Q You've lived out there since when?

18 A I've lived on Resurrection Road for 12  
19 years.

20 Q During that time do you recall Dr. Haynes'  
21 property being used for anything other than an  
22 agricultural purpose?

23 A When we first moved there it was  
24 abandoned.

25 Q Do you know if 333 is taxed as agricultural

1 or taxed as residential?

2 A Agricultural because he has Sidi to farm  
3 it for that reason.

4 Q Is it your understanding that Dr. Haynes  
5 derives some benefit from it currently being zoned  
6 agricultural?

7 A I would think so.

8 Q I think you were very thorough earlier in  
9 saying that you did not respond to the letter of  
10 March from Mr. Neal; is that correct?

11 A Yes.

12 Q Have you dealt directly with any County  
13 employees regarding people's right to use  
14 Resurrection Road?

15 A No.

16 Q Have you ever phoned in a maintenance  
17 request to the County for Resurrection Road?

18 A No.

19 Q Be fair to say you call in a maintenance  
20 request to your husband?

21 A No.

22 Q Do you ask him?

23 A No.

24 Q Okay.

25 A I haven't really needed to.

1 Q Do you know the identity of the person you  
2 saw on the motor grader that day?

3 A No.

4 Q Is the person who was on the motor grader  
5 someone you've seen in your neighborhood other than  
6 for purposes of this work?

7 A The last time I saw the motor grader I  
8 really did not pay attention to who was operating  
9 it.

10 Q Do you have knowledge of a County employee  
11 who lives on Resurrection Road?

12 A Yes.

13 Q Do you know if they are involved in road  
14 maintenance?

15 A I've seen him out on Betsy Kerrison with  
16 that crew that's always there.

17 Q Have you ever seen County equipment parked  
18 on his property?

19 A No.

20 MR. ROBINSON: Those are all the questions

21 I have, Your Honor.

22 CROSS EXAMINATION BY MR. MITCHELL:

23 Q Ms. Bennet, just have a few questions for  
24 you. Earlier you testified that the public wouldn't  
25 use that road because it's a dead end road; is that

1 correct?

2 A (Witness nods affirmatively).

3 Q Have you ever ridden down a dead end road  
4 before?

5 A Have I ridden down what?

6 Q Had you ever driven down a dead end road  
7 before, besides Resurrection Road?

8 A Probably a couple of times.

9 Q Do you believe those are public roads?

10 A Most of them have signs saying dead end.

11 Q So there are times when there can be a  
12 dead end road that can also be a public road; is  
13 that correct?

14 A Yes.

15 Q The public can use a dead end road other  
16 than being a resident or visitor of the resident; is  
17 that correct?

18 A Yes.

19 MR. MITCHELL: Thank you, Your Honor. I  
20 have nothing else.

21 MR. WILLIAMS: No questions, Your Honor.

22 THE COURT: All right. Anything?

23 MR. OBERMAN: No.

24 THE COURT: Just want to be clear about  
25 something. Ms. Bennet, you live at the end of

1           the road; do you not? The road, I assume, dead  
2           ends into your driveway?

3           A     Where Resurrection Road ends is a question  
4           nobody seems to be able to answer. Because there is  
5           a road that the County has never had their road  
6           machinery on that goes around our house and around  
7           Dr.~Haynes' field, which I assume is a -- I don't  
8           know, I guess it's a private road because the County  
9           has never been on it that I've ever seen. And it's  
10          definitely not maintained.

11          THE COURT: Okay. Do you have, like, a  
12          circular driveway at your house?

13          A     We have a half circle.

14          THE COURT: You drive into the road, it  
15          takes you back to your house, there is nobody  
16          behind you, no public going through your  
17          property?

18          A     No.

19          THE COURT: Tell me again about the road  
20          that goes around Dr.~Haynes' property. What is  
21          that?

22          A     It's just a little, you know, two lane  
23          road with two little ruts, I guess, is a better --

24          THE COURT: Is that used at all by  
25          Mr. Limehouse to far<sup>337</sup> or --

1 A Oh, yes.

2 THE COURT: Anybody else? You see any  
3 traffic on that road?

4 A Goodness no. Everybody would turn around  
5 before they got on that road.

6 THE COURT: All right. I would think so.  
7 Okay. All right. I think that's all I have.

8 MR. OBERMAN: I want to call to the  
9 Court's attention that if we go to Plaintiff's  
10 Exhibit 1A, the plat done by Johnson, it shows  
11 the road bed of Resurrection Road that does not  
12 terminate on the Limehouse/Bennett property.

13 THE COURT: That roadway continues on  
14 past?

15 MR. OBERMAN: Apparently it stops. And  
16 maybe goes on one side. You see how it, it  
17 skirts one corner of the Limehouse property.

18 THE COURT: Goes all the way back to what  
19 he shows as point M. Okay. Very good.

20 MR. OBERMAN: Yes.

21 THE COURT: It's only about 6 or 8 feet  
22 wide though; isn't it? It ain't a big road.

23 MR. OBERMAN: I would have to look and see  
24 what he says here, sir; 6.8, 7.5.

25 THE COURT: About seven feet.

1 MR. OBERMAN: Seven, 8 feet.

2 THE COURT: Okay. All right. Any other  
3 question for Ms. Bennet?

4 (No response.)

5 THE COURT: Okay. Can she be excused?

6 MR. ROBINSON: I ask she be excused.

7 THE COURT: Thank you for coming today.  
8 Appreciate your time.

9 Any matters we need to take up? It's a  
10 little after five.

11 (No response.)

12 MR. OBERMAN: I don't think so, Your  
13 Honor. I think that I have one, two, three  
14 more witnesses to take up tomorrow.

15 THE COURT: All right. Why -- let's make  
16 our goal for tomorrow just to get through the  
17 Plaintiff's case. We've taken witnesses out of  
18 turn. I don't know whether that would be in  
19 the morning or take all day. For planning  
20 purposes, because I have you here all week,  
21 let's just plan to get through the Plaintiff's  
22 case tomorrow. I'm assuming that's Mr. Neal  
23 and Mr. Johnson and whoever else you-all are  
24 going to call, and Mr. Heyward. And then  
25 Wednesday I think we're off because I've got my

1           day cleared for Wednesday, and then Thursday  
2           and come back with defense's case, whatever.  
3           Whoever you-all need to plan for.

4           (Discussion off the record.)

5           THE COURT: We'll get started at 9:30  
6           tomorrow morning.

7           MR. MITCHELL: On Thursday I'll have a  
8           couple of road people out in the ditches, and  
9           do you require them to be in suit and tie or --

10          THE COURT: Absolutely not.

11          (Court adjourned.)

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STATE OF SOUTH CAROLINA )

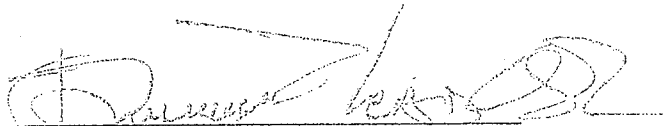
C E R T I F I C A T E

COUNTY OF CHARLESTON )

I, Bernadette Cali Leland, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this September 20th, 2015.



Bernadette Cali Leland, CSR

Notary Public

My Commission Expires

April 5, 2020

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Transcript of January 15, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

FRANCIS JOHNSON,  
Plaintiff,  
VS.  
MASON HEYWARD, ET AL,  
Defendants.

CASE NO.:2008-CP-10-1054

 ORIGINAL

Hearing before the  
Honorable Mikell R. Scarborough, reported by Bernadette A.  
Cali, CSR and Notary Public, on January 15,  
2013 at 100 Broad Street, Charleston, South Carolina.

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1 (Court commences.)

2 THE COURT: For the record, I did read all  
3 of Dr. Haynes' deposition last night. That was  
4 Plaintiff's Exhibit C; and reviewed the  
5 documentation that was with it, Exhibits 1  
6 through 18. Eighteen was the appraisal. I  
7 didn't go through the appraisal at length, just  
8 his testimony.

9 Just for the record, my recollection is  
10 Dr. Haynes purchased this property in 1988  
11 which would have been prior to the dedication  
12 of the easement, but he's had it for that  
13 period of time. He kept saying 15 years.  
14 Wouldn't that be more like 25 years?

15 MR. ROBINSON: I think so.

16 MR. WILLIAMS: Twenty-four or 25.

17 MR. OBERMAN: I think he purchased it --

18 THE COURT: He purchased an interest  
19 through an employee stock option plan or  
20 something. It's always been a retirement  
21 vehicle for him.

22 MR. OBERMAN: I think the final purchase  
23 was after the '96 --

24 THE COURT: The individual purchase.

25 MR. ROBINSON: It was, Your Honor.

1           THE COURT: He ended up buying out the  
2           Nautilus group. I think he converted his IRA  
3           from a regular IRA to a Roth IRA, if I recall  
4           correctly.

5           MR. OBERMAN: The important thing is he  
6           purchased it as an individual, either IRA or  
7           individual name after the dedication of the  
8           25-foot right-of-way.

9           MR. ROBINSON: Your Honor, he also did so  
10          without a South Carolina licensed closing  
11          attorney. That closing statement, without  
12          title search or title insurance, according to  
13          his testimony.

14          THE COURT: All right. Very good. Thank  
15          you.

16          MR. OBERMAN: Your Honor, I'm going to  
17          call our next witness, Mr. Neal.

18          (James R. Neal, 4045 Bridgeview Drive, North Charleston,  
19          S.C. 29405, duly sworn, testifies as follows:)

20          DIRECT EXAMINATION BY MR. OBERMAN:

21          MR. OBERMAN: At this time I want to bring  
22          to the Court's attention the stipulation  
23          between myself as attorney for Dr. Haynes and  
24          for Mr. Frank Johnson and the County attorney,  
25          where we stipulated that we would not go

1 forward with our conspiracy efforts against the  
2 County, and the County has stipulated that the  
3 roadways, the prescriptive roadway and the  
4 dedicated right-of-way are both -- have been  
5 both accepted by the County and have been  
6 maintained by the County.

7 THE COURT: All right. Mr. Mitchell.

8 MR. MITCHELL: Your Honor, that's as we  
9 agreed yesterday. We'll put forth facts that  
10 will show that dedication/acceptance on both  
11 the 25-foot right-of-way and also on the travel  
12 way.

13 THE COURT: So stipulation is to the  
14 effect that the Plaintiff will drop its claim  
15 of conspiracy against the Defendant County, in  
16 return the County acknowledges that the 25-foot  
17 dedicated right-of-way and the roadway are  
18 what?

19 MR. MITCHELL: They are both public roads.

20 THE COURT: Are public roads.

21 MR. MITCHELL: Both public properties.  
22 The right-of-way might not necessarily be a  
23 road but is a right-of-way dedicated and  
24 accepted by the County and through continued  
25 use you'll see that the traveled way is also a

1 public roadway.

2 THE COURT: Okay. A public roadway. And  
3 that would be effective as of what date?

4 MR. MITCHELL: On the right-of-way the  
5 date that the County accepted the right-of-way  
6 is around the 1996 timeframe, and I think  
7 you'll hear today that we've been maintaining  
8 Resurrection Road for about 34 years.

9 THE COURT: And when did the County  
10 declare it to be a County road? Over those 34  
11 years?

12 MR. MITCHELL: Yes, sir.

13 THE COURT: Or currently? Or since 2011  
14 when the letter came out?

15 MR. MITCHELL: I think the County has  
16 shown, through continued use since 34 years  
17 ago, that it is a public roadway. County  
18 Council also, as we talked about the letter  
19 yesterday, did declare it also a County roadway  
20 under a different type of road program.

21 THE COURT: Is that new? Or is that just  
22 a piggyback onto what's been going on?

23 MR. MITCHELL: The new public roadway, as  
24 Mr. Neal testified, is it's a new program to  
25 allow these roads that were formerly commonly

1 called community road to be brought into the  
2 County system without requiring them to be  
3 brought up to County road standards of the  
4 other four standards like a 50-foot  
5 right-of-way and that sort of -- issues that  
6 deal with the public roads.

7 THE COURT: All right. That's what I'm  
8 getting at here. When does the community road  
9 become a public road?

10 MR. MITCHELL: By County Council action by  
11 the letter, it was last year.

12 THE COURT: So March of '11.

13 MR. MITCHELL: Yes, sir.

14 THE COURT: All right. Okay. I'll  
15 acknowledge the stipulation.

16 DIRECT EXAMINATION BY MR. OBERMAN:

17 MR. ROBINSON: And, Your Honor, just to be  
18 clear, I don't want to --

19 THE COURT: You're not agreeable.

20 MR. ROBINSON: My objection still stands.

21 THE COURT: All right.

22 Q Mr. Neal, would you state your full name  
23 please?

24 A James R. Neal.

25 Q With whom are you employed?

1 A Charleston County.

2 Q What position?

3 A Director of Public Works.

4 Q How long have you been employed with the  
5 County of Charleston?

6 A Since 2006, September.

7 Q Prior to that where was your employment?

8 A I worked for the City of Charleston and I  
9 retired from the Army in 2000 where I was -- my last  
10 duty assignment was the deputy director -- or Deputy  
11 Director for the Charleston District.

12 Q What are your duties as of now, since  
13 2006?

14 A 2006 I was the Assistant Director of  
15 Public Works; 2008 I became the director. My  
16 duties, I'm responsible for the maintenance and  
17 infrastructure of the County's road and drainage  
18 infrastructure, and I'm also responsible for  
19 mosquito control and storm water program.

20 Q Are you familiar with the roadway known as  
21 Resurrection Road?

22 A Yes.

23 Q Has the County taken that into its system  
24 as a public road?

25 A We have not formally brought it into the

1 system. It's in the process. It has been in -- on  
2 6 December 2011 County Council did two things. They  
3 created a new amendment to the road code and --  
4 establishing a new classification of road called a  
5 County non-standard road, which allowed us, then, to  
6 bring these roads that had been called community  
7 roads under a policy of the County since 1965 of  
8 maintaining roadways within the County if they met  
9 certain requirements. One of which, that they had  
10 been asked by the people on the road to maintain  
11 them, that they had three or more dwellings, and  
12 there was a place for the motor grader to turn  
13 around. That was the old policy.

14                   The new policy states that because of  
15 that long time maintenance, that the County would  
16 consider these public roads, and I would take the  
17 steps necessary to bring them into the County road  
18 system. There is almost 300 of these roads and it  
19 takes a lot of effort and time to go through each  
20 road.

21                   So Resurrection Road has not been  
22 through the process that we've developed to bring  
23 them into the system, but it will be at some date or  
24 very soon, anyway. Until that time we consider it a  
25 public road and maintain it as such, as we have for

1 many years.

2 Q How long have you or has the County  
3 maintained Resurrection Road as to grading,  
4 maintenance items?

5 A Our records show that we've had it in  
6 excess of 34 years. The employees that we have  
7 working it -- I have one employee who has been  
8 maintaining the road since he started working here  
9 29 years ago. My field ops manager and others have  
10 said that it's been in the system -- in their  
11 maintenance since they've been there and I've had  
12 between -- I think longest employee is something  
13 like 40 years. In their recall Resurrection Road  
14 has been on the list and they've been maintaining it  
15 since then.

16 Q There was some question about the  
17 gentleman who works for the County living on  
18 Resurrection Road. Do you know who that might be?

19 A Yes, I do.

20 Q What is his name?

21 A Vern Smith.

22 Q Vern what?

23 A Smith.

24 Q Smith. Has he been doing maintenance on  
25 the road?

1           A     Yes.  He hasn't been a County employee all  
2     that long but he has done maintenance on the road.  
3     It's part of the Johns Island camp.  That camp's  
4     responsible for the road.  His foreman assigns him  
5     to work on that road along with other employees of  
6     the camp, so all the folks on the camp do  
7     maintenance on the road.

8           Q     How long has he been employed with the  
9     County?

10          A     I don't know.  I don't have that.  I  
11     didn't look it up.

12          Q     All right, sir.  The maintenance that he  
13     does on the road is under the direction of the  
14     County of Charleston?

15          A     Yes.

16          Q     There are other people who do maintenance  
17     on the road?

18          A     Yes.

19          Q     How many County personnel would you  
20     estimate have done maintenance on Resurrection Road?

21          A     There is a lot, a number.  You know, we've  
22     been maintaining it for a very long time.  We have  
23     turn over like any other organization, so been a lot  
24     of different people.  The person that -- Ray  
25     Robinson, currently a forearm man out there, and

1 he's been -- he started working there 29 years ago.  
2 His job was maintaining -- driving the motor grader,  
3 so he's operated a grader that's graded that road  
4 since he started working there.

5 Q Other than grading the road are there  
6 other services that are done on the road by the  
7 County?

8 A Yes. If needed we bring in material to  
9 fill in holes or low spots. We -- if a culvert is  
10 required or needs repair we put -- erect road signs  
11 for the public so they know -- as way finding. And  
12 once the roads are in the system we do the full  
13 level of service we do for any dirt road. We do  
14 that routinely on all our roads. Primarily on the  
15 non-standard roads it's using motor grader to bring  
16 the road -- bring it up to speed. Bring material in  
17 as needed to upgrade them. That's the maintenance  
18 we routinely do on all of our roads.

19 Q Has anyone on that road, including but not  
20 limited to Mr. Sidi Limehouse, objected to  
21 maintenance of the road, sir?

22 A Not to my knowledge.

23 Q Have you done or has the County done  
24 maintenance on that road in the recent past?

25 A Yes.

1 Q Do your records show that maintenance,  
2 sir?

3 A Since 2009 our Cartagraph system, software  
4 package we use C-A-R-T-A. C-A-R-T-A graph. It's a  
5 purchased off the shelf software, we use and we keep  
6 since 2009, we track -- whenever we go to any road,  
7 do any work orders, replace a sign, we're getting to  
8 where we're trying to get it -- all of our work  
9 completely entered into that system.

10 Q How many times does it show that the  
11 County has done maintenance on the road since 2009?

12 A I believe it's 11. I had a copy of that  
13 with my deposition.

14 Q Can I correct you and say 12?

15 A It could be 12. It's probably 13 or 14  
16 now. I think we've done some work since then.

17 Q So you're continuing to do maintenance on  
18 that road up through today?

19 A Yes, sir.

20 Q Since 2009 you've done at least 12 or 13  
21 acts of maintenance?

22 A Yes.

23 Q These acts of maintenance were not for  
24 good will or voluntarily by the gentleman you  
25 mentioned who lived on the road?

1           A     No. In fact, I don't believe he did most  
2 of that work. Most of the work is done by the  
3 current motor grader operator in that area is Paul  
4 Porter. He does most of the work right now. It's  
5 part of our maintenance responsibility in the  
6 County. I have a large number of roads, and we get  
7 to them as much as we can.

8           Q     Mr. Neal, that maintenance that is done on  
9 the road, is it done on the entire road, to your  
10 knowledge?

11          A     It depends on the situation at any one  
12 time. The road is inspected in it's length and then  
13 we only address those areas at any particular time  
14 that need to be addressed. We don't like to waste  
15 money or time. If the road is in pretty good shape  
16 and then we by-pass those areas, we just move down  
17 the road until we get to the areas that need to be  
18 maintained, but we insure the drivability of the  
19 entire system before we leave.

20          Q     To your knowledge, has that included from  
21 Betsy Kerrison down to the end of the road?

22          A     Yes, sir.

23          Q     That maintenance, to your knowledge, does  
24 it include the area starting at point H and going to  
25 line BC?

1           A     You mean along the indicated roadway?

2           Q     Indicated roadway where it comes into  
3 25-foot dedicated right-of-way?

4           A     Yes. We would maintain the road from  
5 Betsy Kerrison to the end and since the motor grader  
6 operator can't see where this right-of-way on the  
7 ground, it's not marked, he maintains where the road  
8 is.

9           Q     So your intention -- your evidence or  
10 testimony is that as part of the maintenance of  
11 Betsy Kerrison -- I'm sorry. I'm not thinking well  
12 this morning -- of Resurrection Road, includes a  
13 portion of the roadway that is within the 25-foot  
14 right-of-way?

15          A     Yes.

16          Q     Are you familiar -- do you know Mr. Mason  
17 Heyward?

18          A     I saw him yesterday.

19          Q     Have you seen him before?

20          A     No.

21          Q     Has he ever objected to your maintenance  
22 of that road?

23          A     Not to my knowledge.

24          Q     Have you anything in your file that would  
25 show that he objected to your continued maintenance

1 of Resurrection Road?

2 A No.

3 Q Are you familiar with the granting of the  
4 25-foot right-of-way to the County of Charleston?

5 A I wasn't working here when that happened.

6 Q Have you made yourself familiar with  
7 the --

8 A I've seen the documents.

9 Q What do the documents show, Mr. Neal?

10 A There is a 25-foot easement --  
11 right-of-way, I believe, from Betsy Kerrison down a  
12 good portion of the length of Resurrection Road.  
13 But not necessarily where the road is.

14 Q Do you know at whose request that 25-foot  
15 right-of-way was accepted by the County?

16 A The property owner would have -- the  
17 practice or the policy -- that I've seen, and I  
18 don't know what happened in this case, but the  
19 practice would be that if somebody wishing to grant  
20 an easement would go through the Planning Department  
21 and they would give them advice and then they would  
22 take it back to Council through the planning system  
23 which includes the Planning Board and others. Then  
24 they would take it to Council and Council would  
25 approve it or not.

1 Q Do you know if it was approved?

2 A I believe so. I heard some testimony  
3 yesterday that indicates there was a document that  
4 Council approved it.

5 Q As part of your duties do you have a list  
6 of the roads within the system that have been  
7 accepted by the County and are maintained?

8 A Yes.

9 Q Do you know, from your knowledge, whether  
10 Resurrection Road is shown on that list?

11 A It's shown on our County non-standard road  
12 list. And it is on the list of roads that we  
13 maintain.

14 MR. OBERMAN: Excuse me just a minute,

15 Your Honor.

16 (pause)

17 Q Do you have any knowledge of whether  
18 Resurrection Road, the prescriptive easement or the  
19 25-foot dedicated right-of-way is taxed to anyone?

20 A I don't know that. That's not part of my  
21 responsibility. But I believe that if -- what I  
22 understand is that if -- when they dedicate a  
23 right-of-way they take that off, the assessor takes  
24 that off the tax rolls. That's not part of my  
25 responsibility. That's just my understanding.

1 Q In 2011, 2012 were letters sent out to the  
2 adjoining landowners of Resurrection Road?

3 A In March of 2012 I sent a letter to all of  
4 those landowners along all of our County  
5 non-standard roads and those that might have been  
6 impacted because they -- their parcel may or may not  
7 adjoin or be very close by, and I believe it's the  
8 letter that was read yesterday. But we sent that  
9 letter out to about 3,000 people in the county.

10 Q Well let's go to the people on  
11 Resurrection Road. Do you know if you ever received  
12 an objection from a Ms. Louise Bennet?

13 A No, our records don't show that we  
14 received an objection. We had one letter that came  
15 from Resurrection Road that was from Berkeley Coop.

16 Q What did Berkeley Coop say to you?

17 A Said they wanted to know more about what  
18 we were talking about and that they wanted to  
19 reserve their right to protest or oppose. But they  
20 wanted to have more information about what the  
21 program was.

22 Q Other than Berkeley Coop you received no  
23 other objection?

24 A No.

25 Q I believe it was a 90-day, don't want to

1 say drop dead by, but a 90-day limitation?

2 THE COURT: Deadline.

3 MR. OBERMAN: Deadline, that's the word I  
4 was looking for.

5 A We included that at the recommendation of  
6 our Council so people would kind of make a response.  
7 Obviously, in Charleston County if someone wants to  
8 object five years later, and they tend to do that,  
9 so we listen to anybody but -- but we wanted to get  
10 the responses and give people a timeline that was  
11 reasonable to get a response to us, and so we put  
12 down 90 days.

13 Q It's your testimony you did not receive an  
14 objection from Ms. Louise Bennet?

15 A No, sir.

16 Q Nor from Mr. Sidi Limehouse?

17 A No, sir.

18 Q Nor from Mr. Mason Heyward?

19 A No.

20 Q You mentioned a list of roads. I'm asking  
21 you to take a look at that, sir.

22 MR. MITCHELL: Can I take a look?

23 Q Would you tell the Court what that is?

24 A This is a list of roads in Charleston  
25 County that, a copy of a list of roads that I keep

1 in my office that notes who owns what road, where  
2 they are located.

3 Q To your knowledge does Resurrection Road  
4 appear on that list?

5 A Yes. Well, most of it does. Resurrection  
6 with no N on the end but --

7 Q What does it say, sir?

8 A It says Resurrection Road, Johns Island  
9 then it's blank, and it says community. Which was  
10 our old designation for the County non-standard  
11 roads.

12 Q We'll put that in as the Plaintiff's  
13 Exhibit 5.

14 (Whereupon Plaintiff's Exhibit 5 is  
15 marked.)

16 THE COURT: What that is is the County's  
17 list of community roads?

18 A It's my list of all roads in Charleston  
19 County; state roads, private roads, all the roads  
20 that we know about that's -- it's updated a couple  
21 of times a year, so it's not exactly current. I  
22 keep that in my desk -- at my desk so when somebody  
23 calls and says, hey, I have a problem on this road,  
24 I can quickly look and see who -- whether we fix it  
25 or somebody else does. My official listing I keep

1 is in Cartagraph and we keep non-standard roads, we  
2 keep that separate.

3 THE COURT: What do you call that  
4 document?

5 A My road list.

6 THE COURT: Charleston County Road List.

7 A Yes.

8 THE COURT: And it purports to be all  
9 roads in the County?

10 A Yes.

11 THE COURT: And to designate who owns the  
12 road?

13 A Where they are and who owns them.

14 THE COURT: All right. Thank you,  
15 Mr. Neal.

16 A Officially we -- if we want to know  
17 something officially we go to, like, if it's a state  
18 road, they have a website they keep pretty current,  
19 and I go look at our records to see if we picked up  
20 something. It changes a lot as people annex and  
21 that's where truly --

22 THE COURT: Right. Right. I'm with you.

23 A It's a little crazy.

24 Q Sir, there has been some question about  
25 private roads and public roads. What is

1 Resurrection Road?

2           A     It's a County non-standard road. And on  
3 December 6, 2011 I provided a list of about 300 -- I  
4 think it was 297 roads -- to Charleston County  
5 Council recommending that they have those -- those  
6 were all community roads, considered community  
7 roads. County Council said they are going to  
8 consider those roads public roads, because we've  
9 maintained them for a very long time, and we would  
10 treat them as such. I was directed to do what it  
11 took to bring them into the County maintenance  
12 system which means I would need to survey them, have  
13 plats prepared, talk to all the citizens. The  
14 process has become rather involved, because they  
15 want us to speak with all the landowners, make sure  
16 they understand what we're doing and what -- what  
17 effect it has on them, so rather than being done in  
18 a year or two it's probably going to take us five to  
19 ten years to finish all these roads, because then we  
20 have to get signatures and record plats, and so it's  
21 a pretty involved process. In the mean time they  
22 are considered public roads. We maintain them as we  
23 always have. That's pretty much the program.

24           Q     It's your testimony here today that  
25 Resurrection Road is a public road?

1           A     Yes.

2           Q     It has been dedicated to the public?

3           A     Yes.

4           Q     You have a way of marking, which is --  
5     that which is a public road and that which is a  
6     private road; do you not?

7           A     We do. But it was done -- when we changed  
8     the road code in December 6, 2011, that provided  
9     us -- provided the County the ability to put a blue  
10    sign for a private road and a green sign for public  
11    road. Not all road signs have been converted over  
12    because of man power and money constraints, but for  
13    the most part a blue sign would indicate a private  
14    road and green sign would indicate a public road.  
15    State road, county road, whatever.

16          Q     Do you know how long the Resurrection Road  
17    sign has been green? Do you have any idea?

18          A     Been green for a very long time. Because  
19    before that, before December 2011 all road signs  
20    were green whether they were public or private.  
21    So -- but we did replace the Resurrection Road sign.  
22    It was crooked and it was the PGA tournament was  
23    coming, wanted it to look nice so we put up new sign  
24    and it was green.

25          Q     You prettied it up with a new sign?

1           A     It has to meet the new MUTCD standards.  
2     The old sign had -- the letters were smaller than  
3     the new standards require, so we put up new signs.

4           THE COURT:   Is that mud?

5           A     M-U-T-C-D, Manual of Uniform Traffic  
6     Control Devices.

7           Q     This is a correct picture of the  
8     Resurrection Road sign as it now exists?

9           A     I believe so.  I haven't been out there  
10    recently but --

11          Q     It is upright?  It's not crooked?

12          A     Yes, sir.

13          Q     To your knowledge, the old crooked sign  
14    was straightened up before the PGA?

15          A     I believe so.

16          Q     And we're referring to Plaintiff's Exhibit  
17    3A.

18                         Referring to Plaintiff's Exhibit 4,  
19    is that a depiction of a private road sign?

20          A     Yes.

21          Q     What color is it?

22          A     It's blue.

23          Q     It's blue.  Sir, I've asked you before  
24    about the acts of maintenance on Resurrection Road.  
25    Would you have a, in your records, a list of work

1 orders for Resurrection Road?

2 A It's kept electronically in the Cartagraph  
3 system.

4 Q I'm going to hand you what has been  
5 previously marked as Neal 11A to your deposition and  
6 ask you --

7 A Yes, this is a printout of -- let's see,  
8 looks like Monday May 14, 2012 of the work order  
9 that we've done on Resurrection Road.

10 Q I believe you said there were 12 through  
11 the end of that?

12 A Yes, 12.

13 Q Twelve. All right. We'll put this in as  
14 Plaintiff's Exhibit 6.

15 (Whereupon Plaintiff's Exhibit 6 is marked.)

16 THE COURT: That's the Cartagraph report  
17 on Resurrection Road? Is that what that --

18 A Yes. As with any software sometimes what  
19 you get is what you ask for. In my -- the person  
20 who created the report is my manager for this  
21 particular operation. I said print out everything  
22 we have on Resurrection Road that we've done since  
23 2009.

24 THE COURT: Okay.

25 A So it does show some work orders that were

1 canceled or that they planned and didn't execute,  
2 but also shows everything that we did so --

3 THE COURT: Okay.

4 Q Were there roads that asked to be shown as  
5 private roads?

6 A I don't understand your --

7 Q I'm saying were there previous public  
8 roads that requested that they -- the status be  
9 changed to private?

10 A As part of the policy, if the residents of  
11 the road oppose our action of making them public we  
12 would meet with all of them, as long as they  
13 understood what the ramifications of that -- we  
14 wouldn't be maintaining it, somebody else would be.  
15 If there was a hurricane it would be up for them to  
16 clear it out. School bus getting down their road is  
17 their responsibility. As long as they understood  
18 that, we took it to Council and Council, you know,  
19 they -- on two occasions thus far have taken roads  
20 out of the system. Feldman Road and Possum Trail  
21 have both been taken out of the system. We have  
22 other roads that we're working with now that have  
23 requested that. We just haven't taken them back to  
24 Council yet.

25 Q So those are two roads that have been

1 taken out of the public domain, shall we say?

2 A Yes.

3 Q That is Possum Trail Road and Feldman  
4 Road?

5 A That's correct.

6 Q You've had no request from anyone on  
7 Resurrection Road to change --

8 A No.

9 Q We'll put this in as Plaintiff's 7.

10 (Whereupon Plaintiff's Exhibit 7 is marked.)

11 (pause)

12 Q Sir, there was a report made,  
13 Administrator's Report to Council dated March 21,  
14 2012. Information provided by one Jim Neal,  
15 Director of Public Works. Are you familiar with  
16 that, sir?

17 A Yes.

18 Q Would you take a look at that and identify  
19 that. That's your --

20 A Yes, it's actually signed by Kirk Taylor,  
21 but I wrote it.

22 Q All right, sir. Would you check to see if  
23 on the list of roads there, there appears to be a  
24 Resurrection Road?

25 A Yes.

1           Q     What information is given about  
2 Resurrection Road?

3           A     Well, on all the roads we had categories  
4 with information that we knew at the time;  
5 approximate years maintained, what Council district  
6 it was in, number of properties adjacent to the  
7 road, travel-way width; is there a turn-around at  
8 the end; right-of-way, was there some kind of  
9 right-of-way existing, partial or not? Does the  
10 road meander in and out? Is there adequate  
11 drainage? Large trees within -- along the roadway?  
12 Wetland? About how long it was. And if we knew how  
13 many heirs properties there were.

14          Q     Would you inform the Court what you showed  
15 for Resurrection Road as to those categories?

16          A     Yes, sir. Resurrection Road been  
17 maintained approximately 34 years. It's in district  
18 2. There are 17 adjacent properties; travel way is  
19 about 16 feet wide. There isn't a turn-around at  
20 the end. There is a partial right of way. Doesn't  
21 meander. Adequate drainage is no. Trees larger  
22 than 24 inches, yes. Are there wetlands, yes.  
23 Length in miles, point four miles. Number of heirs  
24 properties listed as two. That was the information.  
25 Best information we had at the time.

1 Q We'll put that in as Plaintiffs 8.

2 (Whereupon Plaintiff's Exhibit 8 is marked.)

3 MR. OBERMAN: That's all the questions I  
4 have for Mr. Neal on that.

5 Q Mr. Neal, to your knowledge has  
6 Resurrection Road been shown on various aerial  
7 photographs, sketches of that area of Johns Island?

8 A Repeat your question, please.

9 Q I say, to your knowledge has Resurrection  
10 Road been shown on aerial photographs?

11 A Yes.

12 Q And that's been of public record?

13 A Yes.

14 Q I'm going to show to you what's been  
15 previously indicated as Defendant's Exhibit B and  
16 ask you to tell me if that's not a part of your file  
17 on Resurrection Road?

18 A I believe so. Aerial photo of --

19 Q Aerial photo. What does it show on there,  
20 sir?

21 A Shows Betsy Kerrison and it shows a road  
22 that is labeled Resurrection Road that runs back  
23 towards the, I guess, east.

24 Q East. All right. And that is public  
25 record for anyone who would want to look that up, is

1 that not correct?

2 A I believe this is a screen shot off of our  
3 GIS system that's available to the public any time.  
4 You can go to the aerial photos. I believe this  
5 is -- appears to be the 2009 aerial photo. Could be  
6 the 2001. We now have the 2012 which this is not.  
7 (Hands up document.)

8 THE COURT: Is that one previously marked?  
9 Defendant's B? Okay. All right. Came in  
10 yesterday. Defendant's B.

11 (pause)

12 THE COURT: Okay.

13 Q Are you familiar with the recording of  
14 surveys and plats at the RMC Office for Charleston  
15 County?

16 A I know that that's where we take our plats  
17 to be recorded.

18 Q I'm going to hand to you a plat that's  
19 been previously marked as Plaintiff's Exhibit 2A and  
20 I will submit that it's dated January 18, 1996 and  
21 revised February 27, 1996. Shown at the top  
22 recorded 20th day of May, 1996. It shows Book G-269  
23 Page 298. Are you familiar with that, sir?

24 A Yes, looks like a mock up of the plat that  
25 I had in our files.

1 Q Do you know that is public record?

2 A If it's at the RMC Office it is public  
3 record. If it's in my file it's public record, so  
4 in both cases, yes.

5 Q Persons interested in Resurrection Road  
6 have a right to rely on that survey and plat that's  
7 recorded?

8 MR. ROBINSON: Objection; calls for a  
9 legal conclusion.

10 THE COURT: You can answer. Go ahead.  
11 Overruled.

12 A I think people can rely on that to say  
13 that there is a Resurrection Road with a 25-foot  
14 right-of-way. It's the kind of thing that we rely  
15 on to say is there a right-of-way there or is there  
16 not a right-of-way there? But it doesn't  
17 necessarily mean -- it's got to have a stamp that it  
18 was dedicated and accepted so -- that's what I've  
19 learned from my --

20 Q You're familiar with the process of  
21 getting the County to accept a road?

22 A Yes. It's not a process of the Public  
23 Works Department. It's a process that goes through  
24 the Planning Department, but I'm familiar with it.

25 Q To your knowledge was the 25-foot

1 Resurrection Road right-of-way submitted to the  
2 County offices?

3 A I wasn't here in 1996. Based on the  
4 record that it was recorded at the RMC, that there  
5 was a Council action, I would assume, I would make  
6 assumption it was, you know, a dedicated and  
7 accepted easement.

8 Q You've read the correspondence back and  
9 forth; have you not?

10 A Yes.

11 Q You've read the letter from Beverly  
12 Craven?

13 A Yes, and I read that yesterday as well.

14 Q And if I remember right, it says that it's  
15 been dedicated to the public, the 25-foot  
16 right-of-way has been dedicated to the public?

17 A Yes.

18 Q And went further and said that it was to  
19 provide access to 25 acres of potentially  
20 development land?

21 A I don't have the document in front of me.  
22 I don't recall exactly what it says, but for my use  
23 it says 25-foot right-of-way dedicated to the  
24 public, then it comes under my purview at that  
25 point.

1 Q All right, sir.

2 MR. OBERMAN: That's all the questions I  
3 have of this gentleman. So he can get on that  
4 cruise ship.

5 CROSS EXAMINATION BY MR. ROBINSON:

6 THE COURT: All right, Mr. Robinson.

7 Q Mr. Neal, it's a pleasure to see you  
8 again. Thank you for being here today.

9 A Thank you.

10 Q You stated in your testimony for Mr.  
11 Oberman that you had prepared a spread sheet of the  
12 roads in Charleston County and you attached that to  
13 Exhibit 8; correct?

14 A Yes. When we sent the memo out to  
15 Council -- when the administrator sent it out, he  
16 included -- we included the background for the basis  
17 as well as the specifications on what the  
18 non-standard roads were and a listing of the roads.

19 Q Okay. Who compiled the information that  
20 went into this exhibit?

21 A Members of my staff.

22 Q Under your supervision?

23 A Yes.

24 Q I think I may have misheard you in your  
25 previous testimony. Would you please read the

1 information regarding Resurrection Road,  
2 specifically that information regarding the  
3 existence of a right-of-way?

4 A Thirty-four years Council District 8, and  
5 I must have made a mistake when I was reading. I  
6 got into the wrong line. It's 34 years, Council  
7 District 8, nine adjacent properties, 30-foot travel  
8 way, no turn-around at the end, the right-of-way is  
9 blank, and I said it was partial and that was a  
10 mistake. Wrong line.

11 Q That's okay.

12 A It does meander. It does not have  
13 adequate drainage. It does have trees, some  
14 wetlands, about .4 miles long and there is one heirs  
15 property.

16 Q Okay. Why is the box, that is captioned R  
17 slash W partial slash yes slash no that you've  
18 described as the right of way box, blank?

19 A Either we didn't have the information, we  
20 hadn't done the research or the person that was  
21 assigned to do that didn't find the plats or didn't  
22 see them in the file. We compiled this as a  
23 preliminary document that we used to just get a  
24 scope of what we had to do and the amount of work  
25 involved in bringing these roads into the system.

1 Most of this work was done by interns that came to  
2 work for us in the summer, and a lot of their  
3 information was incomplete. But it's just a  
4 preliminary document. That's what it was for.

5 Q Was this preliminary document provided to  
6 County Council?

7 A Yes.

8 Q Did County Council vote or make any  
9 decision based on this preliminary document?

10 A I don't know if they based it on that  
11 document or the information, you know, I don't know  
12 what the basis of their decision was. But the basis  
13 of their decision for these roads was that these  
14 were the roads that had been listed as community  
15 roads for a very long time. And we had, in our  
16 briefing to Council, we said that this information  
17 was all preliminary other than the name of the road  
18 and how long we've been maintaining it.

19 Q How did you obtain the information  
20 regarding how long the road had been maintained?

21 A From a number of sources. We look in our  
22 Cartagraph system where we keep most of our current  
23 records. We pulled our existing work books from --  
24 we compile annual or they did compile annual reports  
25 that listed the roads that we had and the number of

1 years that we maintained them. If there was any  
2 question we would go ask our staff. Staff had been  
3 here for up to 40 years. Said is this a road you  
4 had maintained? We're maintaining it today, do you  
5 remember when you started? A lot of times we've  
6 been maintaining it since I started here, so we  
7 verified it through a number of different ways. But  
8 those were the important points of this list that we  
9 expressed to Council, is we got the name of the  
10 road, we've been maintaining it and -- for a very  
11 long time.

12 If there was a question of whether or  
13 not we had been maintaining it for more than 20  
14 years or if we didn't have sufficient records or  
15 recollections from our staff, we didn't put it on  
16 the list.

17 Q Would you agree with me that it says that  
18 Resurrection Road has a 30-foot travel way?

19 A Yes.

20 Q I'll refer you to Plaintiff's Exhibit 1A,  
21 specifically the dirt road that you have previously  
22 identified today. We've been calling it the  
23 Resurrection Road travel way as oppose to  
24 right-of-way. Could you look at the marks on the  
25 road and identify for me a place where the dirt

1 travel way is 30 feet wide?

2 A It's not listed in any place.

3 Twenty-four, 25 feet is the maximum that shows on  
4 that.

5 Q So how would you have gotten that  
6 information regarding width?

7 A In general it was information we either  
8 had on our -- in our files and, again, roadway  
9 travel-way widths vary over time. The roadways move  
10 over time as people avoid pot holes and other  
11 things. What we've -- when we talk to our citizens  
12 about bringing a road into the system we tell them  
13 that we would take the traveled way and probably  
14 five feet on either side to address for drainage, so  
15 that we can account for that. But usually it's when  
16 we finish platting out the roads it's around 30,  
17 35 feet. On this particular case I don't know.

18 Again, this was preliminary  
19 information. It was provided as preliminary  
20 information on any of the columns past the  
21 maintenance date. It was probably the best guess of  
22 the supervisor at the time. And if you look at  
23 Resurrection Road, especially in the back, it's  
24 pretty obvious where somebody has plowed their field  
25 right up to the edge of the road and sometimes they

1 go a little far and kind of have to grade the furrow  
2 back. But that's not uncommon on a lot of our  
3 roads. So that 30 feet was the best guess of the  
4 person making -- doing that particular roads  
5 investigation.

6 Q Okay. On this, what appears to be column  
7 nine on Exhibit 8 on this table, what does it say  
8 about Resurrection Road and trees, 24 inches plus?

9 A Says yes.

10 Q What does that mean?

11 A That means that there are, along  
12 Resurrection Road, along that right-of-way there  
13 exist trees that are greater than 24 inches in  
14 length that may have to be considered -- given  
15 special consideration if we decided to widen the  
16 road or realign the road.

17 Q Can you define what special consideration  
18 would be?

19 A In general if it's larger than 24 inches  
20 we have to go to the County Planning Department and  
21 the Board and have them give a variance or give us a  
22 permit to take down a tree that large. Depending on  
23 the health of the tree. That's done by the  
24 arborist.

25 Q What about column ten where it says

1 wetlands?

2 A Says yes.

3 Q What -- how does that effect the  
4 information you gave Council?

5 A Well, in general a lot of the times we  
6 have roads where they are adjacent to wetland and  
7 that requires special consideration when we go to do  
8 things. And, again, those columns were put in -- it  
9 wasn't a delineated wetland, just what that person  
10 who was doing an investigation of the file would say  
11 looks kind of wet from the color of the trees on the  
12 overhead imagery or low spot here or there. But in  
13 general if there is wetlands, we have to worry about  
14 jurisdictional wetlands. It just goes to show the  
15 increased cost in upgrading roads.

16 Q Costs are an important factor in this  
17 community road system?

18 A Costs are important to the Public Works  
19 Department and the County.

20 Q This community roads Appendix A list, does  
21 it contain a column to delineate whether a road is  
22 public or private?

23 A No.

24 Q What is your definition of community road?

25 A Community road is a road that was -- that

1 was deemed as so by County Council action in 1965.  
2 That action set a criteria which included a request  
3 to Council for them to maintain the road. So in  
4 order for a road to be considered a community road  
5 it had to -- Council had to say, yes, we would  
6 accept that road; that we would -- there had to be  
7 three or more dwellings and a place for the motor  
8 grader to turn around. That was -- they entered the  
9 system starting in 1965, a lot of the roads '67. I  
10 think the last road that we had come into the  
11 system, I can't recall at this point in time but it  
12 was in the 80's, I believe. But the community road  
13 system was -- you had to formally enter it. It had  
14 to be a request by someone along the road for us to  
15 do that and then Council would approve us  
16 maintaining that road, and we over time just  
17 continued to maintain those roads. If someone asked  
18 and said we want you to stop maintaining those  
19 roads, we would inform all the citizens on the road  
20 and we would cease maintaining it. That was one of  
21 the provisions that came later. I think that policy  
22 came into effect in the 80's or '90's, that if there  
23 was a request in writing from residents on the road  
24 that wanted us to stop maintaining that road, that  
25 we would do so.

1 Q What is your definition of a public road?

2 A Public road is a road that's publicly  
3 dedicated and accepted to the public, or road that  
4 has been, by virtue of long time public access and  
5 public use and maintenance, used by the public. So  
6 all of our County non-standard roads, again, if  
7 Council tells me that they are public roads then  
8 that's also part of my definition. So if County  
9 Council said all the roads on this program are  
10 public then, in my opinion, they are public.

11 Q Is there a specific definition that you  
12 can point to in any County regulation or rule that  
13 defines what a public road is?

14 A I don't know.

15 Q Okay. You have previously testified that  
16 there were two roads that were community roads?

17 A Yes.

18 Q That became private roads?

19 A They were actually County non-standard  
20 roads. First they were community roads. They were  
21 part of the County Non-standard Road Program in  
22 December of 2011. When we -- again, as we bring  
23 these roads into the system we -- and those people  
24 responded to my March 11 letter, they said we want  
25 it to be private, thank you for maintaining the road

1 for all this time, really like for this road to be a  
2 private road. We spoke with those individuals. We  
3 took those roads to Council and Council said they  
4 were taken from the rolls.

5 Q I'm sorry. We're throwing a lot of terms  
6 around here, but did I hear you say that a community  
7 road under the 1965 rules was a public road?

8 A Yes.

9 Q But by action of this Non-standard Road  
10 Program you're telling me that a public road became  
11 a private road?

12 A When Council said that all of these  
13 community roads -- community roads -- and there was  
14 a letter written in '67, I believe. Anyway, there  
15 was a policy in 1967 that they would not -- they  
16 would allow the Public Works Department to maintain  
17 these roads without regard to rights of way or  
18 whether -- it was not a requirement that there was a  
19 dedicated right-of-way for it to be included in this  
20 program, in 1965. But Council, you know, in  
21 previous -- subsequent years, you know, as we spent  
22 more and more time and dollars maintaining these  
23 roads it became a much more formal process. And  
24 then in December, partially through the actions of  
25 Mr. Dawson and Mr. Taylor and myself, to take the

1 question mark away of private versus public, Council  
2 said these are public roads, we've maintained these  
3 for a very, very long time, there is a public  
4 interest in these roads, and that we want to take  
5 the steps necessary to bring those roads into the  
6 County maintenance system so they would be  
7 dedicated, there would be a plat. So that's what  
8 the non-standard road established.

9 Q That's right. You said you had to take  
10 that question mark away because there was a question  
11 as to whether they were a public or a private road;  
12 right?

13 A There was a question, because we didn't  
14 want to have to go to court on every single road if  
15 there was -- when there was a question. In general  
16 I think in the past we had had a court case or two.  
17 I don't recall.

18 MR. MITCHELL: Your Honor, I object to  
19 Mr. Robinson's questioning. He's asking legal  
20 questions. Mr. Neal is his witness. So he  
21 shouldn't be --

22 MR. ROBINSON: This is on first cross. As  
23 I understand it, Your Honor, we're still in the  
24 Plaintiff's case in chief.

25 THE COURT: He can lead. He's on cross.

1           Q     Mr. Neal, I want to turn you to  
2     Plaintiff's Exhibit 2A, which I believe you  
3     previously identified for Mr. Oberman?

4           A     Yes.

5           Q     You have described that this appears to be  
6     the Resurrection Road right-of-way; correct?

7           A     That's what it seems to indicate, yes.

8           Q     Does it indicate the center line of  
9     Resurrection Road?

10          A     Yes.

11          Q     Okay. Now, you previously testified that  
12     something to the effect of you believe that a plat  
13     recorded in the RMC would provide the public and  
14     landowners with notice; correct? That this was  
15     record notice?

16          A     I don't know what you mean by the word  
17     notice. But this would indicate that there is a  
18     public right-of-way dedicated and accepted.

19          Q     Would you please read the two stamps in  
20     bold on the left and center of the document?

21          A     Says -- one says warning, approval of this  
22     plat by the Planning Board and/or County Council  
23     does not indicate approval nor adjudicate title of  
24     the access or right-of-way shown. And the next one  
25     says this approval in no way obligates the County of

1 Charleston to maintain the right-of-way until it's  
2 been constructed to County standards.

3 Q In fact, using your engineering experience  
4 can you delineate that there appears to be a  
5 difference between the 25-foot right-of-way and the  
6 center line of Resurrection Road?

7 A Yes.

8 Q They don't run on top of each other; do  
9 they?

10 A Not entirely, no.

11 Q Now, you have been out to inspect the  
12 physical Resurrection Road; right?

13 A Correct.

14 Q The dirt road bed?

15 A Yes.

16 Q Would you describe that road as  
17 meandering?

18 A Somewhat.

19 Q As a matter of fact, you put that in your  
20 table of information; didn't you?

21 A Correct.

22 Q Is the Resurrection Road 25-foot  
23 right-of-way meandering?

24 A No. The one in that picture, that's what  
25 you're talking about?

1 MR. ROBINSON: Yes, sir.

2 THE COURT: I've got it. I'm looking at  
3 it. You can keep it down there.

4 Q Mr. Neal, you've identified two roads in  
5 which all the landowners agreed that they wanted a  
6 road, whatever it was, to become a private road.  
7 Would that be a fair statement?

8 A Yes.

9 Q Did all the landowners on the road agree  
10 to make it a private road?

11 A Yes.

12 Q What happens if you have a dispute between  
13 the landowners on the road as to whether a road is  
14 public or private under this Non-standard Road  
15 Program?

16 A If there is a dispute we try to resolve  
17 the disputes if we can. Then we take the  
18 information, and it hasn't happened yet, but we'll  
19 take that to Council for them to make a decision.

20 Q Okay. I'm going to turn you back to  
21 the -- that's in your -- I'm sorry. This is  
22 Defendant's Exhibit 7. Can you identify that  
23 letter?

24 A This is a copy of a letter I sent to  
25 Equity Trust Company.

1           Q     The body of that letter, is that a form  
2 letter that you prepared?

3           A     Yes, it is.

4           Q     In fact, it was in the materials you  
5 submitted to County Council for approval; right?

6           A     No, that was for information.

7           Q     For information. Excuse me. But this is  
8 a letter that you've disseminated across the County  
9 including the folks on Resurrection Road?

10          A     About 3,000 of them, yes.

11          Q     Item number two, I think it's been read ad  
12 nauseam, but it says -- let's see. I'm sorry. Item  
13 number three. It says that the County may require  
14 additional right-of-way; correct?

15          A     It says for future improvements additional  
16 right-of-way may be required. That was to let  
17 people know that if they wanted their road widened,  
18 if they wanted it paved it may require additional  
19 right-of-way.

20          Q     Returning you to Plaintiff's Exhibit 1A,  
21 can you identify at the convergence of the  
22 Resurrection Road dirt road and the Resurrection  
23 Road 25-foot right-of-way, which you say has been  
24 dedicated to the public, how wide is the road there?

25          A     Where the road -- where do you --

1 Q Well, let's see the first point at which  
2 you can identify where the dirt travel lane and the  
3 right-of-way converge?

4 A Probably H?

5 Q Yes, sir; I would say that's fair.

6 A Says 13.6.

7 Q If you add that to the 25-foot adjacent to  
8 it how many feet is that approximately?

9 A 38.5. Right?

10 Q If you're right that the County has access  
11 to that right-of-way or has the use of that  
12 right-of-way, doesn't the County, in fact, have  
13 approximately 28 feet of right-of-way at that spot?

14 A I think 38.

15 Q 38 feet. You said that you did not  
16 receive any objections from property owners on  
17 Resurrection Road related to the nonconforming  
18 roads?

19 A We received one letter.

20 Q Who did you receive a letter from?

21 A Berkeley Electric Coop.

22 MR. ROBINSON: Court's indulgence one  
23 second, Your Honor?

24 THE COURT: Okay.

25 Q Mr. Neal, did you receive a letter from

1 Mason Heyward related to Resurrection Road?

2 A It's the first time I've seen this, but it  
3 could have been received by our office.

4 Q So this letter could have been received by  
5 your office, but you didn't have it?

6 A I haven't seen it.

7 Q Could you identify the fax source on the  
8 top of that document? The fax strip?

9 A Charleston County Public Works.

10 Q So it came from your Public Works office;  
11 right?

12 A Yes.

13 Q Could you read that document, please, for  
14 the record?

15 A Sure.

16 MR. OBERMAN: May I correct, I think, a  
17 misconception, Your Honor?

18 THE COURT: Let's identify it. Let's give  
19 it a name and number.

20 MR. ROBINSON: Okay. I'll go ahead and  
21 mark it for identification.

22 (Whereupon Defendant's Exhibit 9 is marked  
23 for identification.)

24 THE COURT: Let me stop you. So from the  
25 list it says letter from John Robinson to Jim

1 Neal, Director of Public Works, April 12, 2012.

2 That's what this document is?

3 MR. ROBINSON: Yes, sir.

4 MR. OBERMAN: It is not from Mason  
5 Heyward. It's from Mason Heyward's lawyer.

6 MR. ROBINSON: I'll stipulate to that.

7 That's fine.

8 THE COURT: Okay.

9 MR. OBERMAN: There was a mistake made in  
10 questioning.

11 MR. ROBINSON: I apologize. I'll clarify  
12 that.

13 THE COURT: All right.

14 Q I think to the point, Mr. Neal, you've  
15 said -- I'm sorry?

16 THE COURT: You've got it identified. Any  
17 objection to the letter?

18 MR. OBERMAN: No.

19 (Whereupon Defendant's Exhibit 9 is marked  
20 in evidence.)

21 MR. MITCHELL: No, Your Honor.

22 THE COURT: All right. Go ahead.

23 Q Mr. Neal, you say you haven't seen this  
24 letter before now, but you have identified that this  
25 document was faxed back from some source from Public

1 Works; correct?

2 A I should have seen it, yes.

3 Q What is the date on that? You show it  
4 going out from you?

5 A 8/24/12. Friday at noon.

6 Q I represent to you that I'm John Robinson  
7 and that you know?

8 A Yes.

9 Q What's the date on that letter?

10 A April 12, 2012.

11 Q Would that be within the 90 days of your  
12 letter notifying landowners that they needed to  
13 inform you of their intent on the community roads  
14 program?

15 A Yes.

16 Q Could you read that letter for the record?

17 A Dear Mr. Neal, thank you for your letter  
18 dated March 27, 2012 which you sent to my client  
19 Mason Heyward on parcels designated TMS number  
20 204-00-00-018 and 068 and how they would be effected  
21 by the Charleston County Non-standard Road Program.  
22 The subject property has been in litigation since  
23 2008 largely because of issues related to  
24 right-of-way and the extent of boundaries of  
25 Resurrection Road. Pursuant to item 4 of your

1 letter this serves as written notice that Mason  
2 Heyward disagrees and opposes the County's proposed  
3 actions related to public roads that -- as they  
4 would apply to Resurrection Road and the  
5 Resurrection Road right-of-way on the effected  
6 parcels. Mason Heyward expressly requests that the  
7 County discontinue maintenance and improvements on  
8 this road as part of its anticipated public road  
9 maintenance system. Mr. Heyward expressly requests  
10 Charleston County not survey the right-of-way or  
11 record a plat or any other way alter the boundary of  
12 the property reflecting the existence of a public  
13 road. Mr. Heyward expressly requests that the  
14 County discontinue all maintenance and improvements  
15 on this property.

16                   Secondly, Mr. Heyward disputes that  
17 Resurrection Road is a public road within the  
18 County's newly created definition and has an active  
19 court case intending to demonstrate just that. Mr.  
20 Heyward contends, and trial testimony has  
21 demonstrated, that this road has been privately  
22 maintained by road residents for many years. Mr.  
23 Heyward will continue to grant ingress and egress to  
24 neighbors, but due to the nature and placement of  
25 the road he would be irreparably harmed if the

1 subject road were improved to County standard or if  
2 a party has standing to assert that Resurrection  
3 Road is a public road that should be raised to  
4 County standards.

5           Please call me if you have any  
6 questions regarding this matter. Bernard Ferrara,  
7 Esquire as County Attorney is a party to the above  
8 referenced lawsuit and I copy him on this  
9 communication to insure clarity of our current  
10 position. I'm sure he may be able to answer some of  
11 your questions as well. With kindest regards -- I  
12 guess that's your signature -- John Edward Robinson.

13       Q     Thank you for that exercise. Now that you  
14 have seen this document, is it possible that public  
15 works received this document?

16       A     Absolutely.

17       Q     Is it possible it received it in a timely  
18 manner?

19       A     Sure.

20       Q     You very kindly acknowledged that you  
21 should have seen it or known about it, but it's  
22 possible that you didn't; correct?

23       A     Yes.

24       Q     Do you have any reason to doubt my  
25 representation that this document was furnished to

1 you after April 12, 2012?

2 A I have no reason to say you didn't, no.

3 MR. OBERMAN: Your Honor, I'm going to  
4 have a continuing objection to the use of the  
5 possible. I think in the law possible is not  
6 recognized as the standard of proof that we  
7 look for.

8 THE COURT: You want to restate that?

9 Q In your experience are there documents in  
10 any given file that escape your attention?

11 A Yes.

12 Q Is it possible that some documents  
13 received by the County, that are technically public  
14 records, do not get put in the correct file?

15 MR. OBERMAN: I continue the objection.

16 THE COURT: All right. His objection is  
17 to the term possible. Is there a better term  
18 you could use to pin him down, what's more than  
19 likely than not?

20 MR. OBERMAN: Try probable.

21 Q Probable? Thank you. Is it probable that  
22 this letter escaped your attention?

23 A That letter did escape my attention. I  
24 was notified there was a lawsuit back in that  
25 timeframe. But that's really not an excuse for me

1 not to have seen the letter. It is not in my  
2 Resurrection Road file.

3 THE COURT: I'm assuming that more likely  
4 than not or more probably than not it should be  
5 in that file; should it not?

6 A It should be in that file with all the  
7 other letters that we received.

8 THE COURT: All right.

9 Q Mr. Neal?

10 THE COURT: Objection noted. I think  
11 we've overcome that. Go ahead.

12 Q Mr. Neal, it would appear you have one  
13 objection to the development of Resurrection Road;  
14 correct?

15 A Correct.

16 Q You would have one objection to bringing  
17 that road into the community -- I'm sorry, not the  
18 community. The non-conforming roads program; right?

19 A County Non-standard Road Program.

20 Q County. I'm going to start saying  
21 Non-standard Road Program and hopefully I can stick  
22 to that.

23 A Thank you.

24 Q So we have one objection to that; right?

25 A That's correct.

1           Q     How, based -- you have written protocols  
2 and procedures for how to deal with this process;  
3 correct?

4           A     We have a set of procedures. They kind of  
5 evolve but, yes, in general we have a set of  
6 procedures written up.

7           Q     What is your procedure right now for when  
8 you have a dispute among landowners as to whether a  
9 road should be or is public or private?

10          A     We have hired an individual whose job it  
11 is to go out and explain the program, because we  
12 have found that the letter that I sent on March 27  
13 causes a lot of consternation. Our intent is not to  
14 bring every road to a County road standard. In  
15 fact, our intent is to determine what the residents  
16 along the road would like us to do and then make  
17 those improvements, either preserving it as an earth  
18 road with very little additional right-of-way or if  
19 the residents on the road would like us to put it  
20 forward for funding to get it paved, or a lot of  
21 people would like to have their roads paved, a lot  
22 of people would like to have them improved to a rock  
23 standard. Other people would like them to be just  
24 as rural -- but they would like to have the bushes  
25 cut back. Or they want to get the pot holes out.

1 One of my biggest drivers is to reduce the cost that  
2 it is to maintain it. And that is mostly driven by  
3 drainage. So we have actually two people, one on my  
4 existing staff and this new person who go out and  
5 speak with all the residents, which have to make  
6 appointments with them, we sit down with them,  
7 explain the program. Usually takes about two hours  
8 per person to explain what we're trying to do. And  
9 explain that we're not trying to do something that  
10 the community doesn't want to do. Now, when we have  
11 cases -- so a lot of the letters -- your letter  
12 probably being an exception, because not that many  
13 lawyers -- most of the lawyers that sent us letters  
14 said we want to reserve the rights and tell us what  
15 the heck is going on. But in most of the cases they  
16 just -- it's a matter of they don't understand the  
17 language, they don't understand the intent. The  
18 intent is not to go out and build super highways.  
19 The intent is to try to have a public road that's  
20 traversable in all weather situations and the  
21 community agrees. When we have disputes that can't  
22 be resolved, that's when I would get the advice of  
23 our counsel and we would go to County Council and we  
24 would say this is the deal. We have four people who  
25 say they don't want the road improved and they have

1 four people who say they do. Then Council will make  
2 a decision.

3 Q Okay. Redirecting you to item three of  
4 your letter in Defendant's Exhibit 7 where it says  
5 the County may seek additional right-of-way, do you  
6 know under the plans and protocols that you have  
7 developed as a part of the Non-standard Road Program  
8 whether right-of-way would be taken voluntarily or  
9 through litigation?

10 A As part of this program we do not want to  
11 have to go to any kind of litigation. We ask for  
12 all right-of-way, under this program, to be gratis.  
13 If someone wanted their road to be paved and we  
14 needed an additional 15 feet of right-of-way to do  
15 that, we would say if you want this road paved you  
16 have to give us the right-of-way to do so. And we  
17 would have them sign the forms to do that, et  
18 cetera. And this very carefully said the word may.  
19 Because we don't -- some of the improvements that we  
20 plan would be installing culverts and putting in  
21 ditches, not wholesale paving of roads. We don't  
22 have the money for that anyway.

23 Q You previously testified --

24 THE COURT: Let's go ahead and take a  
25 break right now.

1 (Whereupon Defendant's Exhibit 14 is marked.)

2 (Whereupon Defendant's Exhibit 15 is marked.)

3 (Short break.)

4 THE COURT: Mr. Robinson, are you ready to  
5 start back?

6 MR. ROBINSON: Yes, sir.

7 THE COURT: Let's start back.

8 CONTINUED CROSS EXAMINATION BY MR.

9 ROBINSON:

10 Q Mr. Neal, do you recall at your deposition  
11 providing a document related to work orders by route  
12 for roads that the County says it maintains?

13 A Yes.

14 Q Could you identify this document and see  
15 if it's the same as the one you provided us? Has it  
16 already been entered? I apologize. I'll withdraw  
17 that.

18 A Previously had one by somebody else.

19 Q Thank you for catching that. On -- if you  
20 would please, on Plaintiff's Exhibit 6 could you  
21 read the line with the start date of 6/16/2001, or  
22 could you read everything on that line?

23 A 6/16/2011, is that the one?

24 Q Yes, sir?

25 A Work order number 1776 dash 2011, status

1 cancel. Status cancel -- status it says, under the  
2 status line, it says cancel, then it says is  
3 recurring, yes. Activity is mowing and trimming  
4 right-of-way R-O-W. Total cost zero. Canceled per  
5 Jim Neal at foreman's meeting 4/28/2011 community  
6 road work will only be on an on-call basis until  
7 R-O-W is obtained.

8 Q Mr. Neal, if the County had the  
9 right-of-way that you've asserted that they have why  
10 would they cancel mowing the property until  
11 right-of-way was obtained?

12 A This is the interpretation of the foreman  
13 who entered the note at the foreman's meeting on  
14 that date which was prior to the County non-standard  
15 date which was in December of 2011. In order to  
16 save money I told them that we had to -- on all  
17 community roads, unless there was a, you know, firm  
18 reason, it was already a County road or part of it  
19 was a County road, that we were going to suspend  
20 routine maintenance and go to an on-call basis.  
21 That was because we ran out of fuel. And in order  
22 for me to continue to do the absolute necessary work  
23 we basically stopped doing maintenance on about 80%  
24 of the roads in the County for about a three-month  
25 period. That turned out to be a pretty bad decision

1 and I should have just busted my budget, because I  
2 caught more grievance for that than any other single  
3 event in my career as Public Works director, except  
4 perhaps this trial.

5 (Laughter)

6 THE COURT: Keeps getting better, too.

7 A I apologize.

8 THE COURT: You just wait.

9 A That statement was something that the  
10 foreman or whoever -- I don't know who put this in.  
11 That's just something they put in the file. So I  
12 don't think -- it was not stated at the meeting  
13 until right-of-way was obtained. I think that was  
14 their interpretation of only those roads that were  
15 formal County roads with -- that were not on the  
16 community road list, that were County roads like Old  
17 Georgetown Road or Leadenwah Road would have normal  
18 maintenance continue. All community roads, all  
19 roads that we could avoid having to maintain, that  
20 we would do everything we could to preserve fuel.  
21 That's in response to the price of fuel and the fact  
22 that we were running out of money for fuel.

23 Q Can you draw anything from the context of  
24 that note or your recollection about why the foreman  
25 or the inputter of the information would have used

1 the term right-of-way?

2 A Often times in the field the foreman used  
3 the term right-of-way to denote a formal road,  
4 formal easement, but I really don't know why because  
5 it wasn't something we had in the discussion at the  
6 foreman's meeting.

7 Q Would you identify what's been previously  
8 marked as Defendant's Exhibit 15?

9 A This is a letter from Beverly Craven, the  
10 Clerk of Council, to Mr. Seabrook. It says that --  
11 it's referenced the lands of Mason Heyward. There  
12 is a number in front of that. It says County  
13 Council at their meeting of May 7 granted approval  
14 of a 25-foot right-of-way being dedicated to public.  
15 Resurrection Road serves as access to approximately  
16 25 acres of property with high developmental  
17 potential.

18 Q Was that one of the documents that you  
19 reviewed as far as minutes of Council, actions of  
20 Council regarding Resurrection Road?

21 A It would have been one of the documents  
22 that we looked at, yes.

23 Q So you may have seen that before?

24 A I haven't, but my staff I'm sure has seen  
25 it.

1 Q Okay. That document uses the word  
2 approval; correct?

3 A Yes.

4 Q Does it use the word acceptance?

5 A No.

6 MR. ROBINSON: Your Honor, I would ask the  
7 Court to take judicial notice that Mr. Heyward  
8 has filed an abandonment action for this road,  
9 against the County.

10 THE COURT: Is that pursuant to the code?

11 MR. ROBINSON: Yes, sir.

12 THE COURT: 57-9-10?

13 MR. ROBINSON: Yes, sir; it is.

14 THE COURT: When was that filed?

15 MR. ROBINSON: That was filed when you  
16 allowed us to amend the pleadings, which I  
17 believe was October 2011, Your Honor.

18 THE COURT: All right. That's one of your  
19 causes of action?

20 MR. ROBINSON: Yes, sir.

21 THE COURT: All right.

22 Q Mr. Neal, are you familiar with the ways  
23 in which the County may abandon a road?

24 A I'm aware of the way that I'm allowed to  
25 abandon a road, and I have a copy of our road

1 abandonment procedures. It requires County Council  
2 to approve me notifying folks and then posting it  
3 and then coming back to Council again for decision.

4 Q May I mark this as an exhibit?

5 A It's public record.

6 MR. ROBINSON: Thank you.

7 (Whereupon Defendant's Exhibit 16 is marked.)

8 Q Mr. Neal, would you read the top two  
9 paragraphs. I'm sorry, the two lower paragraphs  
10 under the section entitled Road Abandonment  
11 Procedure on page two of Exhibit 16?

12 A Where it says here?

13 Q Yes, sir. If you would just start there?

14 A There are two methods for abandonment of  
15 roadways. The first and most common is set forth  
16 below. The authority originates in the ability of a  
17 governmental body to acquire and dispose of excess  
18 property or rights-of-way. The second process, not  
19 covered here, is the statutory process of South  
20 Carolina under South Carolina code, squiggly line,  
21 57-9-10 SC et sequitur 1976 code which provides for  
22 the bringing of a lawsuit in order to determine  
23 whether a governmental body has actually abandoned a  
24 roadway. Note, this statutory process is rarely  
25 used and the process set forth below is normally

1 used when consent has been acquired from nearby  
2 property owners and when the governing body agrees.

3 Q Okay. Thank you for taking the time to do  
4 that. Do you, from your personal knowledge, know if  
5 Mr. Heyward has filed for abandonment of this road?

6 A I did not -- I did not. No.

7 Q And --

8 A I would assume it's not from number one  
9 from the process of the County but from number two.

10 Q Yes, sir; I think that's --

11 A -- my assumption.

12 Q That's a fair characterization. Returning  
13 you to Plaintiff's Exhibit 1A, you have previously  
14 identified, for the Court, the Resurrection Road  
15 25-foot right-of-way, would you agree with me that  
16 it is bounded by the corner marks or the letters  
17 ABCD and back to A?

18 A Sure, yes.

19 Q That would be a yes, okay.

20 You have -- and correct me if I'm  
21 putting words in your mouth. You previously  
22 testified that the County maintains the dirt travel  
23 path; correct? On Resurrection Road?

24 A The County maintains the earth road of  
25 Resurrection Road. I cannot say whether this

1 depicts that or not. But --

2 Q Well --

3 A Where it exists, that's where we maintain  
4 it.

5 Q Where the dirt physical road exists is  
6 where you maintain?

7 A That's correct.

8 Q Now, at one point, at least according to  
9 this plat, the dirt road converges into the  
10 right-of-way; right?

11 A Yes.

12 Q Would you agree with my characterization  
13 that that is not true for most of the length of the  
14 right-of-way?

15 A According to this depiction.

16 Q Okay. That's fair. According to this  
17 exhibit, if it's correct, then for much of the  
18 25-foot right-of-way the dirt travel path does not  
19 converge into it?

20 A By half.

21 Q And you have just said that the County  
22 only maintains the dirt travel path; correct?

23 A That's correct.

24 Q And in your own words, approximately half  
25 of the 25-foot right-of-way, based on your

1 definition of maintaining the dirt path, the County  
2 would not do any maintenance inside the 25-foot  
3 right of way; correct?

4 A Break it down.

5 Q Certainly, certainly. You have said that  
6 there is an area approximately half of the 25-foot  
7 Resurrection right-of-way box, as shown on this  
8 plat, that the dirt travel path does not traverse;  
9 correct?

10 A Correct.

11 Q You have said that on the dirt -- that the  
12 County only maintains the dirt travel path; correct?

13 A Currently we maintain just where the road  
14 is and maybe -- if tree bushes or whatever are in  
15 the way we sometimes will go outside of that area to  
16 cut them back, if that's -- they're blocking line of  
17 sight, that kind of thing. But for the most part  
18 this depiction shows the road as it exists. That's  
19 where we maintain Resurrection Road.

20 Q So that would not include an area that is  
21 approximately half of the 25-foot right-of-way;  
22 correct?

23 A Yes.

24 Q As we sit here today can you point to any  
25 specific instance of maintenance that the County

1 does do inside the 25-foot right-of-way except where  
2 the road converges?

3 A Looks like -- I don't have any record of  
4 us doing something that's outside of that, no.

5 Q Mr. Neal, you're an engineer; correct?

6 A Yes.

7 Q Have you had any experience in building  
8 roads?

9 A Yes.

10 Q In your experience is it possible to build  
11 a road inside the Resurrection Road 25-foot  
12 right-of-way in the ABCD-A box?

13 A Not if it's to meet County road standards.

14 Q Why is that?

15 A Because County road standards require  
16 50-foot right-of-way. In a 25-foot right-of-way you  
17 account for drainage. You could only put in a one  
18 lane road; very narrow. So that's why the standards  
19 that were set up -- I mean, that's what I would  
20 assume the standard is set up. I didn't make the  
21 standards. They existed before I came here, but the  
22 County standards require 50-foot right-of-way for a  
23 County standard road unless it's in an urban  
24 environment where they can be slightly less because  
25 it's a curbing intersection. But in a rural road

1 you would have to have a 50-foot right-of-way to  
2 have two traveled lanes and sufficient room for  
3 drainage.

4 Q How about under the non-standard program,  
5 would that 25-foot right-of-way be sufficient?

6 A Under the County Non-standard Road Program  
7 where the road exists today and where we've  
8 maintained it is the right-of-way. So we have one  
9 road I think that's 24 feet, 23 feet that we brought  
10 into the system already. There is others that are  
11 very narrow. We try to make sure when we talk to  
12 the citizens about where the road is, we survey it,  
13 that we address those things, but it's generally  
14 where the tires go and five feet on either side.  
15 So, yes, it's possible.

16 Q What's your budget for the non-standard?

17 A We have about \$350,000 of transportation  
18 sales tax allocation money set aside, plus the  
19 salaries for our permanent full time staff and we've  
20 budgeted about \$80,000 in general fund dollars for  
21 actually making road improvements above and beyond  
22 our general fund funding for our equipment and  
23 people. So we have a very, very limited budget.  
24 That money, the \$300,000 is for temporary staff and  
25 the contractor that we're using for our survey and,

1 you know, go out and help us with our discussions  
2 with the community. So it's a very limited budget.

3 Q To maintain how many roads?

4 A Right now 287.

5 Q Has the County made any specific plans in  
6 regards to future maintenance or improvements on  
7 Resurrection Road?

8 A No specific plans. I mean, we have not  
9 brought it into the system. We continue to provide  
10 the same service that we've been providing; when we  
11 get a call for service for something, address pot  
12 holes, those kind of things. Once this lawsuit has  
13 been figured out, and I guess that's part of why we  
14 haven't sat down with the citizens, because they are  
15 obviously in a dispute and at the advice of counsel  
16 we've not included those in the list of roads we're  
17 going to do in the next few months, but if that  
18 weren't the case we would sit down with everybody  
19 who lived on the road either individually or as a  
20 group and determine what they wanted to do. If they  
21 said we want it to be exactly like it is, then we  
22 can tell them do you want us to come by and do the  
23 maintenance or do you want it all to be private? We  
24 can talk about that. There is a 25-foot -- in cases  
25 where we have publicly dedicated right-of-way we

1 have to -- we talk about that, and many times  
2 Council's reluctant to give up existing right-of-way  
3 so we may say we're going to go keep this 25-foot  
4 right-of-way. On another road we have a 12-foot  
5 right-of-way we're expanding because they want --  
6 the people on that road want us to improve it a  
7 little bit and give them a wider access. But we  
8 really try to do what the citizens along the road  
9 want to do, and we try to reach a consensus with  
10 those. If we get to the point we can't reach  
11 consensus then I would take that to Council and ask  
12 them what they wanted to do.

13 MR. ROBINSON: That's all I have at this  
14 time, Your Honor.

15 THE COURT: Mr. Mitchell.

16 MR. MITCHELL: Yes, sir.

17 CROSS EXAMINATION BY MR. MITCHELL:

18 Q Mr. Neal, do you have Plaintiff's Exhibit  
19 6 in front of you?

20 A Yes.

21 Q Let's take a look at that exhibit. What  
22 is that exhibit again?

23 A Record from our Cartagraph work management  
24 system that details the work that we've done since  
25 7/6/2010. Actually goes back to 2009.

1 Q I'll call it a work order. I'll ask you  
2 what the activity was listed?

3 A Okay.

4 Q Work order 1903-2010.

5 A That was a canceled work order.

6 Q What was the requested work order?

7 A Blade community earth road.

8 Q Next work order. It was also canceled.

9 What was the original?

10 A Mowing and trimming right-of-way.

11 Q Next work order after that?

12 A Planned routine grading. Blade community  
13 earth road.

14 Q Work order after that?

15 A Completed mowing and trimming  
16 right-of-way.

17 Q So there is more than just grading a road  
18 to maintaining a road; is that correct?

19 A Yes. A lot more.

20 Q Now, all of these items on this list, are  
21 these for the traveled way or for the 25-foot  
22 right-of-way?

23 A The traveled way.

24 Q So on here it might not indicate, except  
25 for the one section that you show, that another

1 exhibit shows where we actually maintain the travel  
2 way when it intersects with the right-of-way, the  
3 other portion may not be maintained to a road  
4 standard; is that correct?

5 A That's correct.

6 Q Now, there was talk about a County  
7 employee that lives on Resurrection Road. You've  
8 mentioned his name was?

9 A Mr. Smith.

10 Q Mr. Smith. Where is your procedure for  
11 County employees to taking home work equipment?

12 A Generally they don't.

13 Q You say generally. Are there exceptions  
14 to that?

15 A Yes. Often times if we have an emergency,  
16 if there is a hurricane or event that's likely to  
17 happen we send a backhoe or piece of equipment to  
18 the operator's house so he can get his road and get  
19 to work where he can start doing the work in a  
20 emergency. We also have cases, not generally  
21 leaving at their house but we have cases especially  
22 in the rural part of the county where we'll leave  
23 equipment at a private individual's property with  
24 their permission. This is so we don't have to dead  
25 head a motor grader or excavator a long distance

1 back and forth to the camp when it's going to be  
2 starting up in the same place the next day. So  
3 we'll make arrangements for it to be parked on  
4 somebody's property, kind of out of view; secure the  
5 piece of equipment and whether that's on a -- for  
6 use the next day.

7 Q You've never authorized Mr. Smith to take  
8 any equipment home; is that correct?

9 A I haven't specifically, no.

10 Q So any time Mr. Smith has taken a piece  
11 equipment down there it's been during his work  
12 performance; is that correct?

13 A Any time that Vern would take -- have a  
14 piece of equipment near his house it would be  
15 because he was maintaining the road or using it for  
16 County purposes.

17 Q Throwing around the term maintenance.  
18 What is your definition of maintenance?

19 A Fixing, repairing, inspecting, insuring  
20 that the infrastructure or the area is functional  
21 and usable. So we do inspection. We do grading,  
22 hauling material, we do drainage work. We do  
23 trimming of roads and of bushes and trees and  
24 vegetation to remove it from the site lines. We  
25 spray herbicides in order to keep the grass from

1 growing or the deleterious plants -- nice word --  
2 from taking over our drainage ways. So there is a  
3 lot of discreet different tasks that come under --  
4 even under the umbrella of blading a road. It's  
5 more than just running the blade up and down the  
6 road. We scarify. We remove pot holes with  
7 scarifiers. We dig them out with the blade then  
8 reestablish it. We roller it with rollers. Under  
9 the community road system all we could do was blade  
10 it. Under County maintenance system we can do a lot  
11 more extensive work even with the same piece of  
12 equipment.

13 Q Wait. You said you only bladed on  
14 community roads?

15 A And haul in some dirt.

16 Q Let's go back to Plaintiff's Exhibit 6.  
17 Do you see any activities on there other than  
18 blading or hauling dirt?

19 A Mowing and trimming right-of-way.

20 Q So there are other times where you may do  
21 more than just blade the road? There may be mowing  
22 and trimming?

23 A We have to do that in order for people to  
24 see. Or get complaints about cars getting scratched  
25 by the limbs.

1           Q     When you're speaking of maintenance are  
2 you speaking to a road bed or speaking to a  
3 right-of-way?

4           A     Yes. Essentially it's the road and the  
5 area along side the road, the traveled way. But  
6 often times we have to go beyond where, actually,  
7 the cars travel to address drainage, address the  
8 vegetation matters.

9           Q     There is a distinction between the roadway  
10 and a right-of-way; is that correct?

11          A     Absolutely.

12          Q     Is there any example that you can think of  
13 in Charleston County where we might have a  
14 right-of-way dedicated to the County that we don't  
15 necessarily have a roadway through?

16          A     I can think of a large number of them.  
17 One would be Alfred Road. Alfred Road we just -- we  
18 brought Alfred Road into the County maintenance  
19 system just recently. But the existing right-of-way  
20 went through a complete different set of landowners.  
21 But we've been asked to maintain this road, we  
22 maintained it for very long time. Right-of-way --  
23 existing right-of-way has trees in it, has water  
24 running through it, those kind of things so, yes.  
25 It's not at all uncommon for people to dedicate a

1 right-of-way to the County where you can't build a  
2 road. There are examples, we find them all the  
3 time, where the road exists in one place and the  
4 right-of-way is some place else and it happens to be  
5 a foot under water most of the time, but they  
6 convinced somebody in the past -- perhaps it was  
7 very dry, I don't know, but they've convinced  
8 people, oh, yes, I'll dedicate this right-of-way for  
9 the County but the road actually goes some place  
10 else, and please maintain it for us. Even on  
11 existing County roads sometimes the road comes out  
12 of the right-of-way.

13 Q Your Honor, I would offer Defendant's  
14 Exhibit. It's not marked yet. County Exhibit  
15 Number 1. Mr. Neal, I'll show you County's Exhibit  
16 1. Do you recognize that?

17 A It's an aerial photo with County GIS  
18 overlay of Alfred Road. It's --

19 Q Do you have a second copy of that, that I  
20 can --

21 A Yes.

22 (Hands up document.)

23 THE COURT: All right.

24 Q Now can you orient us to where Alfred Road  
25 is on that diagram?

1           A     The right-of-way is adjacent to parcel 089  
2 down at the bottom. The road actually starts on  
3 parcel 090, runs across 091, kind of caddy corner  
4 across those parcels. It crosses the actual  
5 right-of-way at 084 and then proceeds out to Wilson  
6 Road, I believe.

7           Q     Do you consider that traveled way to be a  
8 public road?

9           A     Yes.

10          Q     Do you consider the right-of-way that was  
11 dedicated to be abandoned just because it has trees  
12 in it?

13          A     No, it's not abandoned.

14          Q     So when we discuss maintenance we're  
15 discussing maintenance in terms of the road bed.  
16 It's not necessarily of the right-of-way; is that  
17 correct?

18          A     It's where the road is that we maintain.

19          Q     So do you feel like you need to maintain a  
20 parcel of land that's designated as right-of-way if  
21 there is no road bed in it?

22          A     Not unless there is some overriding  
23 reason, no.

24          Q     Was there an overriding reason on  
25 Resurrection Road? I'm speaking specifically about

1 the 25-foot right-of-way?

2 A No. Only where the road bed intersected.

3 Q On road maintenance we heard Mr. Limehouse  
4 speak yesterday about he conducted some maintenance  
5 on the road. Is that an uncommon thing to happen on  
6 public roads?

7 A It's very common. If -- in fact, it  
8 happens on almost every road we have. People will  
9 go out and if they see a clog in the drainage system  
10 they'll shovel it out. Sometimes they'll call us,  
11 sometimes they won't. People who are in the rural  
12 community who have farm equipment will often use box  
13 blades to blade the road and we thank those people  
14 for helping us out. But we prefer them to call us.  
15 But -- and if my foreman sometimes take the  
16 opportunity to tell them what they are doing wrong  
17 if they do it incorrectly, but for most part it  
18 saves taxpayers money. So it's a service to the  
19 community. If they want to help us maintain that  
20 road that's great. Sometimes people think they are  
21 helping and don't do a very good job. But for the  
22 most part it happens very, very frequently.

23 Q Any of those instances that you know about  
24 have you ever had anybody declare a public road,  
25 where somebody did some maintenance on it privately,

1 to be a private road?

2 A No.

3 Q Do you even believe that's an indicator  
4 whether it's a private road or not?

5 A No.

6 Q I'll direct your attention to Plaintiff's  
7 Exhibit 2A. Do you recognize --

8 A Yes, I've seen this today.

9 Q Do you know what a TMS number is?

10 A It identifies a parcel.

11 Q Why is it used to identify a parcel?

12 A For tax purposes, I suppose.

13 Q Do you own property in Charleston County?

14 A No.

15 Q A TMS number is used to identify a parcel  
16 of land for tax purposes; is that correct?

17 A Yes.

18 Q Now, could you look at Lot J residual. Is  
19 there a TMS number indicated on that lot?

20 A Yes, there is.

21 Q What is that TMS number?

22 A TMS number 204-00-00-018.

23 Q What about Lot J1?

24 A Lot J1 has the same TMS number,  
25 204-00-00-018.

1 Q What about below that? Berkeley County  
2 Cooperative. Is there a TMS number there?

3 A Yes, 204-00-00-022.

4 Q What about the lot up in the upper  
5 left-hand corner that's marked Johnny Heyward, is  
6 there a TMS number on that?

7 A Yes, 204-00-00-027.

8 Q Now, next to that it says Betsy Kerrison  
9 Parkway. Is there a TMS number associated with  
10 that?

11 A No, it's a right-of-way.

12 Q You don't believe a TMS number should be  
13 assigned to right-of-way; correct?

14 A No.

15 Q Please draw your attention to the portion  
16 of land that we've been talking about, what we've  
17 all considered the 25-foot right-of-way. Do you see  
18 a TMS number within that portion?

19 A No.

20 Q That indicates to you it's probably not  
21 taxed; correct?

22 A No, it's a public right-of-way so it  
23 wouldn't be taxed; wouldn't have a TMS number.

24 Q If it had a TMS number it would be taxed;  
25 correct?

1           A     I would assume the tax assessor would come  
2 after them; yes.

3           Q     There are some entities such as church's  
4 that might be exempt from taxation but they are  
5 still -- have a TMS number?

6           A     Yes. But in general the rights-of-way for  
7 the County that we maintain don't have TMS numbers.

8           Q     Have you ever seen a right-of-way that has  
9 a TMS number?

10          A     No.

11          Q     I want to talk about that 25-foot  
12 right-of-way some more. Is there a procedure for  
13 abandoning property that Charleston County goes by?

14          A     Yes.

15          Q     Do you know of any time that the County  
16 has abandoned property, specifically a right-of-way,  
17 where they have not followed that procedure?

18          A     No.

19          Q     Do you still believe that that 25-foot  
20 right-of-way is County property?

21          A     I think it's a County right-of-way, yes.  
22 My understanding is it's County right-of-way unless  
23 it's been abandoned. Once it becomes a right-of-way  
24 we have to go through abandonment through one of  
25 those two process in order to abandon it, otherwise

1 it's a County road.

2 Q Have we gone through either of those two  
3 processes?

4 A As far as I know, we have not. I heard of  
5 somebody filing a lawsuit, which is the second of  
6 the two but nobody's come to the Public Works and  
7 said we want to abandon. We haven't posted it or  
8 done anything, taken it to Council so --

9 Q So in order to abandon something the  
10 County has to abandon the property. Does that mean  
11 they have to own it first?

12 A I would think so, yes.

13 Q It's kind of difficult to abandon  
14 something if you don't have ownership over it;  
15 correct?

16 A I would think so. I agree.

17 Q We discussed a little bit about a  
18 right-of-way and whether a road bed has to be in a  
19 right-of-way. Correct?

20 A Correct.

21 Q When you have a road bed in right-of-way  
22 does it fill up the whole right-of-way?

23 A Sometimes. In general where the cars  
24 drive do not fill up the entire right-of-way.

25 Q So there are portions of it that may not

1 have any kind of ditch or swail or road bed in the  
2 right-of-way?

3 A That's correct. Highway 17 or Highway 26  
4 going to Columbia has a median, there is nothing  
5 there. Sometimes trees. The right-of-way exists.  
6 There is different things within the rights-of-way.  
7 Not just a travel way where the cars go.

8 Q Now, is parts of Betsy Kerrison a County  
9 road?

10 A Yes, half of Betsy Kerrison is County.

11 Q Which half is that?

12 A Right-hand side?

13 Q Is there portions of right-of-way that  
14 don't necessarily have road bed or ditches or swails  
15 in it?

16 A It mostly has trees we have to trim.

17 Q You have trees in right-of-way?

18 A Yes.

19 Q Do you feel like you've abandoned that  
20 right-of-way because there are still trees in it?

21 A No.

22 Q Are there times when you might purchase or  
23 acquire more right-of-way, that you need to put a  
24 road bed in anticipation of expanding that road bed?

25 A Yes.

1           Q     Let's talk about road signs just briefly.  
2     When the Public Works Department decided to redirect  
3     the road sign there, after the acceptance by --  
4     excuse me -- Council action, was there any  
5     investigation done on whether it was a private or  
6     public road?

7           A     It was on our list.

8           Q     As a?

9           A     County non-standard road.

10          Q     That is a public road; correct?

11          A     Public road.

12          Q     So there might have been some kind of  
13     investigation to determine whether it was a private  
14     road or public road to determine that a green sign  
15     is supposed to be affixed to that corner; correct?

16          A     Yes. It's actually kind of the opposite  
17     of that. If the road is not on one of our lists  
18     it's not one of our public roads. If it states it's  
19     private on my road list then they put a blue sign.  
20     Because the state roads we put up green signs on the  
21     state road. We put them on the road within the  
22     municipalities so --

23          Q     Up until then all road signs were  
24     generally green; correct?

25          A     Up until, yes, until March about. Within

1 unincorporated Charleston County. The  
2 municipalities have their own rules. Most of the  
3 municipalities have the Charleston County Public  
4 Works Department maintain their road, but the larger  
5 municipalities, North Charleston, Mt. Pleasant, do  
6 it themselves. They have their own sign shops.

7 Q There is a possibility that there are  
8 private roads out there that have green signs  
9 because they are already posted before that March  
10 time period?

11 A Absolutely.

12 Q At some point the County, when they have  
13 the resources, goes back and changes signs, the blue  
14 to denote a private road; correct?

15 A We're doing that now. I'm putting in my  
16 budget request this month. I'm asking for money to  
17 do that, so --

18 Q Earlier there was questions to you  
19 concerning the width of the road bed, but I wasn't  
20 too clear on what they are exactly asking you. I'll  
21 ask you more questions on it. I'll refer to  
22 Plaintiff's Exhibit 1A. Did you conduct the survey  
23 of this property?

24 A No.

25 Q Do you know what these measurements mean?

1           A     Just in common practice, when surveyors  
2 survey something they put down, whenever they take a  
3 point, they measure a width and it's kind of a  
4 subjective determination of where the road bed ends  
5 or whatever, so that's why we generally in Public  
6 Works rely on our surveyors when we record things.

7           Q     Is it possible they measured from edge of  
8 the dirt to other edge of the dirt?

9           A     Absolutely.

10          Q     Is it possible they ignored whatever  
11 ditches or whatever might be outside of the edge of  
12 that dirt?

13          A     Yes.

14          Q     These measurements might not actually  
15 reflect what area that would purport to be a public  
16 road; is that correct?

17          A     Correct.

18          Q     On your determination that the road was  
19 30-foot wide, was that just an average?

20          A     Probably.

21          Q     The same person determined 30 foot wide is  
22 not the same person who conducted the survey;  
23 correct?

24          A     That's correct.

25          Q     You don't know the person who determined

1 the 30-foot wide was standing on edge of the ditches  
2 or actually putting tape measure right there edge of  
3 the dirt; correct?

4 A I don't know what procedure they used.

5 Q So it's possible that your numbers might  
6 not actually match perfectly up with what's on that  
7 exhibit; correct?

8 A That's correct.

9 Q Let's talk about roadway standards. How  
10 many different roadway standards are there in  
11 Charleston County?

12 A Currently we have five approved standards.  
13 County non-standard road and four categories of  
14 standard road.

15 Q Can you describe each one of those  
16 standards?

17 A A county earth road standard for rural and  
18 urban areas and we have a County paved road standard  
19 for rural and urban areas and then we have the  
20 County non-standard road. The paved road standard  
21 for the urban environment has a closed system. In  
22 other words it has a curb and gutter type of system  
23 with drainage system. Others have open systems.

24 Q Do you believe --

25 A They all have requirement for 50-foot

1 right-of-way for standard road.

2 Q For the standard road program requires  
3 50-foot right-of-way?

4 A Correct.

5 Q All that right-of-way is not taken up by  
6 roadway bed?

7 A Absolutely.

8 Q Non-standard County program --  
9 non-standard County road program there is a  
10 different standard that's less than that 50 feet?

11 A Existing travel way with five feet either  
12 side for drainage. And we had discussion with  
13 landowners the make sure they understand. If there  
14 is concerns we can adjust that to meet the concerns  
15 of particular trees. People have lot of concern  
16 about their grand trees. We move the road little  
17 bit, don't address their trees.

18 Q Show you Defendant's Exhibit 9 which is  
19 purported to be a letter from Mr. Robinson?

20 A Yes.

21 Q Did you have chance the read through this  
22 letter?

23 A I just did.

24 Q When you read through that letter did you  
25 believe it was speaking to the 25-foot dedicated

1 right-of-way or to the travel way?

2 A When you talked about the County  
3 non-standard road program my assumption that -- when  
4 I read this, that this is dealing with the travel  
5 way; where the cars drive, not the existing 25-foot  
6 right-of-way which really isn't -- County property  
7 as opposed to individual.

8 Q Drawing your attention to the second page,  
9 can you read first sentence starts with pursuant?

10 A Pursuant to item 4 of your letter this  
11 serves as your written notice that Mason Heyward  
12 disagrees and opposes the County's proposed action  
13 related to public roads as they would apply to  
14 Resurrection Road and the Resurrection Road  
15 right-of-way on the effected parcels.

16 Q Does that add any confusion to your  
17 interpretation of what this letter means?

18 A Yes, because I would just have assumed  
19 that he was talking about the County non-standard  
20 road where it exists today. I would not have --  
21 just wouldn't have been -- wouldn't imply existing  
22 25-foot right-of-way unless the road and the  
23 right-of-way coincide.

24 Q So it's possible this letter is written  
25 with litigation in mind; correct?

1           A     I think it kind of says that.

2           Q     He sent it to you during current  
3 litigation; correct?

4           A     Correct. It went to your office. To  
5 Bernie. The original letter, that's what it says.

6           Q     Mr. Neal, has the County surveyed  
7 Resurrection Road?

8           A     No.

9           Q     Did Mr. Heyward request that you not  
10 survey Resurrection Road?

11          A     Mr. Robinson in this letter did.

12          Q     Mr. Robinson did but not Mr. Heyward?

13          A     As I said, I've never had any direct  
14 communication with Mr. Heyward. Although I look  
15 forward to talking with him at the conclusion of all  
16 this mess, perhaps.

17          Q     This letter adds more confusion when --  
18 written by Mr. Robinson by reading the second  
19 sentence starting out with Mr. Heyward?

20          A     Mr. Heyward expressly requests that  
21 Charleston County not survey the right-of-way or  
22 record a plat or in other way alter the boundary of  
23 the property reflecting the existence of a public  
24 road.

25          Q     When you read that right-of-way what's

1 your interpretation of that?

2 A In context with the letter I'm assuming --  
3 I would be lead to assume that it was the road that  
4 was under the County non-standard road although I  
5 sit here today and I can see there is confusion  
6 because there is a right-of-way and -- not survey or  
7 record a plat -- but there is already a plat so  
8 there is confusion that could come about. Reading  
9 it in context and in context of the program that we  
10 were sending the letter on I would never have  
11 thought to consider the existing 25-foot  
12 right-of-way that didn't have a road in it as what  
13 he's referring to.

14 Q Upon reading this letter it would be  
15 confusing what Mr. Robinson is requesting; correct?

16 A I think so, yes.

17 Q Do you have plans to speak with Mr.  
18 Heyward after this litigation to discuss his  
19 concerns?

20 A Absolutely; all the landowners. If we  
21 continue with the program on this road we will  
22 certainly sit down with Mr. Heyward, Mr. Johnson,  
23 Ms. Bennet and all the other landowners along the  
24 road, Berkeley County, explain to them what we would  
25 like to do and if they collectively say we think it

1 ought all be a private road then we would talk about  
2 the 20-foot right-of-way and abandonment procedures.  
3 Explain what would have to be done for that. We  
4 would say what needed to do as far as if they wanted  
5 to keep it public and explain -- and make it a paved  
6 road; explain that process. We would sit down with  
7 them. We're here to serve the citizens of the  
8 County and we're not here to have disputes with  
9 them, although we do know that disputes do arise.  
10 We're trying to serve the public. So if every one  
11 along the road said they wanted to be a private road  
12 they wanted abandon, they would request that  
13 abandonment, we would then consider that. Talk to  
14 other members of the public that might be -- post  
15 those kind of things. A lot of discussion has to go  
16 on in a public process. To answer your question,  
17 yes, I would like to speak with all the residents  
18 after this is done to see what they want to do as  
19 far as Resurrection Road.

20 Q Right now do you consider the travel way  
21 of Resurrection Road a public road?

22 A Yes.

23 Q Do you consider the right-of-way that was  
24 dedicated in 1996 by Mr. Heyward to be public  
25 property?

1           A     Yes.

2           Q     During certain portions of your testimony  
3 you used the term brought into the system. Brought  
4 into the system doesn't mean it goes from a private  
5 road into the public road; correct?

6           A     No, that means it's brought into our  
7 maintenance system. We've identified the road in  
8 space. We've recorded -- surveyed it and recorded  
9 it at the RMC. The process now is we have all the  
10 landowners sign the plat before it's recorded to  
11 make sure that they've all concurred with what we're  
12 doing. Then we establish -- goes to my engineering  
13 group, they look at if there is improvements that  
14 are needed to keep the road more passable or easier  
15 to maintain. We'll look at that. We'll go back to  
16 the citizens and explain what we're going to do and  
17 then it's in the maintenance system when we start  
18 doing those maintenance improvements as we can, as  
19 funding is available.

20          Q     Do you know how long Charleston County has  
21 been maintaining Resurrection Road?

22          A     Not exactly, but it's more than 34 years.

23          Q     Do you not supervise equipment operators?

24          A     I do. Raymond Robinson's been employed by  
25 the County for 29 years. His job started as working

1 on the Johns Island crew that was maintaining  
2 Resurrection Road and all the other roads on the  
3 island. For just a short time he was on James  
4 Island. Now a foreman out there, been supervising  
5 that work. So he's had 29 years of work on that  
6 area and knowledgeable of that road. Paul Porter, I  
7 think, is the motor grader operator now who has been  
8 there for quite sometime as well.

9 Q Even though -- on maintenance on roads you  
10 are familiar with the system you have in place to be  
11 able to address concerns from citizens; correct?

12 A Yes.

13 Q Do you have a regular routine or cycle  
14 where you go out to Resurrection Road or is it  
15 on-call basis?

16 A It's both. We have a regular inspection.  
17 In the past, because of the lack of communication,  
18 we didn't have the radios, didn't have the cell  
19 phones, things we have today. The motor grader  
20 operator would just start on his trail, hit every  
21 road along a route. If it didn't need too much work  
22 he wouldn't work too much but we didn't have the  
23 ability to call a cell phone, enter into electronic  
24 system when we started this process. With the  
25 Cartagraph system and our communication systems we

1 do a pre-inspection. We go out, take a look and  
2 see, okay, it's January, we're going to -- this week  
3 I'm going to get this road. Then we'll line up the  
4 work that needs to be done. We have -- also have a  
5 maintenance rating process that we use to determine  
6 the faults of the road and how much work they need  
7 and when they should be scheduled for future  
8 maintenance. We're much more sophisticated today.  
9 It costs us less time and effort if we inspect and  
10 not do maintenance this month or this week but on  
11 other roads we have to go much more frequently. If  
12 I don't show up on Leadenwah Road every other  
13 Thursday the residents get upset with me because it  
14 gets to be a mess.

15 Q Is Resurrection Road one of those  
16 concerned roads where you have to show up regularly  
17 or residents call in?

18 A No. There's just a few of those. In  
19 fact, most people on the non-standard roads, we come  
20 out on some roads just three, four times a year and  
21 others we come every month. But most of the  
22 citizens, some cases they don't have enough traffic  
23 to warrant to getting back. It's seasonal. When  
24 everybody's having their kids over for Christmas  
25 they want the road look nicer. So we have to do

1 more work if it rains in that timeframe, so we get a  
2 lot of calls.

3 Q So it's fair to say that there might not  
4 be maintenance crews on Resurrection Road on a  
5 regular basis. Since it's based mostly off of rain  
6 events or specific instances; correct?

7 A I would say it's regularly done not just  
8 every month. I would say any day we go to  
9 Resurrection Road for trimming three, four times a  
10 year and for fixing the road up probably about the  
11 same, three, four times a year. That's pretty  
12 typical of that kind of road.

13 Q Look at Plaintiff's Exhibit 6 again. You  
14 see under notes there's two notes, one starts with  
15 canceled, the other starts with we. Could you read  
16 the second note?

17 A We had to spend a lot of time on the road  
18 because of the large pot holes from the heavy rain  
19 we had. That would be a note that the foreman would  
20 make in general.

21 MR. MITCHELL: I have no further  
22 questions, Your Honor.

23 THE COURT: All right.

24 MR. OBERMAN: I have.

25 THE COURT: Let me ask Mr. Williams.

1 MR. WILLIAMS: Just a couple Your Honor.

2 CROSS EXAMINATION BY MR. WILLIAMS:

3 Q Mr. Neal, you said the only -- until today  
4 when they showed you the second letter, the only  
5 letter you had gotten was from the Cooperative; is  
6 that correct?

7 A We have a letter from the Cooperative.

8 Q Do you recall basically that letter just  
9 says that the Cooperative takes no position in what  
10 the County is going to do with that road?

11 A It said that -- in essence, what I got  
12 from that letter was that you didn't oppose. You  
13 wanted to know what we were going to do and have a  
14 chance to voice your opinion, and I think we sent  
15 something back to you that said we would keep you  
16 informed.

17 Q Okay, sir. Thank you. And all -- I know  
18 you're not a surveyor but you've been looking at the  
19 rights-of-ways here. There is nothing to indicate  
20 that any of the property of the Cooperative is  
21 involved in either the 25-foot granted easement or  
22 the controlled right-of-way. I mean -- excuse me --  
23 the used old dirt road versus the 25-foot grant?

24 A I didn't see any evidence of that.

25 MR. WILLIAMS: Thank you, sir. That's all

1 I have.

2 MR. OBERMAN: Your Honor?

3 REDIRECT EXAMINATION BY MR. OBERMAN:

4 Q Mr. Neal, there is nothing sacred about a  
5 tree, is there?

6 A Not to me. But to some people I'm pretty  
7 sure there is. In Charleston County that's a  
8 special tree.

9 Q If there is a tree that is dangerous to a  
10 right-of-way or a travel lane can the County take it  
11 down?

12 A We have a procedure for grand trees that  
13 we have to follow in Charleston County if we want to  
14 remove a grand tree. First off, is it not healthy,  
15 is it dying, is it ill? Our arborist makes that  
16 decision. If it is then, yes, they issue us a  
17 permit, but we have to get a permit in order to cut  
18 down a grand tree in Charleston County.

19 Q So there is a procedure of taking down  
20 trees in a right-of-way or travel path?

21 A Yes, sir, there is.

22 Q And they have been taken down in the past?

23 A Yes, they have. I have recently taken  
24 down trees in -- to build roads in Charleston  
25 County.

1           Q     If you wanted to expand an existing  
2 roadway, widen it, and there was a tree there you  
3 could go through a procedure to take it down?

4           A     I would have to go through a procedure.  
5 If it was on Bohicket Road I probably wouldn't get  
6 approval. In general for the road that I deal with  
7 we put in a permit. It has to go through the  
8 process.

9           Q     So you could expand what I'll refer to as  
10 the prescriptive travel path that runs parallel to  
11 the 25-foot right-of-way into the 25-foot  
12 right-of-way if you felt it necessary or required,  
13 if you went through the procedure clearing portion?

14          A     If we needed to expand the road, if that  
15 was the desire of Council and the members of the  
16 public then we could expand into that right-of-way,  
17 yes.

18          Q     All right, sir. Is there mitigation --  
19 heard that term used as to taking down a grand tree?

20          A     There are procedures for grand tree  
21 removal. It's a case by case thing. I have had to  
22 plant back the equivalent diameter of smaller trees.  
23 I've had to do couple other things. That was in the  
24 City of Charleston. I haven't recently taken down a  
25 grand tree in unincorporated Charleston County that

1 wasn't deceased or damaged in some way.

2 Q There is a procedure, then, that --

3 A Goes through the Planning Board of zoning  
4 appeals. That's their process.

5 Q And it would be mitigation of planting a  
6 like tree?

7 A It would be whatever the Board directs you  
8 to do in that case.

9 Q You yourself have mitigated taking down  
10 trees?

11 A Yes, I have.

12 Q All right.

13 MR. OBERMAN: That's all the questions I  
14 have, Your Honor.

15 MR. ROBINSON: Briefly. We can break.

16 THE COURT: No, we're not going to break.  
17 We're going to go work with him until lunch but  
18 I have questions for him. I'll let you ask two  
19 or three. Let's move forward.

20 BY MR. ROBINSON:

21 Q Mr. Neal, what is your position regarding  
22 a private person or persons using a dedicated  
23 right-of-way to develop a road?

24 A I understood what you said but I'm not  
25 sure I understand. Are you saying that a private

1 individual wants to come on a public right-of-way  
2 and build a road?

3 Q Yes, sir.

4 A They would certainly need to ask  
5 permission of the owner of the right-of-way.

6 Q I would represent to you that in this case  
7 Mr. Johnson has made plans to develop and subdivide  
8 his property. This is Mr. Johnson. Has Mr. Johnson  
9 asserted either --

10 MR. OBERMAN: I'll object, Your Honor.

11 There has been no testimony presented to this  
12 gentleman.

13 THE COURT: I'm not sure this is in  
14 response to anything. Tell me what this is in  
15 response with or are we plowing new ground?

16 MR. ROBINSON: We're not plowing new  
17 ground. Mr. Mitchell asked about the uses of  
18 the area inside the right-of-way and whether  
19 the County had purview to maintain or could --  
20 had the right to control the main over  
21 right-of-way without actually doing anything  
22 with it. In this case in the pleadings Mr.  
23 Johnson alleged in the first instance that  
24 because the 25-foot right-of-way was public  
25 that he had a right to get an order from you,

1 or the appropriate authority, to take land and  
2 build a road there. Not the County.  
3 Privately. So that's why it's relevant and  
4 it's reflective of what Mr. Mitchell said.

5 MR. OBERMAN: I'm not sure there has been  
6 any such testimony, Your Honor. I don't think  
7 there has been any request of you, Your Honor,  
8 to build a road in the 25-foot dedicated  
9 right-of-way. Now, once we put Mr. Johnson up,  
10 if he so testifies then I think --

11 THE COURT: I'll cut you off on that. I  
12 know you're on cross but there is no testimony  
13 to that yet. Let's get to it. May have to  
14 bring Mr. Neal back later. Hate to do that,  
15 but we'll cross that bridge when we come to it.

16 MR. ROBINSON: All right. That's all I  
17 have.

18 MR. MITCHELL: Nothing.

19 THE COURT: Let me hand you this  
20 Defendant's County Number 1. That diagram of  
21 that Alfred Road, I had to pull it up because I  
22 couldn't figure out what was going on there, so  
23 I wrote some notes on there. You talked about  
24 some TMS numbers. Here's my question to you.  
25 You indicated that Alfred Road had been brought

1 up to the community non-road standards.

2 A It is a county non-standard road as they  
3 exist. We went out and spoke with all the residents  
4 and we said this is the program. Do you agree or  
5 disagree? We handed them the plat. It says you're  
6 knowledgeable this is a public right-of-way. They  
7 all signed the plat and we've recorded that. So you  
8 can go to the RMC and get a copy of that today.  
9 It's not where the right-of-way is.

10 THE COURT: Here's my question. That's  
11 exactly what my question is. Which  
12 right-of-way are you all seeking to improve?  
13 Is it what I call the paper road that has some  
14 width to it and runs from, I believe that's  
15 Ethel Post Office Road back to a cul de sac, or  
16 is it the dirt path that runs from Ethel Post  
17 Office Road back to Wilson Road?

18 A It is the earth road that is existing  
19 today; physical road. We would make some minor  
20 improvements to that. There has been or there is a  
21 request --

22 THE COURT: Let me stop you. So the plan  
23 is to improve the earthen road that everybody's  
24 been using?

25 A Yes.

1           THE COURT: So that leads me to my next  
2 question. Would that be the plan for  
3 Resurrection Road when it's being brought into  
4 the County Non-standard Road Program, is to  
5 improve the part of the roadway which has been  
6 used previously?

7           A     That would be what we would start with.  
8 But if the citizens that live there say, well, gee  
9 can we move it into the right-of-way?

10           THE COURT: You can see that's not  
11 happening.

12           A     That would be our plan.

13           THE COURT: That's not where we are today.  
14 So my question then turns to this. You talked  
15 about bringing a road into the system, which  
16 means that you would start to maintain it,  
17 inspect it, all that kind of stuff.

18           A     We would do more than we had in the past  
19 with the community road. We were prohibited from  
20 doing improvements that would make it so we wouldn't  
21 have to come back there all the time.

22           THE COURT: Okay. Can you tell me when  
23 the 25-foot dedicated right-of-way was brought  
24 into the system and whether or not any effort  
25 has been made on that particular piece of

1 property?

2 A It is. The dedicated part of that  
3 right-of-way that is -- doesn't have a road bed in  
4 it today is not considered part of our maintenance  
5 system. It's considered a right-of-way that -- it's  
6 a public right-of-way the County has title to or  
7 owns as it reflects in the Public Works Department.  
8 So we concern ourselves with maintaining the road.

9 THE COURT: The road bed.

10 A Where the road exists. The area on either  
11 side where the trees are.

12 THE COURT: Right. So the right-of-way --  
13 dedicated right-of-way has not been brought  
14 into the system, is what I'm hearing you say.  
15 All right, now, let me turn you back to Exhibit  
16 1A, the Steve Johnson plat. That's the one  
17 we've been looking at all through the trial.  
18 Right. All right.

19 So at point H -- you've identified this  
20 previously. At point H is where the roadway  
21 travels into the right-of-way?

22 A Yes.

23 THE COURT: That point back -- has been  
24 maintained back further on back to the road. I  
25 believe it's at point BC, where it's fully

1 encompassed within the right-of-way?

2 A Looks like it's 40 or 50 feet of road bed.

3 THE COURT: My question to you is this.

4 Is there any difficulty in maintaining,  
5 improving, and constructing that road to  
6 whatever the County non-road standards are  
7 beginning at that point back into the  
8 right-of-way?

9 A In other words, could we move this road  
10 back into the right-of-way?

11 THE COURT: Nope. Just the opposite.

12 A Can we move the road out of the  
13 right-of-way?

14 THE COURT: Yes. The right-of-way --  
15 you've just testified the right-of-way has not  
16 been used at all. I'm looking for whether or  
17 not at that point the roadway can then be  
18 improved all the way back.

19 MR. OBERMAN: When you say back you're  
20 talking about --

21 THE COURT: Back to the end of the road.

22 A We can make improvements to where the road  
23 exists today. We don't plan -- the word road  
24 construction is outside the County non-standard  
25 road. That program says the road is where it's at,

1 it's maintained, let's improve it a little bit so we  
2 don't have to keep coming back. In other words, fix  
3 some drainage problems, fix places where over time a  
4 lot of our non-standard roads are two feet lower  
5 than the surrounding community; bring them back up.  
6 It doesn't cost as much as going back in getting  
7 permits and all --

8 THE COURT: So I'm looking at the point  
9 right behind Mr. Heyward's house, lot which  
10 says 12.7 to 12.9 is the road bed width on the  
11 back side of his house.

12 A Yes.

13 THE COURT: Approximately half of that is  
14 in the right-of-way. Okay?

15 A Yes.

16 THE COURT: You've got some width within  
17 which to work.

18 A Yes.

19 THE COURT: To make your improvements. On  
20 a 25-foot right-of-way -- I can't remember what  
21 the width of these cars are any more, but on a  
22 25-foot right-of-way does that provide you with  
23 enough drainage area to build the roadway that  
24 you-all contemplate building, I think, under  
25 the County non-road standard?

1           A     We have roads that are currently that  
2 width in the County road -- non-standard road. We  
3 would not, under this program, construct a road to  
4 that width but if it's that way now that's what --  
5 we'll take what you have, take what's there, make  
6 those improvements that are needed to make, if there  
7 is low places, put some gravel, those kind of  
8 things.

9           THE COURT: All right.

10          A     One of the things we've asked people in  
11 similar circumstances is do you want us to move the  
12 road back into the right-of-way? Wouldn't be able  
13 to improve it much. Or would you grant us to widen  
14 the road, those kind of things. Most residents, the  
15 majority of residents want us to pave their road.  
16 But on Johns Island it's a little different. Off of  
17 this road it's significantly different.

18          THE COURT: Tougher on Wadmalaw.

19          A     Even worse. That is correct. But in this  
20 case, yes. Fourteen feet's a little narrow; 25 is  
21 certainly -- all we're looking for there is the  
22 legal ability for us to go out and maintain the road  
23 and not be told you're violating the law.

24          THE COURT: All right. Those are my  
25 questions, Mr. Neal. Anybody else want to

1 follow-up you can. That's just what I wanted  
2 to establish.

3 MR. ROBINSON: No questions.

4 THE COURT: Mr. Oberman.

5 MR. OBERMAN: None, Your Honor.

6 MR. WILLIAMS: None, Your Honor.

7 MR. MITCHELL: No, sir.

8 THE COURT: All right. Very good.

9 MR. OBERMAN: I would let Mr. Neal go on  
10 his cruise.

11 (Discussion off the record.)

12 (Lunch Break)

13 THE COURT: All right, Mr. Oberman.

14 MR. OBERMAN: Yes, sir. We labored  
15 diligently trying to follow your suggestion for  
16 a settlement and we've come up empty.

17 THE COURT: All right. That's consistent  
18 with this case.

19 MR. OBERMAN: Yes, sir. Your Honor, we  
20 tried this case or tried a major portion of  
21 this case some years ago. I gave you a  
22 transcript of your ruling and I'm going to try  
23 and abbreviate this by not going over, plowing  
24 over the same ground. I hope that you won't  
25 mind me doing that. I know that you normally

1 take copious notes and you will have where Mr.  
2 Heyward was born, where he worked and whatever.  
3 So with that, Your Honor, I would call Mr.  
4 Heyward to the stand as an adverse witness.

5 THE COURT: All right. Let's do this this  
6 way because I'm going to let him call Mr.  
7 Heyward as an adverse witness, and he'll be  
8 subject to cross but my understanding from  
9 Mr. Robinson is he wants to be able to put him  
10 up in the case in chief. Let's sort of keep it  
11 focused on what it is you're trying to prove,  
12 which I assume to be the conspiracy.

13 MR. OBERMAN: That's part of it, Your  
14 Honor but --

15 THE COURT: I'm hoping not to plow old  
16 ground. I already ruled there is a  
17 prescriptive easement out there and the issue  
18 for this Court today, principally, is the scope  
19 of the easement. There is the road closing  
20 counterclaim and there is the conspiracy claim,  
21 so we've got those issues that we do need to  
22 deal with. Those are questions of law as  
23 opposed to equity.

24 MR. ROBINSON: Your Honor, I have no  
25 problem with your objection. I would just ask

1 for the benefit of the Court, benefit of  
2 counsel, if possible Mr. Oberman finishes his  
3 examination today, because obviously I would  
4 like to be able to talk to my client tomorrow  
5 in your absence.

6 THE COURT: Sure.

7 MR. OBERMAN: I can promise you, Your  
8 Honor, that I will finish my adverse  
9 examination of Mr. Heyward today.

10 THE COURT: Very well. Mr. Heyward, if  
11 you would, sir, you come can right around.

12 (Mason C. Heyward, 4429 Betsy Kerrison Parkway, Johns  
13 Island, S.C. 29455, duly sworn, testifies as follows:)

14 THE COURT: Mr. Heyward, Mr. Oberman has  
15 called you an adverse witness. That means he  
16 gets to lead you a little bit; take you through  
17 some testimony he wants to cover with you.  
18 When he's done the other attorneys will have  
19 some questions. Thank you, sir.

20 MR. OBERMAN: Your Honor, I have  
21 abstracted the deposition that I took of Mr.  
22 Heyward back in 2009, I think it was. And I'm  
23 going to hand to opposing counsel some of the  
24 exhibits to that deposition. I'll be -- may I  
25 approach the bench, Your Honor?

1 THE COURT: You may.

2 MR. OBERMAN: Why don't you go ahead and  
3 mark all of these as Plaintiff's Exhibit 9?

4 THE COURT: We can do this provided one  
5 thing. He's here to testify today and today is  
6 his day to testify. You're not trying to  
7 impeach him in any way; just trying to get the  
8 documents in?

9 MR. ROBINSON: As to admissibility of this  
10 only -- I mean, if it's offered for the --  
11 exhibit, fine, I have no problem with that but  
12 if the deposition testimony is being offered I  
13 understand it's only being offered for  
14 impeachment purposes.

15 THE COURT: Which means it doesn't come in  
16 writing, so we might want to redact that. He's  
17 here. He's on the stand. Let's let him  
18 testify. If you wish to impeach him we'll go  
19 through a different process. Deposition  
20 testimony or prior trial testimony would only  
21 be used for that purpose. You may proceed.

22 DIRECT EXAMINATION BY MR. OBERMAN:

23 Q Would you state your full name, sir?

24 A Mason Charles Heyward.

25 Q Mr. Heyward, you remember that we had a

1 portion of this trial some years ago?

2 A Yes, sir.

3 Q Do you remember that I took your  
4 deposition on more than one occasion?

5 A Yes, sir.

6 Q During that deposition you were asked  
7 questions and under oath you gave answers?

8 A Yes, sir.

9 THE COURT: I'll stop you right there.  
10 He's here today. He's under oath to answer  
11 questions.

12 MR. OBERMAN: All right, sir.

13 THE COURT: Ask him a question. If he  
14 testifies materially different from that you  
15 get to impeach him through prior testimony, but  
16 we're not going to start that way. He's here,  
17 as far as I'm concerned for the first time.

18 MR. OBERMAN: Yes, sir.

19 Q Do you remember -- you recognize that  
20 Resurrection Road is a road that's been there since  
21 dirt was new?

22 A Yes, sir. The road was there since dirt  
23 was new. It wasn't called Resurrection Road.

24 Q You recognize that people have been using  
25 Resurrection Road for years and years and years to

1 get to and from their property?

2 A Yes, sir.

3 Q You recognize the County of Charleston  
4 records by putting up a sign has indicated that  
5 Resurrection Road exists as a road of ingress/egress  
6 to these properties?

7 A Only ingress/egress.

8 Q You're not opposed to Mr. Johnson here or  
9 anyone else going to and from there properties on  
10 Resurrection Road?

11 A No, sir. That would be ingress/egress.

12 Q What you're saying is not only going  
13 ingress/egress but to use his property; is that  
14 right, sir?

15 A Yes, sir; I mean to go into his property.  
16 I mean, if he got to work it or what he got to do.  
17 He has the right to go in and out.

18 Q That's from his property to Betsy Kerrison  
19 Road?

20 A Yes, sir.

21 Q He has a right to have his guests come in  
22 and out to his property?

23 A Yes, sir.

24 Q He has a right to farm his property if he  
25 wishes to do so?

1           A     If he wishes to do so.

2           Q     He has a right to drill for oil on the  
3 property if he wishes to do so?

4           A     That would be his property there.

5           Q     He has a right to build a house on it if  
6 he wishes?

7           A     If the County submit ingress/egress for  
8 him to build a house then I have no objection with  
9 that.

10          Q     Does he have the right to build two houses  
11 on his property?

12          A     I really don't know how many house.

13          Q     You're not objecting to him building more  
14 than one house on his property; are you, sir?

15          A     Again, I object for him to be -- for Mr.  
16 Johnson to develop it. Now with that concern is  
17 whether they build two house or more or less.

18          Q     So what you're saying is if Mr. Johnson  
19 wanted to build one house.

20                     (Interruption)

21          Q     So the whole reason that we're going  
22 through all of this is that you don't object to him  
23 building one house or two houses or whatever on his  
24 property. You object to him building more than five  
25 houses on the property?

1           A     Yes, sir.

2           Q     And the reason you are objecting to that  
3 is you feel that if he builds houses on his property  
4 that you're looking for compensation for him to do  
5 so; is that correct, sir?

6           A     I think I should be.

7           Q     You should be what, sir?

8           A     Compensation.  Compensated, whatever.

9           Q     You should be compensated for him building  
10 on his property?

11          A     You know, I want to answer that question  
12 and then I want to say something afterward.

13          Q     You have all the right in the world.

14          A     The question was if I don't want him to  
15 develop the property to build five or more houses?  
16 Rephrase the question again.

17          Q     My question is, you feel that for Mr.  
18 Johnson to use his property the way he wants to use  
19 his property that you should receive money for him  
20 to do that?

21          A     Correct.  Now, the reason for that is I  
22 talked to Mr. Johnson before.  We had a conversation  
23 before the property, and I actually farmed Mr.  
24 Johnson property a little while before.  I had nice  
25 conversation and I said to Mr. Johnson -- he said

1 that he probably want to develop it probably later  
2 on, whatnot. I said to him, well, you've got  
3 ingress/egress. He said to me, well, he can't do it  
4 with that. Have to have the full right-of-way. So  
5 we talk about the full right-of-way and I said I  
6 don't know, what's the right-of-way or whatever.  
7 But sometime right-of-way could be something more  
8 than the property you have. I mention, you know,  
9 one time when Kiawah was bought in 1951, Dr. Rawl  
10 pay \$125,000 for it. And spring field them,  
11 charging 75 thousand dollars for the right-of-way.  
12 Now 75 thousand for right-of-way Kiawah is \$10,000  
13 AN acres. Right-of-way was only 75 acres. Now I  
14 offer Mr. Johnson because he didn't have any money  
15 and I didn't have much either. I said to him, well,  
16 if you develop property, you want develop property  
17 you get me one acre lot of what you doing and you  
18 can have it done. He refuse. He said he'll get  
19 attorney and have it done. That's why we here now.

20 Now, this question you talk about  
21 what we doing here about Mr. Johnson, this wasn't  
22 supposed to be Mr. Johnson. This is conspiracy  
23 against something else but seem to me like Court  
24 hear the same situation we bringing back making it  
25 two out of one. So this is dealing right now. I'm

1 asking you a question toward Mr. Johnson.

2 Q You say we're making it two out of one?

3 A Right. Because the other guy I never even  
4 met. Never even met him, and probably if I had met  
5 him probably could make some agreement with him.  
6 Because by me being nice, let the folks come into  
7 the property, ingress/egress and do what they want  
8 to do, even come wider than was supposed to do, then  
9 that's why I'm here now. I wasn't trying to make no  
10 money or nothing. I'm not trying to make money now.  
11 As a matter of fact, I had \$75,000 offer just for  
12 P.J. And I turn it down. You know why? Because I  
13 want my house strip. Money don't bother me.  
14 \$75,000.

15 Q For what, sir?

16 A For one week. I didn't understand.

17 Q What?

18 A One week.

19 Q One week?

20 A Almost a little more what you make for one  
21 week. I'm not trying to be smart, but I didn't like  
22 it, but I turn it down. Why I turn it down because  
23 of my wife. She a little insane. Joseph have a  
24 witness. Not tell you that story but that's why I  
25 turn it down to have a little piece of mind.

1 Q All right, sir. You are familiar with the  
2 layout of the lots on Resurrection Road; are you  
3 not?

4 A Yes.

5 Q You own, we'll call it lot 133, it's TMS  
6 number and the last digits are 133. That's where  
7 your house is; isn't it, sir?

8 A Yes, 133.

9 (Discussion off the record.)

10 Q Let's use one that's been submitted into  
11 evidence as Defendant's Exhibit B. You've  
12 identified parcel number 133 as being your house; is  
13 that correct, sir?

14 A Yes, sir.

15 Q And you also own Parcel 18; is that  
16 correct?

17 A Yes, sir.

18 Q Mr. Johnson owns Parcel 14?

19 A Right.

20 Q That's correct?

21 A Right.

22 Q And Dr. Haynes owns parcel 17, that's the  
23 other gentleman you were asking about?

24 A Right.

25 Q All right, sir. So anything you say about

1 ingress/egress would pertain not only to Mr. Johnson  
2 and his heirs and assigns and subsequent owners,  
3 whatever, would also go to Dr. Haynes?

4 A Right.

5 Q On 17?

6 A Right. In the back, yes.

7 Q And Dr. Haynes I think has said that you  
8 had entered into a conspiracy to deprive him of the  
9 value of his property; is that correct, sir?

10 A No, sir. That's what you're saying but  
11 how could Dr. Haynes say that I'm conspiracy with  
12 his property and I never even met him. Never even  
13 talked to him. Only one thing I know, Dr. Haynes is  
14 his name which you mention right now. And to me  
15 conspiracy mean -- I mean, if you, if someone talk  
16 to you about something whatnot. Going up against  
17 them whatnot. Someone tell him that, because I  
18 didn't conspiracy with no one about Dr. Haynes.  
19 Like I said, if Dr. Haynes had talked to me we might  
20 not be here now.

21 Q Did you talk to anyone about Mr. Johnson's  
22 right to use his property the way he wanted to use  
23 it?

24 A Did I talk to anyone but Mr. Johnson? I  
25 already said he could use his property. County, you

1 have to do, so far as ingress/egress. That's what  
2 he got. Only person I talk to about is Mr. Johnson  
3 himself.

4 Q All right. You knew that Mr. Johnson had  
5 a contract on selling his property; did you not?

6 A No. I know he talk about a contract on  
7 selling his property, but I didn't know he had a  
8 contract. Apparently, if he had one he should have  
9 sold it. If that's what he want.

10 Q Sir, did you not raise a question about  
11 ingress/egress to the people who were interested in  
12 buying this property?

13 A I don't remember talking to anyone who was  
14 interested in buying the property, Mr. Johnson  
15 property. No more than, you know, that you just say  
16 I already said had ingress/egress but no one had to  
17 discuss, to my knowledge, that I can remember  
18 anything else.

19 Q Do you deny that you offered to buy  
20 Mr. Johnson's property?

21 A Deny?

22 Q Yes, sir.

23 A No. We talked a little bit about his  
24 property. So far as buying it, I couldn't afford to  
25 buy it. If he want was to sell it for a low price I

1 would buy it if I could, but it wasn't no issue of  
2 my buying it. I didn't need no more property.

3 Q Are you denying today that Mr. Johnson  
4 offered you \$50,000 to let him have ingress/egress  
5 to his property?

6 A No, I don't remember that. Never.

7 Q You don't remember?

8 A I don't remember that.

9 Q Okay, sir.

10 A I made Mr. Johnson an offer. I don't  
11 remember he made me any offer.

12 Q What did you offer Mr. Johnson to buy his  
13 property?

14 A I didn't offer Mr. Johnson to buy his  
15 property. He talk to me about developing it and I  
16 told him I said, well, if you have -- let me have  
17 one lot in the back.

18 Q Yes, sir. Continue.

19 A If you let me have one lot in the back  
20 then I'll let you do what you've got to do for the  
21 right-of-way. As a matter of fact, I didn't even  
22 think about Mr. Haynes in the back at that time.  
23 Because it was something Mr. Johnson I want to do.  
24 Getting up age for his retirement or something, I  
25 don't know.

1 Q So you were interested in buying  
2 Mr. Johnson's property?

3 A Always buy property if I can afford it. I  
4 just say I wasn't interested in buying Mr. Johnson's  
5 property. I couldn't afford it and I actually  
6 couldn't afford it at the time.

7 Q But you asked him to give you a lot in the  
8 back of the Johnson parcel?

9 A Only because he asked. I wasn't going to  
10 do nothing. I didn't want nothing. I can just soon  
11 unless be leave alone. He want to develop and I  
12 made him an offer because he didn't have any money  
13 to pay me so I can't see how he offer me \$50,000.  
14 He didn't offer me \$50,000.

15 Q My question was did you demand \$50,000?

16 A Not offer. I didn't ask for anything.  
17 Why should I demand it? Didn't want to buy the  
18 property, didn't want anything. Just soon be left  
19 alone.

20 Q I'm going to take you back to 1996. Did  
21 you obtain the service of a Mr. E.M. Seabrook?

22 A I did.

23 Q What did you ask Mr. Seabrook to do, sir?

24 A Well, the County tell me, say I have to  
25 survey the property and get a pure plat in order to

1 build my house back. Otherwise I wouldn't have gone  
2 to Seabrook. I asked Seabrook, what do I have to do  
3 to get a plat to build my house? Then he discuss  
4 what I had to do. That's all I did.

5 Q You talked with Mr. Seabrook?

6 A Yes, sir.

7 Q Your house parcel was contained within the  
8 acreage that you own; was it not?

9 A Yes.

10 Q That acreage had ingress/egress to Betsy  
11 Kerrison Boulevard; did it not?

12 A Boulevard, Parkway.

13 Q Parkway, whatever we call it, sir. So you  
14 could come in from Betsy Kerrison over your own  
15 acreage to get to your home lot; could you not, sir?

16 A Yes, sir. You know if at that time I  
17 could have done that, and knowing that, I would have  
18 done it. Mr. Seabrook told me, said, well, you have  
19 a road on the right side that you're now using. I  
20 said, well, that road was eight, ten foot. He said,  
21 well, that ain't cause no problem with you trying to  
22 use the road across the center, then just use this  
23 road here as is.

24 Q So Mr. Seabrook told you that you could  
25 use the road, that existing road to get to and from

1 your house?

2 A Yes, Mr. Seabrook told me. I didn't  
3 listen to him but he told me. He said when you use  
4 that road over there you should run a fence right on  
5 down there because ain't no more eight or ten foot,  
6 leave it like it is. If I had listen to Seabrook I  
7 wouldn't have been in this 10, 12, 14, 16 mix right  
8 now.

9 Q You and Mr. Seabrook went before the  
10 County officials?

11 A Yes, sir.

12 Q The County officials said they needed a  
13 50-foot right-of-way running from Betsy Kerrison  
14 down Resurrection Road?

15 A Right.

16 Q You objected to 50 feet?

17 A Yes, sir.

18 Q You asked for them to agree to a  
19 25-foot --

20 A I asked for them to agree to a 25-foot.  
21 Ms. Kerrison already talked to me before this  
22 situation occurred. Ms. Kerrison told me, said the  
23 50-foot going to come up, offer them 25 foot, make  
24 sure you offer them. Ms. Seabrook on other side of  
25 the property no sense to go in the center or the

1 edge. I think that was the east. That was west end  
2 they call it; south, north. But it's on the  
3 property right-hand side give them that 25 feet.  
4 That's what I did. Then Seabrook made up a profile  
5 to have it approved and it wasn't no situation where  
6 been approved or not because she already know it's  
7 going to be approved. Approved like nothing.

8 Q You went before the various County boards  
9 and County agencies?

10 A Yes, between Planning Board and they tell  
11 me I would never have a problem with me losing my  
12 property, so far as developing concerned. That's  
13 what I've been told.

14 Q I'm going to hand to you what's been  
15 indicated here as the Charleston County Planning  
16 Department Subdivision Transmittal Cover Sheet and  
17 ask you to go to the very end of that cover sheet  
18 and see if there is underlined parcel 16-476. Are  
19 you familiar with that, sir?

20 A Approval plat, yes.

21 Q Now, can you tell the Court what the  
22 various agencies said about that 25-foot offer you  
23 made?

24 A What did they say?

25 Q Yes, sir. Is there approvals and

1 disapprovals indicated?

2 A Says approve plat.

3 Q If you look down, sir, you see the  
4 Planning Department?

5 A On the bottom.

6 Q Planning Department?

7 A Yes, I see it.

8 Q What did the Planning Department say about  
9 your offer of the 25-foot right-of-way?

10 A All they said here is the Planning  
11 Department disapprove.

12 Q Disapprove?

13 A Yes.

14 Q Under that there is a Public Works  
15 Department; is there not?

16 A Yes.

17 Q What do they say, sir?

18 A Health Department approve.

19 Q Public Works Department -- what does that  
20 say?

21 A Approve.

22 Q You see the Public Works Department above  
23 the Health Department?

24 A No, sir. Looking at the bottom. Where  
25 you showing me at.

1 Q The middle one, sir?

2 A Public Works Department, disapprove.

3 Q Then Health Department said approval; did  
4 it not?

5 A Yes.

6 Q So you ran through different agencies and  
7 boards of the County, some of which said disapproval  
8 of your application for 25 feet?

9 A I don't know what I did for sure, but I  
10 can remember what I went to them, when I get my plat  
11 to build my house, that was approved and I got it.  
12 That was the only reason I was there for that, to  
13 get my plat approved to build my house. They didn't  
14 even know I had needed it, but I went by what the  
15 law say.

16 Q You hired Mr. Seabrook; did you not?

17 A So I can get my house build back.

18 Q And Mr. Seabrook was working for you to  
19 get the survey and plat approved; was he not?

20 A Yes, sir.

21 Q Mr. Seabrook attempted to secure approvals  
22 from the different boards and agencies of the  
23 County; did he not?

24 A Yes, sir.

25 Q Some of those boards disapproved; did they

1 not?

2 A I don't know whether they disapproved or  
3 approved. The situation is I got my permit to build  
4 a house. Whether approved, disapprove, I don't  
5 know. I know I had to get approval to get my  
6 permit, and that's all I was doing to build my  
7 house.

8 THE COURT: I think he's covered that  
9 adequately.

10 Q Did you go with Mr. Seabrook to County  
11 Council?

12 A Yes, sir.

13 THE COURT: I think he's covered that  
14 whole process. He's gotten his permit. He  
15 subdivided his property. Let's talk about what  
16 happened since.

17 MR. OBERMAN: My question was -- next  
18 question was, did he request compensation for  
19 his 25-foot --

20 THE COURT: Go ahead. From County  
21 Council?

22 MR. OBERMAN: I'll read to you what the  
23 minutes say, Your Honor. We can decide.

24 THE COURT: Just ask him the question.  
25 He's right there.

1 Q Did you state to County Council that if  
2 the people in the rear would like access to the  
3 property let them pay him for the additional 25-foot  
4 of right-of-way?

5 A No.

6 Q You didn't say that?

7 A To the County? Let me tell you. No one  
8 was asking me for no 25-foot additional at that  
9 time. No one was asking me for anything. They was  
10 trying to block me so I can give it to them, but I  
11 had nothing to say to the County but get my permit.

12 Q I'm going to go refer you to page 10 of  
13 the County records and ask you to put your glasses  
14 back on and read just the last sentence, sir.

15 A You talking about the last -- Mason  
16 Heyward was sent to ask question from the board when  
17 his house was destroyed by first five years. He  
18 waited approximately months before applying for a  
19 permit to rebuild.

20 Q Do you see the last sentence, sir?

21 MR. OBERMAN: May I approach the witness,  
22 Your Honor?

23 THE COURT: You may.

24 Q Right there.

25 A Mason Heyward -- Mr. Heyward stated that

1 when Ms. Betsy Kerrison asked him to name the road,  
2 he was concerned by naming the road. It would take  
3 50-foot away from his -- what's that?

4 MR. OBERMAN: Excuse me, Your Honor, if I  
5 may approach?

6 A Take away from his property. He told him  
7 he stated if the people in the rear would like  
8 access to their property that let them pay him for  
9 additional 25-foot of right-of-way?

10 Q That is correct. Way back when you were  
11 asking for money?

12 A That's asking for money?

13 Q Yes. You were asking for money from the  
14 people that this 25-foot right-of-way would serve;  
15 were you not, sir?

16 A Not directly. If I was asking for money I  
17 would talk to someone personally. You know who I  
18 made that statement? Honest truth. I'm telling you  
19 like it is. Is Ms. Kerrison told me that. Said if  
20 anyone want any part of my property then easement  
21 ingress/egress let them pay for it. That's why I  
22 went that way. I hadn't sense enough to know that  
23 before, but I do know it now.

24 MR. OBERMAN: We'll put this in as  
25 Plaintiffs 10.

1 when Ms. Betsy Kerrison asked him to name the road,  
2 he was concerned by naming the road. It would take  
3 50-foot away from his -- what's that?

4 MR. OBERMAN: Excuse me, Your Honor, if I  
5 may approach?

6 A Take away from his property. He told him  
7 he stated if the people in the rear would like  
8 access to their property that let them pay him for  
9 additional 25-foot of right-of-way?

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11 asking for money?

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13 Q Yes. You were asking for money from the  
14 people that this 25-foot right-of-way would serve;  
15 were you not, sir?

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17 would talk to someone personally. You know who I  
18 made that statement? Honest truth. I'm telling you  
19 like it is. Is Ms. Kerrison told me that. Said if  
20 anyone want any part of my property then easement  
21 ingress/egress let them pay for it. That's why I  
22 went that way. I hadn't sense enough to know that  
23 before, but I do know it now.

24 MR. OBERMAN: We'll put this in as  
25 Plaintiffs 10.

1 THE COURT: Any objection?

2 MR. ROBINSON: No objection.

3 (Whereupon Plaintiff's Exhibit 10 is marked.)

4 Q We've agreed that you went before County  
5 Council with Mr. Seabrook?

6 A I remember.

7 Q And Mr. Seabrook was hired by you to get  
8 you --

9 MR. ROBINSON: Your Honor, asked and  
10 answered. Already testified to.

11 THE COURT: Let's just move it along.

12 Q Was your proposed plat approved?

13 A If my approve plat hasn't been approved  
14 won't be able to build my house and it was approved.

15 Q Did Mr. Seabrook and you get a letter  
16 showing the granting of that approval?

17 A I remember. I remember going down there,  
18 say time I get my permit or he can get it for me.

19 Q Sir, I'm going to hand to you a letter  
20 purporting to be signed by Beverly T. Craven, Clerk  
21 of Council dated May 8, 1996 and ask you if you're  
22 familiar with that letter, sir.

23 A It's sound to me, says what it is here.  
24 I'm not so much familiar with what's going on. He  
25 says 25-foot roadway being dedicated to the public.

1 Resurrection Road. Serve possibly 25-foot under  
2 high development. What I just said is I did what I  
3 had to do in order to get a plat to get it approved  
4 to build my house. Nothing else that I know of was  
5 supposed to be done.

6 Q The letter was addressed to Mr. E.M.  
7 Seabrook?

8 A I guess.

9 Q Take a look at it and tell me.

10 A Yes, Seabrook.

11 Q And who was -- who were copies of that  
12 letter sent to, sir?

13 A I believe I had copy of it but, I don't  
14 know. I don't remember. Sure got copy of it.

15 Q Does it show you've got a copy?

16 A Said one was mailed to me.

17 Q Does it show it was sent to someone else?

18 A E.M. Seabrook and line of Mason Heyward.  
19 Mr. Seabrook.

20 Q Look at the cc, sir, and see if there was  
21 anybody else.

22 A Under cc? What you talking about?

23 Q Where you have your thumb, sir, does it  
24 show right there?

25 MR. ROBINSON: Your Honor, we stipulate

1 the document speaks for itself.

2 A Planning Board Department.

3 Q And?

4 A Public Works Department.

5 Q And?

6 A Mason Heyward.

7 Q All right, sir. If this is not already in  
8 we'll put this in as Plaintiff's 11?

9 MR. ROBINSON: I believe that was already  
10 admitted in Mr. Neal's testimony.

11 (Reporter's note: Previously received as Defendant's Exhibit  
12 15.)

13 Q Do you remember that Mr. Kerrison came to  
14 you to get a confirmation and grant of access  
15 easement?

16 A No, Ms. Kerrison came to me.  
17 Mr. Kerrison, I don't even know who is that.

18 Q Do you remember that you signed a  
19 confirmation and grant of access easement?

20 A To Ms. Kerrison. Could have been  
21 Mr. Kerrison but at that time Ms. Kerrison came to  
22 me.

23 Q Would you look and see if -- who this goes  
24 to?

25 A Charleston County.

1 Q Do you know who the grantee is, sir? Way  
2 up here doesn't it say Mr. Kerrison?

3 A Yes, William Kerrison.

4 Q William Kerrison.

5 MR. OBERMAN: We'll put this in as  
6 Plaintiffs 11.

7 (Whereupon Plaintiff's Exhibit 11 is marked.)

8 Q Mr. Heyward, you sold Mr. Kerrison an  
9 easement for him to get in and out of his property;  
10 did you not?

11 A Only because she asked me to do it. At  
12 that time I believe whatever Ms. Kerrison say. I  
13 had put my trust in what she said. If I sold  
14 Ms. Kerrison easement to get back to her property,  
15 if she had already ingress/egress and the property  
16 wasn't mine why would she need that?

17 Q To recap. You executed a confirmation and  
18 grant of access easement to William L. Kerrison  
19 dated April 29, 1999 and it was recorded in Book  
20 N-325 Page 750. Does that sound correct?

21 A Sound correct? Like I said, I did what I  
22 had to do at that time. Ms. Kerrison was, to me,  
23 like Sidi. Was friend, and really when she brought  
24 the paper to me, you say Mr. Kerrison but it was  
25 Ms. Kerrison. I never saw Mr. Kerrison. I mean, I

1 had no conversation with him about doing anything.

2 But Ms. Kerrison. Maybe she brought the paper from

3 her husband or whatnot, but that's what I did.

4 Q Did you receive compensation for that,

5 sir?

6 A I don't remember what it was.

7 Q I'll remind you.

8 A Remind me.

9 Q I'm going to hand to you a letter from  
10 Karen W. Kerrison to G. Simmons McDowell, III and  
11 attached to it is a check for \$600. Would you take  
12 a look at that, sir?

13 A When you mention that then that refresh my  
14 mind. The 600 wasn't buying any property. It was  
15 not. As a matter of fact, I could remember when she  
16 did that because I could have just as well, when she  
17 brought to my attention she said how much would be  
18 sufficient? I said I don't know. Give me a hundred  
19 dollars or so. To make it legal. I think you could  
20 do a dollar and make it legal, but that's what she  
21 did.

22 Q Who came up with the price of 600?

23 A It wasn't no price of 600 came up. I'm  
24 just telling you. I said to her fifty, hundred  
25 dollars or so.

1 Q Sir, we'll put this in as Plaintiffs 12.

2 (Whereupon Plaintiff's Exhibit 12 is marked.)

3 THE COURT: Without objection I assume.

4 MR. ROBINSON: No objection.

5 Q Mr. Heyward, would you take a gander at  
6 the copy of the check attached to the letter? Tell  
7 me the amount of that.

8 A It says \$600.

9 Q Who is it made payable to?

10 A Mason C. Heyward.

11 Q Thank you. That's all.

12 A I didn't know that.

13 Q You didn't know that?

14 A I said I didn't deny that. I didn't make  
15 no price.

16 Q So you received compensation for this  
17 confirmation and grant of access easement; is that  
18 correct, sir?

19 A Listen, I answer you yes, sir and with an  
20 explanation. So the question is answer yes, sir.  
21 With respect. But so far as the \$600, Ms. Kerrison,  
22 she did that. I said fifty or a hundred, whatever.  
23 And this was from her. Not me. That was like  
24 paying me for the property, whatnot. She advised me  
25 on what should be done up until now, until she die.

1 Q Did you spend the \$600?

2 A No, I give it to my wife.

3 Q Did your wife spend the \$600?

4 A Almost before I get it.

5 THE COURT: Things don't change much.

6 Q I'm not going to go into detail on this  
7 confirmation and grant of access easement but it  
8 appears the me that you gave William L. Kerrison an  
9 easement alongside the previously granted easement  
10 for him to use until he could use the ingress/egress  
11 easement; is that correct?

12 A Not to my knowledge. I didn't know what  
13 was going on there. Why they had even wanted an  
14 easement. I really didn't.

15 Q I'm going to read to you, so as not to be  
16 a burden on you, sir, the last paragraph. The  
17 easement granted herein shall be conditioned upon  
18 the continued use of lot 16. Now that lot 16 is the  
19 one that Ms. Bennet owns now; is that correct?

20 A Yes, continuous use.

21 Q For residential purposes?

22 A Yes.

23 Q The easement granted herein over any  
24 portion of Resurrection Road currently lying outside  
25 the area shown and designated as Resurrection Road

1 25-foot right-of-way on said plat shall expire in  
2 the event the road is relocated so as to lie wholly  
3 with the area shown and designated as Resurrection  
4 Road, 25-foot right-of-way on said plat. Nothing  
5 contained herein shall be construed or deemed to  
6 constitute a dedication expressed or implied of any  
7 real property to of any public use or whatsoever.  
8 Do you remember that language, sir?

9 A Yes. But I'm saying why would -- if  
10 you've got egress and ingress everybody got the  
11 right to come in and do what they got to do. Why  
12 would anybody want to locate a road when they ask  
13 for 25-foot? I mean, I had a 25-foot right-of-way  
14 on the right-hand side that was given to them, so  
15 now you want to relocate back to the road bed which  
16 we now using rather than the 25-foot? Then you want  
17 part of the road bed and then part of the 25-foot to  
18 make it and then you think I'm Mike Tyson.

19 Q No, sir. Mike Tyson bites ears off. I  
20 don't think you would do that.

21 Sir, did you not, in fact, confirm  
22 the grant of your 25-foot ingress and egress  
23 easement as being in existence by this deed of  
24 April 29 --

25 A The 25-foot ingress/egress, whatever it

1 is, is marked, is on the right side and is still  
2 there. And I ain't stopping nobody from using it.  
3 Ain't stop anybody from using the road bed what they  
4 using. Never did. Didn't even intend to. You  
5 know? But so far making it wider and doing this,  
6 doing that, I mean, I don't agree.

7 Q Do you agree that the 25-foot Resurrection  
8 Road right-of-way, R/W -- R slash W, is still there?

9 A Yes, 25-foot right-of-way is facing the  
10 land from right from the highway from Betsy Kerrison  
11 to 25-foot right-of-way, is to your right. I got  
12 25-foot in between that before you took the 25-foot  
13 right-of-way. Ms. Kerrison put the sign on the  
14 right-hand side and pointed at the wood. That's  
15 actually where the road is. When I hear County --  
16 Charleston County say they maintain the road for X  
17 amount of years. They have stipulated say  
18 maintaining the right-of-way. Which they wasn't.  
19 They were maintaining the road bed. No one did  
20 anything with the right-of-way. They were  
21 maintaining what they did. That's what I say to  
22 myself and I wasn't lying. I say like it was. It  
23 is what it is. County Council, Charleston County  
24 when they came down there, what little they do, Sidi  
25 do most of it, but whatever little they do they did

1 to the road bed. So far as the 25-foot right-of-way  
2 they did nothing.

3 Q I'm going to test your coloring skills  
4 like I did on the deposition. Give you an Irish  
5 green. This is Plaintiff's Exhibit 2. Do you see  
6 what has been marked as Resurrection Road 25-foot R  
7 slash W?

8 A Right here.

9 Q Yes.

10 A Yes.

11 Q Would you start at Betsy Kerrison Parkway  
12 and would you color in between the lines there  
13 25-foot Resurrection Road right-of-way.

14 (Witness indicates.)

15 Q Would you put the other boundary? Would  
16 you put the eastern most boundary, this line right  
17 here?

18 A Yes.

19 Q Would you mark that as part of it, isn't  
20 it?

21 A What line?

22 Q Right here. Mark that.

23 A Right here. It come in right there.

24 (Witness indicates.)

25 Q You haven't colored in this little part up

1 here.

2 (Witness indicates.)

3 A All right.

4 Q Would you go all the way down now within  
5 that 25-foot right-of-way?

6 (Witness indicates.)

7 A That's 25-foot right-of-way.

8 Q Yup. And that's what you granted at the  
9 request of County Council; is that not correct, sir?

10 A Correct.

11 Q And this 25-foot right-of-way was recorded  
12 at the RMC Office for Charleston County?

13 A I believe so.

14 Q That's for every one in the world could  
15 come there and see where that right-of-way was?

16 A See where the right-of-way still is.

17 Q Still is. All right. And that ends on  
18 the, I believe, the eastern end of that property  
19 that's shown as the Nautilus Group parcel 17. Do  
20 you see that, sir?

21 A Where you saying?

22 Q Right here.

23 A Right there.

24 Q That's the Nautilus Group?

25 A Yes.

1           Q     So the Nautilus Group has or actually Dr.  
2     Haynes has the right to use that Resurrection Road  
3     right-of-way?

4           A     Ingress and egress.

5           Q     Ingress and egress. All right, sir. And  
6     he had use of that ingress and egress from his  
7     property to Betsy Kerrison Parkway; is that correct?

8           A     Yes, sir.

9           Q     Mr. Johnson can use that 25-foot  
10    right-of-way?

11          A     Well, I even back up on that on  
12    Mr. Haynes. You say Mr. Johnson can use it and  
13    Mr. Haynes can use it.

14          Q     Dr. Haynes.

15          A     Dr. Haynes. They all can use it, but I  
16    think have a little problem coming up on the left  
17    over there. That's where the problem is. They  
18    can't run no more, not even a hundred yard on the  
19    25-foot right-of-way. I mean, from the 25-foot road  
20    bed into the right-of-way. The right-of-way just  
21    all trees up. They had that right-of-way 17 --  
22    something almost like 17 years and they did nothing  
23    with it. They keep saying the roads strip and this,  
24    that, all that stuff. It's straight. My property.

25          Q     When you say your property?

1           A     Right.

2           Q     Aren't you talking about the prescriptive  
3 easement road bed?

4           A     The road bed. I don't know what you call  
5 it. The road bed was opposite, leave so far when I  
6 give the 25-foot right-of-way? It was my property.  
7 They had the right for the right-of-way on the right  
8 side of that. I didn't stop them from  
9 ingress/egress. If they want to do anything that's  
10 different.

11          Q     Are you saying today that Dr. Haynes and  
12 Mr. Frank Johnson do not have the right to drive  
13 their vehicles on the road bed?

14          A     I said -- saying the same thing over and  
15 over of the ingress/egress and what your description  
16 of the road bed, I'm thinking something else. On  
17 the right side there is a high bed over there. The  
18 roadway, that's different to me. So that's  
19 different distinction what I'm looking at because  
20 the road bed, no one can even drive on the road bed  
21 but the path, the road path. Yes, they can drive  
22 the road path ingress/egress.

23          Q     And they can drive from Betsy Kerrison all  
24 the way back to --

25          A     To Kiawah.

1 Q All the way to Kiawah. And that road bed  
2 runs into the 50-foot -- I'm sorry -- 25-foot  
3 right-of-way; does it not?

4 A Yes.

5 Q All right. And the County of Charleston  
6 comes in there and scrapes down that road bed; don't  
7 they, sir?

8 A I guess you call it the road bed because,  
9 like I say, I was distinguishing between road bed  
10 and the dirt road. Yes, that's the road bed, okay.

11 Q Let's say the dirt road.

12 A They come in there and occasionally they  
13 do. Sidi been doing most of it. All this type the  
14 stipulation of time that they say they've been  
15 there. I mean (Nods negatively.)

16 Q Does the County of Charleston maintain  
17 that section of the road within the 25-foot  
18 right-of-way?

19 A That section of the road within the  
20 25-foot right-of-way?

21 Q Yes, sir.

22 A Not in the 25-foot right-of-way. Doesn't  
23 contain that. It contain out of the 25-foot  
24 right-of-way, but on the back side then the County  
25 of Charleston does take care of that occasionally.

1 Q Where it says on Plaintiff's 2A center  
2 line Resurrection Road?

3 A Yes.

4 Q Is that within the boundaries of the  
5 Resurrection Road 25 right-of-way?

6 A Yes, from there to -- we talking about it  
7 just maybe five foot.

8 Q You say that's five feet?

9 A No, I'm saying maybe because it's part of  
10 (inaudible)? Just like look to me look like it's  
11 about a half. And the half of that distance even up  
12 to where my house is, say a hundred yard, that's all  
13 they will maintain. The rest of it is out of that  
14 25-foot. Am I right?

15 Q Sir, I'm going to ask you, doesn't it say  
16 298.8 feet to --

17 A Where?

18 Q Up on the top?

19 A Going where?

20 Q See right up here, sir? Between this  
21 point and that point?

22 A If that's what it say, but you're talking  
23 eight thousand -- what's this here?

24 Q That is the compass direction, sir.

25 A If this is 225-foot that's what you're

1 saying?

2 Q From line BC down here to where it says  
3 five eighths iron rod?

4 A That's 225-foot. Any how, if you say 290  
5 you've got three -- you've got 600 feet they are not  
6 doing anything with. 600 feet. Double what you're  
7 saying is being covered. 600 feet on the  
8 right-of-way, that's not being taken care of by  
9 Charleston County. You doing 300 feet. Give the  
10 benefit of the doubt. They are doing 300 feet on  
11 the back side. So if they come through on the  
12 300 feet, the right-of-way come through on the other  
13 600 feet, so where they going?

14 Q Aren't they doing the balance of the  
15 prescriptive easement road, sir?

16 A The balance of it?

17 Q Yes, the front portion?

18 A Not doing the front portion of the  
19 right-of-way.

20 Q I didn't say of the right-of-way. I'm  
21 saying of the roadway.

22 A Yes.

23 Q They come in there and scrape it down?

24 A Occasionally.

25 Q They fill in holes?

1           A     I never see them. Sidi fill in the holes.

2           Q     They cut the bushes back?

3           A     Which wasn't asked to do. Charleston  
4 County got lot more other work they can do beside  
5 messing with that. This way don't come up if some  
6 other folks didn't have some high interest in it.

7           Q     Sir, I asked you once or twice, I'll ask  
8 you again, the whole reason that we're here is that  
9 you're objecting to Mr. Johnson developing his  
10 property without compensation to you?

11           MR. ROBINSON: Asked and answered, Your  
12 Honor.

13           A     No, sir. I thought the reason we're here  
14 is because conspiracy situation. That's what I've  
15 been told, was a conspiracy with me and Sidi with  
16 the doctor. So far Mr. Johnson, I thought that  
17 situation was over with. This was decided. But I  
18 have no objection to what the County say. I mean,  
19 they run the book. I'm just a poor boy trying to  
20 make it, and don't want to be nothing taken away,  
21 you know? I work hard for everything I got and  
22 nobody give me anything. I had to pay for  
23 right-of-way before, myself. My father give away a  
24 right-of-way and after he give away they tell him he  
25 can't bring down there, he can't come on the dock.

1 After he done give away 50-foot right-of-way,  
2 covered over five acres of land, tell him, you know,  
3 this belong to Rural Mission and this is -- you can  
4 drive through the road but you can't come to the  
5 dock. Daddy say, well, I just give you all 50-foot  
6 right-of-way. They have nothing to do with it.  
7 That was just word of mouth. They can kick him out.

8 Q Mr. Heyward, I wouldn't argue with you but  
9 you said you are just a poor boy?

10 A Yes, sir.

11 Q You built your house on this piece of  
12 property there on Resurrection Road; did you not?

13 A Yes, sir. It was a shack on the hill.  
14 Little shack on the hill.

15 Q How many square feet is that little shack,  
16 sir?

17 A Eleven thousand almost 12,000 square foot.  
18 You want me to tell you why I say shack on the hill  
19 or I'll let you say that first?

20 Q No, I would like your description. At one  
21 time you said it cost you 2 million to build?

22 A Close to.

23 Q You thought it was worth four to five  
24 million dollars?

25 A You hear what Sidi say yesterday? I don't

1 know, but to me it worth nothing more to me than my  
2 health and strength. The house everything, here  
3 today gone tomorrow. That's why I say it's a shack  
4 on the hill, because M.C. going to be honest, try  
5 not take nothing from nobody else and I'm straight  
6 forward. If I can help somebody I do it. So I'm  
7 not worrying about the property or what you-all  
8 trying to do or whatever situation is. I  
9 understand. I'm not worrying about that. However,  
10 outcome is, then it is. I let them use the road and  
11 they widen it and they keep in and out, whatnot.  
12 You know, I'm not asking for no compensation. I  
13 said I should be compensated. If he didn't have  
14 money, like I told you before, he could have give me  
15 a lot in the back for what he doing there. If I had  
16 talked to the other gentleman you talked to, the  
17 doctor, maybe he would say. But right now I'm not  
18 talking to anyone. I'm just soon well be left  
19 alone. Whatever the situation is then let it be.  
20 They got ingress and egress, to my knowledge, and I  
21 only doing what Ms. Kerrison told me before she  
22 died.

23 Q Did you or someone on your behalf go to  
24 County of Charleston to block the ingress/egress  
25 roadway?

1           A     Never did.

2           Q     Did you receive a letter from Mr. Neal at  
3 the County of Charleston about making that into a  
4 County road or bringing it up to specifications?

5           A     I did so receive a letter not so long. I  
6 received a letter. I took it to my attorney. So  
7 ain't no use to me -- for you say me, myself  
8 personally, to try to respond to them. I'm just,  
9 like, like I tell you, this is a poor boy. I took  
10 to my attorney because he know more about it, and he  
11 responded. It's not that I was denying it. I took  
12 it to him and he responded to it. Then Mr. Neal say  
13 he didn't get a response, but he still is the head  
14 of a head. He don't recollect getting that so it  
15 slipped his mind. He's not perfect either.

16          Q     Sir, is it the whole reason for you  
17 blocking Mr. Johnson and Dr. Haynes from having a  
18 necessary ingress/egress so you can get money out of  
19 them?

20          A     Appears to me the necessary ingress/egress  
21 they have, necessary ingress/egress, they have that.  
22 Keep saying that over, over. I didn't went to  
23 anyone to deny Johnson to have ingress/egress. You  
24 talk something else different, it is different.

25          Q     So you say them, you're talking about

1 being a public road?

2 A It's not a public road. They call it what  
3 they want.

4 Q If I drive down that road you going to  
5 have me arrested for trespass?

6 A If I could I would, but I can't. It's  
7 ingress and egress.

8 Q I'm not an owner, am I, Mr. Heyward?

9 A Well, like I say, you know, the road is  
10 there, use it. But if you drive on that road say  
11 you start building some houses you have to go to  
12 some other plans. That's the difference.

13 MR. OBERMAN: That's all the questions --  
14 excuse me just a minute. That's all the  
15 questions I have.

16 THE COURT: All right. Mr. Robinson. If  
17 you want to be able to call him again in your  
18 case in chief just limit it to what he -- try  
19 to limit it to what he was covering here. That  
20 would be good.

21 MR. ROBINSON: I'm sorry, Your Honor.

22 THE COURT: Try to limit your cross to the  
23 areas he covered.

24 MR. ROBINSON: Yes, I'm limiting it to  
25 Mr. Oberman's claims against my client, as I

1 understand, with civil conspiracy and things  
2 that have happened since 2010 that he has  
3 covered, but it's my understanding from you  
4 that he gets to try his case and I get to take  
5 his direct whenever we resume. Probably not  
6 today.

7 THE COURT: No. That would be  
8 preferential. Let's take a break.

9 (Short break.)

10 THE COURT: Mr. Robinson.

11 CROSS EXAMINATION BY MR. ROBINSON:

12 Q Mr. Heyward, I would like to take you back  
13 to your conversation with Mr. Johnson about use of  
14 the road, about the time you found out that he  
15 intended to develop his property. Okay? Do you  
16 recall when, approximately, that was?

17 A Don't know exact date but, that was in the  
18 '90's, but I don't know exact. Maybe early 2001  
19 something. Ninety-nine, something like that?

20 Q So it's been some time, almost a decade?

21 A Yes.

22 Q Now, correct me if I'm wrong, but I  
23 believe you said you have no problem with anyone on  
24 the road having a right to ingress and egress?

25 A No problem.

1 Q That ingress and egress you want on the  
2 existing road; is that correct? The dirt path?

3 A Not really. I mean, ingress/egress on  
4 existing road, that's what I'm talking about, yes.

5 Q On the existing dirt path?

6 A Yes, ingress and egress.

7 Q That's for everybody who is on the road?

8 A Yes, sir.

9 Q And you offered that to Mr. Johnson;  
10 right?

11 A Right.

12 Q You've never taken that away?

13 A No, sir.

14 Q Have you ever told Mr. Johnson that you  
15 intended to restrict his right to be able to get  
16 ingress and egress to his property?

17 A Never.

18 Q When did you move to your address on  
19 Resurrection Road?

20 A In this case I've been in the house  
21 probably 2004 something. 2002, something like that.

22 Q How long have you owned that property?

23 A Since 1973.

24 Q You've used Resurrection Road since that  
25 time, the dirt path?

1           A     Yes, but I had the house. I was using  
2 Resurrection Road; dirt path.

3           Q     In your experience has the road been  
4 basically the same since 1973?

5           A     Not the same.

6           Q     How has it changed?

7           A     Same place but it's not the same. Because  
8 the road was about eight, ten feet wide going on  
9 down there and when you have to come off that power  
10 line little wider, people turn off in there just  
11 come through but your road wasn't that wide.

12          Q     Did Mr. Johnson ask you for more access  
13 than ingress and egress to his property?

14          A     Not directly. He -- Mr. Johnson know he  
15 had ingress/egress. He did mention he might want to  
16 develop it, so I guess that's more access for, you  
17 know, whatever he need to develop it.

18          Q     Was it your understanding that that was  
19 going to necessitate him widening the dirt road?

20          A     Yes, I know that.

21          Q     Is that why you wanted him to pay you?

22          A     Yes, because he be coming over on my part,  
23 be wider, be taking more off my property.

24          Q     Because the dirt road runs across your  
25 property?

1           A     Exactly.

2           Q     In your opinion -- okay, Mr. Heyward. I  
3 want you to review Exhibit 1A. If you could,  
4 relatively quickly, could you tell me basically what  
5 is on each of these parcels, whether a person lives  
6 there or whether it's just a field or forest? Can  
7 you identify the last number and then tell me what's  
8 on that lot?

9           A     Well, there that's just a piece of lot  
10 here. Sidi had his stand and stuff there. He move  
11 it. Over here Berkeley County. Over here Johnson  
12 property.

13          Q     What's on Mr. Johnson's property?

14          A     Just trees. No houses.

15          Q     How about on this next one?

16          A     Ravenel Smith, they got one house there.

17          Q     How about on this other lot?

18          A     Another house there.

19          Q     What number, for the record?

20          A     015.

21          Q     What's on that lot?

22                MR. OBERMAN: Your Honor, if I may object.

23                This is nowhere in connection with cross  
24                examination.

25                MR. ROBINSON: It is, Your Honor, because

1 it goes --

2 THE COURT: Just one second. One at a  
3 time. Go ahead, Mr. Oberman.

4 MR. OBERMAN: What I'm saying, this goes  
5 far out of the scope of the testimony elicited  
6 from Mr. Heyward.

7 MR. ROBINSON: He has accused my client of  
8 civil conspiracy and in his testimony he has  
9 asked him about the context of the  
10 conversation. I'm attempting to elicit  
11 testimony about the nature and character of the  
12 property in light of the fact that it appears,  
13 from what Mr. Heyward just said, that Mr.  
14 Johnson wanted to buy additional right-of-way  
15 to widen the road.

16 THE COURT: All right. Go ahead.

17 Q Thank you. What's on lot 16?

18 A Sidi house over there. His wife.

19 Q Okay. What about --

20 A Louise.

21 Q What about on this Lot 17?

22 A Haynes, Dr. Haynes property.

23 Q What's on it?

24 A Nothing. Farm.

25 Q Your lot 18?

1 A My lot 18.

2 Q What's on that lot?

3 A My house, shed, that's it.

4 Q All right. As far as you know, is there  
5 more than one house on any of the lots that you've  
6 just identified?

7 A No.

8 Q People have fields on that road that they  
9 use for farming; right?

10 A Right.

11 Q Berkeley Electric has a substation there;  
12 right?

13 A Right.

14 Q Then there are a few scattered houses;  
15 right?

16 A Right.

17 Q If a sub development was put in, let's  
18 say, to use Mr. Oberman's estimate, they had five  
19 houses on it, would that impact -- do you think that  
20 would impact the amount of traffic going up and down  
21 the dirt path?

22 A Definitely. Definitely would impact.  
23 When I spoke to Mr. Johnson earlier back father  
24 down -- I never speak to Mr. Haynes, but he told me  
25 that his property, with the complete right-of-way,

1 worth four times as much than with just  
2 ingress/egress, so what's the situation back?

3 Q Did Mr. Johnson tell you he needed 25 feet  
4 of right-of-way?

5 A No, he said he needed to get it developed  
6 whatever it take. I don't remember 25 feet.  
7 Because at that time he already had 25-foot  
8 right-of-way through the right side. That's why I  
9 have to give in order to get my house to get the  
10 plat, not knowing anything else about it. But  
11 that's what I did that for. Only that.

12 Q Did it seem to you that he needed more  
13 than what he had on the dirt road to build his  
14 development?

15 A Yes, sir.

16 Q Was that the context of your conversation?

17 A Yes, sir.

18 Q So you wanted him to pay you if he was  
19 going to widen the dirt road?

20 A If he could. Situation is I made him an  
21 offer, if he give me one lot on the back side he can  
22 do what he got to do.

23 Q Mr. Johnson's lot doesn't have a  
24 development on it right now; does it?

25 A No, sir.

1 Q Nor does Dr. Haynes?

2 A No, sir.

3 Q Now, Mr. Oberman has filed a complaint for  
4 civil conspiracy, so I'm asking you questions about  
5 this. Have you ever met with Sidi Limehouse or  
6 Louise Bennet about buying either the property of  
7 Frank Johnson or Dr. Haynes?

8 A No, sir.

9 Q Have you ever communicated with them in  
10 writing or by telephone about buying Frank Johnson's  
11 property or Dr. Haynes?

12 A No, sir.

13 Q Has Sidi Limehouse or Louise told you that  
14 they wanted to buy that property?

15 A No. I had conversation with Sidi a little  
16 bit, but so far by the property -- you talking about  
17 Dr. Haynes or Francis, who you talking now?

18 Q We'll take them one by one. Did  
19 Mr. Limehouse tell you he had a conversation with  
20 Mr. Johnson about buying his property?

21 A No, he didn't tell me anything about that.

22 Q And how about Dr. Haynes? Did Sidi tell  
23 you he wanted to buy Dr. Haynes property?

24 A No, Sidi say he couldn't afford it.

25 Q Do you bear any personal ill will or

1 malice to Mr. Johnson?

2 A Break it down a little bit.

3 Q Do you want to hurt Mr. Johnson?

4 A No, I don't.

5 Q Do you want to impair his rights?

6 A No.

7 Q Do you want to prevent him from using the  
8 property as it exists now?

9 A No, sir. He can use it as it exists now.  
10 Don't see problem with that.

11 Q Do you want to hurt Dr. Haynes?

12 A Never even met him; no, sir.

13 Q Do you want to violate his rights?

14 A No, sir.

15 Q Do you want to damage the value of either  
16 of their property?

17 A No, sir. Don't want to damage value of  
18 either one of their property. But if it take me  
19 giving up my property, and they say it would damage  
20 their property, that would be up to them.

21 Q That's right. So you're saying that if  
22 they get what they want it's going to damage your  
23 property?

24 A Right. That's right.

25 Q It's going to damage your house?

1 A Yes.

2 Q It's going to damage the value of your lot  
3 with your house on it?

4 A Exactly.

5 Q Other than the discussion with the County  
6 agencies that Mr. Oberman had you talk about,  
7 Planning, County Council, regarding subdivision of  
8 your lot, since 1996 have you had any dealings with  
9 the County regarding this property other than our  
10 lawsuit?

11 A No.

12 Q You haven't, since before the filing of  
13 our lawsuit, I represent to you that was in 2008,  
14 have you written the County requesting that they do  
15 or not do something with Resurrection Road?

16 A No further than that I know when they  
17 write me a letter I give you the letter and I think  
18 you did what you had to do with that. That was it.

19 Q Have you undertaken any act or actions,  
20 have you done any act or actions to damage the value  
21 of the property of Mr. Johnson or Dr. Haynes?

22 A No, sir.

23 Q And would you do that?

24 A No, sir.

25 Q It would be fair to say that you want them

1 to enjoy their property the same way you've enjoyed  
2 yours?

3 A Exactly.

4 Q Would you describe the nature of the  
5 neighborhood you're in as rural, country?

6 A Country, rural country.

7 MR. ROBINSON: That's all the questions I  
8 have, Your Honor.

9 THE COURT: All right. Mr. Mitchell, you  
10 want --

11 MR. MITCHELL: Like I said, if it's all  
12 right with the Court I'll reserve questions  
13 until after.

14 THE COURT: Mr. Williams.

15 MR. WILLIAMS: Any questions I have would  
16 be just about his boundary line and that's when  
17 he comes back up.

18 MR. OBERMAN: Just one or two, Your Honor.

19 THE COURT: All right.

20 REDIRECT EXAMINATION BY MR. OBERMAN:

21 Q Mr. Heyward, is it your testimony that you  
22 didn't call anyone at Carolina Realtors about the  
23 contract that Mr. Johnson had on his property?

24 A Call Carolina Realtor?

25 Q Anyone at Carolina Realty?

1           A     I don't remember that.

2           Q     Do you remember a lady by the name of  
3 Chris Kerkejis (phonetic)?

4           A     I had a lady call me but I didn't call  
5 anyone.

6           Q     All right. What did you tell that lady  
7 when she called you?

8           A     I don't remember.

9           Q     Didn't you tell her that you weren't going  
10 to agree?

11          A     That I was --

12          Q     You were not going to agree to a right of  
13 ingress/egress of more than what was there?

14          A     No. He already had ingress/egress. You  
15 know? So, I mean, if he had needed more than he had  
16 to go to the County, whatnot, but he got  
17 ingress/egress. He already had that.

18          Q     What did you tell Mrs. Kerkejis?

19          A     I don't remember, because the conversation  
20 was short. Be honest with you I don't remember.

21          Q     Well, it's real important that you do try  
22 to remember.

23          A     I try.

24               MR. ROBINSON: He said he doesn't  
25 remember, Your Honor. Objection.

1           MR. OBERMAN: I'm going to try and  
2           refresh his memory, Your Honor.

3           Q     Did Ms. Kerkejis tell you that she was  
4           representing Mr. Frank Johnson?

5           A     No, she didn't tell me. She told me -- I  
6           really don't remember what she told me because the  
7           conversation was short. I don't remember. She  
8           mentioned Mr. Johnson and the property back there, but  
9           so far as the right-of-way and this and that, you  
10          know --

11          Q     Did she tell you that she was representing  
12          the potential buyer of the property?

13          A     No. I didn't know even had a buyer.

14          Q     Did she ask you if you would object to an  
15          expanded right-of-way back to the property?

16          A     I vaguely even remember her. Only thing I  
17          remember is, you know, he had ingress and egress,  
18          and that was it.

19          Q     You don't remember talking with her about  
20          that ingress/egress?

21          A     No. I had no reason to.

22          Q     Do you remember the reason she called you?

23          A     She called me and mentioned that I think she  
24          had other property up for sale and that, you know,  
25          someone was interested and that I owned the property

1 in the front parcel going by the side and she'll get  
2 back to me. That was it.

3 Q Did you tell her that you would cooperate  
4 in the ingress/egress?

5 A He already had ingress/egress, so we  
6 didn't discuss whether I cooperate with that or not.

7 Q Did you say that you would cooperate with  
8 her so that her buyer would have sufficient  
9 ingress/egress?

10 A No, I didn't stop her buyer, whatever, if  
11 he was going to sell the property. We didn't have  
12 no conversation like that. She mentioned to me she  
13 would get back to me and that was it. We didn't  
14 talk, I think, maybe a minute and a half, if that  
15 much. She just want to know did I own the property  
16 in front, whatnot, and I have any objection if he  
17 going back and forth.

18 MR. OBERMAN: Your Honor, I give notice  
19 now that this comes as somewhat of a surprise.  
20 I'll probably have to call her as a witness.

21 THE COURT: Rebuttal if you would like.

22 MR. ROBINSON: Your Honor, I just say the  
23 witness wasn't disclosed in discovery. We've  
24 done discovery.

25 THE COURT: All right.

1           A     Whatever you're saying, I said I don't  
2 remember any conversation with her no more than what  
3 I told you and that's it.

4           Q     Possibly, sir, she remembers more of the  
5 conversation.

6           A     She can remember. I'm not stopping her.  
7 She can remember what she remember, but I don't  
8 remember. I ain't going to tell you a lie that I  
9 remember. Seem like your going a way that I blocked  
10 Mr. Johnson's sale or something. I didn't do that.  
11 If he had a sale then he had a sale. I would assume  
12 Mr. Johnson come back to me himself. I think I  
13 mention -- I think I asked him about that, but that  
14 blow over whatever.

15          Q     You're denying that you did anything, to  
16 use the terms that we use, to chill that sale?

17          A     No, I wouldn't do that. No. If I could  
18 help him I would.

19          Q     And you would help out Dr. Haynes if he  
20 wanted to develop his property?

21          A     If I could.

22          Q     Would you expect compensation from Dr.  
23 Haynes?

24          A     Yes, sir.

25          Q     Would you expect compensation from Mr.

1 Johnson?

2 A Well it depends. If Mr. Haynes want  
3 compensation for the property in the back, knowing  
4 Mr. Johnson have property also. I assume he would  
5 talk to Mr. Johnson. If he got whatever he want to  
6 do on his own, he do it. But that's the situation  
7 with that. I mean --

8 Q Sir, isn't this whole thing about money  
9 that you want from Mr. Johnson and from Dr. Haynes?

10 A Listen, I told you before, I asked you a  
11 question; no, sir. I don't need no money. All I  
12 want is my health and strength and I can assume  
13 being left alone. So far as I be honest with you  
14 Mr. Johnson, Dr. Haynes when get in the property, in  
15 and out, I don't intend to block them. Never even  
16 tried. They can come in and out as long as they  
17 want. Feel, though -- that Dr. Haynes or Mr.  
18 Johnson feels though that I should be compensated  
19 for my property then so be it. I don't feel that  
20 way.

21 Q And you consider the dirt road or the  
22 prescriptive easement travel lane as your property?

23 A Yes, the dirt road is my property.

24 Q That's what you want to be compensated  
25 for?

1           A     Seem to me like it take more than what  
2 they are doing now and what they got. I give  
3 them -- I give, not to my knowledge, not even what  
4 was going on, just to get my house approval, the  
5 right-of-way which was supposed to be approved just  
6 for house building, whatever, that's it. I mean,  
7 they got the right-of-way. They want the  
8 right-of-way then you're saying they want the road  
9 bed, now you're saying they want to combine the road  
10 bed with the right-of-way. Now, want to give me the  
11 right-of-way back and then use the road bed. You  
12 know, use part of the road bed. Seems as though one  
13 thing -- one of it is not going to work. Got to be  
14 two together or get together. Now, if they want the  
15 road bed to certain extent, seem to me if you can  
16 (inaudible) with the road bed and the right-of-way  
17 something might could be work out. But -- and  
18 you're saying to me just for me to just sign paper  
19 take your road bed, you're saying to me all the  
20 things is about money? I didn't come to no one to  
21 ask for nothing. They got ingress and egress in  
22 there and that's what it is. If they want something  
23 else, you know, just common sense to say where  
24 that's going at. Not asking anyone for anything.  
25 Now, if they had started this -- I know you're doing

1 your job. If they had started this Mr. Haynes and  
2 Johnson, just been fair to me wouldn't be here  
3 talking now.

4 Q When you say being fair to you, you mean  
5 paying you money?

6 A No, I don't mean paying me money. I said  
7 being fair. If I mention money it was money. I  
8 didn't mention money. I said be fair. By being  
9 fair, when I made Johnson an offer to give me one  
10 lot in the back. That's not money.

11 Q That's compensation you wanted from Mr.  
12 Johnson?

13 A I wanted something, definitely. I feel as  
14 though I should be.

15 Q You wanted, you said, one lot?

16 A At that time. I feel as though --

17 Q And didn't you then raise it to some more  
18 money?

19 A No, I never talked money.

20 Q Did Mr. Johnson talk money with you?

21 A Not to my knowledge.

22 Q You don't remember the sum of \$50,000?

23 A No. Told you that but never mention 50  
24 thousand to me.

25 Q You don't remember being secured by some

1 other lots that he would build?

2 A Secured by some of the lots?

3 Q Like mortgage on a lot until he sold?

4 A I suppose to secure that?

5 Q He was supposed to secure that for you,

6 sir.

7 A No. If he secured that it wasn't for me.

8 Might have secured that for you, not me.

9 Q All right, sir. It is your testimony that  
10 the road that had been there long before you came on  
11 the scene was your property?

12 A Not before I came on the scene. After I  
13 came on the scene it's my property. Before couldn't  
14 have been my property. Only after I have come on  
15 the scene then it's my property, because I bought  
16 it.

17 Q Did you buy it subject to that road going  
18 through that property?

19 A I bought it with the road going.

20 Q Yes, sir?

21 A But the road, like I say, it was a path;  
22 eight, ten foot at the most.

23 Q Who widened the road, sir?

24 A Basically most our road was almost widened  
25 by Sidi who tried to do good by doing -- and after

1 the City come in there with the straight then they  
2 widen it more, but otherwise it's still to a certain  
3 extent -- you get a point where you've got 12-foot,  
4 13 foot and that's about it. Average out even come  
5 down to 9 foot. Average to 12, 13 foot, the whole  
6 thing if you come up to it. The front part of it  
7 is -- just saying wider but it's not really wider,  
8 because the other side on the property side I make a  
9 road through there.

10 Q My question to you, sir, is that road was  
11 there for a long time?

12 A Still there. Still got ingress/egress.

13 Q And anyone could have used that road  
14 coming in and out?

15 A In and out. Coming in and out.

16 Q So it wasn't your road or your land to  
17 sell; was it, sir?

18 A It wasn't?

19 Q It was a road, sir, that was there before  
20 you bought the property?

21 A Before I bought the property? Before  
22 wasn't my land or my road to sell, because it  
23 wasn't -- before I bought it.

24 Q When you bought the property the road was  
25 there?

1           A    Then the road became mine, because I  
2 bought it right on through the property.

3           Q    You thought you bought not only the  
4 property --

5           A    I thought I bought the property and the  
6 road that was on there. I know I bought. That's  
7 what they asked me to do when I had to get my house  
8 rebuilt.

9           Q    So it's your testimony that what you  
10 wanted to sell to Mr. Johnson and to Dr. Haynes was  
11 your property?

12          A    I don't want to sell them anything. Not  
13 even now. I don't want to sell nothing. They  
14 coming after me for what they want.

15          Q    You wanted Resurrection Road, you wanted  
16 compensation for it; didn't you, sir?

17          A    Only as it is now they got ingress/egress.  
18 Why the compensation for that for?

19          Q    You wanted compensation for the 25-foot  
20 right-of-way that you granted to the County of  
21 Charleston?

22          A    I granted the 25-foot right-of-way to  
23 County of Charleston and I didn't want nothing. All  
24 I wanted, then, is for me to build my house back and  
25 only was granted that because of that situation.

1 Q Didn't you tell County Council that if the  
2 people in the back wanted to use that 25-foot  
3 right-of-way that they should pay you money?

4 A I'm telling you that now. I ain't saying  
5 no different. I said I should be compensated if  
6 they want to develop or not. Not to use it. They  
7 still they can use it. They can use it all they  
8 want to. I ain't putting no toll on it for their  
9 use.

10 Q You dedicated that 25-foot right-of-way to  
11 the public; did you not?

12 A I dedicate it to the County so I can get  
13 my permit, as far as I know what the situation is.  
14 I don't know further than that. They call it public  
15 or whatever. Sometime they call it whatever.

16 Q Dedicated to the public?

17 A The road I dedicated to the public, or  
18 whatever they call a dedication, is on the right  
19 side and they got it marked. They are not using it.

20 Q All right, sir. And when you dedicated  
21 this property you told County Council that the road  
22 serves as access to approximately 25 acres of  
23 property with high developmental potential?

24 MR. ROBINSON: Objection.

25 THE COURT: Sustained. Let's move on.

1 I've heard that five times today. I got it.

2 MR. OBERMAN: I think it's really  
3 important, Judge. Sometimes I repeat.

4 THE COURT: All right. You've got one  
5 hour. Finish up. I'm quitting at five.

6 (pause)

7 Q The property of Ms. Bennet is quite a  
8 distance from your property; is it not, sir?

9 A Yes, sir.

10 Q And it's quite a distance from the  
11 terminus of the 25-foot right-of-way that you  
12 granted; is it not?

13 A Pretty much the same distance.

14 Q Ms. Bennet would not be impacted by  
15 traffic in front of her piece of property; would  
16 she?

17 MR. ROBINSON: Objection. He doesn't know  
18 what M. Bennet is or is not impacted by.

19 THE COURT: How you get there?

20 MR. OBERMAN: By him knowing the property,  
21 knowing it's a dead end.

22 THE COURT: Go ahead. Overruled. Go  
23 ahead, ask him.

24 Q Automobiles going into Mr. Johnson's  
25 property or the Dr. Haynes property would not

1 normally go further back down the road in front of  
2 Ms. Bennet's property; would they?

3 A Automobile going down the road could pass  
4 Haynes property, goes down to Ms. Bennet in the  
5 back.

6 Q Yes, they would go back. All right.

7 MR. OBERMAN: That's all the questions I  
8 have, Your Honor.

9 MR. ROBINSON: Very briefly, Your Honor,  
10 for clarification. Just --

11 THE COURT: Go ahead.

12 MR. ROBINSON: One little group of  
13 questions.

14 RECROSS EXAMINATION BY MR. ROBINSON:

15 Q Mason, I need this to be real clear for  
16 the record. When you talked to Mr. Johnson about  
17 compensation if you widen the existing dirt path, if  
18 you widen that road on either side would it encroach  
19 further onto your property?

20 A Definitely.

21 Q Is that what you sought to be compensated  
22 for?

23 A Right.

24 Q The inconveniences of having extra  
25 traffic?

1           A     Go on the left and right. Take the right  
2 and right-of-way.

3           Q     The inconvenience of having all the  
4 traffic of the subdivision going up and down the  
5 road?

6           A     Exactly.

7           Q     What kind of vehicles, in your analysis,  
8 what you've seen currently, what people currently do  
9 with the people going up and down Resurrection Road?

10          A     Currently or would happen if --

11          Q     Right now.

12          A     Right now. Not a whole lot of cars.

13          Q     So people drive passenger cars down the  
14 road, people drive pick-up trucks down the road?

15          A     Once in a while.

16          Q     People drive tractors down the road?

17          A     Once in a while Side drive a tractor down  
18 the road.

19          Q     People drive motor graders down the road?

20          A     Charleston County came in there once in a  
21 while.

22          Q     Do you know of anybody who has not been  
23 able to use the road to get to and from their  
24 property for the purposes for which the road is  
25 currently used?

1 A No, sir. No problem.

2 Q For the way the property --

3 A They got to come off the side once in a  
4 while because not that wide where you've got  
5 easement in with power company is, then it's still  
6 use the road. Otherwise that's it.

7 Q You wanted to be compensated because if  
8 they widen the dirt road it came farther onto your  
9 property?

10 A Exactly.

11 MR. ROBINSON: Thank you.

12 MR. OBERMAN: I've got to go into that,  
13 Your Honor. If you'll allow me.

14 THE COURT: I'm not happy about it. I'll  
15 give you five minutes.

16 BY MR. OBERMAN:

17 Q Sir, I'm going to show you Exhibit 1A. If  
18 the Judge in his ultimate wisdom decides to widen  
19 the dirt path to the south, is that going to impact  
20 your property?

21 A When you say the dirt path to the south?

22 Q This is the dirt path. That's north, this  
23 is south. If the Judge comes over toward the  
24 25-foot grant of right-of-way --

25 A Go ahead.

1 Q Is that going to impact your property?

2 A Yes.

3 Q What property is that, sir?

4 A This is my property here, so you going to  
5 come 25-foot on the -- what you talking about?

6 Q Coming over five feet into what we refer  
7 to as the sliver; is that correct?

8 A What about here?

9 Q Sir, one at a time. Are you using this  
10 sliver of property?

11 A If I use that?

12 Q Yes.

13 MR. ROBINSON: Objection. Irrelevant.

14 It's his property.

15 Q My question is do you make any use of that  
16 property?

17 A It's my property. If we need to come over  
18 one foot over there it's still my property.

19 Q The question is are you using it for  
20 anything other than being your property?

21 A You have property you don't have to use it  
22 for anything, but it still be your property.

23 Q All right, sir, so the answer is you're  
24 not using it for anything?

25 A Not at the moment.

1 Q That's the only spot, if the Judge would  
2 move the boundary line of the dirt path to the  
3 south, to impact your property?

4 A How could he move it to the south? You  
5 talking about -- this is east, west.

6 Q This is north?

7 A This would be south.

8 Q That is correct.

9 A Okay. This is the right-of-way.

10 Q That is correct.

11 A So why don't move to the right-of-way if  
12 anything got to be done.

13 Q That's my question, sir. Would that be of  
14 any detriment to you if he moved it?

15 A Where he going to move it at?

16 Q Right to this line here which is the  
17 northern boundary of the --

18 A This my property right here.

19 Q What is, sir?

20 A Right here.

21 Q You're pointing to the prescriptive  
22 easement as your property?

23 A I'm talking about the road bed.

24 Q Road bed?

25 A What you call the road bed.

1           Q     You're saying the road bed is your  
2 property?

3           A     Right.

4           Q     Even though people have been using it for  
5 a road since forever?

6           A     Forever? That's why they got the 25-foot  
7 there. They want to do something, I ain't stopping  
8 the ingress/egress.

9           MR. OBERMAN: That's all the questions I  
10 have, Your Honor.

11          THE COURT: All right.

12          MR. OBERMAN: I ask your forgiveness for  
13 pinching on your time.

14          THE COURT: It's not my time. It's your  
15 time. Anything further?

16          MR. OBERMAN: Nothing further from --

17          THE COURT: All right. Thank you, sir.

18          MR. ROBINSON: Nothing Your Honor.

19          THE COURT: Mr. Heyward you can step down.

20          A     Thank you, sir.

21          THE COURT: Thank you. Okay. Any other  
22 testimony today, Mr. Oberman?

23          MR. OBERMAN: I don't think -- the next  
24 witness would be Mr. Johnson and I think he's  
25 going to take longer.

1           MR. ROBINSON: For clarity sake only  
2           person we would call on our case is Mason  
3           Heyward. Just trying to help the Court  
4           schedule.

5           (Discussion off the record.)

6           THE COURT: Why don't we stop here today?  
7           We'll come back Thursday. Let's start back  
8           9:30 Thursday. Finish up the Plaintiff's case  
9           at that time. Then start moving into the  
10          Defendant's case.

11          (Discussion off the record.)

12          MR. MITCHELL: Can we excuse Mr. Neal?

13          THE COURT: Certainly. You're excused and  
14          enjoy your trip. All right. So let's plan to  
15          come back here Thursday morning 9:30.

16          MR. WILLIAMS: Your Honor, just for  
17          planning purposes, on Thursday if things aren't  
18          going slow do you plan to go beyond five as  
19          long as it's needed or --

20          THE COURT: I would love to put it to bed.

21          (Discussion off the record.)

22          (Court adjourned.)

23

24

25

STATE OF SOUTH CAROLINA )

C E R T I F I C A T E

COUNTY OF CHARLESTON )

I, Bernadette Cali Leland, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this September 20th, 2015.



Bernadette Cali Leland, CSR  
Notary Public

My Commission Expires

April 5, 2020

\$	2	35 feet [1] 38/17 36 [1] 1/22 38 [2] 49/14 49/15 38.5 [1] 49/9 3A [1] 25/17
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Transcript of January 17, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

FRANCIS JOHNSON,

)

)

Plaintiff,

)

)

VS.

)

CASE NO.: 2008-CP-10-1054

)


MASON HEYWARD, ET AL,

)

)

Defendants.

)

 ORIGINAL

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A.

Cali, CSR and Notary Public, on January 17,

2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff     Marvin Oberman, Esq.  
                                 Oberman & Oberman, LLC  
                                 104 Church Street  
                                 Charleston, S.C. 29401

For the Defendant:     John E. Robinson, Esq.  
                                 McDowell Law Offices  
                                 36 Broad Street  
                                 Charleston, S.C.

For Charleston County: Brad Mitchell, Esq.

For Berkeley Coop:     John B. Williams, Esq.

Bernadette Cali, CSR and Notary Public

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1 (Hearing commences.)

2 THE COURT: We're back with day three of  
3 Johnson versus Heyward. And I believe we're  
4 still on the Plaintiff's case.

5 MR. OBERMAN: That is correct, Your Honor.

6 THE COURT: And I know that the Defendants  
7 wanted to call some folks out of turn. Can  
8 they wait and take Mr. Johnson?

9 MR. OBERMAN: I think we decided to go  
10 ahead and take Mr. Johnson. He shouldn't be  
11 long. And then as long as they get out of here  
12 today.

13 MR. ROBINSON: I have two witnesses here.

14 THE COURT: Anything we need to take up  
15 before we get started this morning?

16 MR. OBERMAN: Not that I know, Your Honor.  
17 We've tried again but --

18 THE COURT: That's all right. We'll get  
19 somewhere soon.

20 MR. OBERMAN: Call Mr. Johnson.

21 THE COURT: All right. All right, Mr.  
22 Johnson come around, sir.

23 MR. OBERMAN: The second Mr. Johnson in  
24 this case.

25 (Francis O. Johnson, 2792B River Road,

1 Johns Island, S.C. 29455, duly sworn, testifies  
2 as follows:)

3 DIRECT EXAMINATION BY MR. OBERMAN:

4 MR. OBERMAN: Your Honor, Mr. Johnson  
5 testified at length at the first part of the  
6 trial of this case.

7 THE COURT: I recall.

8 MR. OBERMAN: I have an outline of his  
9 testimony if that will be of any help to the  
10 Court.

11 THE COURT: I think I recall. Let's just  
12 go ahead. We're talking about the purpose of  
13 this trial is to discuss the scope of the  
14 easement and, I suspect, the location of the  
15 easement. So let's focus on that aspect of the  
16 road.

17 MR. OBERMAN: All right, sir.

18 Q Just for a little bit of background, Mr.  
19 Johnson, you bought your piece of property, which I  
20 believe is TMS number 14, way back in 1977; did you  
21 not?

22 A That's right.

23 Q With the Court's permission and  
24 Mr. Robinson's permission I'll lead a little bit,  
25 Your Honor, to try and mo571this along.

1 THE COURT: He won't object until it  
2 starts hurting him.

3 MR. ROBINSON: Your Honor, if it speeds  
4 things along that's fine, but if it's putting  
5 answers in his mouth I'll object when it's  
6 appropriate.

7 THE COURT: That would be fine.

8 Q Mr. Johnson, you've got a deed from Earl  
9 Manigault(phonetic), et cetera, and you bought this  
10 five acres of property for \$10,000; did you not?

11 A That is right.

12 Q At the previous trial we put in  
13 Plaintiff's Exhibit 3.

14 MR. OBERMAN: Your Honor, do you want me  
15 to put these back in or just refer back to what  
16 they were back --

17 THE COURT: If they are already in  
18 evidence at a prior trial we do have them. You  
19 just want to just reference them as to prior --

20 MR. ROBINSON: We have no objection,  
21 rather than have duplicative exhibits.

22 THE COURT: Okay.

23 Q Do you recognize your old deed, sir?

24 A Yes, I do.

25 Q That was submit572i as Plaintiff's Exhibit

1 3 in the previous trial?

2 What did you buy this -- what was the  
3 purpose of buying this property?

4 A At the time my purpose was that when I  
5 retired that I would probably move back, because I  
6 was living in New York at the time, and that I would  
7 have a place to live on or build my house and that  
8 was really the purpose of it; retire to.

9 Q Did you think of it as an investment also?

10 A Yes, I did.

11 Q Now, the deed, Exhibit 3, referred back to  
12 a predecessor deed from Margarita Andell to William  
13 Simmons. Do you remember that deed?

14 A Yes.

15 Q That was submitted as Exhibit 4 in the  
16 earlier trial. Do you recognize that, sir, as  
17 previously submitted?

18 A Yes, I do.

19 Q Would you look at what's attached to that  
20 deed and tell the Court if it shows a road on the  
21 northern boundary line?

22 A Yes, it does.

23 Q Does it show the distance from your  
24 property to Bohicket Road?

25 A Yes.

1 Q What is that distance?

2 A I believe the first number, I believe, is  
3 the distance and it says 580?

4 Q Try be of help to you, sir. If you look  
5 right up here it says 772 feet to Bohicket Road; do  
6 you see that, sir?

7 A Yes.

8 Q Did you understand that to be your  
9 ingress/egress to your property?

10 A That is true, that is right.

11 Q That was the road that was there in 19, I  
12 think we said, 77?

13 A Yes.

14 Q And did you use that road to and from your  
15 property?

16 A Yes, I did.

17 Q Did other people use it?

18 A Yes.

19 Q Did there come a time when you sought to  
20 put your property up for sale?

21 A Yes, it was.

22 Q Did you put a sign on it?

23 A Yes, I did.

24 Q Was there trouble with the For Sale sign?

25 A Yes. The sign <sup>574</sup> kept disappearing or being

1 vandalized or knocked down.

2 Q Did you have Steve Johnson or the Steve  
3 Johnson company come out and survey your property?

4 A Yes.

5 Q I'm going to show to you what was  
6 Plaintiff's Exhibit 5 at the previous trial. Can  
7 you read the title? Do you need my glasses, sir?

8 A No, no, I can see it. Just wondering  
9 which part you want me to read.

10 Q Just read this.

11 A Plat showing the physical location of  
12 Resurrection Road located on Johns Island,  
13 Charleston County, South, Carolina.

14 Q Does it have a date, sir?

15 A Yes.

16 Q That date is what, sir?

17 A January 16, '08.

18 Q Does that show your piece of property as  
19 Parcel 14?

20 A Yes.

21 Q And that shows the road going from your  
22 property and further from your property down to  
23 Betsy Kerrison Parkway?

24 A Yes.

25 Q Which used to be 5753 Bohicket Road?

1 A Yes.

2 Q In drawing this plat, do you see where Mr.  
3 Johnson, Mr. Johnson's company relied on references?

4 A Yes.

5 Q Can you tell the Court what reference  
6 number 3 is?

7 A Reference number 3, plat by W.L. Gaillard.

8 Q I apologize. Reference number 5?

9 A Reference number 5. Plat by Lewis E.  
10 Seabrook revised February 27, 1996, plat book DA  
11 page 789, planning board number 16457 RMC Charleston  
12 County.

13 Q So in drawing your survey and plat way  
14 back in 2008 Mr. Johnson relied on, among others,  
15 the plat of Lewis E. Seabrook as you've just read  
16 into the record?

17 A Yes.

18 Q And do you know what that plat showed?

19 A From memory, it showed the right-of-way to  
20 the property using the road, Betsy Kerrison Road.

21 Q That right-of-way was granted by whom?

22 A By M.C. Heyward.

23 Q I hand to you what was previously entered  
24 in at the earlier trial as Plaintiff's 6. Is that  
25 the plat that is referenc576 on Mr. Johnson's plat?

1           A     Mr. Heyward? Oh, Mr. Johnson's plat, yes.  
2     Yes, it is.

3           Q     What does that show, sir, can you read --

4           A     It shows a drawing or sketch of lot number  
5     J1, which is 1.3 acres, and it also shows property  
6     owned by different members of the area and also  
7     Resurrection Road.

8           Q     What does it say about Resurrection Road,  
9     sir?

10          A     It says Resurrection Road 25 feet R dash  
11     W.

12          Q     Do you know if Resurrection Road was  
13     accepted by the County of Charleston as a  
14     right-of-way?

15          A     I believe I do. I will say yes to that.

16          Q     I'll show it to you, previous exhibit  
17     Plaintiff's Exhibit 7, and ask you to read to the  
18     Court what that says.

19          A     This is a letter from the Charleston  
20     County Council addressed to E.M. Seabrook, Post  
21     Office Box 96, Mt. Pleasant, South Carolina. RE:  
22     Number 16467, Lands of Mason Heyward. Dear  
23     Mr. Seabrook, County Council at their meeting of May  
24     7, 1996 grant approval of a 25 feet road  
25     right-of-way being dedica<sup>5771</sup> to the public.

1 Resurrection Road serves as access to 25 acres of  
2 property with high developmental potential. Yours  
3 Truly, Beverly T. Craven, County Clerk -- or Council  
4 Clerk.

5 Q Does it show to whom copies of that letter  
6 went?

7 A Carbon copy County Planning Department,  
8 Public Works Department and Mason Heyward.

9 Q Sir, that letter mentions a meeting and a  
10 process took place. Were you made familiar with  
11 what went on to get the approval of this 25-foot  
12 right-of-way granted to the public?

13 MR. ROBINSON: Objection. I would ask  
14 unless he knows from personal knowledge. I  
15 would ask his testimony be confined to what he  
16 knows from personal knowledge.

17 MR. OBERMAN: Personal knowledge.

18 Q Was there -- did you remember reviewing  
19 Plaintiff's Exhibit 7A to your previous trial?

20 A I'm not familiar with the content of your  
21 question so, therefore, I don't understand the  
22 question, really.

23 Q All right. Then I'll withdraw the  
24 question, but I will refer the Court to the minutes  
25 and the letter and the plan.<sup>578</sup>

1 THE COURT: I think they are already in  
2 evidence.

3 MR. ROBINSON: They are. They are in  
4 evidence. As far as I know been in evidence  
5 since 2010.

6 THE COURT: Okay. Just as that letter was  
7 that he read.

8 MR. ROBINSON: That's right.

9 THE COURT: We covered that.

10 Q Mr. Heyward -- I apologize. Mr. Johnson,  
11 did you retain the George A. Johnson -- George A.Z.  
12 Johnson, I believe, survey people to subdivide your  
13 five acres?

14 A Yes, I did.

15 Q Did they do so?

16 A Yes, they did.

17 Q Did they draw up various and sundry  
18 surveys and plats?

19 A Yes.

20 Q I'm going to hand to you and ask you if  
21 you've seen that before?

22 A Yes, I have.

23 Q What does that show, sir?

24 A This shows the lot of the property that I  
25 purchased being subdivided<sup>579</sup> and the drawing of the

1 lots.

2 Q How many lots does it show there, sir?

3 A I believe it's twelve.

4 Q If you read the title, sketch showing  
5 proposals. You see that, sir?

6 A Question again?

7 Q I said, does it say how many lots?

8 A Yes.

9 Q Says one -- lots 1 through 12?

10 A Yes.

11 Q To the west boundary of your lot does it  
12 show Resurrection Road?

13 A Yes, it does.

14 Q Did you use Resurrection Road to go to and  
15 from your property from 1977?

16 A Yes.

17 Q You still use it?

18 A Yes, I do.

19 THE COURT: Is this document previously in  
20 evidence?

21 MR. ROBINSON: Your Honor, either this one  
22 or the one that had eight lots on it is in  
23 evidence. I mean, I don't know if we need to  
24 enter into -- them into evidence as one of  
25 these was, I believe, the last exhibit of the

1 2010 trial.

2 MR. OBERMAN: Let's go ahead and put this  
3 into evidence, sir. That would be Plaintiff's  
4 Exhibit 13.

5 (Whereupon Plaintiff's Exhibit 13 is marked.)

6 THE COURT: What's the date of that? The  
7 date on that plat?

8 MR. OBERMAN: 6 July, 2000 and -- I  
9 believe that's 6.

10 A '06, yes.

11 THE COURT: Okay.

12 Q I'm going to hand it to you, Your Honor.

13 (Hands up document.)

14 THE COURT: Thank you.

15 Q Do you see references on the plat?

16 A Yes.

17 Q Can you read what reference number 3 is?

18 A Reference number 3 is plat by Lewis

19 Seabrook dated February 27, 1998, Plat Book DA Page

20 789. Planning Board number 18467 RMC Charleston

21 County.

22 Q Would you double check? You said 19 --

23 February 27 --

24 A 1996.

25 Q '96?

1 A Right.

2 Q All right. So that is the survey and  
3 plat, to your knowledge, that was approved by County  
4 Council and recorded in the RMC of Charleston  
5 County?

6 A Yes.

7 Q To your knowledge, Mr. Johnson relied on  
8 that?

9 A Yes.

10 Q He relied on that to draw the sketch?

11 A Yes.

12 Q I believe you said where that plat was  
13 recorded, Plat Book DA Page 789?

14 A Yes.

15 Q All right. That's in the RMC office of  
16 Charleston County?

17 A Yes.

18 Q That's for anybody in Charleston County or  
19 in the world, for that matter, to go down and check  
20 it out?

21 A Yes.

22 Q Once you put up your signs for sale on  
23 your parcel number 14 did you have interaction with  
24 Mr. Mason Heyward?

25 A Yes, I did. 582

1 Q Did he talk to you about compensation?

2 A Yes, he did but at first it wasn't said as  
3 compensation. It was almost like, I see you have  
4 your land up for sale and we agreed yes. And, of  
5 course, wish you luck, et cetera, et cetera. Then  
6 after a time -- or I got a person who made an offer  
7 to buy the property. And, of course, we came to an  
8 agreement on what we were going to sell it for and  
9 it was agreed, and we set up a closing date. Just  
10 prior to the closing date, about a couple of days, I  
11 got a call from my agent saying that the property  
12 was -- the person was going to withdraw their offer  
13 due to being contacted by Mason and that Mason told  
14 them that he owned the road and that he's also  
15 getting compensation from Berkeley Electric and he  
16 showed them the document where Berkeley Electric was  
17 paying him, and he used that as property reference  
18 or authority saying -- showing of proof, showing  
19 that he owned the property and that -- the road, and  
20 that he gets compensation from Berkeley Electric.  
21 And the person withdraw. So the person did withdraw  
22 and that deal fell through because they felt that  
23 they didn't have access to the property and the  
24 property is owned. They didn't know who it was  
25 owned by. They might have<sup>583</sup> problems either building

1 a house or developing the land or any reason or  
2 another.

3 Q Did you talk to Mr. Heyward about what he  
4 had done with chilling the sale of that piece of  
5 land?

6 MR. ROBINSON: I object to the form of  
7 that question.

8 THE COURT: What's the objection?

9 MR. ROBINSON: The objection is the use of  
10 the term chilling in terms of leading.

11 THE COURT: Rephrase the question.

12 MR. ROBINSON: That's fine.

13 Q Did you have a conversation with Mr. Mason  
14 Heyward after the sale fell through?

15 A Yes, I did.

16 Q During that conversation did he admit to  
17 you that he had talked with --

18 A No, he did not admit it. In fact, he  
19 denied that he spoke to anyone. But he didn't deny  
20 that he got compensation from Berkeley. He kind of  
21 used that as a power point.

22 Q Did he ask you to do anything to remove  
23 that question of the roadway?

24 A No, he didn't.

25 Q Did he mention <sup>584</sup>any to you?

1           A     He didn't use money as cash money. He use  
2 as being compensated, and he told me how Kiawah  
3 purchased the property, the Island of Kiawah, and  
4 that they had to buy road right-of-way and how much  
5 money they spent, and the money they spent was  
6 equivalent almost to the money that the land was  
7 worth, and he kind of used that as a reference. So  
8 if a road is worth more than the property how much  
9 would you pay me? He didn't use -- he didn't say  
10 how much would you pay me, but he left it open.

11           Q     Did any figure ever come up, sir?

12           A     Yes. It came up when I asked him if he  
13 would accept \$10,000. And he never agreed that that  
14 was enough. But he indicated that that wasn't going  
15 to cut it.

16           Q     What would the \$10,000 be for, that you  
17 offered?

18           A     The \$10,000 would be to satisfy him as a  
19 claim against any right-of-way intrusion.

20           Q     During that time did Mr. Mason Heyward  
21 have conferences with Mr. Sidi Limehouse?

22           A     To my knowledge no, I can't say that he  
23 had a conference with him, no.

24           Q     Did you see them talking together?

25           A     Yes, I have.

1 Q Did the amount of compensation, your offer  
2 of compensation ever go up?

3 A Yes, it did.

4 Q What did you offer?

5 A I offered him one of the lots and said to  
6 him that the lots, for whatever reason, I don't  
7 remember in the calculations on them, we came up  
8 with a 50,000 price and would that suffice to clear  
9 up any claim against the road or right-of-way or  
10 anything that would prohibit me from selling the  
11 property and present the property to prospective  
12 buyers as with a road that's -- official road that  
13 was authorized by the County.

14 Q Did you agree on the \$50,000?

15 A No, we didn't. Once Mason met with myself  
16 and the agent, but he did not agree because, I  
17 believe, when he was told that it would be based on  
18 either him accepting it or when the property sold he  
19 got the value of it, and he didn't like the idea of  
20 having to wait for his money.

21 Q Once you say you offered to give him a lot  
22 as compensation?

23 A Yes.

24 Q And his answer was no, he wanted the money  
25 up front?

1 A Yes.

2 Q Didn't Mr. Mason Heyward tell you that he  
3 and Sidi would block you unless you paid that money?

4 A No, he never said that that way or any way  
5 in those terms of blocking, no.

6 Q Do you know if Mr. Mason Heyward did, in  
7 fact, go to the County of Charleston?

8 A I did not know that he did but he said  
9 that he had County backing and that he would use it,  
10 but he didn't say I have went or how he known it.  
11 But he also mentioned that he's been in real estate  
12 for a long time, he knew a lot of people and he knew  
13 his way around.

14 Q So your testimony is he told you that he  
15 had County backing?

16 A Yes.

17 Q And the backing was to block that  
18 right-of-way to your property?

19 A I didn't know whether that meant that -- I  
20 felt that it meant that he knew his way around and,  
21 of course, whatever a person, whether it was legal  
22 or illegal or whether it was through just the  
23 knowledge or what. I didn't know what it was. But  
24 I know that he said that he had backing.

25 Q What was the co.<sup>587</sup> fact agreed purchase

1 price for your property?

2 A The purchase price was 500 and -- well,  
3 the offer price was 550,000. But the buyer, when  
4 they made the contract, offered to pay more money if  
5 I would agree to forego the lawyer's fee and the  
6 commission, which came to 650,000.

7 Q So is it your testimony, sir, that you had  
8 a ready, willing and able buyer at \$650,000?

9 A Yes.

10 Q And closing had been set up at that price?

11 A Yes.

12 Q The closing fell through?

13 A Yes.

14 Q And the closing fell through because Mr.  
15 Heyward said he owned the right-of-way?

16 A Yes.

17 Q And that he would block it unless he got  
18 compensation?

19 MR. ROBINSON: Objection. He's already  
20 testified that word was never used.

21 THE COURT: I note it. Objection was as  
22 to leading. I'll sustain it as to leading.

23 MR. OBERMAN: Yes, sir.

24 Q Have you been able to sell the property  
25 since then?

1           A     No, I haven't.

2           Q     Is the question of ingress/egress,  
3 right-of-way still open today?

4           A     To my knowledge it is. It was never --  
5 one of the things I'm waiting for now is to have  
6 official information on what's the status, that I  
7 could go to a bank or a prospective buyer and say  
8 that this is the options or this is the status, it's  
9 land with ingress and egress areas, et cetera. And  
10 that there is no lien or no problem in that regard,  
11 that the person can make up their mind whether they  
12 want to buy it, not because it's now land locked or  
13 squeezed -- they might be squeezed out at a later  
14 date. That's where I'm at now. I want an official  
15 knowledge on that part.

16          Q     In danger of repeating myself -- you paid  
17 money to the Johnson surveying people?

18          A     Yes, I did.

19          Q     Do you have an estimate of how much you  
20 paid to them?

21          A     Well, the estimate now is several thousand  
22 dollars. I didn't have the total figure but there  
23 was several thousand dollars; 3,000 plus.

24          Q     That as of this moment that money is lost  
25 to you?

1           A     Yes.

2           Q     All right, sir. And you lost the sale of  
3 this property for a very substantial price?

4           A     Yes.

5           Q     Did the economic down turn effect the  
6 value of your property, do you know?

7           A     I don't know. Based on the information of  
8 land around, it appears that it's been down graded  
9 much from what it was and, yes, I would say yes, I  
10 believe it is.

11          Q     If this whole thing comes down to you  
12 paying a little bit of money to Mr. Heyward, what  
13 I've referred to as the radish patch, and by that I  
14 mean the area between the roadway as it exists today  
15 and the 25-foot right-of-way, Resurrection Road  
16 right-of-way, would you object to the Court  
17 compensating Mr. Heyward for the radish patch which  
18 would be this little crescent there to the north of  
19 the 25-foot right-of-way?

20          A     Well, the first thing I would like to say,  
21 I have lost so much money on this deal from the date  
22 that we had the sale until, and all what I had to  
23 spend is almost unbelievable. I don't believe I  
24 will be able to even recover in any way. First  
25 thing, the purchase of the property, I had a tax

1 free proposal made to me at that time, with  
2 investment that -- with an investment of a 12%  
3 interest. When that fell through it knocked  
4 everything that I had dreamed of out of whack. And  
5 it causes me even -- I'm even working right now. In  
6 fact, I worked last night until 12 o'clock. Thank  
7 God I'm in pretty good physical condition. But to  
8 calculate the losses of the sale and the interest  
9 rate and the tax free and how much I have to spend,  
10 whether it would in time and in service, it's just  
11 almost incalculable. But, anyway, I still feel that  
12 if the case comes to compensating, I don't see -- I  
13 don't see how that could be justice.

14 Q But if you had to hold your nose and the  
15 Court said pay him \$500 for his radish patch, would  
16 you take that and run with it?

17 A I sure would.

18 Q All right. And do you know what I'm  
19 referring to as the radish patch?

20 A I don't know. I assume -- but I don't  
21 know.

22 THE COURT: Let me just say this for the  
23 record. I think I understand what it is. The  
24 area between the designated 25-foot  
25 right-of-way and whe<sup>591</sup> the roadway is.

1 A Yes.

2 THE COURT: On Mr. Heyward's property.

3 A Right.

4 THE COURT: I think it's prior to getting  
5 to his house.

6 MR. OBERMAN: That is correct.

7 A Okay.

8 THE COURT: I know where the radish patch  
9 is. I just didn't know that's what we're  
10 calling it until now. Now I know.

11 MR. OBERMAN: I sometimes have the  
12 tendency to use --

13 THE COURT: I like that term. It's very  
14 descriptive. I understand that.

15 A I was thinking it was a colloquial other  
16 than a specific spot.

17 THE COURT: Okay.

18 MR. OBERMAN: I think that's all the  
19 questions I have of this gentleman. I'm sure  
20 Mr. Robinson will have some questions for you,  
21 Mr. Johnson.

22 THE COURT: All right Mr. Robinson.

23 MR. ROBINSON: Thank you, Your Honor.

24 CROSS EXAMINATION BY MR. ROBINSON:

25 Q Nice to see you 592 day.

1           A     Nice to see you, too.

2           Q     You said you had purchased the property in  
3     1977?

4           A     That's right.

5           Q     For how much money?

6           A     \$10,000.

7           Q     When you first went on to this property,  
8     either before or after you bought it, how did you  
9     access your lot?

10          A     I accessed it by the road that's there  
11     now, Betsy Kerrison Road.

12          Q     Has anyone -- oh, okay. When you turn off  
13     onto the dirt path for Resurrection Road has that  
14     road ever been obstructed?

15          A     No.

16          Q     Has anyone ever put a post in the middle  
17     of that road?

18          A     No.

19          Q     That road ever been chained off?

20          A     No.

21          Q     Whenever -- charge you a toll for using  
22     that road?

23          A     Let me back up on the chain off. I have  
24     never seen a chain off, but I was told that it was  
25     chained off.

1 Q But you've never personally seen a chain  
2 across that road?

3 A No.

4 Q Anyone charge you a toll for being on that  
5 road?

6 A No.

7 Q Has Mason Heyward ever told you that you  
8 personally could not use the dirt path to get to  
9 your property?

10 A No.

11 Q When you access the property how do you  
12 get there?

13 A I either drive or walk or either or --

14 Q I'm going to direct you back to  
15 Plaintiff's Exhibit 1A, Mr. Oberman's exhibit, and I  
16 will tell you that this is your lot. Does that look  
17 familiar?

18 A Yes.

19 Q You agree with that?

20 A Yes.

21 Q Now, I would also represent to you that  
22 this undulating line here is the dirt path, what  
23 we've been calling the travel-way at trial. From  
24 your familiarity with the road would you agree there  
25 is a dirt path that kind 594 winds through the

1 property?

2 MR. OBERMAN: Your Honor, I'll object to  
3 the terminology path. I think we all recognize  
4 it's a roadway.

5 MR. ROBINSON: Dirt road, that's fine.

6 THE COURT: I'm with you.

7 A Yes, I recognize it as a road. Now, there  
8 are several things. I grew up on a dirt road and  
9 this dirt road crosses at least 25 family  
10 properties, and is now is known as a public road.  
11 But all the properties on both side of the road,  
12 and, therefore, no one ever had any problem.

13 Q Can you show me on the points that I would  
14 represent to you, F to J, two corner marks of your  
15 road facing off of your property that are near the  
16 dirt path, can you show me where the dirt path turns  
17 onto your property?

18 MR. OBERMAN: I'll continue to object.

19 MR. ROBINSON: Dirt road.

20 A When you say turn off I don't understand  
21 what you're --

22 Q Okay. Can you show me an area -- let me  
23 direct you to this mark. Do you see where it says  
24 edge of existing dirt road known as Resurrection  
25 Road?

1           A     Yes.

2           Q     Do you see where the two lines, for what  
3 is represented as the border of those roads, pass  
4 your property?

5           A     Yes.

6           Q     Can you show me a point at which the edge  
7 of that dirt road touches your property?

8           A     Edge of existing road, number 215.68.

9           Q     Can you show me where that edge of that  
10 dirt road touches your property?

11          A     Based on this -- when you say edge,  
12 probably be talking about here or right there.

13          Q     Does it show that on Exhibit 1A?

14          A     Yes.

15          Q     Where?

16          A     Actually, the road, Resurrection Road run  
17 down and my property begins here, so it shows that  
18 it comes to contact further down, if you want to use  
19 that as a guide.

20          Q     So you're saying that the edge of the  
21 existing dirt road touches your property?

22          A     Yes.

23                THE COURT: We can stop right there. I  
24 need to take care of an emergency. I'll be  
25 right back. We'll take about a five, ten

1 minute break. I'll be right back.

2 (Short break.)

3 THE COURT: Go ahead.

4 Q Mr. Johnson, I would like to show you  
5 what's previously been marked as Defendant's Exhibit

6 A. Have you ever seen this exhibit before?

7 A Yes, I have.

8 Q Was that prepared by your surveyor as  
9 well?

10 A Yes.

11 Q You see green lines on this document?

12 A Yes, I do.

13 Q What is your understanding of what the  
14 green lines indicate?

15 A Well, I don't know what it is.

16 Q Do you see these whip marks in between the  
17 points on the green line?

18 A Yes.

19 Q Do you believe that this could be  
20 depiction of the existing dirt road?

21 A Yes, I do.

22 Q And can I direct your attention to a mark  
23 that says edge of existing dirt road?

24 A Yes.

25 Q Again, this was<sup>597</sup> prepared by your surveyor?

1 A Okay.

2 Q Your expert; right?

3 A Yes.

4 Q I would direct you -- where do you turn  
5 out on your property from the dirt road onto your  
6 property?

7 A There is a road right on the corner of --

8 Q How about -- direct you to that --  
9 property of Frances O. Johnson?

10 A Right. There is a road right in the  
11 corner here that you can turn off onto the property  
12 and it runs along the side of it all the way down to  
13 the end.

14 Q Is that road depicted on this document?

15 A No.

16 Q Thank you.

17 MR. OBERMAN: Your Honor, I'll object to  
18 this whole line of questioning. I don't think  
19 it's responsive to any question.

20 THE COURT: Doesn't have to be on cross.

21 MR. ROBINSON: He's answered. I'm done.

22 I wanted him to establish that because it was  
23 depicted on the plats.

24 THE COURT: He does have access to his  
25 property off of Resurrection Road; right?

1 MR. ROBINSON: Your Honor, if these  
2 drawings would be taken at face value, there is  
3 no dirt turn-off depicted on these plats. But  
4 that's not my point, not ultimate legal  
5 conclusion. Merely establishing that that's  
6 based on the documents that are in the record.

7 THE COURT: Okay? Your objection was,  
8 then, as to what?

9 MR. OBERMAN: This is not in response to  
10 direct.

11 THE COURT: Doesn't have to be. Okay.  
12 Very good.

13 Q Mr. Johnson when you bought your property  
14 in 1977 I believe you said that you bought it for  
15 retirement purposes?

16 A That came in later on. I was thinking in  
17 terms of retirement, yes, yes.

18 Q Did you intend to ever live on the  
19 property?

20 A I intend to live on it, yes.

21 Q You intended to build a house on it?

22 A Yes, but that wasn't entirely the reason  
23 for it. It was retirement slash investment.

24 Q Do you have any opinion as to the value,  
25 that -- you said that you bought the property in

1 1977 for \$10,000?

2 A Yes.

3 Q Do you have any idea what it was actually  
4 worth in 1977?

5 A No, I don't have any idea what it was  
6 worth.

7 Q Do you have any idea what it's worth  
8 today, again, your opinion?

9 A My opinion? It's less than it was in '05.

10 Q Is it more than it was worth in 1977?

11 A Yes.

12 Q When you purchased the property -- you  
13 have previously testified about Plaintiff's Exhibit  
14 2A. I'll redirect you to that. Do you remember  
15 talking about that document?

16 A Well, the document itself, I don't know  
17 whether I did or not because I've seen this document  
18 so many times in different formats that it's kind of  
19 hard to determine which is which. But looking at  
20 it, yes, I have discussed the areas, yes.

21 Q You have testified -- correct me if I'm  
22 wrong. You testified today that there was a  
23 document that dedicated a 25-foot right-of-way;  
24 correct?

25 A Yes.

1 Q If I draw your attention to the center of  
2 the document do you see an area where it says  
3 Resurrection Road 25-foot R slash W?

4 A Yes.

5 Q And, in fact, you previously identified  
6 that during Mr. Oberman's testimony; correct?

7 A Yes, I did.

8 Q Did the Resurrection Road 25-foot R slash  
9 W box exist in 1977 when you bought the property?

10 A No, to my knowledge, no.

11 Q Would it be fair to say that you did not  
12 rely on the existence of that Resurrection Road  
13 25-foot R slash W when you bought the property in  
14 1977?

15 A I relied on the road itself but --

16 Q Because you used the dirt road; right?

17 A Yes, I used the dirt road.

18 Q I'm going to show you your sketch  
19 regarding subdivision of the property which has  
20 previously been marked as Plaintiff's Exhibit 13.

21 A Okay.

22 Q You recognize that now that I've shown it  
23 to you again?

24 A Yes, I do.

25 Q Could you read what it says in the area

1 that shows where Resurrection Road is?

2 A It says Resurrection Road right-of-way  
3 varies.

4 Q Is this a document that was also prepared  
5 by your surveyor?

6 A Yes.

7 Q What was the date on that?

8 A The date on this is July 6, '06.

9 Q Okay. Are there any other areas on  
10 Resurrection Road that you're familiar with that  
11 have a sub development that looks like this?

12 A No, to my knowledge, no.

13 Q Do any of those currently exist?

14 A On Resurrection Road?

15 Q Yes, sir.

16 A No.

17 Q Can you identify, from personal  
18 observation anywhere on Resurrection Road, where two  
19 houses are similarly situated or as close together  
20 as they are on this drawing?

21 A I believe so.

22 Q Where is that?

23 A At the beginning of Resurrection Road  
24 there are two houses; one trailer and one house.  
25 They are approximately, #6020e, 15 feet apart. I'm

1 guessing. I don't know. I've never measured it.

2 Q That's fair. More than one?

3 A More than one, no.

4 Q Okay. Is there any other area on  
5 Resurrection Road where there is a cul de sac?

6 A No.

7 Q Mr. Johnson, you have testified as to your  
8 future plans, your development plans, but what do  
9 you presently actively do with the property?

10 A Right now the property is just -- it's not  
11 being used in any way.

12 Q How often do you go out and visit it?

13 A Approximately once or twice a month.

14 Q How about in the 2006 timeframe? How many  
15 times would you say you would go out there?

16 A Approximately once a month or sometimes  
17 once a week. Just happen to stop by and, if I had  
18 to guess on the time probably once a month, twice,  
19 once a week, so --

20 Q Do you know before you bought the property  
21 in 1977 what the piece of property was used for?

22 A Yes.

23 Q What was that?

24 A That was a family that lived there, you  
25 know. As the years passe603y the family died out or

1 move away or, you know, the mother left after the  
2 father died and then eventually she died and the  
3 property was left and the children sold it.

4 Q And does that house still stand on the  
5 property?

6 A No.

7 Q No one currently resides on it?

8 A No.

9 Q Would you agree that the existing dirt  
10 roadway to access your property is in some areas  
11 less than 25 feet wide?

12 A Yes.

13 Q Would you agree from your personal  
14 observation that those areas have been less than  
15 25 feet wide since the time you bought the property?

16 A More or less. I would say yes.

17 Q Have you found the road sufficient for  
18 your personal use to access the property?

19 A Say that again, please?

20 Q Have you found the road, you personally,  
21 found the road sufficient for your access to the  
22 property?

23 A For me personally? Yes. It can be used.  
24 I can access it, yes.

25 Q I would like to ask you about your

1 interactions with Mr. Heyward. When was -- what was  
2 the date of the first time you had a conversation  
3 with Mr. Heyward about the use of the Resurrection  
4 Road dirt road?

5 A The very first time, I can't recall when.  
6 Even when I moved back to South Carolina I talked to  
7 Mr. Heyward several times, many times. I visit him  
8 at his home. We rode together, he took me around  
9 his job site, showed me Kiawah, so we had a good  
10 interaction. The time when I put the price up for  
11 sale and he didn't say anything to me, I didn't say  
12 anything to him. When the person said that they was  
13 withdrawing based on the action of Mr. Heyward,  
14 that's when I mention to him, what could we do, what  
15 is the problem? And he said, he told me about the  
16 story of the development and the money problem.

17 Q What was the date of that conversation  
18 with your realtor?

19 A Oh, the date of the conversation with the  
20 realtor? I don't remember the exact date. It was  
21 in '03.

22 Q What is your understanding of the amount  
23 of road width that you need to sub develop your  
24 property?

25 A My understanding 605 it's needed to be

1 25 feet.

2 Q Is the dirt path presently 25 feet wide  
3 all the way down its length, the dirt road?

4 A No.

5 Q You previously testified in areas it was  
6 narrower than that; right?

7 A Yes.

8 Q Isn't it true that Mr. Heyward's  
9 questioning to you about use of the road was  
10 regarding getting a 25-foot right-of-way?

11 A Would you please state that again? I kind  
12 of lost you.

13 Q Isn't it true that your conversations with  
14 Mr. Heyward were about you expanding the dirt road  
15 to get a 25-foot right-of-way?

16 A It didn't start out like that. It start  
17 out that -- about the right-of-way, was there any  
18 objection for him -- for using the right-of-way.  
19 And, of course, that's where the problem came in.  
20 How, did he feel like -- he said he owned the  
21 property. He owned the road. And then it was like,  
22 well, if you own the road how could I satisfy you  
23 and causing it not to be a problem with you?

24 Q But you agree that nobody has obstructed  
25 your use of the road; right?

1           A    No, not physically. Verbally, it's like  
2    this is worse than physical, because now it stops  
3    everything in its track.

4           Q    In your testimony today you've not  
5    presented us with a copy of the contract you had on  
6    your property; right?

7           A    That is right.

8           Q    Do you know the name of the buyer of the  
9    property?

10          A    I can't recall the name. It's on the  
11   contract, and I don't have it.

12          Q    Do you recall the date there was to close?

13          A    The year but the date, no.

14          Q    You said previously words to the effect of  
15   you have so much money tied up in this thing it  
16   would be almost impossible to account. Would that  
17   be a fair characterization of what you said?

18          A    No.

19          Q    Okay. Tell me why that statement is  
20   wrong.

21          A    Because I said that the amount of money  
22   that was lost and calculate what it's worth at that  
23   time and what it's worth today, that would be almost  
24   impossible to calculate the difference between the  
25   value of today and the lo<sup>607</sup> from the time it was put

1 up for sale.

2 Q Have you done that calculation?

3 A No.

4 Q Have you done a calculation as to what the  
5 value of the area between the Resurrection Road  
6 edge -- dirt road edge and the Resurrection Road  
7 right-of-way is?

8 A No.

9 Q Can you identify any choke point that  
10 Mason Heyward has created on Resurrection Road -- on  
11 the dirt road?

12 A Choke point that he has?

13 Q Created.

14 A Created? I can't identify any place that  
15 he have a choke point.

16 Q Can you identify any choke point that Sidi  
17 Limehouse has created on the Resurrection Road dirt  
18 road?

19 A No.

20 Q In your previous testimony you said  
21 something about right-of-way intrusion on Mason  
22 Heyward's property; words to the effect that Mason  
23 Heyward was concerned about intrusion of the  
24 right-of-way onto his property. Do you remember  
25 that?

1           A     I don't remember, no.

2           Q     Let's go back to the conversation you had  
3 with Mr. Heyward. Did he ever express any concern  
4 to you about the impact of widening the  
5 right-of-way?

6           A     No.

7           Q     I've previously shown you a plat that has  
8 a number of subdivided lots on it; correct?

9           A     Yes.

10          Q     From your personal observation or your  
11 experience do you believe that building that  
12 subdivision would impact the amount of traffic  
13 currently going up and down the Resurrection Road  
14 dirt path, dirt road?

15          A     Yes, it could.

16          Q     Is it possible for two cars to pass  
17 abreast on that road all the way down its length?

18          A     No.

19          Q     Is the property currently listed?

20          A     No, it's not.

21          Q     When's the last time it was listed?

22          A     The last time it was officially listed was  
23 in '03.

24          Q     Your conversation with Mr. Heyward about  
25 the right-of-way or lack thereof, would you agree

1 that they were in the year 2003?

2 A That was one of the times, yes.

3 Q Were there times later than that?

4 A Yes.

5 Q When?

6 A In '06.

7 Q Do you have the phone record of any  
8 conversation you had between you and Mr. Mason  
9 Heyward regarding this property?

10 A No.

11 Q Do you have the phone record of any  
12 conversation you had with your realtor regarding  
13 this property?

14 A No.

15 Q In your personal observation; and only  
16 from your personal observations, how did the other  
17 people on Resurrection Road use it, what do they use  
18 it for?

19 A They use it for personal use of ingress  
20 and egress to their property or to ingress and  
21 egress to their farms or their family or their  
22 friends and they use it as a normal road.

23 Q Turning you back to your sketch of the  
24 subdivision, Plaintiff's Exhibit Number 13, does  
25 anyone presently use Resu610:ction Road for accessing

1 a subdivision like the one that's in this exhibit?

2 A There is no subdivision so, no.

3 Q Prior to your filing a complaint in this  
4 case with Mr. Oberman, do you know of any legal  
5 action that either you filed or that Mr. Heyward  
6 filed against you related to the use of this road?

7 A No.

8 Q Never served with papers regarding a legal  
9 access to this property?

10 A No.

11 Q So you agree that when you initially  
12 bought the property in 1977 you contemplated buying  
13 the property to move there and live on it?

14 A That was one of the thoughts, but it  
15 wasn't my final thought on it.

16 MR. OBERMAN: I'm going to have to use the  
17 objection of asked and answered just out of --

18 MR. ROBINSON: I'll move on.

19 THE COURT: I note it. Okay. Good.

20 Q When was the first time you firmed up your  
21 plans to develop the property with the subdivision?

22 A Well, the first time, I believe, when the  
23 prices of land was going up and I wanted to sell the  
24 land as one piece. The person who wanted to buy the  
25 land indicate that they wanted to develop the land.

1 And that's when I got the idea, well, if I don't  
2 sell it as it is, then maybe I could develop it.  
3 And that's when the thought first came to my mind.

4 MR. ROBINSON: I have no further  
5 questions.

6 MR. MITCHELL: Yes, Your Honor just have a  
7 few.

8 CROSS EXAMINATION BY MR. MITCHELL:

9 Q Mr. Johnson, you believe that that dirt  
10 road we were just talking about is a public road;  
11 correct?

12 A Yes, I do.

13 Q And you have seen other vehicles than  
14 yours on that public road?

15 A Have I did --

16 Q You've seen other vehicles other than your  
17 own?

18 A Yes.

19 Q Farm trucks on that road?

20 A Yes.

21 Q Have you seen other vehicles that did not  
22 appear to be residents of that road on the public  
23 road?

24 A Yes.

25 Q Have you seen county maintenance vehicles

1 on that road?

2 A Yes.

3 Q And were they maintaining that public  
4 road?

5 A Yes.

6 Q Have you ever call the county to complain  
7 about anything about the road for them to come out  
8 and fix the road?

9 A No, I haven't.

10 Q You received a letter from the County  
11 similar to Defendant's Exhibit 7; correct? Take  
12 your time. Look at it.

13 A Yes, I did.

14 Q You did not respond to that letter;  
15 correct?

16 A That's right.

17 Q You did not respond because you believe it  
18 was a public roadway; correct?

19 A Yes.

20 Q You might have already testified to this.  
21 No one ever obstructed you or anybody else for the  
22 use of that public roadway; correct?

23 A Well, yes. I have not seen anyone but it  
24 was reported that others, people were -- was  
25 obstructed from using the road, yes.

1 Q But you have not physically been witness  
2 to somebody putting a chain across the road, parking  
3 their vehicle across the public road, standing in  
4 the middle of the public road, laying on the middle  
5 of the public road?

6 A Right.

7 MR. MITCHELL: Thank you very much.

8 That's all I have, Your Honor.

9 A You're welcome.

10 THE COURT: Mr. Williams?

11 MR. WILLIAMS: Just one second.

12 THE COURT: All right.

13 CROSS EXAMINATION BY MR. WILLIAMS:

14 Q Mr. Johnson, the boundary lines that show  
15 your property on these various surveys, you don't  
16 dispute those boundary lines; do you?

17 A Say that again, please.

18 Q The plats that show your property, the  
19 measurements, the boundary lines on those and  
20 especially the boundary line that adjoins the  
21 property of the Cooperative, Berkeley Electric  
22 Cooperative, Inc., it is your opinion that that  
23 boundary line is accurate?

24 A Yes.

25 Q Is that correct? 614 Whatever is shown on the

1 plat accurately reflects that boundary line?

2 A I believe it does, yes.

3 Q Okay, sir. And you have not ever been on  
4 the property of the Cooperative, used it for any  
5 purpose or anything else; is that correct?

6 A That is right.

7 Q Okay. Fine, Thank you very much.

8 MR. OBERMAN: Just one or two questions,  
9 Your Honor.

10 REDIRECT EXAMINATION BY MR. OBERMAN:

11 Q Mr. Johnson, you were asked about the  
12 subdivision of other property on this Resurrection  
13 Road. Did you look at the Exhibit 2A?

14 A Yes, I did.

15 Q Can you read to the Court what that title  
16 is?

17 THE COURT: That's the plat from  
18 Mr. Seabrook?

19 MR. OBERMAN: Yes, sir.

20 THE COURT: I think I've read it fifteen  
21 times. He doesn't need to read it to me.

22 MR. OBERMAN: I did want to bring out that  
23 it is a subdivision.

24 THE COURT: Subdivision plat.

25 MR. OBERMAN: Subdivision plat of Mr.

1 Heyward.

2 Q Is it correct to say that it subdivides  
3 Mr. Heyward's property into three different parcels?

4 A Yes, it does. Should I read it?

5 Q No.

6 THE COURT: I'll do it.

7 Q The Court will do it.

8 A Sorry.

9 Q Sir, you haven't been using a pogo stick  
10 to get from Resurrection Road into your property;  
11 have you?

12 A No, I haven't.

13 Q You've been going from Resurrection Road  
14 onto your property since 1977?

15 A That's right.

16 Q And on the deed into William Simmons I  
17 directed your attention to the northern boundary  
18 line of your property. Do you see that, sir?

19 A Northern boundary line is -- yes, yes.  
20 Northern boundary line.

21 Q Northern boundary line would be right  
22 here, sir?

23 A Yes.

24 Q Does your road touch -- bound on your  
25 property?

1           A     It shows a road touching, yes.

2           Q     All right, sir. So there is no need for  
3 the pogo stick?

4           A     That is true.

5           Q     This is referring back to Exhibit 4 to the  
6 previous trial. You've seen maintenance people  
7 going up and down the road?

8           A     People in general -- no, I've seen  
9 vehicles, like for instance road scraper or maybe,  
10 that's probably all I can identify other than maybe  
11 a truck.

12          Q     And to your knowledge, Mr. Heyward nor  
13 anyone else have ever run the maintenance men or the  
14 road scraper or anyone off of that road; have they?

15          A     No.

16               MR. OBERMAN: That's all the questions.

17               THE COURT: Anything?

18               MR. ROBINSON: No.

19               MR. MITCHELL: One quick one, Your Honor.

20               BY MR. MITCHELL:

21          Q     That road scraper you mentioned, was Sidi  
22 operating that road scraper?

23          A     No.

24          Q     Was Mr. Heyward operating that road  
25 scraper?

1 A No.

2 MR. MITCHELL: Thank you. That's all I  
3 have.

4 THE COURT: Mr. Johnson, in the  
5 presentation of this case do you have any  
6 concerns with getting directly to your property  
7 or is the focus getting access to your property  
8 so that you can subdivide and develop the  
9 property?

10 A Yes, the concern is mainly to have some  
11 kind of proof of being a public road where people  
12 can readily use it without pressure or thinking that  
13 somebody can stop them from using it or causing a  
14 problem.

15 THE COURT: Just to apply that to your  
16 situation, you've never been denied the right  
17 or access to get to your property yourself; is  
18 that right?

19 A That is right.

20 THE COURT: But the pressure you've got  
21 was in your desire to subdivide, right?

22 A Well, yes, because you know, to subdivide  
23 to me means several things. If I divided it,  
24 subdivided it into five parts we have a house on  
25 each acre, is to me subdivi618de. If a person want to

1 do that then is it okay to do that and say, yes, you  
2 have access, because it's a right-of-way to the  
3 property. Or if a person buys it and say, well, I  
4 want to develop it later but I don't have access to  
5 it, yes, you do because here the document say it is.  
6 At the time I was thinking, well, there was some  
7 money around that I could develop it, then but the  
8 bank say you need to have access. I wanted to have  
9 papers or some documents say to the bank, yes, this  
10 is a free -- this is a public road adjoining my  
11 property. You know, whether they make a decision to  
12 loan money or whatever or not.

13 THE COURT: So answer me this question.  
14 When, during the course of your ownership, have  
15 you determined that the Resurrection Road is a  
16 public road.

17 A From the beginning.

18 THE COURT: Since 1977?

19 A Yes.

20 THE COURT: Now, take me back to the  
21 contract. You put the property on the market  
22 in 2003?

23 A Yes.

24 THE COURT: And got a contract for  
25 550,000?

1 A Yes.

2 THE COURT: And what was -- I didn't  
3 understand about the 650,000.

4 A The contractor said I could give you  
5 650,000 but you would have to pay any commission,  
6 legal fee and, therefore, I can give you the 600 or  
7 we can write it up for 650, therefore, you will pay  
8 the legal and the commission.

9 THE COURT: Okay. So that would be the  
10 closing attorney's fees, any attorneys fees  
11 incurred with making sure the road is up to  
12 standards and that type of thing?

13 A Yes.

14 THE COURT: All right.

15 MR. OBERMAN: And the real estate  
16 commission.

17 THE COURT: And the real estate  
18 commission. I'm with you. Okay.

19 And then that contract went away when?

20 A When the person was contacted by Mason  
21 saying that the road belonged to him and that.

22 THE COURT: In what year would that have  
23 been?

24 A In '03.

25 THE COURT: 200620

1           A     Yes, that's the end of the year around  
2     October:

3           THE COURT:  Then since that time you have  
4     not had an offer on the property?

5           A     That is true.  I didn't put it back on  
6     because I wanted to get the legal feel and it just  
7     drag on so long to get the written up and survey  
8     probably and present it in a fashion.

9           THE COURT:  And today as we sit here, do  
10    you have an opinion as to the value of your  
11    property?

12          A     Well, not doing any calculations.  I just  
13    felt that based on what real estate is selling today  
14    and, because I have, I won't say a friend but a  
15    person I know who have his land.

16          THE COURT:  Let me stop you.  I'm just  
17    asking you about your opinion on your property.  
18    First question.  Do you have an opinion, yes or  
19    no?

20          A     Yes.

21          THE COURT:  What would that value be?

22          A     The value would be at least 600,000.

23          THE COURT:  So back to what it was in  
24    2003?

25          A     Yes.

1 THE COURT: All right. Any follow-up?

2 MR. ROBINSON: Just one, Your Honor, based  
3 on what you had said.

4 BY MR. ROBINSON:

5 Q Did you personally witness or participate  
6 in this conversation between your realtor and the  
7 buyer?

8 A No, it was done by phone.

9 Q But were you on the phone with them when  
10 the call was made?

11 A About the canceling or about making the  
12 amount of money decision on what to be paid?

13 Q On canceling the contract?

14 A No, I did not speak to the person.

15 Q Did you participate in the telephone call  
16 between Mason Heyward and your realtor where  
17 allegedly Mr. Heyward demanded or extorted  
18 right-of-way?

19 A No, but could I say this? The gentleman  
20 who was purchasing did not live in the United  
21 States. He was -- had an agent here and I had an  
22 agent and, therefore, it was a lot of telephone  
23 dealings like the person has power of attorney to  
24 purchase.

25 Q But you weren't present for those

1 conversations?

2 A No.

3 THE COURT: Okay. Anything further for

4 Mr. Johnson? All right. Thank you, Mr.

5 Johnson, you may step down.

6 All right.

7 MR. OBERMAN: That, together with the de

8 bene esse of Dr. Ralph Haynes is the case of

9 the Plaintiffs.

10 THE COURT: All right, sir. Very good.

11 All right. Any motions?

12 MR. ROBINSON: Motion for directed

13 verdict, Your Honor.

14 THE COURT: All right. Tell me why.

15 MR. ROBINSON: I've got a motion for  
16 directed verdict on the civil conspiracy claim.

17 The first element is that civil conspiracy

18 requires the participation of more than one

19 conspirator. The testimony presented at trial

20 has been devoid of any record of conversation

21 or overt act that required the participation of

22 more than one purpose that effected Mr. Johnson

23 or Dr. Haynes.

24 Additionally, Your Honor, on November 10,

25 2011 Mr. Oberman filed a document entitled

1 Amended Answer of Ralph Haynes, Ralph Haynes  
2 and crossclaim --

3 THE COURT: Slow down.

4 MR. ROBINSON: It is the amended response  
5 to these pleadings. It's my understanding that  
6 this is the pleading that closed the record.  
7 Mr. Johnson did not independently assert, under  
8 his caption and individually, the damages that  
9 he seeks for civil conspiracy or anything  
10 arising out of that.

11 Additionally, going as to acts, overt acts  
12 or conversations, none of the testimony has  
13 established a conversation that occurred or any  
14 overt act with a public or private authority  
15 that would constitute civil conspiracy. No one  
16 could identify, despite what is plead in the  
17 pleadings, the creation of choke points along  
18 the road. There has been no testimony to that  
19 as of the closing of the Plaintiff's case.

20 Additionally, the Plaintiffs --  
21 Mr. Johnson's damages, as alleged here today,  
22 and I would also say Dr. Haynes, are  
23 speculative. First, while I realize that the  
24 Court has decided whether it's going to  
25 consider Exhibit 18 c624 not, no independent.

1 expert testimony has been offered to verify  
2 either of these numbers, and during  
3 Mr. Johnson's testimony he offered an opinion  
4 as to the value but not a basis for that.

5 Additionally, the purchase price of his  
6 property in 1977 was \$10,000. Regardless of  
7 what happened with development or  
8 non-development of the property using the  
9 access he presently has the property is worth  
10 more than he bought it for.

11 Your Honor, in the case of Pie v Fox,  
12 which is a 2008 case of the South Carolina  
13 Supreme Court, that case involved a directed  
14 verdict at this stage of the trial, too. We  
15 would cite that there is no evidence to support  
16 the trial court's ruling or where the ruling is  
17 controlled by error of law. That's Clark v  
18 South Carolina Department of Public Safety that  
19 they cited in the Pie opinion.

20 Additionally, the opinion states that  
21 there must be -- this specifically addressing  
22 civil conspiracy. Supreme Court said the  
23 elements of the civil conspiracy in South  
24 Carolina are a combination of two or more  
25 people for the purp625 of injuring the

1 Plaintiff which causes special damages.

2 I've already talked about the first  
3 element. Talked about the second element, and  
4 that no testimony has been elicited as to  
5 malice or specific injury of rights other than  
6 value of the property, which brings us to the  
7 third element, which is there has to be special  
8 damages. Nowhere has there been an amended  
9 pleading or additional information that says  
10 that the diminution of value because of the  
11 access issue is any different from a civil  
12 conspiracy claim. The Supreme Court basically  
13 says there must be a special damage that goes  
14 over and above damages that are related to  
15 diminution of value of property. That's again  
16 in Pie.

17 Additionally, Your Honor, in order to --  
18 this is quoting the Pie decision. In order to  
19 establish a conspiracy, evidence, direct or  
20 circumstantial, must be produced from which  
21 parties may reasonably infer the joint assent  
22 of the minds of two or more parties to the  
23 prosecution of an unlawful enterprise. That's  
24 the Island Car Wash versus Norris case 292 SC  
25 595 from 1987 which 626 is also a Supreme Court

1 decision, again cited in the Pie decision.

2 There is nothing to infer from the nature  
3 of the acts done, there has been no testimony  
4 elicited that shows a specific combination of  
5 acts to injure the rights of another party. So  
6 on that basis and the basis of the speculative  
7 information presented as to damages we would  
8 move for a directed verdict in Mr. Heyward's  
9 favor and against Mr. Haynes -- Dr. Haynes  
10 alleging that Mr. Johnson has not independently  
11 alleged that cause of action.

12 Thank you, Your Honor.

13 THE COURT: Mr. Oberman, are you familiar  
14 with that case?

15 MR. OBERMAN: The Pie case, yes. Very  
16 familiar with it, Your Honor.

17 I think what we have here, number one is  
18 no directed verdict and we don't have a jury to  
19 direct --

20 THE COURT: Motion for non-suit.

21 MR. OBERMAN: Motion for non-suit.

22 THE COURT: Would be the proper term.

23 MR. OBERMAN: Your Honor, what we have  
24 here is a conspiracy, by its very nature is  
25 somewhat secretive. 627 doesn't have to be but by

1 nature it's normally secretive. And only a  
2 scintilla of evidence is needed for it to go  
3 forward to the ultimate decision by the fact  
4 finder, which would be up to the fact finder to  
5 dismiss that cause of action at a later time,  
6 after considering it.

7 What we do have is we have a combination  
8 of Mr. Heyward, who expressed interest in  
9 either purchasing the land or to getting  
10 compensation, working together with Mr. Sidi  
11 Limehouse, and while we didn't join Mr. Sidi  
12 Limehouse, because we don't need to join all  
13 the coconspirators, he did elicit the help of  
14 the County of Charleston who went so far as to  
15 serve a pleading to abandon that which was  
16 previously given to them in the 25-foot  
17 right-of-way. The County has decided not to go  
18 forward with that action and we dropped the  
19 County as a coconspirator, but I think the  
20 actions of Mr. Heyward together with the  
21 County, Mr. Sidi Limehouse stirring the pot  
22 also, is enough of a scintilla of evidence to  
23 show that there was an action taken by those  
24 three units.

25 It does not have to be an unlawful action.

1           It can be either an unlawful conspiring  
2           together to commit an unlawful action or  
3           conspiring together to commit a lawful action  
4           in an unlawful means.

5           THE COURT: Take me there. Because I'm  
6           not the sure I've heard any unlawful actions  
7           yet. You've dismissed the County on the issue  
8           of the conspiracy, so you're left to Mr.  
9           Heyward and Mr. Limehouse at best. So take me  
10          to what the unlawful means is or was.

11          MR. OBERMAN: The unlawful means was that  
12          the County, though we've dismissed the action,  
13          Your Honor, their actions, in combination with  
14          Mr. Heyward, of reneging, of trying to  
15          disengage a lawfully-given 25-foot right-of-way  
16          is, in our opinion, evidence of an action done  
17          in an unlawful manner and it is sufficient,  
18          under the facts that we have in this case, for  
19          you to decide, once you have a chance to go  
20          through all of the testimony and see if the  
21          actions have taken place that were done in an  
22          unlawful manner. I think the fact that the  
23          County dropped its action of abandonment and  
24          the thing that we worked out, is evidence that  
25          the County came to the conclusion that their

1           action of abandonment that was done at the  
2           request and insistence of the attorney for Mr.  
3           Heyward, is evidence they understood that it  
4           was unlawful and their action here today  
5           stating, yes, it's a public road, we're not  
6           going to abandon that which was dedicated to  
7           the County back in 1996.

8           THE COURT: I understand your position.  
9           Then tell me what the special damage is.

10          MR. OBERMAN: Special damages could be the  
11          amounts paid by Mr. Johnson and by Dr. Haynes  
12          for Mr. Johnson for the surveys, for the plats  
13          that he had that Steve Johnson drew up for him  
14          and which he paid substantial sums of money.  
15          That is money down the drain. I think that is  
16          special damages on the part of Mr. Johnson.  
17          Dr. Haynes' special damages would be the  
18          appraisals that he did to find out what his  
19          property would be worth with or without the  
20          25-foot dedicated right-of-way.

21          THE COURT: All right. Very good. I'll  
22          hear from you, Mr. Mitchell.

23          MR. MITCHELL: As to the portion of the  
24          County changing their Answer that's evidence of  
25          unlawful act, I do believe so. As I said,

1 first part of the case, Mr. Ferrara answered  
2 the Complaint. I believe his contention in his  
3 Answer there was not directly expressed the  
4 magic word stamped on a plat. So we haven't  
5 changed positions. That portion Mr. Ferrara  
6 was just expressing that, no, there was not an  
7 expressed dedication. Might not have done it  
8 artfully, still kind of broad statement but we  
9 still believe there was a dedication.

10 THE COURT: Therefore, you're not a  
11 co-conspirator?

12 MR. MITCHELL: Therefore we're not a  
13 co-conspirator. In addition, the claim against  
14 us has been dismissed, Your Honor.

15 THE COURT: Mr. Robinson?

16 MR. ROBINSON: Your Honor, as plead it has  
17 not been dismissed. I know there was  
18 stipulation between the parties. Under rules  
19 technically we're entitled to objection to  
20 further amendment of the pleadings. I  
21 understand their stipulation, but there is a  
22 settlement, supposed to have the consent of all  
23 parties.

24 Also, Your Honor, I draw your attention to  
25 Paragraph 42 of the A631nded Answer I previously

1           referenced. It doesn't have an or provision.  
2           Clearly says conspirators were Julian Sidi  
3           Limehouse and Louise Donnie Bennet, acting in  
4           concert with Mason C. Heyward and cross claim  
5           Charleston County, have conspired together to  
6           create a choke point on the ingress/egress  
7           serving the properties.

8           There is no evidence of that anywhere in  
9           the record. And Mr. Johnson didn't have any  
10          independent authority to assert that. You  
11          can't sever the private actors from the public  
12          actors. If there has been a conspiracy  
13          Mr. Mason Heyward was conspiring with himself  
14          from the testimony I've heard.

15          MR. OBERMAN: If I could say one last  
16          thing, Your Honor? Mr. Robinson seems to be  
17          real interested in the terminology of choke  
18          point. I sometimes use phraseology that the  
19          Court has commented on. When you reduce a  
20          granted, documented 25-foot wide right-of-way,  
21          and you come into court and you say no, the  
22          prescriptive easement road, even though people  
23          have been using it, again to use one of my  
24          terms, since dirt was new, belongs to me. I  
25          own it. And you are<sup>632</sup>limited to the -- not to

1 the width of the road, because there is  
2 testimony varying what width of the road is,  
3 but to the actual travel path of the wagon  
4 wheels or the tires or whatever. That is a  
5 choke point when you go from 25 feet down to 13  
6 feet. I think that is -- I think it's a  
7 instrument of art to use that term choke point.  
8 That's exactly what Mr. Heyward has come into  
9 this court and asked you to create, a choke  
10 point to choke off the rights of Dr. Haynes and  
11 Mr. Johnson. And we're here to say this Court  
12 in it's equitable functions can say no, no,  
13 this Court does what is right, what is just and  
14 what is just is what Mr. Heyward came before  
15 the County of Charleston, who had asked for a  
16 50-foot right-of-way, and he came before the  
17 County of Charleston and said I don't want to  
18 give a 50-foot right-of-way. Will you settle  
19 for a 25-foot right-of-way dedicated to the use  
20 of the public? And now for him to come in and  
21 say no, it's not 25 feet, it's 12 feet or it's  
22 13 feet, that is the choke point. That is a,  
23 to use harsh words, that is a fraud against the  
24 County of Charleston and against the citizens  
25 of the County of Charleston to whom this

1 25-foot right-of-way was dedicated.

2 THE COURT: All right. Very good. All  
3 right. Well, civil conspiracy is an action at  
4 law not an action in equity and it requires  
5 proof. And it should be sufficient proof to  
6 establish the elements and they have been  
7 stated adequately by Mr. Robinson and they are,  
8 of course, a combination of two or more persons  
9 to injure Plaintiff and cause special damages  
10 and what special damages is is dependent on the  
11 facts of each case. What the evidence here --

12 I'll grant the motion on the basis that I  
13 have seen no evidence of a combination of two  
14 or more persons. The evidence that I have seen  
15 in the record is that Mr. Heyward has  
16 consistently, since 1996, objected to any  
17 additional use of what is, quote, his property,  
18 by anybody unless he is paid for that. And  
19 that is a constitutional right to do that.

20 Now, he has dedicated to the County a  
21 25-foot right-of-way. What remains an issue in  
22 this case is the acceptance, use, maintenance,  
23 bringing it into the system I think was the  
24 testimony that Mr. Neal used on Tuesday when he  
25 testified of the 25-634t right-of-way. The

1 extension, the width, the scope, the extent of  
2 the prescriptive easement is a different issue.  
3 And I find that the testimony has been  
4 consistently that Mr. Heyward has asserted his  
5 rights since 1996 to the additional burden that  
6 the width of that prescriptive easement would  
7 place on what is, in fact, his property. I  
8 haven't heard any testimony from him as to if  
9 it's placed within the 25-foot right-of-way  
10 that he has any objection to that. It's only  
11 if it's on his property and further burdens his  
12 property.

13 So I don't find a combination, first and  
14 foremost, in that regard. Mr. Limehouse, under  
15 vigorous cross examination, denied anything --  
16 of any agreement of such a type as did  
17 Ms. Bennet. Clearly the stipulation has been  
18 that the County was not in the conspiracy, so  
19 I'm going to hold you responsible for that.

20 Therefore, I find there has been no  
21 unlawful act. The only issue then became  
22 whether or not there was an unlawful means to  
23 an action, and I find there is no evidence of  
24 an unlawful means under the facts of this case.

25 Again, someone <sup>635</sup>is a piece of property,

1        someone wants to burden that piece of property  
2        further than what's been used, then there  
3        should be requisite criteria for doing that.  
4        And that, again, is the purpose of this  
5        hearing, to determine the scope of the  
6        easement.

7                In addition to which there has been no  
8        proof of special damages that I can see. There  
9        has been testimony that there was additional  
10       costs and expense, but I've got no evidence of  
11       what that is. In response to my specific  
12       inquiry of Mr. Johnson as to what the value of  
13       the property is today, he thinks the value of  
14       the property today is basically the same as it  
15       was in 2003 when he last got a contract on it,  
16       \$600,000. So there I don't see any damage.  
17       Mr. Haynes' evidence on that, at least as to  
18       value, would be -- I can't recall if he was  
19       asked what it was worth, but I find that the  
20       evidence was incompetent. He never testified  
21       as to his own opinion of value as Mr. Johnson  
22       did. He relied on an appraisal. The appraiser  
23       has not come forward to testify to establish  
24       his appraisal and, therefore, there is no  
25       evidence in the record as to damages, monetary

1 damages as it relates to Dr. Haynes.

2 So on that basis I'm going to grant the  
3 motion and find that the cause of action for  
4 conspiracy has been foreclosed. All right?

5 Now, it's high noon. We got a couple of  
6 witnesses. Any other matters I need to take  
7 up?

8 MR. ROBINSON: One motion that's not like  
9 the other ones, nothing on cause of action. In  
10 an abundance of caution, unless Plaintiffs  
11 object, I wanted to make sure that we have  
12 agreed to move all the exhibits in the  
13 Plaintiffs' and Defendants' case into evidence.  
14 I can't recall if we had that stipulation  
15 before.

16 MR. OBERMAN: I think they're all in.

17 THE COURT: I don't see a problem with  
18 that. Very good. How long are these witnesses  
19 going to take, Mr. Mitchell?

20 (Discussion off the record.)

21 (Raymond Robinson, 45 Woodleaf Court, Charleston, S.C.  
22 29407, duly sworn, testifies as follows:)

23 DIRECT EXAMINATION BY MR. MITCHELL:

24 Q Mr. Robinson, where are you currently  
25 employed?

1 A Charleston County Public Works.

2 Q What is your current position with  
3 Charleston County Public Works?

4 A Public works maintenance foreman.

5 Q Is there a certain location in Charleston  
6 County that you're responsible for?

7 A Yes. All kind of areas from Edisto Beach  
8 back up to parts of James Island and Wadmalaw and  
9 Johns Island.

10 Q Is Resurrection Road within that area?

11 A Yes, sir.

12 Q What are your current job duties as  
13 supervisor?

14 A I go out and we maintain county and public  
15 roads with the cutting, mowing right-of-ways and to  
16 grade them. And we also do stop signs, street  
17 signs, stuff like that.

18 Q You have, like, a mowing crew?

19 A Yes, sir.

20 Q Also have like a grading crew, is that a  
21 proper term?

22 A They are operators. Their terms would be  
23 operators 1, 2, 3, like that.

24 Q How many people generally do you  
25 supervise?

1           A     It's twelve of us over there. I have  
2 twelve employees.

3           Q     You send them all out to a road at the  
4 same time?

5           A     No, sir. They go out to various roads,  
6 different roads.

7           Q     When did you start your employment with  
8 Charleston County?

9           A     I started in March of 1984.

10          Q     What was your job position then?

11          A     At that time I was CMW-1. That's like a  
12 labor position, I should say.

13          Q     What did you do in that position?

14          A     At that time we would cut the road  
15 right-of-way back manually. At that time -- I was  
16 on a drainage crew also at that time. We did a lot  
17 of drainage work also at the time.

18          Q     Can you describe drainage work?

19          A     Drainage work would be like the drainage  
20 ditches that runs off from, say, a residence. A lot  
21 of subdivision has drainage ditch that we would  
22 maintain manually.

23          Q     Does that include drainage ditches  
24 alongside the road bed?

25          A     Yes, sir.

1 Q Why are drainage ditches important?

2 A Drains water off property. And it have  
3 the access a lot better. Water is not draining.  
4 Could be a lot of potholes, it's very difficult to  
5 travel.

6 Q Fair to say, that's to help the road bed?

7 A Yes.

8 Q Now, when you say manual labor, what do  
9 you mean?

10 A Well, everything is done manually with  
11 tools, shovels. At the time we had bush knives,  
12 chainsaws, stuff like that.

13 Q Now you might use something different?

14 A Now we use -- our terms would be side-arm  
15 mowers.

16 Q Side-arm mowers?

17 A S-I-D-E-A-R-M mowers. M-O-W-E-R-S.

18 Q Mr. Robinson, you say you're from Wadmalaw  
19 Island; is that true?

20 A Yes, sir. I was born and raised over  
21 there. But I move West Ashley. My dad loan me some  
22 money, I moved.

23 Q Are you familiar with Resurrection Road?

24 A Yes, sir.

25 Q Now, back when 640<sup>1</sup> started in 1984, did

1 you ever go on Resurrection Road?

2 A Yes, sir.

3 Q What did you do along the road?

4 A At the time we cut the road. The  
5 overhanging branch that hang over the road, cut it  
6 back. And we also put up stop signs if it was down.  
7 At the time we would haul material to the road.  
8 Even though it would seem -- the commercial license  
9 where I could drive the vehicle, I would haul dirt  
10 to the road when the grade operator come in and  
11 grade it. That's what I would do at that time.

12 Q I'm going to show you an exhibit that  
13 shows what we call -- what I'm calling the public  
14 roadway.

15 A Yes, sir.

16 Q It is Exhibit 1A, Plaintiff's 1A. I'm  
17 going to ask you to -- back in 1984, you can see --  
18 see the roadway? You can see the dirt path or  
19 public roadway. How far back did you maintain?

20 A We maintain it from about right here to  
21 right about here, almost at the end of where Mr.  
22 Sidi lived at.

23 Q You say Mr. Sidi. Did he live there back  
24 there in 1984?

25 A Yes, sir, he wa64]here.

1 Q Now, you're indicating right before the  
2 property of Louise Bennet; correct?

3 A Yes.

4 Q Why did you stop there?

5 A Well, at the time further down I think  
6 there was a field or somewhat that they were  
7 planting stuff in it. And we just stopped grading  
8 right there because very difficult to go around  
9 there and turn around.

10 Q Did you go -- back then did you guys  
11 actually go beyond that point?

12 A Yes, for certain time. Turn around come  
13 back out.

14 Q Currently you don't --

15 A No.

16 Q Is there a culvert that kind of marks that  
17 point?

18 A Yes, it is. There's a culvert at the end.  
19 A cross line pipe. Basically it's right by  
20 Mr. Sidi's -- Limehouse.

21 Q Do you remember installing that cross line  
22 pipe?

23 A No, we didn't.

24 Q Is it possible Mr. Sidi --

25 A Yes, sir.

1 Q Mr. Limehouse installed it?

2 A Yes, sir.

3 Q Now, how many years were you a CMW?

4 A I was a CMW roughly for about six to  
5 seven -- say seven years. Then I got a promotion as  
6 an Operator 1.

7 Q To an Operator 1?

8 A Yes, sir.

9 Q What were your duties as an Operator 1?

10 A Then I would operate the backhoe, the  
11 side-arm mowers, five yard dump trucks and also got  
12 some cross training on the motor grader.

13 Q Now, as Operator 1 did you help maintain  
14 Resurrection Road?

15 A Yes, sir. Well, not at that time. At  
16 that time I was transferred elsewhere to James  
17 Island. But Resurrection Road, that road would be  
18 still maintained by us. I wasn't there. I was  
19 transferred to James Island.

20 Q So it's fair to say you worked on that  
21 road until 19 --

22 A '93, '94, something like that; yes.

23 Q Did you ever have a chance to come back --  
24 back up. When you were maintaining the road how  
25 often did you go out on Resurrection Road?

1           A     At that time we would check it, like,  
2     every other month or so. Say every two months we  
3     would go in there. And I think at the time there  
4     was another foreman who was our leader at the time.  
5     I don't know the details of how we would get terms  
6     to go on the road, but I know roughly about every  
7     two months we would go on there on a regular basis  
8     and grade it. But there might have been other method  
9     to where sometime the homeowner could contact my  
10    supervisor and say we need assistance to the road  
11    and we would go out like that, but on a regular  
12    routine thing we would go every two months or so and  
13    grade it.

14           Q     When you were maintaining the road,  
15    Resurrection Road, did you stop maintaining exactly  
16    where the dirt line was, where it met up with the  
17    grass?

18           A     Yes.

19           Q     Did you trim up the side of the trees?

20           A     Sometime we would go further back, maybe  
21    couple foot off the edge of the road just to get the  
22    overhanging limbs from hanging over.

23           Q     Was there any kind of ditches or anything  
24    similar to that alongside the --

25           A     No. There wasn't a ditch alongside that

1 road.

2 Q It's fair to say you cut back tree limbs  
3 beyond where the dirt path was; correct?

4 A Yes, sir.

5 Q Now, after you left the Johns Island crew  
6 you went to James Island; correct?

7 A Yes, sir.

8 Q When did you return back to Johns Island?

9 A I returned back in, I want to say '02 or  
10 '03, something like that.

11 Q What was your job position then?

12 A Then I got promoted as an Operator 2 and  
13 that's when I was all officially a motor grader  
14 operator, and that's when I used to grade the road  
15 myself, Resurrection Road.

16 Q How often did you grade Resurrection Road?

17 A At that time it would be on a monthly  
18 basis. We used to go in there, like, once a month  
19 go in touch it up.

20 Q Do you know why you were called to  
21 Resurrection Road?

22 A Because the access was poor, couldn't get  
23 out. A lot of potholes at times and it was kind of  
24 rough for vehicle to go down. They would call us,  
25 we would go in there and grade it.

1 Q Were you aware of any -- did you respond  
2 to, like, the public request to --

3 A Yes.

4 Q Was there also an inspection team that  
5 might go out and inspect the road?

6 A Yes, sometimes before and after we would  
7 have an inspection team.

8 Q As a grader operator, how long were you a  
9 grader Operator 2?

10 A Grader -- I want to say six years.  
11 Maybe -- about six years. I don't have the exact  
12 dates, but these are rough estimates. About six  
13 years.

14 Q When you were promoted to supervisor were  
15 you removed from the Johns Island area?

16 A No, I was still there. Got promoted right  
17 there, stayed right there.

18 Q From around 2000, 2002 you've been on  
19 Johns Island and responsible for Resurrection Road?

20 A Yes, sir.

21 Q How wide is your motor grader?

22 A The motor grader itself has six foot  
23 blades on both sides, 12-foot wide. If you open the  
24 blades up it will be that wide.

25 Q Do you ever rem<sup>646</sup>ber opening the blades

1 all the way on Resurrection Road?

2 A No. You can't.

3 Q Are there spots that you could?

4 A No, not to open it all the way, no.

5 Q Does the roadway, does it narrow at some  
6 points and widen back out?

7 A At the start it's sort of wide but when it  
8 gets down, it gets a little narrow where it gets  
9 down. By Ms. Ravenel's place, kind of wide but  
10 further down past Mr. Heyward's house it gets little  
11 narrow then.

12 Q Have you had any chance during the whole  
13 time you've been employed with Charleston County any  
14 citizens that might have stopped you while you were  
15 grading alongside the road?

16 A No, sir.

17 Q Ever speak with Mrs. Ravenel?

18 A Yes, I have. I have had conversation with  
19 her concerning problems right at the head of her  
20 road when you come off of Betsy Kerrison.

21 Q What kind problems did you observe?

22 A Potholes. Deep potholes where we needed  
23 to put materials there so she can get in and out.

24 Q Did you put materials in there?

25 A Yes, sir.

1           Q     Is there any other spots along  
2 Resurrection Road you remember filling potholes?

3           A     There have been low areas past Mr.  
4 Heyward's house where there is another cross line  
5 pipe. We have put dirt down in there, and we have  
6 put some at the end almost before you get to  
7 Mr. Limehouse, Sidi's.

8           Q     So explain to me when you say you put dirt  
9 down you go in with a dump truck or what exactly do  
10 you do?

11          A     Yes, take the dirt and we don't dump it in  
12 piles. Sort of run it out a little bit. The motor  
13 grader come behind us and level it down.

14          Q     You mention cross line pipe?

15          A     Yes, past -- about midway of Resurrection  
16 there is a cross line pipe, when you get past  
17 Mr. Heyward's place.

18          Q     Do you remember doing anything with the  
19 cross line pipe?

20          A     Other than just cleaning the end of it  
21 out.

22          Q     Why would you clean the end of it out?

23          A     So water can flow from one side to the  
24 other.

25          Q     How did you clean it out?

1           A     With shovels.

2           Q     So you actually crawled down there in the  
3 pipe?

4           A     You've got to clean out the end of it.  
5 It's never stopped up completely, just the ends of  
6 it's clogged up so we take a shovel, clean out the  
7 end of it.

8           Q     Why would you do that?

9           A     That helps the flow of the water, because  
10 it's clogged up, water can't come out of the pipe.

11          Q     Does the water, if it's clogged up, water  
12 goes over the road?

13          A     Yes.

14          Q     Would you consider that maintenance of the  
15 road by cleaning out pipes?

16          A     Yes.

17          Q     Do you remember when that pipe was put in?

18          A     No, I can't recall.

19          Q     On your time as grader operator, laborer  
20 as you said and supervisor, do you remember seeing  
21 other vehicles going up and down Resurrection Road?

22          A     Yes.

23          Q     What kind of vehicles did you see?

24          A     Sometime it would be a dump truck. It's  
25 been cars -- basically ca<sup>649</sup> and I've seen it's like

1 a farm truck or whatever. I've saw tractors went  
2 down there; and cars.

3 Q When you say dump truck, did you recognize  
4 the dump truck?

5 A No.

6 Q Did it look like anybody that lived down  
7 Resurrection Road driving that dump truck?

8 A Could have been. I would be speculating  
9 if I say it was. It could have been.

10 Q Do you remember just seeing anyone  
11 alongside when you're maintaining the road, any of  
12 the residents?

13 A Yes.

14 Q Do you remember seeing Mr. Heyward?

15 A I have seen Mr. Heyward in his yard. As I  
16 was grading the road I've seen him in his yard.  
17 Never had contacts with him.

18 Q Did he ever try to stop you from going  
19 down the roadway?

20 A No, sir, never.

21 Q Has anyone ever tried to stop you from  
22 going down the roadway?

23 A No, sir.

24 Q Sidi Limehouse, have you ever seen him  
25 maintain the road?

1           A     No, sir. Never seen him. Not actually  
2     seen him doing anything to it.

3           Q     Would it surprise you if he did do  
4     something to the road?

5           A     No.

6           Q     Have you seen him on a tractor that has a  
7     box blade?

8           A     I have seen him on a tractor but not  
9     maintaining the road. But I've seen him in the  
10    fields with the box blade.

11          Q     Is it uncommon for residents or citizens  
12    to help maintain roads?

13          A     No.

14          Q     If there is a tree branch that falls in a  
15    public road you notice citizens might pick them up  
16    and move them?

17          A     Yes, sir.

18          Q     Would you consider that maintenance?

19          A     Yes, sir.

20          Q     Can you think of any other examples in  
21    Charleston County where there is a public roadway  
22    where citizens often might go out and help maintain  
23    it?

24          A     Several times. One would be Leadenwah  
25    Road. A guy had box blade he takes care of that

1 road all the time. He'll call me directly and say,  
2 Ray, I took my blade out there and touch it up for  
3 you. That's not uncommon to see people do that. It  
4 happens all the time. Especially farmers who have  
5 access the a tractor or box blade.

6 Q You don't have a problem with them doing  
7 that on the public road?

8 A No, sir.

9 Q Are you -- you're still currently the  
10 supervisor over at Johns Island?

11 A Yes, sir.

12 Q So there is only a certain point of time  
13 or what time period were you not there?

14 A It was about six, seven years when I went  
15 to James Island.

16 Q Since 1984 when you became employed have  
17 you ever maintained a private road?

18 A No, sir.

19 Q Why wouldn't you?

20 A We cannot go on private roads. We have no  
21 access to go on a private road. We take the only  
22 community or county road and -- well, community  
23 slash public.

24 Q So you believe that Resurrection Road, the  
25 dirt pathway through there is a county road?

1 A No, it's not a county road.

2 Q Is it a public road?

3 A It's a public road.

4 Q When you say county road you mean it's not  
5 50-foot wide with ditches and swails and everything;  
6 correct?

7 A If it's a county road, yes, it would have  
8 that on there.

9 Q Is there a non-standard county road  
10 program?

11 A Yes, sir.

12 Q Does this qualify for this program?

13 A Yes, sir.

14 Q So it is a county road?

15 A Yes.

16 MR. MITCHELL: I have nothing else, Your  
17 Honor. Please answer any other questions.

18 THE COURT: Mr. Oberman.

19 MR. OBERMAN: Just a very few questions.

20 CROSS EXAMINATION BY MR. OBERMAN:

21 Q Your name is Mr. --

22 A Raymond Robinson.

23 Q Mr. Robinson, you testified that you blade  
24 level out the travel path?

25 A Yes.

1 Q That's correct?

2 A Yes, sir.

3 Q But if necessary you go further than the  
4 travel path to clear tree limbs or shrubbery grown  
5 over toward the road?

6 A Yes, sir. Up a foot or two off the edge  
7 of the road.

8 Q So where it shows travel path of 20 feet,  
9 20.8 feet or 20.7 feet, 21 feet, you go into what I  
10 refer to as the radish patch?

11 A Yes.

12 Q And clear shrubs and weeds and tree limbs  
13 from there?

14 A Yes, sir, on the side.

15 Q On both sides of the road?

16 A If needed.

17 Q As needed?

18 A Yes.

19 Q Has Mr. Heyward ever objected to you doing  
20 that?

21 A No, sir.

22 Q Has anyone ever objected to you doing  
23 that?

24 A No, sir.

25 Q So is it fair to 654.y that you have

1 maintained more than the travel path?

2 A A foot or two off the edge of the road.

3 Only if needed. If it's not, we not touch it.

4 Q If it's not needed?

5 A Yes, sir.

6 Q Now, are you familiar -- have you been  
7 made familiar with the 25-foot right-of-way that was  
8 dedicated to the public?

9 A I'm not too familiar with that.

10 Q Your maintenance has gone between these  
11 red lines; has it not?

12 A Yes.

13 Q And you've maintained within that --  
14 between the red lines at least up to line BC?

15 A Yes, sir, we have.

16 Q Has anyone objected to you maintaining  
17 within that area?

18 A No.

19 MR. OBERMAN: That's all the questions I  
20 have, Your Honor.

21 CROSS EXAMINATION BY MR. ROBINSON:

22 MR. ROBINSON: Your Honor, I will try to  
23 be brief.

24 THE COURT: Mr. Robinson, meet

25 Mr. Robinson.

1 (Laughter)

2 (Discussion off the record.)

3 Q Mr. Robinson, I didn't catch this, how old  
4 are you?

5 A I'm 50 right now.

6 Q You started work with the County in 1984?

7 A Yes, sir.

8 Q Sorry, not to be repetitive, just make  
9 sure I've got the facts right. Your current  
10 position with the county is?

11 A Public Works Maintenance Foreman.

12 Q For the area that you described in your  
13 previous testimony?

14 A Yes, sir.

15 Q In that position, in that job do you do  
16 any inputting into computers?

17 A Yes.

18 Q Are you a foreman who puts information  
19 into a system related to community roads?

20 A No, I don't do that. I only put in the  
21 work that my fellows do that day. Inputs are put in  
22 from Edmund(phonetic), that's our department that we  
23 have on Azalea.

24 Q Does the inputter -- is it Edmund?

25 A Edmund. We ca<sup>656</sup> it Edmund.

1 Q Does Edmund use information that you have  
2 relayed to him to put into the --

3 A The caller. The caller who calls about  
4 the complaint relays to Edmund what they would like  
5 and then she relays that, that person relays it to  
6 me.

7 MR. ROBINSON: One moment, with the  
8 Court's indulgence. I have to find an exhibit.

9 THE COURT: Okay.

10 Q Mr. Robinson, I'm only asking you what you  
11 know about anything, okay? But on this Exhibit  
12 Number 6, I represent to you it's been previously  
13 entered in their case.

14 A Get me my glasses.

15 Q Okay. Take your time.

16 A Go ahead.

17 Q First of all, Plaintiff's Exhibit 6, have  
18 you ever seen a document like this before?

19 A Yes, sir.

20 Q Is this a document that you've read or  
21 that you're familiarized with?

22 A Yes. Not in this format.

23 Q Maybe not this specific one?

24 A Yes.

25 Q But you've seen 657 computer printout or

1 computer screen that looks something like that?

2 A Yes.

3 Q I would represent to you that this  
4 document contains what appears to be a reference to  
5 Resurrection Road and a work order done on it.

6 A Yes.

7 Q Can you read what it says here in the far  
8 right-hand column?

9 A Cancel for Jim Neal at foreman's meeting  
10 on 4/28/2011. Community road work only on an  
11 on-call basis unit. Rois obtained(phonetic).

12 Q Do you know anything about that note?

13 A No.

14 Q That's all right. Only asking you what  
15 you know.

16 Were you present or do you think you  
17 could have been present at a meeting on 4/28/2011  
18 with Mr. Neal?

19 A Yes.

20 Q That would be a meeting that you were  
21 present at, presumably?

22 A Probably. Several meetings with.  
23 Probably was there.

24 Q I'll be careful not to talk over you. You  
25 say as much as you need t658

1                   So it's probably that you were at  
2   that meeting?

3           A     Yes.

4           Q     Can you recall Mr. Neal saying anything  
5   about the right-of-way on Resurrection Road?

6           A     I don't know. Perhaps to someone else but  
7   not directly to me.

8           Q     Do you have any personal observation or  
9   information and understanding, perhaps with your  
10   fellow workers, superiors or those who work under  
11   you that there is some kind of problem with the  
12   right-of-way on Resurrection Road?

13          A     No.

14          Q     I'm going to redirect you to what has  
15   previously been admitted as Plaintiff's Exhibit A --  
16   Defendant's Exhibit A. You previously identified  
17   another exhibit about the road and right-of-way. I  
18   would represent to you that the green road, as you  
19   will see there on the document, says edge of  
20   existing dirt road known as Resurrection Road. Do  
21   you see that?

22          A     Yes.

23          Q     See a green line on each side?

24          A     Yes.

25          Q     Do you see mark<sup>659</sup> in between?

1 A Yes.

2 Q Varying widths?

3 A Yes.

4 Q Based on your familiarity with  
5 Resurrection Road and your maintenance of it over a  
6 long period of time, is it -- would the green lines  
7 be a fair depiction, representation of your  
8 understanding of where the dirt path of the road is?  
9 Take your time.

10 MR. OBERMAN: Dirt road.

11 A Yes. I would say, yes.

12 Q So as you sit here today, having a minute  
13 to look at it, you wouldn't necessarily object with  
14 the information on there?

15 A No.

16 Q I want to ask you specifically about the  
17 red box on here that is delineated as ABCD and back  
18 to A?

19 A Yes.

20 Q We agree -- can we agree that's a  
21 rectangle?

22 A Yes.

23 Q I would represent to you that this is a  
24 document we've called in the case, or an area we've  
25 called the Resurrection Road <sup>660</sup> 25-foot right-of-way.

1 And you see that note right there on the plat?

2 A Yes. This would be the existing road from  
3 that.

4 Q That's right. Do you distinguish a  
5 difference between the two by looking at this?

6 A Yes.

7 Q Are there places where the dirt path does  
8 not converge with the box that you have just  
9 described?

10 A No.

11 Q Are there areas of the edges of the dirt  
12 path that are outside the box?

13 A Yes. It's outside the box right here.

14 Q That's what I was asking. Thank you for  
15 clarifying. So it's outside the box marked ABCD A;  
16 right? Now, there are places where, if you look at  
17 it further, would you agree that there are places  
18 where the dirt road converges into the 25-foot  
19 right-of-way?

20 A Yes, right here.

21 Q Again, just based on your experience and  
22 with the property, would you say that that's a fair  
23 representation?

24 A I would say, yes.

25 Q Now, looking specifically at the box you

1 have identified ABCD A can you tell me, other than  
2 those areas that are marked with the green  
3 boundaries of the dirt road, what areas the county  
4 maintains, works on, does anything with?

5 A Just existing areas where the county works  
6 on.

7 Q Nothing beyond that?

8 A Nothing.

9 Q Have you done anything in that area?

10 A On the existing area?

11 Q I'm sorry. Let me distinguish between the  
12 two. With the exception of where the dirt road  
13 converges, that red line that we just talked about,  
14 can you identify anything that the county does  
15 inside that red box?

16 A Right here, the red box, we maintain the  
17 road.

18 Q But it's only on the dirt path?

19 A Right. That's it.

20 Q So if the dirt road, dirt path is not in  
21 the box marked ABCD A, does the county do anything  
22 with it?

23 A No.

24 Q Okay. How often would you say you go and  
25 maintain the road?

1           A     About once a month or so we would go in  
2     there. Basically upon request. Because it's not a  
3     standard road, county standard road. We only  
4     maintain standard roads on a regular routine basis.  
5     Public roads is upon request.

6           Q     Walk me back through that. Public roads  
7     are only upon request?

8           A     Yes.

9           Q     Why is that?

10          A     Because we don't have access to doing it  
11     as a county road on a regular basis. Now, public  
12     road, upon request we go in there or if needed by  
13     the foreman, myself. If I go inspect that road and  
14     I think it needs grading, then I send my grader in  
15     and grade it. That's my call, being the foreman  
16     over there. Now, if it's upon request the caller  
17     who wants attention to the road call the Edmund  
18     base. They may direct it to me. If that never  
19     happens I take the initiative to grade the road once  
20     a month.

21          Q     Okay. I'm going to ask you to look back  
22     to Plaintiff's Exhibit 6. Take your time.

23          A     Okay.

24          Q     This is the work order we were talking  
25     about previously?

1           A     Yes.

2           Q     I would like -- you don't have to read it  
3     aloud or anything, but take a minute and look  
4     through the dates and the second column or first  
5     column on the left. Just read them to yourself and  
6     then I'm going to ask you a question. Tell me when  
7     you're done.

8           A     I'm done.

9           Q     Do you believe that the dates shown on  
10    that form are an accurate representation of when you  
11    believe you've done maintenance on the road?

12          A     Yes, sir.

13          Q     Now, you have been with the county since  
14    1984; right?

15          A     Yes, sir.

16          Q     Do you know from personal knowledge who  
17    maintained Resurrection Road before 1984?

18          A     The county did.

19          Q     Is that based on your personal  
20    observation?

21          A     Yes, and -- I would say yes, I know for  
22    sure the county did.

23          Q     How do you know that?

24          A     Because the foreman who hired me at the  
25    time, he was doing it bef<sup>664</sup> when I was a little guy

1 I used to see him. He was the grader operator and  
2 he did that road back then that was, like, in the  
3 '60's.

4 Q That's what he told you?

5 A Yes. I never actually seen it but that's  
6 what he told me.

7 Q That's what I was getting at. You didn't  
8 see what they were doing out there before 1984?

9 A No, but when I got there it's not likely  
10 that we would just start Resurrection Road back in  
11 '84 when I got there.

12 Q I understand. Do you have any experience  
13 in the road building or road construction business?

14 A No.

15 Q All right. Have you ever walked on the  
16 property or looked on the property marked in that  
17 box ABCD A with the exception of where the dirt road  
18 is?

19 A No, never walked on it.

20 Q How many times would you say you have  
21 personally been on the road, say on average per year  
22 in the time you've been ---

23 A About twelve times a year.

24 Q You haven't had interaction -- I thought I  
25 understood you to say you <sup>665</sup> hadn't had interaction

1 with any of the neighbors except Mr. Limehouse?

2 A Ms. Ravenel.

3 Q Ms. Ravenel at the front?

4 A Yes.

5 Q Anybody else?

6 A Nobody else.

7 Q You have many times, and clearly stated,  
8 that you consider Resurrection Road to be a public  
9 road; correct?

10 A Yes, sir.

11 Q That would be fair?

12 A Yes, sir.

13 Q What is your definition of a public road?

14 A A public road is a road that the public  
15 have access to, to come down. And public slash  
16 community is the same. The community owns the road,  
17 and when it's public anybody still could come down  
18 there. County road is totally different. It  
19 belongs to us.

20 Q Us being the county, obviously?

21 A Yes. Public, anybody is welcome to come  
22 down on it.

23 Q Okay.

24 A Do improvements or anything.

25 Q This is just your <sup>666</sup> definition, but to your

1 mind there's not really a distinction between a  
2 public road or a community road?

3 A It is a distinction. It is different.  
4 But it was appointed to us as being addressed the  
5 same; community, public. But I guess public also  
6 could be considered someone personally owning the  
7 road and the people that lives on it has to get  
8 access through him to come down there.

9 Q Now, you said that -- I think you just  
10 said something to the effect of it was your  
11 understanding or you had been told about this  
12 community road program. When, to your recollection,  
13 did you start making the distinction between a  
14 community road and a public road?

15 A It was never really something that we  
16 started. Ever since I started with the county  
17 that's always been. We developed a program  
18 recently. That started, I don't know, '10 or  
19 somewhat, distinguishing the difference. I hope  
20 that's clear.

21 Q It is. That's very help. So 2010 would  
22 be the timeframe where suddenly this distinction  
23 starts to be important?

24 A Well, no. The program of the standard to  
25 non-standard started arou667 in that time. Could

1 have been my dates could be little off. Somewhere  
2 in there, because that's when we started our  
3 computer system. What you just saw right there,  
4 public can have access to how many times we work on  
5 roads. That's basically when it all started.

6 Q Do you know if before that there was a  
7 data base or information that you could obtain to  
8 distinguish whether a road was a public or private  
9 road?

10 A Yes, but it was done manually.

11 Q Was it written on a card?

12 A It was written on a card.

13 Q The county kept that in its records?

14 A Yes.

15 Q Do those cards still exist?

16 A Perhaps some of them. I can't say for  
17 sure.

18 Q Not trying to put you personally in a  
19 tough spot.

20 A I love it. I love it.

21 (Laughter)

22 Q I'm not trying to beat you up. I will  
23 take you back to something you said to Mr. Mitchell.  
24 You said words to the effect of you did not  
25 personally know of the county maintaining a private

1 road; is that correct?

2 A Yes.

3 Q Do you know, from your experience on the  
4 job, talking to coworkers, superiors, subordinates,  
5 any instances of county workers working on a private  
6 road?

7 A No.

8 Q Okay.

9 MR. ROBINSON: One moment. Because I have  
10 to pull out another exhibit.

11 MR. OBERMAN: Excuse me, Your Honor. The  
12 doctor says I can't sit too long.

13 THE COURT: Okay.

14 (pause)

15 Q Mr. Robinson, ever heard of Possum Trail?

16 A Yes, sir.

17 Q Where is that road located?

18 A Off of County Line Road, I think it is.

19 Q Is that road within your district?

20 A It was.

21 Q So you have some familiarity with it?

22 A Little bit.

23 Q Did the county ever maintain that road?

24 A Yes, sir.

25 Q Do you know if the county presently

1 maintains that road?

2 A No, sir.

3 Q Why is that?

4 A I think it was -- I don't know the real  
5 details. They just sent me some notes on it that we  
6 no longer maintain it. I never got into details  
7 why.

8 Q Do you know the reason was -- the road  
9 went from being -- transitioned from being  
10 considered a public road to a private road by the  
11 county?

12 A I don't know if it's by the county, but  
13 those were some of the notes that was given to us.

14 Q So you did have some familiarity with that  
15 maybe being the reason?

16 A A little bit.

17 Q Now, how long had, from -- again, from  
18 your experience, from 1984?

19 A But not that area.

20 Q Okay. How long have you had familiarity  
21 with Possum Trail?

22 A About two years.

23 Q Did you have an understanding of how long  
24 the county has maintained that road?

25 A No, sir.

1 Q But now the county has stopped?

2 A Apparently; yes, sir.

3 Q You have seen some information that that  
4 may be because it has been declared a private road?

5 A Not that it was a private road, just that  
6 we just don't maintain it any more.

7 Q That would be an instance -- is there a  
8 manual, work book, any document that you have seen  
9 and read that defines a public road or a private  
10 road?

11 A I have seen some.

12 Q Do you know what that might be?

13 A No, I can't recall. But I had read upon  
14 it and I've seen it.

15 MR. ROBINSON: I found it at last, Your

16 Honor. Sorry. Mark this.

17 (Discussion off the record.)

18 Q Mr. Robinson, I'm going to show you  
19 Plaintiff's Exhibit 7. I'll ask you to read the  
20 middle paragraph on -- under this Council item 8 to  
21 yourself.

22 MR. MITCHELL: Your Honor, I object to  
23 this line of questioning. Mr. Robinson does  
24 not have any knowledge of this agenda to a  
25 County Council meeti671. He is a motor grader

1 operator, not in the higher echelons of County  
2 Council.

3 THE COURT: He can ask him and if he knows  
4 he knows. If he doesn't know, he doesn't know.

5 MR. MITCHELL: Fair enough.

6 (pause)

7 A Okay.

8 Q Thank you. Are you familiar with Feldman  
9 Road?

10 A Yes, sir.

11 Q Where is Feldman Road?

12 A Off Cain Slash Road on Johns Island.

13 Q You have some familiarity with that;

14 right?

15 A Yes, sir.

16 Q For how many years?

17 A We've been doing Feldman ever since I  
18 started here.

19 Q 1984?

20 A That's it.

21 Q What did the county do on Feldman Road  
22 during that time to maintain it?

23 A Just grade the road itself, mow the  
24 right-of-way, just like we had on Resurrection Road.

25 Q Do you have, aga.672 a personal opinion

1 based on your definition of public road as to  
2 whether, in your past experience, Feldman Road was a  
3 public road?

4 A I had no knowledge whether it was public  
5 or not at that time. Because at the time the term  
6 was community.

7 Q Well, help me here. Let's say it was a  
8 community road. To your mind does that mean that  
9 the public has the right to use it?

10 A Yes.

11 Q And that the county maintains it?

12 A Yes.

13 Q Would you agree that this return to agenda  
14 says that the following roads --

15 A (reading) Be private road and not to be  
16 included in the county maintenance system.

17 Q If those were community roads or public  
18 roads based on your definition, prior to that memo,  
19 how did they become private roads?

20 A Good question. I don't have the answer.

21 Q Mr. Neal testified a couple of days ago  
22 that there was a distinction between road signs in  
23 the county. And I would represent to you that he  
24 said that theoretically a blue sign means the road  
25 is private?

1 A That's true.

2 Q And that theoretically a green sign means  
3 a road is public?

4 A Yes.

5 Q Have you ever had an opportunity to  
6 observe, in your experience, a road being mislabeled  
7 by the color of it's sign?

8 A No.

9 Q When did the county start making -- start  
10 putting up blue signs to mark private roads?

11 A Now, that question I can't answer because  
12 we've got a sign shop that directly do that. I  
13 don't have the answer for that when they started  
14 that.

15 Q You don't know if it's in the time you've  
16 worked for the county?

17 A Perhaps it was. Evidently it is. I'm  
18 still there. So -- but I don't know for sure when  
19 they started that process.

20 Q Going back, can you remember a time when  
21 they were no blue signs?

22 A Yes, I can remember that.

23 Q When would you say the blue signs started  
24 showing up?

25 A Like I said, I <sup>674</sup> don't know when it was put

1 up because a sign shop do it. They don't give us  
2 information when they change the signs on it. I  
3 don't know.

4 Q All right. From your observation could  
5 you say it's been in the past five years?

6 A I would say in the past five to ten years,  
7 yes.

8 Q So relatively recent in terms of the total  
9 of your career with the county?

10 A Yes.

11 Q Have you ever seen or read memorandum  
12 about the distinction between a green or blue road  
13 sign?

14 A No.

15 Q Anybody ever handed you a memorandum or  
16 protocol or something telling you the difference  
17 between a green and blue --

18 A No, I had my supervisor to set us down and  
19 talk to us about it; why we were doing it.

20 Q That was information you received?

21 A Yes.

22 Q Because they told you. But you've never  
23 been pointed to rule or regulation in written form  
24 that makes that distinction?

25 A No.

1 Q I don't want to belabor this but if you  
2 would look again --

3 A Take your time.

4 Q -- at the document, back to return to  
5 agenda, and read right there where it says the  
6 following?

7 A The following roads desire to be included  
8 as public roads.

9 Q What's that list of roads?

10 A White Road, Amen Road, Kidmore Road, Young  
11 Hall Road, Lucas Lane I guess, Holly Creek Road,  
12 Givans Road and Taggerton Lane.

13 Q Any of those roads in the district you  
14 supervise?

15 A Yes.

16 Q You don't have to go through them one by  
17 one, but how many of them are there?

18 MR. OBERMAN: I'll object, Your Honor.

19 THE COURT: Where are we going with this?

20 MR. ROBINSON: The county's made an  
21 arbitrary distinction between public and  
22 private roads.

23 THE COURT: Go ahead.

24 Q Three of them you know. Since it's only  
25 three could he just ident6767 them real quick?

1 A Holly Creek, Amen Road and Givans.

2 Q Are any of those roads similar to  
3 Resurrection Road?

4 A Yes.

5 Q Are Possum Trail Road and Feldman Road,  
6 either of them similar to Resurrection Road?

7 A Yes, at the time yes.

8 MR. ROBINSON: That's all the questions I  
9 have. Thank you, Mr. Robinson.

10 A Yes, sir.

11 THE COURT: Mr. Williams.

12 MR. WILLIAMS: No, sir.

13 MR. MITCHELL: Your Honor, may I redirect?

14 THE COURT: Sure.

15 REDIRECT EXAMINATION BY MR. MITCHELL:

16 Q Mr. Robinson, currently and here in the  
17 past how are you all alerted to come out to a public  
18 road to maintain it?

19 A Right now?

20 Q Yes, sir.

21 A I get it through the computer system.  
22 They send us email. I check them daily and when it  
23 comes in I print it off, I go out and inspect the  
24 road and that's when I schedule to go out there and  
25 grade it.

1 Q Why are these emails generated? From  
2 customers calling from out there?

3 A Yes, customer calls it in to Azalea  
4 complex which is Edmund and they forward it out to  
5 me.

6 Q Can you tell me, from your knowledge, who  
7 lives on Resurrection Road? Let me stop for a  
8 minute. Earlier you testified that you didn't know  
9 anybody, had not spoken to anybody else that lives  
10 on Resurrection Road?

11 A Correct.

12 Q Do you know a Vernon?

13 A Yes.

14 Q And you do know he lives on Resurrection  
15 Road; correct?

16 A Yes, sir.

17 Q How do you know him?

18 A He's employed with me.

19 Q There is somebody else that you have  
20 spoken to that actually lives on the road?

21 A Yes.

22 Q Just want to make sure we're clear on  
23 that.

24 Back to the question. Can you tell  
25 me other people who live on 678 Resurrection Road?

1           A     Yes, sir. Mr. Limehouse, Vernon,  
2     Ms. Ravenel that I know of, Mr. Heyward, and that's  
3     all that I know of.

4           Q     To your knowledge do you know if Mr. Sidi  
5     or his wife called in any road complaints?

6           A     No.

7           Q     Do you know if Mr. Vernon's called in any  
8     road complaints?

9           A     Yes, Vernon has.

10          Q     He lives on that road?

11          A     Yes.

12          Q     What about Mrs. Ravenel?

13          A     Yes, she has.

14          Q     Mr. Heyward?

15          A     I can't recall if I ever got a request  
16     from Mr. Heyward.

17          Q     So 50% of the residents have called the  
18     county and relied on them to maintain the road;  
19     correct?

20          A     Yes.

21          Q     Want to go back to this document that  
22     Mr. Robinson was showing you. Turn to page three.  
23     It says department head recommendation. Could you  
24     read the paragraph below that?

25          A     Establish the (inaudible) of Possum Trail

1 Road and Feldman Road as private roads rescinding  
2 all previous public designation and remove them from  
3 Charleston County maintenance system.

4 Q I'll draw your attention to the second  
5 page. Can you read the paragraph right below the RE  
6 status of Possum Trail Road?

7 A As a regular meeting of the County Council  
8 held on August 21st of 2012, Council voted to  
9 establish the status of Possum Trail and Feldman  
10 Road as a private road rescinding all previous  
11 public designation and remove them from Charleston  
12 County maintenance system.

13 Q When you see anywhere in that paragraph  
14 does it mention the name Resurrection Road?

15 A No, sir.

16 Q Does it mention in there that they  
17 approved these to be public roads that I've just now  
18 pointed to on the second page?

19 A Yes.

20 Q Let's go back to where County Council --  
21 what did they vote on? Did they vote on those two  
22 roads to be private roads?

23 A No.

24 Q Read it again.

25 A Well, yes, they voted as Possum Trail and

1 Feldman to be private, yes.

2 Q But they didn't vote on whether these  
3 other roads that Mr. Robinson is pointing out to you  
4 that you said you had knowledge of to be public  
5 roads?

6 A No.

7 Q Why wouldn't they do that? Because  
8 they're public roads?

9 A Yes.

10 Q Let's talk about standards because it  
11 seemed like there might have been confusion on  
12 community roads and non-standard county roads. Do  
13 you know how many standards of county roads there  
14 are?

15 A No, I don't know all of them.

16 Q Why not?

17 A I could tell you in my area on Johns  
18 Island how much it is, but I really don't know  
19 exactly the number of standard roads that we have.  
20 That would be considered county roads up to the  
21 standards.

22 Q Not how many numbers but what type of  
23 standard county roads are there?

24 A The standard county roads, explain what it  
25 means?

1 Q Yes, sir.

2 A That's the --- from the center line to the  
3 road that's the road that has the established  
4 25-foot on each side with proper drainage and it's  
5 basically maintained and controlled by us, the  
6 county. But that's the 25-foot is the standard size  
7 for a county road. That has that.

8 Q You believe that's a public road; correct?

9 A Yes.

10 Q Now, is there another type of road that is  
11 not a standard county road?

12 A That's the type that do not have access of  
13 the 25 easement and that's when we consider that a  
14 private road -- I mean a public road.

15 Q Public road, would a community road fit  
16 into that?

17 A Yes, sir.

18 Q Do you consider a community road a public  
19 road?

20 A Yes, sir.

21 Q The new program to reconfirm that these  
22 are public roads the non-standard road county road  
23 program, do you believe a community road falls into  
24 that?

25 A Yes, sir.

1 Q Do you believe those are public roads?

2 A Yes, sir.

3 MR. MITCHELL: Nothing further, Your  
4 Honor.

5 THE COURT: Anything?

6 MR. ROBINSON: I have one brief --

7 MR. OBERMAN: And I have a question that  
8 would be off the record.

9 THE COURT: All right.

10 BY MR. ROBINSON:

11 Q Mr. Robinson, in the testimony you just  
12 gave Mr. Mitchell you said something to the effect  
13 of community roads are non-standard roads were roads  
14 for which you did not have a 25-foot right-of-way;  
15 correct?

16 A Yes.

17 Q On this document does it appear -- is  
18 there an area marked that is an existing 25-foot  
19 right-of-way?

20 A On the red marks? Yes.

21 Q So it exists on paper; right?

22 A Yes.

23 Q Just doesn't exist on the dirt?

24 A No. The main portion, no, it don't.

25 MR. ROBINSON: O1683, thank you. That's

1 all I have.

2 MR. OBERMAN: My question off the record.

3 (Discussion off the record.)

4 THE COURT: Back on the record. I have a  
5 couple of questions.

6 Mr. Robinson, you indicated you worked  
7 Resurrection Road from '84 to '94. You left  
8 Johns Island, came back in 2002.

9 A Yes, sir.

10 THE COURT: Were there any changes in that  
11 road from the time you left until the time you  
12 came back, that you recall?

13 A No, none that I can recall, no.

14 THE COURT: Do you recall ever working in  
15 that what Mr. Robinson has referred to as the  
16 red box, the dedicated 25-foot right-of-way, at  
17 any time?

18 A No.

19 THE COURT: Only the roadway that was  
20 there?

21 A The existing.

22 THE COURT: Whatever width that road is is  
23 what you worked and possibly another foot or  
24 two on either side of that to cut back bushes  
25 or whatever you do?

1. A Yes, sir.

2 THE COURT: The motor grader has two  
3 six-foot blades on it?

4 A Connected together underneath.

5 THE COURT: That's for purposes of pushing  
6 the dirt?

7 A Yes, and grading the road.

8 THE COURT: You've never used the entire  
9 12-foot of road grader?

10 A Got to work at an angle.

11 THE COURT: When you look -- it will be in  
12 green on that. That road, Betsy Kerrison  
13 Parkway is -- what's the width of that roadway,  
14 the one that you maintain?

15 A Betsy Kerrison. I can't see.

16 THE COURT: Is it 24 feet? That's my  
17 question.

18 A Yes.

19 THE COURT: Then the road narrows as you  
20 come in?

21 A Yes, as it turns in it gets narrow as it  
22 gets to the end.

23 THE COURT: So you have the entrance way  
24 into the Berkeley Electric Coop and it's about,  
25 what, 21 feet there? 685

1           A     Yes -- no, it's about 16--something as you  
2 turn in. 25 feet at the head; 21.5.

3           THE COURT: Then 16, then there on back it  
4 gets narrower and narrower?

5           A     Yes, sir.

6           THE COURT: Where along that roadway is  
7 that cross line pipe you talked about?

8           A     The cross line pipe would be right up in  
9 here.

10          THE COURT: Tell me where here is..

11          A     It's somewhere up in here. There is  
12 another cross line pipe. It's up in here somewhere.

13          THE COURT: Is it near the BC?

14          A     I'll say E.

15          THE COURT: Close to E?

16          A     Yes.

17          THE COURT: All right. Let me locate E  
18 for a second. That would be at the back of Mr.  
19 Heyward's house lot?

20          A     Yes, sir.

21          THE COURT: Okay. And was that pipe  
22 installed by the county, to your knowledge, or  
23 was it there before you started?

24          A     It was there. We didn't install it.

25          THE COURT: You'd not install it. All

1 right. I think that's all the questions.

2 MR. OBERMAN: I have one clarifying  
3 question.

4 THE COURT: You may.

5 BY MR. OBERMAN:

6 Q You asked if Mr. Robinson had worked  
7 within the rectangular ABCD A, and I refer him to  
8 point H down to line BC. Did you, in fact, work  
9 within that area?

10 A Yes.

11 Q So you worked within the existing road?

12 A Yes.

13 Q That was in the 25-foot dedicated  
14 right-of-way?

15 A Yes.

16 Q You have to say yes?

17 A Yes, yes.

18 MR. OBERMAN: Just wanted to clarify that,  
19 Your Honor.

20 THE COURT: Just to go further with that,  
21 at about what point in time does the roadway  
22 get about half way onto the right-of-way,  
23 25-foot right-of-way? Is that around point E  
24 or is that further down?

25 A That's further <sup>687</sup>wn. That's further down.

1 THE COURT: Before B and C?

2 A Yes, sir.

3 THE COURT: You see a point F on there  
4 where Mr. Johnson's property stops and Berkeley  
5 Electric Coop ends?

6 A Yes.

7 THE COURT: Is that about where it's half  
8 way on and half way off?

9 A Roughly about that point.

10 THE COURT: Very good. All right.

11 MR. MITCHELL: Your Honor may I?

12 BY MR. MITCHELL:

13 Q Mr. Robinson, you said there were two  
14 cross line pipes?

15 A Yes, sir.

16 Q The one you just told Your Honor was by  
17 Mr. Heyward's property?

18 A Yes, sir.

19 Q That's not where you stopped maintenance;  
20 correct?

21 A No, sir.

22 Q Where was the second cross line pipe?

23 A On the corner where Mr. Sidi Limehouse's  
24 is.

25 Q That's where you stopped maintenance?

1 A Yes, sir.

2 THE COURT: Yes. You go all the way down  
3 then Mr. Limehouse's?

4 A Yes, sir.

5 THE COURT: Okay.

6 MR. MITCHELL: Nothing further, Your  
7 Honor.

8 THE COURT: While I got you there let me  
9 ask this question. On the Smith property,  
10 which I think is -- who is the county employee?

11 A Vernon.

12 THE COURT: Is he a Smith?

13 A Yes, sir.

14 THE COURT: The Smith property, there is a  
15 30-foot right-of-way referenced, I think it's  
16 on that plat. If not it's on another one.

17 Show him that. That's Plaintiff's  
18 Exhibit 1A. You see where Mr. Smith lives?

19 A Yes, sir.

20 THE COURT: You see a 30-foot easement  
21 right-of-way there?

22 A Yes, I see it now; yes, sir.

23 THE COURT: Any maintenance in that area?

24 A No, sir.

25 THE COURT: Never?

1 A No.

2 THE COURT: Mr. Smith ever talk to you  
3 about that section of roadway?

4 A No, sir.

5 THE COURT: All right. Very good. That's  
6 all the questions I've got. Thank you. All  
7 right.

8 Mr. Robinson, I think we beat up on you  
9 hard enough. Even Mr. Robinson. All right. I  
10 think we're at a good stopping point for lunch.

11 (Discussion off the record.)

12 THE COURT: Can Mr. Robinson be excused to  
13 go back to work?

14 MR. ROBINSON: No objection.

15 (Discussion off the record.)

16 MR. MITCHELL: Your Honor, we would call

17 Paul Porter.

18 (Paul Porter, 5653 Heywood Smalls Road, Hollywood, S.C.  
19 29449, duly sworn, testifies as follows:)

20 DIRECT EXAMINATION BY MR. MITCHELL:

21 Q Mr. Porter, can you tell us where you're  
22 currently employed?

23 A Charleston County Public Works.

24 Q What is your current position with

25 Charleston County?

1           A    Heavy equipment operator.

2           Q    What is a heavy equipment operator?

3           A    Run the motor grader, side-arm and

4 backhoe.

5           Q    So you do just more than motor grading?

6           A    Right.

7           Q    How long have you been with the county?

8           A    Twenty-four years.

9           Q    Are you currently on Johns Island?

10          A    Johns Island, yes.

11          Q    Is your supervisor in this room?

12          A    Yes, sir. Robinson.

13          Q    So you operate in the same area as

14 Mr. Robinson?

15          A    Yes, sir.

16          Q    So you are familiar with Resurrection

17 Road?

18          A    Yes, sir.

19          Q    How long have you been on Johns Island?

20          A    About twelve years.

21          Q    When did you start?

22          A    I think about 2005.

23          Q    You said twelve years. 2005?

24          A    That's when I started, yes. James Island.

25 Johns Island.                           691

1 Q On Johns Island? Before Johns where were  
2 you at?

3 A James Island.

4 Q What are some of your duties on Johns  
5 Island?

6 A Now?

7 Q Yes, sir.

8 A Most run motor grader.

9 Q You do down Resurrection Road?

10 A Yes, sir.

11 Q How often do you run that motor --

12 A About once a month.

13 Q Have you operated any other equipment up  
14 and down Resurrection Road?

15 A The side-arm.

16 Q When you are operating that side-arm do  
17 you go strictly where the dirt line is?

18 A For me, well, whatever the reaching over  
19 the road wouldn't damage the motor grader, so I cut  
20 from the side and keep on down.

21 Q Is it fair to say if you looked at the  
22 dirt might have been a foot or two?

23 A Probably about a foot.

24 Q Now, when you're operating equipment or  
25 working on Resurrection Road did you see other

1 vehicles going up and down Resurrection Road?

2 A Sometime I get pull to the side, let them  
3 through.

4 Q When you pull to the side, why did you  
5 have to pull to the side?

6 A He can't get through unless I pull to the  
7 side.

8 Q What kind of vehicles were they?

9 A Sometimes car, tractor, pick-up.

10 Q Did you ever have a chance to speak with  
11 any of the residents on Resurrection Road except for  
12 Vernon?

13 A Vern, yes. (Nods negatively.)

14 Q Has anybody ever tried to stop you from  
15 coming down Resurrection Road?

16 A Never had a problem going over there.

17 Q Ever had a chance to see Mr. Heyward?

18 A Never seen him in my life.

19 Q You're still currently maintaining the  
20 road on Resurrection Road?

21 A Yes, sir.

22 Q I want to grab an exhibit for you. This  
23 is Plaintiff's Exhibit 1A. Now, if you take a look  
24 at this you can see this area right here? Does that  
25 look like Resurrection Rc693 that you maintain?

- 1           A     Okay, where is -- where is Betsy Kerrison?
- 2           Q     Betsy Kerrison is over there.
- 3           A     Betsy Kerrison.
- 4           THE COURT:   On the left-hand side.
- 5           Q     Right here?
- 6           A     So we coming down.
- 7           Q     Yes, sir.
- 8           A     Yes, sir.
- 9           Q     How far do you go down Resurrection Road?
- 10          A     I go as far as where the cross line might  
11    come in at, before you get to -- what's the guy  
12    there? Sidi.
- 13          Q     Now does Sidi live down here?
- 14          A     This is Betsy Kerrison we coming through,  
15    right? Betsy Kerrison this way?
- 16          THE COURT:   Yes, sir.
- 17          A     We coming -- we turning right here, right?
- 18          Q     Yes, sir.
- 19          THE COURT:   Past Mr. Heyward's house.
- 20          Q     There is Mr. Heyward's house and here's  
21    the Smiths house?
- 22          A     Okay.
- 23          Q     Here's where you believe that's where Sidi  
24    lives?
- 25          A     Yes.

1 Q Where do you usually stop the motor  
2 grader?

3 A Right over where the pipe at. Right here.  
4 Between here. Smith.

5 Q Can you identify that point? Do you see a  
6 circle with a letter in the middle of it?

7 A Look like is that E?

8 Q Would you believe me if I said K?

9 A K.

10 Q You sure it's not further down?

11 A This is Limehouse right here. This is the  
12 little -- where little curve come in at. This  
13 where, yes, this is where the cross line pipe is.

14 Q That's where you stopped your maintenance?

15 A That's where I stop my maintenance at.

16 Q Did you ever vary outside that dirt path  
17 other than mowing?

18 THE COURT: Just for the record, that's at  
19 that last curve in the road?

20 MR. MITCHELL: Yes, Your Honor.

21 Q Do you turn around there, Mr. Porter?

22 A No, he got field there, right before you  
23 get that pipe. I usually back there or pull in  
24 there then back into the road and come on out.

25 THE COURT: That's you.

1 Q Now, there is not a turn around there?

2 A He have a field there. Field. I usually  
3 turn around in that field.

4 Q Are there other roads that you might not  
5 be able to turn around?

6 A That's only way you can turn around in.

7 Q Could you back up down the road?

8 A I could.

9 Q So if there was walls alongside that road  
10 that doesn't mean you can't get out of there?

11 A I can back it all the way out.

12 Q Now, do you know Mr. Sidi or  
13 Mr. Limehouse?

14 A No, but I see him. I don't know him.

15 Q Have you ever seen him maintain the road?

16 A Nope.

17 Q Ask you couple more questions.

18 A Yes, sir.

19 Q It's going to be off this exhibit right  
20 here which is Defendant's Exhibit A. On the  
21 left-hand side is Betsy Kerrison Parkway. Here's  
22 the north arrow. You see a box labeled on the  
23 corner ABCD?

24 A Right.

25 Q In the north of <sup>696</sup>at there is this path

1 way?

2 A This is the road.

3 Q Does that look like an accurate depiction  
4 of what you grade, mow?

5 A Yes, sir.

6 Q Now any times in this front part of this  
7 box, red box, any time you've ever done any  
8 maintenance inside there?

9 A No. This is the road gets smaller at.

10 Q Later on inside where this box is, the  
11 road does go inside that box; correct?

12 A I couldn't tell you.

13 Q Okay.

14 Have you ever been blocked from going  
15 down Resurrection Road?

16 A No, sir.

17 Q Have you ever graded or worked on a  
18 private road?

19 A What you mean by private?

20 Q That's not a public road?

21 A No, sir.

22 MR. MITCHELL: That's all I have, Your  
23 Honor.

24 THE COURT: All right, Mr. Mitchell. Very  
25 good. Mr. Robinson? 697/r. Oberman?

1 CROSS EXAMINATION BY MR. OBERMAN:

2 Q Who pays your salary, sir?

3 A Charleston County.

4 Q They paid your salary since you started?

5 A Yes, sir.

6 Q And at the end of every week or every  
7 month they pay you a salary for doing this work on  
8 Resurrection Road?

9 A On all the road.

10 Q Yes, sir.

11 MR. OBERMAN: That's all the questions I  
12 have.

13 BY MR. ROBINSON:

14 Q I have just a few, Mr. Porter.

15 A Yes, sir.

16 Q Thank you for being patient with us today.

17 A Yes, sir.

18 Q You were describing using the side-arm  
19 mower on the road?

20 A Both of them and the grader.

21 Q Talking about the side-arm mower, you gave  
22 an answer but I just want to clarify on that. Is  
23 your object with that to remove plants or trees or  
24 anything on the side of the road?

25 A Not plants. G1698s.

1 Q Just grass?

2 A Right. Whatever is there.

3 Q So it's not to cut limbs or anything like  
4 that?

5 A All depend what blocking my motor grader.

6 Q So you just clear enough to get that motor  
7 grader through?

8 A So wouldn't damage my motor grader. Make  
9 sure it's a decent job.

10 Q You were here when Mr. Robinson was on the  
11 stand; right?

12 A Yes, sir.

13 Q Would you agree with his statement  
14 regarding the need to pull in the blades on the  
15 motor grader -- I'm sorry, on the mower to be able  
16 to pass down the length of the road?

17 A Yes.

18 Q Would you agree that if you extended those  
19 blades all the way out it would be twelve feet wide?

20 A Yes. When I grade I would have to turn  
21 it.

22 Q Yes, sir. Because otherwise the blade  
23 would be too wide?

24 A Yes.

25 Q Okay.

1                    Now, Mr. Mitchell asked you if you  
2 had ever graded for the county on any private roads  
3 and you said no. Do you know if it's true that that  
4 would be a violation of the law if you did?

5            A        Well, I don't supposed to do it on a  
6 private road.

7            Q        You don't support doing it on a private  
8 road. That's a fair answer.

9                    Have you received instruction from  
10 your coworkers or superiors that you are not to do  
11 work on private roads?

12           A        Yes, sir.

13           Q        That's been made clear to you?

14           A        Yes, sir.

15           Q        Without -- I'm not saying you're doing  
16 this. I'm not accusing of doing this. Don't take  
17 it that way. Do you know, from your experience with  
18 the county, of men ever doing work on a private  
19 road?

20           A        Nope.

21           Q        Okay.

22           A        No, sir.

23           Q        Okay. What kind of road would you say  
24 Resurrection Road is?

25           A        How you mean?

1 Q Use your definition. Is it a public road?

2 A Well, I grade it.

3 Q Do you think it's a private road?

4 A No, it's not a private road because we  
5 wouldn't have been in there.

6 Q Are you familiar with the term community  
7 road?

8 A No, sir.

9 Q Okay.

10 (pause)

11 Q Just a couple of questions about your  
12 observation being on the road. Would you agree with  
13 my statement that Resurrection Road kind of winds  
14 through the area?

15 A Not really.

16 Q How would you describe its path?

17 A To me it's like a straight road and later  
18 on when you get almost to the back it's a little, go  
19 in that little angle.

20 Q Would you agree that it is not even in  
21 width from one end to the other?

22 A (Nods negatively.) I don't know.

23 Q All right. That's fine. Thank you very  
24 much, Mr. Porter.

25 MR. MITCHELL: Nothing else, Your Honor.

1 MR. OBERMAN: Nothing, Your Honor.

2 MR. WILLIAMS: No questions, Your Honor.

3 THE COURT: Mr. Porter, in that red boxed  
4 area where you say you had not been, is there a  
5 reason why you hadn't worked in that area?

6 Show him. Show him the photograph of the road.

7 MR. ROBINSON: ABCD. See there is a green  
8 road? That's the dirt road.

9 A No, we don't suppose to.

10 THE COURT: Let me show him that. You  
11 see -- I think that shows the -- I think that  
12 shows the red box with black lines around it.  
13 Which exhibit we referring to?

14 MR. ROBINSON: B, Your Honor, Defendant's  
15 B.

16 THE COURT: All right. I think that shows  
17 the box and then it shows the roadway; do you  
18 see that? There is no box on that.

19 MR. MITCHELL: No box.

20 THE COURT: Let me take look at it.  
21 Actually, it is on there. It's hard to say.  
22 In a light color. Yes. Okay. Let me hand it  
23 back to him. I'll see if I can do this from a  
24 distance. That's the only one we've got.

25 Mr. Porter, on 702ere, on that Defendant's

1 B there is some faint like almost yellowish  
2 looking lines on there?

3 A Right here.

4 THE COURT: Yes, sir. You see the one  
5 that's on the south side, that's close to you?

6 MR. MITCHELL: If I may? You see the  
7 roadway? Then right below is this box? This  
8 box with those lines?

9 THE COURT: Let's start here. With Betsy  
10 Kerrison, you see the lot that's number 19;  
11 019.

12 A Yes, that's Ms. Ravenel.

13 THE COURT: Then you see just below that  
14 you see a line and then another line.

15 A Right.

16 THE COURT: Then you see another line.

17 A Right.

18 THE COURT: Then you see an open way that  
19 leads back to 022, that's Berkeley Electric  
20 Coop.

21 A Right.

22 THE COURT: So actually two boxes on that  
23 thing.

24 A Right.

25 THE COURT: Now the roadway looks to be

1 on the top box. Talking of those two little  
2 lines, the roadway is on the top. That's where  
3 you-all work?

4 A Right.

5 THE COURT: Tell me what's in that lower  
6 box. What's in there? First of all, have you  
7 ever worked in that lower box?

8 A No.

9 THE COURT: Tell me why not.

10 A Well, in that lower box there is a wooded  
11 area.

12 THE COURT: Trees.

13 A Yup.

14 THE COURT: Shrubs.

15 A Trees in that area.

16 THE COURT: All right. There is some big  
17 trees there, too?

18 A Yes, sir.

19 THE COURT: All right. Looks like it  
20 opens up so Berkeley Coop can get in there,  
21 then gets treed again.

22 A Treed again, yes; yes, sir.

23 THE COURT: You go on down, you get to  
24 Mr. Johnson's property which is 014. Can you  
25 make that one out? 704

1 A Yes, sir, right there.

2 THE COURT: You've got trees on the front  
3 of his property, too?

4 A Yes, sir.

5 THE COURT: All along that road the  
6 roadway is passable that is there, but the  
7 roadway is not in that box until it gets  
8 further down the road; is that right?

9 A Yes, sir.

10 THE COURT: All right. Then as you go on  
11 down past where Johnson is you see there is a  
12 box that continues and you see the line that  
13 says Resurrection Road?

14 A Yes, sir.

15 THE COURT: The road is above that box; is  
16 it not?

17 A Yes, Resurrection Road, there is another  
18 road right there. Where the box at, yes, sir.

19 THE COURT: So right about there where the  
20 curve is, and I see there is a house, that's  
21 where you take your motor grader?

22 A I stop right there.

23 THE COURT: Right at that house?

24 A Right at that house.

25 THE COURT: And turn right around?

1           A     I turn, yes, sir.

2           THE COURT: I think that's the Smith  
3           property if I'm not mistaken.

4           A     Right.

5           THE COURT: All right. Very good. That's  
6           all the questions I've got.

7           MR. OBERMAN: Just want to clarify.

8           THE COURT: Sure, sure.

9           BY MR. OBERMAN:

10          Q     You see that the road bed runs into the  
11          box further down by Mr. Johnson's property, don't  
12          you?

13          A     When I grade I never see another road when  
14          I grade it. Only thing I see just that.

15          Q     Right. But let me show you Defendant's  
16          Exhibit A and ask you to see the roadway between the  
17          green lines?

18          A     Yes.

19          Q     And then as you get up further towards  
20          this point H -- you see point H, sir?

21          A     Yes, sir.

22          Q     You see the green lines coming into the  
23          red rectangle?

24          A     Yes, sir.

25          Q     And you grade within that red?

1           A     I grade but then on the other side I grade  
2     where the road is at.

3           Q     Right. But do you grade inside here?

4           A     No.

5           Q     Even down here you don't grade?

6           A     No.

7           Q     All right.

8           MR. OBERMAN: That's all the questions I  
9     have, Your Honor.

10          MR. MITCHELL: May I clarify?

11          THE COURT: You can try.

12     BY MR. MITCHELL:

13          Q     Mr. Porter, I'm going to direct you to --  
14     this is Mr. Heyward's property. And this is  
15     property down here is the Berkeley Electric?

16          A     Okay.

17          Q     Next to that is Ms. Johnson.

18          A     So this is I stop right here.

19          Q     Would you like to --- do you stop here or  
20     go all the way out to Sidi's?

21          A     No, I don't go to Sidi. See, that's where  
22     the cross line pipe is right next door to  
23     Ms. Johnson.

24          Q     There is two cross line pipes?

25          A     One in the middle, one on the end.

1 Q You go to the second cross line pipe?

2 A Second cross line pipe. That's before you  
3 get Mr. Limehouse.

4 Q Yes, sir.

5 MR. MITCHELL: Thank you, Your Honor.

6 THE COURT: Anything further?

7 MR. ROBINSON: One brief follow-up based  
8 on a question you asked.

9 BY MR. ROBINSON:

10 Q Mr. Porter, in your experience being out  
11 on Resurrection Road you describe there were trees  
12 on one side of the road; right?

13 A Right side going in.

14 Q And how close do the trunks of those trees  
15 come up to the road?

16 A It's not that close to the road. Because  
17 you've got a little swail there. The trees is here.  
18 You've got the swail right here, so it's not that  
19 close to the road.

20 Q Is there any place you have to adjust your  
21 motor grader or other equipment to get around any  
22 trees that are up close to the road?

23 A No.

24 MR. ROBINSON: That's all I have, Your

25 Honor. Thank you. 708

1 THE COURT: Very good. Nothing further?

2 Mr. Porter, thank you, sir. Thank you for your  
3 time.

4 A Thank you very much.

5 THE COURT: Can he be excused as well?

6 MR. ROBINSON: No objection.

7 THE COURT: You're free to go back to  
8 work, pick up your pay check if you've got one.

9 A Thank you very much.

10 THE COURT: Mr. Mitchell, anything further  
11 from the county?

12 MR. MITCHELL: No, Your Honor.

13 THE COURT: All right. County's case is  
14 up. Let me just ask this question. You're  
15 going to put Mr. Heyward back up?

16 MR. ROBINSON: I do, Your Honor and I have  
17 tried to be careful to bifurcate stuff  
18 regarding the claims and defenses regarding  
19 civil conspiracy, either any developments after  
20 2010 or Mr. Heyward testifying as to the nature  
21 and scope of the easement in his view. But it  
22 is my intention to limit it to that, and he is  
23 my only witness. Other than the whole  
24 cumulative testimony of the trial.

25 THE COURT: All right. I'm with you. All

1 right. You ready to proceed?

2 MR. OBERMAN: Yes, sir.

3 THE COURT: All right. Call Mr. Heyward  
4 back.

5 (Mason C. Heyward, previously sworn,  
6 testifies as follows:)

7 DIRECT EXAMINATION BY MR. ROBINSON:

8 Q Mr. Heyward, when did you build the house  
9 that you currently live in?

10 A Build it in 1996 when I got my permit.

11 Q Who did you get a permit from?

12 A Charleston County Planning Board.

13 Q What did you have to do in order to get  
14 that permit?

15 A Boy. I went down there. First, went down  
16 there to get the permit, and they tell me, say, you  
17 can't get a permit to build on this property, not  
18 unless you have it -- my understanding is I couldn't  
19 get the permit, because first time I went down there  
20 wouldn't give it to me. I had to get Seabrook land  
21 surveyor to have the property survey off, then show  
22 plats going to be at, and that's what I did.

23 My argument was that at that time I  
24 could remember, in order for me to get my permit  
25 from Seabrook he said we 710 a little problem. Said

1 County want you to give up a 50-foot right-of-way,  
2 and I said 50-foot right-of-way? He said, yes,  
3 because got some potential property owner in the  
4 back that might want to develop the property later  
5 on. I said why should I have to give up a 50-foot  
6 right-of-way, and people came behind me and build.  
7 All had is ingress and egress. He said he don't  
8 know, but he got to look into it. This what I have  
9 to do. He telling me have to go to County meeting  
10 and then explain myself to them or whatnot and argue  
11 the point, whatnot. I went to the County and had a  
12 meeting there. I did argue the point. I talked to  
13 Ms. Kerrison. Ms. Kerrison said, well, you don't  
14 have to give up no 50-foot right-of-way.

15 MR. OBERMAN: I'll object to what

16 Ms. Kerrison had to say.

17 A Say like it is. You can take it for  
18 truth.

19 THE COURT: Just tell me what happened.  
20 You don't have to tell me what Ms. Kerrison  
21 said. She ain't here.

22 A Well, anyway, I should just give up a  
23 25-foot right-of-way and make sure you do it on the  
24 other side. You should be able to get your permit.  
25 That's what I did.

1 Q Okay. Mr. Oberman asked you the other day  
2 if you remembered signing an easement agreement with  
3 Ms. Kerrison. Do you remember that?

4 A Yes. At the time I didn't, but I remember  
5 vaguely later on. She asked me for easement.

6 MR. OBERMAN: Your Honor, I'll object to  
7 the hearsay. Ms. Kerrison is no longer with us  
8 even.

9 Q Mason, you can't say what Ms. Kerrison  
10 said.

11 A I said she -- I mean -- I can explain it  
12 best I could. I explain it, truth what I'm saying.

13 THE COURT: Mr. Heyward let me stop you.  
14 Let me help you do this process. You don't  
15 need to tell me what she said. But I  
16 understand you-all had a conversation and based  
17 on that conversation you tell me what you did.  
18 Okay? Not what she told you to do. Just tell  
19 me what you did.

20 A Okay.

21 THE COURT: All right?

22 A Question again then?

23 Q Do you remember signing a document for  
24 Ms. or Mr. Kerrison in 1998?

25 A Yes.

1 Q Could you look at what has previously been  
2 marked as Plaintiff's Exhibit 11 and tell me if that  
3 is the document? Take your time. Flip through it.  
4 (pause)

5 A Yes.

6 Q Does that look like the same document?

7 A Yes.

8 Q Now, you heard the testimony of the  
9 gentleman from the county who said this is a public  
10 road; right?

11 A Right.

12 Q Why did you give an easement agreement to  
13 Ms. Kerrison in 1998 if they're right about  
14 Resurrection Road being a public road?

15 A Well, I give an easement because the  
16 person who I give the easement to know it wasn't a  
17 public road. All they want to do is make sure he  
18 have it on the other end, right to get in and out.  
19 That person was working on the County Council board  
20 so should know. That's to my knowledge.

21 Q Now, in all the times that you have been  
22 living on the property -- let me ask you this. You  
23 were living on this property before your house  
24 burned in 1996; right?

25 A Yes, sir.

1 Q As we sit here now or at any time in the  
2 past have you every objected to landowners on  
3 Resurrection Road using the dirt road to get to and  
4 from their houses?

5 A Never did. Never object to anyone to come  
6 in and out Resurrection Road.

7 Q Do you have a driveway?

8 A Yes.

9 Q What kind of driveway do you have?

10 A Well, driveway going up to my house is  
11 paved.

12 Q Let's look at Defendant's Exhibit A. I  
13 would represent to you, you see that word right  
14 there. What's that say?

15 A The number?

16 Q The word.

17 A Garage.

18 Q Looking at that and seeing where it says  
19 Mason C. Heyward, does that look like your lot?

20 A Yes.

21 Q You just looking at this, not being a  
22 professional, does that look like a representation  
23 of where your garage is?

24 A Yes.

25 Q Is your garage attached to your house?

1 A Yes.

2 Q It's part of the house?

3 A Part of the house.

4 Q Now, what are the foot markers there for  
5 the distance between the garage and the house? I  
6 mean -- I'm sorry, between the garage and the road?

7 A About sixty feet.

8 Q You said you have a paved driveway?

9 A Yes.

10 Q Does the driveway come all the way down to  
11 the dirt road?

12 A No. The pavement don't come all the way  
13 to the dirt road. About ten foot off.

14 Q Now, on the north side, if you see this  
15 arrow, that's oriented north? This is the north  
16 side of the road. This is your lot. Are all the  
17 trees that are on your lot shown on Defendant's  
18 Exhibit A?

19 A All the trees shown?

20 Q Yes, sir, on your lot.

21 A Yes.

22 Q Okay.

23 A Trees here?

24 Q Well --

25 MR. OBERMAN: <sup>715</sup>Y Honor, I'll object.

1 Not only to leading but to the education of the  
2 witness.

3 A All the trees is --

4 THE COURT: Sustained. Go ahead.

5 A Yes, I see on this side over here most of  
6 the trees is on the right-of-way. Few trees on my  
7 side of it. But most of the trees is on  
8 right-of-way itself.

9 Q Is that the 25-foot right-of-way?

10 A Yes, sir.

11 Q Now, what about coming to the other side  
12 of the road, the side that your house is on? Does  
13 this plat show all the trees around your driveway or  
14 garage?

15 MR. OBERMAN: That's been asked and  
16 answered twice now, Your Honor.

17 THE COURT: Go ahead. Overruled. Go  
18 ahead.

19 A Again, the plat does show the trees is in  
20 the right-of-way.

21 Q All right.

22 This is Plaintiff's Exhibit 2A. Do  
23 you recognize that?

24 A Yes.

25 Q What is that? 716

1           A     This is a plat showing the whole drawing  
2 of Resurrection Road to my house and everything.

3           Q     Is that the plat you had Mr. Seabrook do  
4 in 1996?

5           A     It look like it.

6           Q     Has anyone ever -- do you know what the  
7 register of deeds is?

8           A     If I know where it's at?

9           Q     Do you know what it is?

10          A     Well, register deeds is what you have  
11 recorded and plat recorded.

12          Q     Was it your understanding that this was  
13 recorded?

14          A     Yes.

15          Q     Has anyone ever shown you any other  
16 recorded document that shows you giving that 25-foot  
17 right-of-way to the county?

18          A     Yes, it's 25-foot right-of-way to the  
19 county, yes. It's listed right there. Point 0  
20 where it's at.

21          Q     It shows on here where it's at?

22          A     Yes.

23          Q     Is there any other recorded document that  
24 you know of where you gave the right-of-way to the  
25 county?

1 A Not any more than I know of. Just that.

2 Q Do you know of any document where the  
3 county accepted the 25-foot right-of-way?

4 A I don't know where the county accept it or  
5 not. I know they tell me this is what I had to do  
6 and I would do anything if I didn't have to and  
7 that's just to get my house, to permit to build my  
8 house, that's all.

9 Q Did you hear Mr. Johnson's testimony  
10 earlier today about his plans to build a  
11 subdivision?

12 A Yes, I heard him.

13 Q From your observation, meaning what you've  
14 seen, what kind of vehicles drive up and down  
15 Resurrection Road?

16 A Not a whole lot of vehicles. Way I look  
17 at this subdivision proposal here, and that's only  
18 for Mr. Johnson, one, two, three, four -- twelve, I  
19 think. It would be a lot, and along with Mr. -- the  
20 other doctor other side would be triple. And you  
21 know --

22 Q How many people, again based on your  
23 observation, would you say live on the road right  
24 now?

25 A Clemmie (phonetic) 718 one, Jimmy, two -- about

1 four, five?

2 Q Four or five people live on the road full  
3 time?

4 A Yes. That would be counting me, five.

5 Q Do you believe that subdivision would  
6 increase traffic on the road?

7 MR. OBERMAN: Your Honor, again I object  
8 to the leading nature of the questions.

9 THE COURT: All right. Rephrase your  
10 question.

11 Q If a subdivision was put in, in your  
12 opinion would it change the use of the road?

13 MR. OBERMAN: I object to that, too, Your  
14 Honor. I mean, Mr. Robinson is testifying --

15 MR. ROBINSON: I asked his opinion. It  
16 doesn't imply an answer.

17 THE COURT: Overruled. That's okay.

18 A My opinion where the twelve subdivision  
19 houses in there, and not even speaking of the  
20 doctor, it would really be tremendous traveling  
21 through there. Not only the people who have the  
22 houses built but five lane and et cetera. Be a  
23 different ballgame all together. Be honest with you  
24 and straight forward. Some places you can get the  
25 situation where you're locked, but they ain't

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1 land locked by no means. All I just asking for  
2 fair -- I'm not afraid of saying pay off or using  
3 word compensation for what I got. But I believe  
4 that I should be paid for what -- and my side of the  
5 road, because when I give the road I give the  
6 25-foot road. That's what they have. I give that  
7 to them. I ain't stopping them from using it. Not  
8 even something from using it. If they want to come  
9 now. My God, what do they want? They want to take  
10 the 25-foot and they also want to come and take  
11 another 25-foot or combine the two together? Where  
12 they leave me at?

13 Q As we sit here today do you have an  
14 objection to the county moving the road into the  
15 25-foot right-of-way?

16 A No. But I don't have, I mean, objection  
17 to it. But I'll say this. I'll say this and I  
18 don't want to put my foot in my mouth, but I'll say  
19 I don't have objection because the 25-foot road is  
20 there, but, you know, on that side to the right side  
21 it got some nice beautiful trees in there. I mean,  
22 nice. I grew up in the land, whatnot. And to me  
23 don't make a whole lot of sense even -- they can do  
24 it because they got it. To go over there when they  
25 can. Come through when t720/ got ingress/egress to

1 go over there. I'm not stopping anybody. Not say a  
2 word to anybody about stopping ingress/egress. When  
3 you want to do something else then I feel, though, I  
4 should be rewarded for it.

5 Q I'm going to direct you back to  
6 Defendant's Exhibit A. You see the green markings  
7 on there?

8 A Yes.

9 Q You see -- can you read that note with the  
10 arrow pointing to it?

11 A Edge of existing dirt road. Known as  
12 Resurrection Road.

13 Q Yes, sir. Okay. From your familiarity  
14 with the road would you say that the green line  
15 shows where the dirt road is?

16 A This would be the right-of-way right here  
17 to your right. This would be the green line  
18 showing. Yes.

19 Q Would you read off the widths of road  
20 where it passes your house?

21 A Fourteen, 13, 13.6, 13.5, 6.8, 13.2.

22 Q That's fine.

23 A That's about it.

24 Q Stop there.

25 A Yes.

1 Q Again, this is north and I believe you  
2 said coming in you considered the right-of-way to be  
3 the right side of the road?

4 A Yes.

5 Q You consider your house to be on the left  
6 side of the road?

7 A Right.

8 Q If the road was widened to the left would  
9 that come onto your property?

10 A Definitely come into my property.  
11 Depending on how much. If you're coming over here  
12 to my property where from here I have to take off  
13 part of my garage over here to make it clear to come  
14 through.

15 Q I want to ask you about the box marked  
16 ABCD and back to A. Okay?

17 A Yes.

18 Q Read the note that's pointing to the arrow  
19 on that.

20 A You say A?

21 Q AB. B down to C. C back to D, back to A?

22 A Existing 25-foot right-of-way C, ABCD  
23 known as Resurrection Road, Resurrection Road per  
24 reference number 2.

25 Q Okay. That's <sup>722</sup>fine. In your observation,

1 meaning what you have seen out on the road, what  
2 kind of work does the county do inside that box?

3 A See, the county ain't -- guys say county  
4 come down there and say county work on Resurrection  
5 Road, you know. I'm considering the 25-foot is  
6 Resurrection Road. That's where the sign was put on  
7 the right-hand side and they move it on the other  
8 side. Put it in the road. That's the road. The  
9 road bed is on my property. You've got -- so far as  
10 that part of the property is ingress and egress.  
11 Ain't stopping nobody, never did. Never will.  
12 Never even tried. They got their right to come in  
13 there and go as they please.

14 Q Okay. Other than where the green edges of  
15 the dirt road are on here, have you seen the county  
16 doing maintenance inside the red box?

17 A No.

18 Q From your observation do people other than  
19 the county do maintenance on the road?

20 A No, but Sidi.

21 Q Sidi Limehouse?

22 A Sidi Limehouse.

23 Q In your observation how often does he do  
24 that?

25 A Sidi be down mo<sup>723</sup>ing, the county claiming

1 to be down there. I be honest with you. That's --  
2 if it rain, time it rain, get slushy Sidi got to do  
3 what they got to do. They may come later on at  
4 their appointment but Sidi get in there and do it.

5 Q Have you ever personally observed the  
6 county road crews working on the road?

7 A I seen them a few times in there but not a  
8 whole lot. Because I work twenty-three hours a day  
9 almost. So ain't a whole seeing. I work from six  
10 to seven, from seven to ten and from eleven to  
11 three.

12 Q That's all the questions I have.

13 MR. OBERMAN: I have some questions, Your  
14 Honor. Are you saying we're stopping for the  
15 day at 3:30? Not just --

16 THE COURT: No, just taking a break at  
17 3:30.

18 CROSS EXAMINATION BY MR. OBERMAN:

19 Q Mr. Heyward, and I don't mean to be  
20 facetious, but you've heard me refer to the cabbage  
21 patch?

22 A Cabbage patch. What you mean?

23 MR. ROBINSON: Radish patch.

24 Q This little area right in here. Do you  
25 see that area?

1           A     Yes.

2           Q     Do you use that for anything?

3           A     You come in over here and ask me if I use  
4 my property for anything? Yes, I use it. I come  
5 down the road.

6           Q     You come down the road?

7           A     Yes. I ain't planting over there at the  
8 moment, but it's mine.

9           Q     You're not putting -- you've not planted  
10 anything?

11          A     No flowers, nothing, not at the time but  
12 it's mine.

13          Q     No radishes?

14          A     No, sir.

15          Q     No corn?

16          A     Not at the moment.

17          Q     Would you be hurt, Mr. Heyward, if the  
18 Judge in his ultimate wisdom said let's take this  
19 area and add it to the road to straighten that road  
20 up and make it wider?

21          A     The road is straight. You've got 25-foot  
22 here. That's what they taken from me, I had to  
23 give. I'm not trying to be anything else. This --  
24 I'm just explain that to you just a while ago. If I  
25 give 25-foot, now they go 725' problem and they want

1 more than 25-foot, why would they need -- let me ask  
2 you a question. Why would they need this cabbage  
3 patch to be wider? Why they can't use it as  
4 existent, ingress/egress?

5 Q I'll ask you again. This would not hurt  
6 you if the Judge decided to widen?

7 A Yes, it would hurt me.

8 Q How would it hurt you, sir?

9 A How would it hurt me?

10 Q Yes, sir.

11 A I'll tell you how it would hurt me.  
12 Because be taking away my property which already  
13 give 25-foot here. If they want to take it for  
14 whatever but not paying for it then it would hurt  
15 me. Then see what happened again, have to come up  
16 here. Not only that, over here have to come closer  
17 to my house. That's hurting me. Not only that, the  
18 people that developing in the back, the other houses  
19 not only that not just the passes, then the other  
20 side with the doctor, 14 acres. You know? I have  
21 community breakdown.

22 Q I'm trying --

23 A You ask me if it hurt me.

24 Q -- to take this a step at a time.

25 A Okay.

1 Q My first question as between point A down  
2 to the utility --

3 A It would hurt me.

4 Q It would hurt you?

5 A Yes, sir.

6 Q It would hurt you in that you're not using  
7 it now. You've got any plans for using that?

8 A I just tell you how it would hurt me. You  
9 asked me.

10 Q Do you have any plans for using --

11 A Yes, sir. I got plans.

12 Q What are your plans, sir?

13 A What are my plans? Maybe plant some  
14 flowers over there or tree or whatever.

15 Q Any other plans besides flowers or a tree?

16 A I didn't have no plan. I said maybe. I'm  
17 not sure what I would do. Only just keep my  
18 property, because it's mine.

19 Q I see. Now, I'm going to take you back to  
20 February of 1996. You wanted to build a home on  
21 property that you own; is that correct?

22 A Correct.

23 Q You own the whole parcel of property;  
24 didn't you?

25 A Yes.

1 Q You wanted to subdivide out?

2 A No.

3 Q Parcel 133?

4 A No.

5 Q So you could build a house there?

6 A No, sir.

7 Q No?

8 A I didn't want to subdivide anything. All  
9 I want to do is build my house. Told me this is  
10 what I have to do.

11 Q Didn't you have a route to get to that  
12 where you wanted to build your house?

13 A I wish you were my surveyor; yes, sir.

14 Q You did have --

15 A I did have.

16 Q And all you had to do was come off Betsy  
17 Kerrison --

18 A That's what I'm saying.

19 Q -- come down, then go to that piece?

20 A That's what I'm saying.

21 Q But you decided you wanted to cut off --

22 A No, sir.

23 MR. ROBINSON: Objection. He's said what  
24 his reason was.

25 A I didn't decide<sup>728</sup> want to cut off

1 anything.

2 THE COURT: He said the County made him do  
3 it. That's what I heard him say.

4 Mr. Heyward -- let me interject. Mr.  
5 Heyward, there is a -- the property that  
6 extends beyond the house has some structures on  
7 it, some vehicles or something? Is that a  
8 business location. What is that?

9 A No. That's a friend of mine. He park his  
10 vehicle be down there and when he come back in the  
11 evening he pick them up and go.

12 THE COURT: Very good. Okay.

13 Q As per the Judge's question, it's pretty  
14 well vacant all the way to Betsy Kerrison; isn't it?

15 A Pretty well vacant?

16 Q Yes, sir.

17 (Witness nods affirmatively.)

18 Q There is nothing blocking your driving  
19 from Betsy Kerrison to where your house is?

20 A What you're saying, except by not using  
21 the road?

22 Q Coming down this way, sir.

23 A This is not in my property. This is  
24 different property over here. Where you see Johnny  
25 Heyward, I have to come <sup>729</sup>here to the center.

1 Q The center piece is your piece?

2 A Right. That's where I should have went.

3 Q Where you should have gone. And there is  
4 nothing there blocking you to this day to come  
5 through there and get to Lot J1; is that correct,  
6 sir?

7 A Right.

8 Q All right. So you decided, or you and  
9 your surveyor decided to subdivide out Lot J1?

10 A No, sir. I didn't decide to -- when I  
11 went down to get my permit, all I want to do is get  
12 my permit to build a house. They tell me just what  
13 I have to do. As a matter of fact, this cost me  
14 money just to cut this off, off of the eight acres  
15 that I had when I could just use it on the whole  
16 property. Like you're saying now, if the surveyor  
17 tell me what you did there, not sense enough I just  
18 leave like this and come on through here.

19 Q You said if you didn't have sense enough,  
20 sir?

21 A I didn't know. That's what I mean. I  
22 didn't know. If I know at that time -- if he would  
23 have said -- as a matter of fact, I did ask him. I  
24 did ask him. He said to me said, well, we use an  
25 existing road right now, <sup>730</sup>ress/egress back there

1 so that's all it's going to be. You can use it at  
2 that. When you put that fence along, that would be  
3 the end of that. So make sense to come through  
4 here. He said again that the County, he don't  
5 believe it would approve for me to come through  
6 here. I would have to do it this way so I can get  
7 approval to get it. Then I can always reverse it  
8 off of this lot, my house back onto the main  
9 property. Not trying to block anybody back here,  
10 and still not for ingress/egress. That's why I come  
11 over there and join them; ingress/egress. But  
12 people before me build their house back down there  
13 and all they had is ingress and egress, so I asked  
14 the County then, why do I have to give any  
15 right-of-way? I just soon not give away any  
16 right-of-way. They made me do that.

17 Q Be that as it may be, to this day you  
18 could come through this center piece?

19 A What that change?

20 Q To your Lot J1?

21 A What that change?

22 Q You wouldn't have to worry about donating  
23 or granting a 25-foot easement to the County.

24 A That true what you're saying? I can do  
25 it? You just saying that?

1 Q No, I'm saying you could have done it.

2 A Oh, okay.

3 Q You can still do that, can't you? You  
4 don't have to use Resurrection Road to get to your  
5 house?

6 A But if I don't use the dirt path to get to  
7 my house and I block that off, how all rest, how  
8 rest of the people get in there?

9 Q That's my question, sir. The County said  
10 if you want to subdivide your property into Lot J --  
11 into Lot J1, and into .51 acres, Resurrection Road  
12 right-of-way, you had to give -- they asked you  
13 first for a 50-foot right-of-way. Did they not ask  
14 for a 50-foot right-of-way?

15 A I said that. But what I'm saying --

16 Q Let me finish, sir.

17 A Go ahead.

18 Q They asked you for a 50-foot right-of-way.  
19 You and your surveyor went before the County of  
20 Charleston and you went to the various boards of the  
21 County of Charleston and they asked for a 50-foot  
22 right-of-way?

23 A Yes.

24 Q Is that correct, sir?

25 A Correct. 732

1           Q     Then you went before County Council and  
2     said, as I guess a favor, let me reduce that from  
3     50 feet down to 25 feet. Did you not do that?

4           A     What was your question?

5           Q     The question is, did you not ask the  
6     County of Charleston to reduce the requirement of  
7     50-foot easement down to 25 feet?

8           A     I did what I had to do to get my house  
9     built. I didn't --

10          Q     Let me ask the question again, sir. See  
11     if you can't answer it yes or no. Did you ask  
12     County Council, please reduce your requirement from  
13     50 feet right-of-way to 25 feet right-of-way?

14          A     Yes, but explanation.

15          Q     Go ahead with the explanation.

16          A     Explanation is, I did what I had to do and  
17     all I want to do is build my house. Didn't want a  
18     subdivision or subdivide anything. And only reason  
19     they asked me to do that because of the other  
20     interest in the back. The people who didn't have  
21     any interest was able to build their house without  
22     any right-of-way or whatever, ingress and egress.  
23     So that's why I didn't -- I wouldn't go to this day  
24     for the 50-foot. I went for the 25-foot. I've been  
25     told since I have to go for 25-foot, put it on the

1 right side. The right side where it's at? Is where  
2 the wood is at. Okay? I had another partner,  
3 person ask for the easement. I give them the  
4 easement because they know this road wasn't a public  
5 road, it was a private road. That's why I asked for  
6 the easement. They offered me -- how much should I  
7 pay you for the easement? Give you for the  
8 easement? I say, maybe, I don't know, fifty or a  
9 hundred dollars. I've been given 600 for the  
10 easement.

11 Q All right, sir.

12 A You know?

13 Q I'm going to go back to my question, sir.

14 A Go back to your question.

15 Q Not trying to be argumentative. The  
16 question came up about the property to the west  
17 being developed. Did it not?

18 A The property?

19 Q The other people. They say, we need a  
20 50-foot easement so the people in back of you can  
21 develop their property?

22 A County mention that is potential 20 or  
23 25 acres back there.

24 Q All right. And what did they say about  
25 that 20 or 25 acres?

1 A Have potential to be developed.

2 Q Had potential to be developed.

3 A Yes.

4 Q And that's why they wanted the 50-foot  
5 easement going back there? That was the requirement  
6 at the time?

7 A They want a 50-foot right-of-way, easement  
8 slash right-of-way.

9 Q They wanted a 50-foot right-of-way?

10 A Right.

11 Q And you and Mr. Seabrook went before  
12 County Council and said, please don't make us give a  
13 50-foot right-of-way, we'll give a 25-foot  
14 right-of-way; is that correct?

15 A Correct. I did that.

16 Q And you also said you objected to giving  
17 the 25-foot right-of-way or the 50-foot right-of-way  
18 because you wanted to be paid for it.

19 A At that time it wasn't mention paid for.  
20 I object because I feel as though that the rest of  
21 them didn't have to give anything so why should I  
22 give 50-foot? I give the 25-foot and I say if they  
23 want any more than that they have to pay me for it.  
24 That's my opinion. I don't make the law.

25 Q Sir, you're familiar with Charleston

1 County records; aren't you?

2 A Yes.

3 Q And would you read just the last sentence  
4 starting, he stated? Do you see that, sir? Where  
5 the arrow is pointing? He stated?

6 A He stated, yes.

7 Q Read that sentence.

8 A People in the county would like assess the  
9 property -- let them pay -- yes. I ain't change  
10 that. That's the same thing we're saying now. I  
11 ain't telling you I remember that but you've got it  
12 down on record so that's what it's there. I'm not  
13 denying that.

14 I tell the County that. I mean I  
15 don't have to be right. But my opinion I was right.  
16 And if I wasn't right they would have taken 50-foot  
17 rather than take the 25-foot.

18 Q Sir, I'm correct in saying that you asked  
19 the County of Charleston for mercy, do not require  
20 me to get a 50-foot right-of-way, please let me give  
21 just a 25-foot right-of-way?

22 A No, sir. I didn't ask for no mercy. I  
23 don't know what you call it. If you call it mercy I  
24 said I would give 25-foot rather than 50-foot. That  
25 wasn't no mercy. I wasn't 736 going to give 50-foot.

1 If I couldn't build a house, whatnot, couldn't get  
2 power, light, I wasn't going to give 50-foot.

3 Q You got what you wanted. You got your  
4 permit?

5 A Go ahead.

6 Q Is that correct?

7 A Got my permit, yes.

8 Q You built a 12,000 square foot house?

9 A Close; correct.

10 Q Who did you understand that the 25-foot  
11 right-of-way would go to?

12 A 25-foot right-of-way?

13 Q Yes, sir.

14 A Would go to the public, 25-foot  
15 right-of-way.

16 Q It would go to the County of Charleston?

17 A Yes, the 25-foot. Only the 25-foot. The  
18 existing road bed would go back to me completely.  
19 But that wouldn't have happened, then they couldn't  
20 get back there.

21 Q Now, do you have anything that says that  
22 the 20 -- or the prescriptive road bed or the  
23 existing road bed would come back to you?

24 A All I say -- I'll say no with explanation.

25 Q My question is 737 the County say you give

1 us a 25-foot right-of-way and we will revert the  
2 existing road bed back to you?

3 A I didn't have that in writing but someone  
4 told me that.

5 Q If someone told you the moon was blue  
6 would you believe that, sir?

7 A Yes, I look up and see it.

8 Q And it's blue?

9 A Yes. I say if it was blue. If I look up  
10 and see it.

11 Q All right, sir. After the County Council  
12 meeting where you and Mr. Seabrook went and said  
13 please don't make us give a 50-foot right-of-way,  
14 have consideration for us, let us have just a  
15 25-foot right-of-way, did they accept that 25-foot  
16 right-of-way?

17 A It's not like how you're saying. You're  
18 saying that me and Mr. Seabrook went down there and  
19 we begged to get a 25-foot right-of-way rather than  
20 the 50-foot right-of-way. I really didn't want to  
21 give nothing no more than build my house. They made  
22 me do that in order to get my permit.

23 Q Did you get that 25-foot right-of-way from  
24 the County of Charleston?

25 A Yes, sir. What<sup>738</sup> don't understand is --

1 can I?

2 Q You can say anything you want.

3 A I don't want to be disrespectful. I  
4 give -- they ask me for the 25-foot right-of-way. I  
5 give them the 25-foot right-of-way. And I did not  
6 deny them to do anything they want with it. The  
7 25-foot right-of-way is their's. They can do  
8 whatever, whenever, however they want to do. As a  
9 matter of fact, do me a favor if they use it. Get  
10 my more (inaudible) to my property toward the  
11 25-foot right-of-way. Ain't like Johnson and the  
12 doctor is land locked in there. Just say if I want  
13 pay for it I want to pay for my property, not for  
14 the 25-foot right-of-way, what they will take for  
15 me. They already got that.

16 Q Sir, do the citizens of the County of  
17 Charleston have what we call a prescriptive  
18 right-of-way over the road bed as it now exists?

19 MR. ROBINSON: Objection. Calls for legal  
20 conclusion.

21 MR. OBERMAN: I think he's sharp enough to  
22 answer that question.

23 A I'm sharp enough to tell you this. They  
24 got 25-foot and they got it. Then talk with the  
25 road bed. The road bed a<sup>739</sup>'t got nothing to do

1. with -- road path ain't got nothing to do with  
2. 25-foot right-of-way, and the right-of-way is the  
3. right-of-way. Now, if they going to use that other  
4. part of the property which is coming in through  
5. the -- averages 13, 8, 10, 12 whatever feet, that's  
6. ingress and egress.

7. Q That's been around before you were born.

8. A It's still there.

9. Q It's still there?

10. A Be there when I leave.

11. Q And the people of the County of Charleston  
12. have the right to go up and down that road bed?

13. A Anybody.

14. Q Anybody.

15. A Ingress and egress. We're not talking --  
16. appears to me we're not talking ingress/egress here.  
17. Talking another ballgame all together.

18. Q That is, again is your legal conclusion  
19. but your lawyer hasn't objected to that.

20. Did you object in any way when you  
21. got a letter saying that you had granted a 25-foot  
22. right-of-way to the public?

23. A Why should I? The public got the 25-foot  
24. right-of-way. I object, but then I had to go with  
25. what they say. I did what they made me do. If I

1 could build my house without anything else like the  
2 rest of them did then I wouldn't have done it. Only  
3 because I have the property I have to give up my  
4 property to do the building. This I don't  
5 understand.

6 Q You've got a copy of a letter from Beverly  
7 Craven. Is she still -- excuse me. Off the record.  
8 (Discussion off the record.)

9 Q She said County Council at the meeting on  
10 May 7, 1996 granted approval of a 25-foot road  
11 right-of-way being dedicated to the public.

12 A Not -- did he know that, sir.

13 Q All right?

14 A I still say it's there.

15 Q Resurrection Road serves as access to  
16 approximately 25 acres of property with high  
17 developmental potential.

18 A Right.

19 Q You agree with that, too?

20 A Yes, sir; still there.

21 Q So at that time you didn't have any  
22 objection?

23 A I don't have no objection now to that. I  
24 have objection to the road bed, what you call.

25 Q So you have no 741 jection to Mr. Johnson

1 developing his five acres of property; is that  
2 correct?

3 A If he needed the road bed I have  
4 objection.

5 Q My questioning is do you have any  
6 objection?

7 A Yes, do I have objection.

8 Q You do have an objection. And for Dr.  
9 Haynes to develop his --

10 A Same.

11 Q You object to it?

12 A Yes, sir.

13 Q Back in 1996 you didn't object to it.

14 A You're confusing me now. You're saying I  
15 didn't object in 1996.

16 Q When you got this letter, sir, it talked  
17 about 25 acres.

18 A I said then I object to it, but I did what  
19 I had to do. I did what they made me do.

20 Q Did you write to Ms. Craven and say no,  
21 no, no, I object to --

22 A I told County Council that and verbally  
23 when I was down there and I didn't want to do either  
24 one of it. They approve it. They have approved the  
25 25-foot, so I couldn't make County Council do

1 anything. They thought it over and approved because  
2 they know what I'm saying is why should I have to  
3 give 25-foot or 50-foot when three other house built  
4 up there with nothing but ingress and egress.

5 Q Now, you've heard the testimony of the  
6 motor grader operators and the people. They've come  
7 in here and they've said that they've been  
8 maintaining that road bed since, I think, 1984; is  
9 that correct?

10 A Well, you're saying the road bed, then  
11 you're saying some of them said they were  
12 maintaining Resurrection Road right-of-way. Some of  
13 them is maintaining the bed. Now, as far as them  
14 guys know they don't even know the right-of-way.  
15 Because you just asked them and they're saying they  
16 didn't even -- wasn't even on that side. All they  
17 was doing was the road that was there. You heard  
18 them say they had to put the scraper side ways to  
19 get in there to run it through, make it any wider  
20 which they still make it wider than it was. You  
21 know?

22 Q I've got a simple question.

23 A Go ahead.

24 Q You have seen the County of Charleston  
25 through its operators maintaining Resurrection Road?

1 A Yes, sir.

2 Q You've seen them on many occasions?

3 A I rephrase that when I say yes, sir. I  
4 rephrase that and I say no, sir. You know why?  
5 Because I call Resurrection Road the right-of-way.  
6 The 25-foot right-of-way. The 25, the other path,  
7 the ten, 12-foot road that's my property. Now, they  
8 was maintaining -- I seen county road guys over  
9 there maintaining the road bed.

10 Q You're differentiating the road bed from  
11 Resurrection Road?

12 A Right.

13 Q And the sign they got up there that says  
14 Resurrection Road --

15 A Before the PGA the sign was on the right  
16 side right through the wood on Resurrection Road  
17 which it's not a road, it's just Resurrection Road  
18 property line for the road. Because it's not a road  
19 there. The road bed is what they use on the other  
20 side.

21 Q All right, sir. They've been maintaining  
22 the road bed?

23 A Yes, sir; correct.

24 Q They've been maintaining it since 1984?

25 A Yes, sir. 744

1 Q During all that time you have not said get  
2 off of my property?

3 A I ain't saying that now. That's why I  
4 give the right-of-way. I'm not saying that now.  
5 I'm not saying get off or move, I ain't insult  
6 nobody or try to run nobody off the road now. They  
7 got ingress and egress.

8 Q They also have the right to accept it by  
9 maintaining it; don't they?

10 A They maintain it all they want. How they  
11 accept it? They ain't going to make it no wider  
12 because they maintain it, the 25-foot. They can  
13 accept and maintain what they got.

14 Q Sir, if I tell you that between a letter  
15 from Mrs. Craven and between the acts of maintenance  
16 since 1984, that that is an acceptance of your kind  
17 offer of the right-of-way?

18 A I think we have an issue here. If I  
19 didn't give 25-foot right-of-way, which I did.

20 Q All right. You have looked at box ABCD A  
21 until you probably are sick of it. Do you recognize  
22 that as the 25-foot dedicated right-of-way?

23 A A --

24 Q Here is A, B, C, D, A.

25 A How much -- A <sup>745</sup>at here?

1 Q Yes, sir. Go all the way down?

2 A This is D. This is the 25-foot  
3 right-of-way.

4 Q Yes, sir.

5 A Not over here to the road bed.

6 Q All right. And these people have been  
7 maintaining the road bed and that road bed enters  
8 into that right-of-way; does it not, sir?

9 A A little bit on the end.

10 Q A little bit or about a half?

11 A Where half way? Actually enter until it  
12 get passed my house.

13 Q Is that point H?

14 A Yes.

15 Q It starts to enter there; doesn't it, sir?

16 See the green line?

17 A Yes, I see the green line.

18 Q You see it says edge of existing road?

19 You agree with that?

20 A Go ahead.

21 Q Do you agree with that?

22 A That's the edge of the existing road.

23 Q And do you agree that all the way down to  
24 line BC that they've been maintaining that area?

25 A They've been ma-  
746

1 for how long I don't know.

2 Q Basically they've been maintaining it  
3 since 1984. Do you deny that?

4 A No, sir. I say I don't know how long  
5 they've been maintaining it. But that's purpose of  
6 me giving 25-foot, so they could have the  
7 right-of-way.

8 Q You've lived there since 1996?

9 A (Nods negatively.) No, sir.

10 Q Didn't you have a house there before it  
11 burned down?

12 A Yes.

13 Q How long?

14 A 1996 I didn't live there. I was building  
15 the house.

16 Q That's the new house?

17 A Yes.

18 Q How about the old house that burned down?

19 A Yes.

20 Q How long were you there?

21 A 1974.

22 Q So from 1974 you could look out your  
23 window and see Charleston County road graders going  
24 up a and down that road bed?

25 A No. Charleston<sup>747</sup> county couldn't even get

1 no road bed. That was one cart road, wagon road.

2 No road bed or nothing could get in there.

3 Q All right, sir. When did Charleston  
4 County start coming down that road, sir?

5 A I don't know. I don't. I don't remember  
6 when they started coming down the road.

7 Q Could it have been ten years before 1996?

8 A I don't know. Could have been.

9 Q Could have been. Sir, what you're telling  
10 this Court is that you went before County Council  
11 and you asked them to reduce their requirements from  
12 a 50-foot right-of-way to a 25-foot right-of-way?

13 MR. ROBINSON: Objection. Asked and  
14 answered.

15 THE COURT: I'll allow it because it  
16 sounds like he's summing up. Is that what I'm  
17 hearing?

18 MR. OBERMAN: That is correct.

19 Q Is that correct, sir?

20 A Go ahead.

21 MR. ROBINSON: Read back the question?

22 A Ask the Council to reduce it.

23 THE COURT: I'll read it right to you,  
24 hold on.

25 (Reading)

1 (Last question read back from prompter)

2 THE COURT: That's the question.

3 Q Yes or no?

4 A No, I didn't ask them that.

5 Q You didn't ask them that?

6 A What I did --- I'll explain that. I told  
7 them, because they were asking me for a 50-foot. I  
8 didn't ask them. They was asking me for a 50-foot  
9 right-of-way. After I speak to someone else I was  
10 given -- I won't say permission, but I was given --  
11 anyhow someone else telling me rather than give  
12 50-foot, give 25-foot. So I didn't go to ask him  
13 for anything no more than my permit. I'm not  
14 denying that, I'm not changing that. All I went to  
15 them is to get my permit. Then give no road no  
16 nothing just like everybody else build for nothing  
17 ingress/egress. And I didn't ask them to change  
18 that from 50-foot to 25-foot. No, sir.

19 Q Did Mr. Seabrook work for you?

20 A Work with me?

21 Q Work for you?

22 A Yes, sir.

23 Q You paid Mr. Seabrook?

24 A I had no choice.

25 Q That was not my <sup>749</sup>question.

1           A     Yes, sir. I said, yes, no choice.

2           Q     You did pay Mr. Seabrook. And  
3 Mr. Seabrook drew up a survey and plat showing a  
4 25-foot right-of-way?

5           A     Still there, sir; yes, sir.

6           Q     He went before County Council with you.  
7 You were there; were you not?

8           A     Yes, sir.

9           Q     And he requested the favor of County  
10 Council to reduce it from 50-foot to 25 feet; is  
11 that correct, sir?

12          A     No, sir. He didn't request it in favor.  
13 He told them that's what I would do. That's what I  
14 said.

15          Q     All right, sir. And they did that. They  
16 reduced it down to 25 feet?

17          A     Yes, sir.

18          Q     All right. So you got what you wanted?

19          A     My permit.

20          Q     Your permit and you got a 25-foot  
21 right-of-way instead of a 50-foot right-of-way; is  
22 that correct, sir?

23          A     Correct, sir.

24          Q     All right. And you built your four  
25 million dollar house based on that?

1           A     Based on what?

2           Q     The subdivision of your property to  
3 allow --

4           A     Not the subdivision anything. I didn't  
5 subdivision. I did what I had to do. I asked them  
6 just to build my house right on the property. Why I  
7 have to subdivision for it? But that's what  
8 happened. It's down there on the paper. I'm not  
9 denying that. All I want to do is build my house  
10 back, and because they got other potential back  
11 there, this is the reason that I have to give up  
12 something.

13          Q     And you gave it up?

14          A     I had no choice.

15          Q     And you gave it up. My question is yes or  
16 no.

17          A     I say yes, I had no choice.

18                THE COURT: That's asked and answered.

19          A     Yes.

20                MR. OBERMAN: All right.

21          Q     Now you come before another part of the  
22 County of Charleston and say I asked you for a  
23 favor, I got that favor, I want to renege on that  
24 favor; is that correct, sir?

25          A     I don't underst751l. You're saying I asked

1 County for a favor and I want to renege on the  
2 favor?

3 Q Yes, sir.

4 A No, sir. Because if I were renege on the  
5 favor I would say, hey, I give you 25-foot  
6 right-of-way, give it to me back. I didn't say  
7 that. They got it. They keep it. I don't need it.  
8 I don't need to jump on the other side, because  
9 that's what, you know, that's what they wanted.

10 Q Are you telling us that you have not  
11 brought a petition to have the County abandon that  
12 25-foot right-of-way?

13 A Well, not directly. If they are not going  
14 to use it, I mean --

15 Q When you say not directly, your attorney  
16 brought that petition?

17 A Yes, sir.

18 Q All right. And he brought that petition  
19 at your request?

20 A Yes, sir.

21 Q You paid him to do that; did you not, sir?

22 A Well, advice, yes.

23 THE COURT: Mr. Oberman, you about ready  
24 to take that break now?

25 MR. OBERMAN: Yes<sup>752</sup>, sir. Let's take that

1 break.

2 THE COURT: Let's go ahead and break right  
3 now. It's 3:30. You're not quite finished but  
4 almost?

5 MR. OBERMAN: Almost.

6 THE COURT: I'm ready to take a break.  
7 Let's take five or ten and let's come right  
8 back.

9 (Short break.)

10 MR. OBERMAN: I took that as a slight hint  
11 from you that are becoming weary. I'll try and  
12 wrap it up, Your Honor.

13 THE COURT: Even the young man looks a  
14 little tired over there. Anything further?

15 MR. OBERMAN: Yes, sir. I think we should  
16 get into Mr. Heyward's statement of being a  
17 poor country boy and how it effects this.

18 Q You stated in your testimony that you were  
19 a poor country boy; is that correct?

20 A Well, I said I was just a poor country  
21 boy.

22 Q You were just a poor country boy?

23 A Yes.

24 Q Now, this poor country boy left Charleston  
25 County and went to New Yo-753; did he not?

1 A Yes.

2 Q You've got to say yes.

3 A Yes, sir.

4 Q And you went up to the big city of New  
5 York and went into construction work; did you not?

6 A Yes, sir.

7 Q You were, I think, a powder man?

8 A Powder man, drill operator.

9 Q Anything else?

10 A Well, in construction I was powder man. I  
11 run the drill. Sometime the backhoe.

12 Q You were working on tunnels, was it?  
13 Under the river?

14 A No, I went under there one time. I won't  
15 go back.

16 Q Where were you setting off your powder  
17 charges and your drilling?

18 A Manhattan, downtown mostly. World Trade  
19 Center.

20 Q How long did you work there, sir, as a  
21 powder man in construction?

22 A I work about four years.

23 Q Four years?

24 A Yes.

25 Q After that you went into the ownership of

1 gasoline stations?

2 A Yes.

3 Q How many gasoline stations did you own,  
4 sir?

5 A One gasoline station, 138th Street in the  
6 Bronx.

7 Q 138th Street?

8 A In the Bronx.

9 Q In the Bronx. Did you have any other type  
10 of automotive connected businesses?

11 A I drive cab, taxi cab.

12 Q And how long had you owned your filling  
13 station?

14 A It's been so long. About five years.

15 Q How long did you drive the cab?

16 A About five years. The same. I own the  
17 station, drive the cab and construction.

18 Q How long did you stay in Manhattan total?

19 A I stayed in Manhattan, let's see, moved to  
20 New York 1965 or '64 until '73.

21 Q So about nine, ten years?

22 A Yes.

23 Q Were you married at that time?

24 A No, I got married part of that time, about  
25 five years into that time.

1 Q And you survived pretty well in Manhattan,  
2 New York City?

3 A I survived very well?

4 Q Yes.

5 A Yes, sir.

6 Q You learned a lot for a country boy up  
7 there; did you not?

8 A Yes, sir.

9 Q When did you come back to Charleston?

10 A 1973.

11 Q When you came back to Charleston you were  
12 no longer a poor country boy; were you?

13 A I still a poor country boy. I came back  
14 to Charleston in 1973. That's when I had my house  
15 finish, yes; 1973. I mean, when I leave New York in  
16 1973 and came home I was doing well. I was making  
17 good money; I consider.

18 Q What is good money, sir?

19 A 3,000 a week.

20 Q 3,000 a week?

21 A Yes.

22 Q That was up in New York?

23 A Yes, sir. Along with three jobs.

24 Q When you came back to Charleston what did  
25 you do, sir?

1           A     I went to work on Seabrook Island for \$87  
2 a week.

3           Q     And what type of work did you do on  
4 Seabrook Island?

5           A     I was security guard and ranger for about  
6 six months and I got a job, I came home one evening,  
7 my old man tell me, say they need somebody to work  
8 at Kiawah if I want to get a job at Kiawah. I told  
9 him I be glad to. Said, well, they want me, I'm too  
10 old. If you want that job Frank Brumley give you a  
11 recommendation, give you a job. That's how I  
12 started from Seabrook Island for the \$87 to Kiawah  
13 to 150. I combined the two together and get another  
14 job.

15          Q     So you had three jobs?

16          A     Yes, sir, Bird and Son.

17          Q     Bird and Son, building supplies?

18          A     Shingle.

19          Q     Where do you work now?

20          A     I've been Kiawah every since I got the job  
21 after I leave Bird and Sons, Kiawah for 39 years.  
22 February be 39 years.

23          Q     Thirty-nine years?

24          A     February.

25          Q     What do you do <sup>757</sup>ere, sir?

1           A     Right now doing transportation. Bell  
2 Captain for 25 years, but right now I cut back and  
3 all I do is transportation and also do the cookout,  
4 barbecue, oyster roast and stuff like that.

5           Q     You're paid pretty well for that?

6           A     If I get paid?

7           Q     I say do you get paid pretty well?

8           A     Yes, sir, I would think so.

9           Q     We know you built a four million dollar  
10 house.

11          A     You want to know how I build a four  
12 million dollar house?

13          Q     I said I think you testified the house is  
14 worth around four million dollars. Is that correct?

15          A     I spent over a million dollars in material  
16 and I did a lot of the work myself, because I learn  
17 how to do it. I draw it out, the plan, the whole  
18 nine yards. No way else I could do it.

19          Q     The house is 12,000 square feet more or  
20 less?

21          A     Yes, sir.

22          Q     So your description of yourself as a poor  
23 country boy is out the window; isn't it?

24          A     Well, if you call it that. I say that for  
25 a reason. See, because e<sub>758</sub>rything here down on

1 earth is material thing. See?

2 Q Everything what, sir?

3 A Here on earth is materialistic thing. It  
4 can be here today, gone tomorrow. As long as I have  
5 my health and strength I'm okay. If I have I make a  
6 nickel, a dime, a dollar, whatever. So that's what  
7 I'm saying. Now, talking about money? I don't  
8 know --- cash money, very little. You talk about  
9 value, I may have a lot of it.

10 Q Sir, all I'm trying to bring out is you  
11 are a pretty astute business man.

12 A Stupid?

13 Q Astute. Smart business man.

14 A Thank you, sir.

15 Q Is that a correct statement?

16 A Somewhat. I would say.

17 Q So when you went before the County of  
18 Charleston to get a permit to build your two million  
19 dollar or three million or four million dollar house  
20 you were not an innocent going before a County  
21 Council. You weren't a county rube. The County  
22 didn't put anything over on you; did they, sir?

23 A I would say so.

24 Q You would say --

25 A Yes.

1 Q They did put something --

2 A What I'm saying is the reason -- my reason  
3 in that is you had three other house built behind  
4 me. They didn't have to have no right-of-way, no  
5 nothing; ingress and egress. And because my house  
6 burned down and now I have to build my house back I  
7 need to give away the right-of-way. Only way I need  
8 to give away the right-of-way, to my understanding,  
9 and I was advised, to my understanding, and to my  
10 knowledge is because the other potential folks  
11 behind me have acres that could be developed. Now,  
12 I have no objection for them to build a house or do  
13 what they had to do. Like I say now, I'm not  
14 even -- some place is like land locked. They are  
15 not land locked with me. By no means. Because I  
16 willing to talk with them.

17 Q Sir, if anyone fooled anyone you fooled  
18 the County of Charleston; didn't you?

19 A I'm not that smart.

20 Q Well, this 25-foot right-of-way can be  
21 considered junk; can it not?

22 A That was advice -- advised, I think, I  
23 using the right word. I was advised to do that by I  
24 would say a member of County Council.

25 Q And the advice 760s give them junk?

1           A    Not junk. The advice was to give them --  
2   make sure when it's away on the far end and County  
3   Council they see the plat where, you know, where.  
4   They review it. They went over it and they approve  
5   it.

6           Q    You've got --

7           A    I wasn't trying to fool nobody. All I  
8   want to do is get my permit to build my house.  
9   That's all I want to do.

10          Q    You got your permit?

11          A    Yes, sir.

12          Q    And you gave the County of Charleston what  
13   I call junk, a piece of property 25 feet wide that  
14   would cost hundreds of thousand dollars of dollars  
15   to clear and possibly put a road bed in there; is  
16   that correct, sir?

17          A    I don't know for sure.

18          Q    You knew at the time it was junk; didn't  
19   you, sir?

20          A    No, sir. You know, that road grow up from  
21   then up until now. I mean, that been years. When  
22   County of Charleston got that 25-foot right-of-way  
23   it was trees in there but not that much. Very  
24   little. They just leave it there. So that wasn't  
25   junk.

1 Q Those were little trees, sir, that high?

2 (indicates.)

3 A No, some of them was little. They had a  
4 few trees in there. But not all of it that size.  
5 It wasn't junk. It was property. County Council, I  
6 didn't give them no junk. I give them what they  
7 asked for.

8 Q Who asked for, sir? Who asked for?

9 A County Council say I have to give up some  
10 property, and which I did.

11 Q And they asked you to give up a 25-foot  
12 right-of-way so people who owned 25 acres behind you  
13 could develop their property; is that correct, sir?

14 A I assume. I don't know.

15 Q That's what it says on the letter; doesn't  
16 it?

17 A Say in the letter, that's what it is.

18 Q All right. And you knew when you gave the  
19 County of Charleston a 25-foot wide right-of-way  
20 that that could not be used for development purposes  
21 for that property?

22 A You know, I didn't know that. It's not  
23 that now. These guys is talking development,  
24 whatnot. If you've got money you want to develop it  
25 you can do it. That's jus<sup>762</sup>talk. I ain't know that

1 they couldn't use. They still use it. Guy talking  
2 penny anty stuff, build one, do one. They are not  
3 developing.

4 Q In New York you learned what the word  
5 snookered -- you know what snookered means?

6 A No. Explain that.

7 Q That's a game of billiards. Pool.

8 A Pool.

9 Q Yes, sir. You don't know about snookered?

10 A No, I don't gamble. Not like that.

11 Q You fooled the County of Charleston; did  
12 you not?

13 A Oh, boy. Not intentionally if I did. I  
14 didn't fool anybody. They fooled me. All I wanted  
15 to do -- and if you just check back through it,  
16 lawyer, whatever, if County of Charleston had did  
17 just what they did for everybody else then I  
18 wouldn't have to give up anything, because the --  
19 and it's on the record. Three other house built  
20 back there. All they had was ingress and egress.  
21 They didn't have to give up anything.

22 Q All right, sir. Do you know what the word  
23 hoot-spa means?

24 A Hoot-spa?

25 Q Hoot-spa. 763

1           A     No. Break it down to me.

2           Q     That usually is defined when a fellow  
3 comes before the judge and pleads guilty killing his  
4 mother and father and asks for the mercy of the  
5 court because he was an orphan.

6           A     That's what you say I'm doing?

7           Q     That's what you've done; isn't it?

8           A     I didn't kill anyone.

9           Q     No, sir. But you asked for the mercy of  
10 County Council and gave them junk in return?

11          A     That's insulting to me to be so good.  
12 Because I had folks never deny one time their  
13 ingress and egress to come back there. And not even  
14 build a house. But when you come to development  
15 that's a different story. Then you say I'm a  
16 snitch, I'm a this and that. I'm just a poor,  
17 honest, working hard person, that's all.

18          Q     Okay, sir.

19               MR. OBERMAN: That's all the questions I  
20 have, Your Honor.

21               THE COURT: Very good. All right.

22               Mr. Mitchell.

23               MR. MITCHELL: Thank you, sir.

24               CROSS EXAMINATION BY MR. MITCHELL:

25          Q     Mr. Heyward, yc764ve spoken about several

1 houses being built in the back and they didn't  
2 require anything from them. Can you point out to me  
3 on this map, which is Defendant's Exhibit B, which  
4 houses they were?

5 A Well --

6 Q That's your home?

7 A That home. And this house.

8 Q You're pointing at -- what's that number  
9 right where that house is at?

10 A 072.

11 Q 072?

12 A Yes.

13 Q What about the other house, what's the  
14 number that's --

15 A 015. And you got the one in the back,  
16 01 -- 16.

17 Q Now, you've said that when they built  
18 those houses back there they weren't required to do  
19 the same thing you were asked?

20 A They were required but they don't do it  
21 because they didn't have the right-of-way from the  
22 front. If they did it from the back, what's that  
23 mean?

24 Q I draw your attention to Plaintiff's  
25 Exhibit 1A. Now, the 072 house you pointed to,

1 the 072 on the first exhibit I showed you, is this  
2 the same property that I'm pointing to here that has  
3 TMS number of 204-00-0072. Is that the same  
4 property?

5 A Ravenel Smith.

6 Q The other house you pointed out with three  
7 numbers 015, is this TMS number end 015 on the  
8 second exhibit the same property?

9 A Yes.

10 Q Can you tell me what this rectangular  
11 area, what it says in the middle there?

12 A 30-foot right-of-way for referral number  
13 3?

14 Q Yes, sir.

15 A So?

16 Q Does it appear that there is right-of-way  
17 someone has given back there, too?

18 A Yes, that's what I'm saying. I could be  
19 wrong. If you've got a right-of-way back here in  
20 the back how you get from the front back there? To  
21 here?

22 Q Do you think a road bed would do that for  
23 you or a county road would get you from Betsy  
24 Kerrison back to this right-of-way back here we just  
25 discussed?

1           A     Well, that was the road bed. I guess  
2     that's what they did.

3           Q     So that county road from Betsy Kerrison  
4     back down to these two homes, that's how these home  
5     owners got back from Betsy Kerrison back to here;  
6     correct?

7           A     Yes.

8           Q     So there is an example of where somebody  
9     had -- appears somebody gave up some right-of-way in  
10    order to subdivide to build houses?

11          A     To build houses.

12          Q     So you're not the only one along  
13    Resurrection Road -- let's make sure we're talking  
14    about the same thing. Resurrection Road, the dirt  
15    path way, you're not the only one that had to give  
16    up some right-of-way; is that correct?

17          A     Correct.

18          Q     Do you know who lives in those homes?

19          A     I think change -- the name is there.  
20    Nesmith, Sidi, Bennet, Vernon.

21          Q     Have you granted them, any of them, an  
22    easement across your property?

23          A     No, sir.

24          Q     So they're trespassing across your  
25    property; correct?

1           A     I be careful what I'm agreeing or saying  
2     or make sure I understand, because I just accused of  
3     fool County Council. They got ingress/egress.

4           Q     Down a county road to get across your  
5     property; is that correct?

6           A     Yes.

7           Q     So the Smiths back there -- excuse me?

8           A     You call it now the county road. I call  
9     it a private road.

10          Q     You call it a private road. Whose private  
11     road is it, then?

12          A     My private road.

13          Q     How much money have you spent on  
14     maintaining your private road?

15          A     How much money I have spent?

16          Q     Yes, sir.

17          A     Very little to nothing.

18          Q     When's the last time you maintain what you  
19     allege to be a private road?

20          A     Lot of time I maintain it.

21          Q     How do you maintain it, sir?

22          A     I got a tractor. When I do -- Sidi do  
23     most of it. All this talk about what city all them  
24     did is whatever -- they do some of it. But Sidi do  
25     most of it.

1 Q Sidi does most of it. How long has Sidi  
2 lived down end of the road?

3 A I don't know. Ten, 15 years.

4 Q So did Sidi do it before then?

5 A No.

6 Q Did you do it before then?

7 A I did what need to be done before then.

8 Q Tell me exactly. Let's talk what you did.

9 A It wasn't a whole lot down there. Wasn't  
10 much people down there. So it wasn't whole lot, few  
11 cars going down. Wasn't nothing to go down there.  
12 When you talk about the road grader, all that,  
13 backing up place, 20 years ago a road grader  
14 couldn't even get in there, because it wasn't about  
15 eight foot. It was just a cart road, just like a  
16 wagon road. So guy is saying twenty, thirty years,  
17 no, it wasn't like that because that road wasn't  
18 like that at that time. You know? But prior that  
19 time then they start doing this stuff. But the  
20 reason I give up the 25-foot right-of-way is because  
21 I've been told to do so, and I wasn't trying to fool  
22 nobody and I had to do so to get my permit. That's  
23 all. Leave up to me I wouldn't have done it. Go  
24 ahead.

25 Q Yes, sir. Let 769 talk about you

1 maintaining what you allege to be a private road.

2 What kind of tractor do you own?

3 A I got had a Ford tractor. Now I got a --  
4 I forget the name of it.

5 Q What kind of attachments do you have for  
6 that tractor?

7 A Cutter, bush hog and road blade.

8 Q What's last time you run that road blade  
9 down that road?

10 A Last year.

11 Q Is there some kind of reason why you did  
12 that?

13 A Sidi got tractor he run down there every  
14 time it rain or whatever. Sidi do it.

15 Q I'm confused. Do you do it or does Sidi  
16 do it?

17 A I did occasionally. Limited time that I  
18 have to do it. Sidi do most of it. Sidi do more of  
19 it than Charleston County does.

20 Q It disturb you at all that taxpayers'  
21 money is going to maintain what you allege to be a  
22 private road?

23 A Don't disturb me because they come in  
24 there. That's what they want to do.

25 Q So you think it 770--

1           A     Not because I call -- couldn't say I call  
2     them one time to come in that road then call them  
3     one time to stop coming in the road.

4           Q     So do you think it's right for government  
5     funds to be spent? Do you think it is right --

6           A     No, sir.

7           Q     Please let me finish. Do you think it is  
8     right to use government money on private roads?

9           A     For who to use government money?

10          Q     Anyone.

11          A     Those guys who doing it, whoever  
12     directing, then they are doing wrong. I don't think  
13     they should do it. They could stop today. They  
14     don't have to use the government money at all.

15          Q     Then why didn't you stop them?

16          A     Why didn't I stop them?

17          Q     Yes, sir. Why did you not stop them?  
18     Because you had the enjoyment of them maintaining  
19     the road?

20          A     Like I said, they maintained the road  
21     some. Sidi maintain the road. He tell you, just  
22     said it before. Sidi did more maintaining that road  
23     than Charleston County did, all them put together.

24          Q     Let's go back to 1996 when you said you  
25     gave up the 25-foot right771f-way.

1           A     Yes, sir.

2           Q     'After you gave up the 25-foot  
3 right-of-way, what did you expect from that?

4           A     I was advised when I give up the 25-foot  
5 right-of-way they would have a right-of-way to  
6 develop or whatever they want to do. And I  
7 expect -- and so far as the road bed is, it's my  
8 property. They got ingress and egress. Still  
9 because that road -- Charleston County didn't do  
10 anything with the road. It was just sitting there.

11          Q     Did you call and tell anybody they  
12 didn't -- complain that they didn't put a road bed  
13 inside that 25-foot right-of-way in 1996?

14          A     Complain?

15          Q     Did you call anyone in Charleston County  
16 and say why haven't you built a road inside what I  
17 dedicated as the 25-foot right-of-way?

18          A     No, I didn't.

19          Q     In 1997 did you call anyone from  
20 Charleston County to complain or object to no one  
21 building a roadway inside the 25-foot right-of-way?

22          A     Nope.

23          Q     1998?

24          A     I don't remember doing it at any time. I  
25 mean --

1 Q Now, let's talk about you were an auto  
2 mechanic at one time; correct?

3 A Yes.

4 Q Did you ever run a shop in that building  
5 back behind your property?

6 A Run a shop some?

7 Q Yes, sir.

8 A No, I never run a shop back there.

9 Q Did you fix cars back there?

10 A No, behind my house right there. If I do  
11 it be myself. I don't fix car for anybody else ever  
12 since I moved, start working at Kiawah. Don't have  
13 time for it.

14 Q The cars around you mentioned earlier  
15 towards the barn, that's where people just park  
16 their cars back there during the day?

17 A Yes, nobody no auto mechanic or nothing  
18 like that.

19 Q You've testified that you would like the  
20 County to give up the 25-foot right-of-way; correct?

21 A Charleston County give up the 25-foot  
22 right-of-way?

23 Q You want this Court here to find that the  
24 County has abandoned a certain portion of that  
25 25-foot right-of-way; is that correct?

1           A     I don't really need the 25-foot  
2     right-of-way. That was given to the County.  
3     25-foot right-of-way, that's what they got and I  
4     assume that they keep the right-of-way. Not trying  
5     take it from them, whatnot. They do what they want  
6     to do with it.

7           Q     On the back portion of that 25-foot  
8     right-of-way the traveled way goes across that;  
9     correct?

10          A     Travel way? Show me what you're talking  
11     about.

12          Q     Yes, sir. I'll refer to Defendant's  
13     Exhibit A. Are you familiar with this?

14          A     Little bit.

15          Q     This green area as discussed earlier is  
16     the travel way which is the road bed. Is there any  
17     time it goes inside the box that is the 25-foot  
18     right-of-way?

19          A     Right back on the end, you can see where  
20     the green is.

21          Q     Now, do you pay taxes on that area?

22          A     I have to check see what I pay taxes on.

23          Q     So you don't pay taxes on that boxed in  
24     area; correct?

25                   MR. ROBINSON: O-774 action.

1 A. I'm not sure.

2 Q You're not sure. If I showed you a  
3 document that showed that you don't pay taxes on  
4 that, would you agree with that?

5 A In the red box?

6 Q Yes, sir.

7 A Yes, I mean, I'm not sure that I pay tax  
8 on that. I thought that was given to -- the 25-foot  
9 right-of-way was given to Charleston.

10 Q So you don't believe you pay taxes on  
11 that?

12 A I don't believe so.

13 Q Okay.

14 MR. MITCHELL: Thank you, Your Honor.  
15 Thank you, Mr. Heyward.

16 THE COURT: Mr. Williams.

17 MR. WILLIAMS: Just got a couple of  
18 questions, Your Honor.

19 BY MR. WILLIAMS:

20 Q Mr. Johnson, you have given testimony ad  
21 nauseam about this 25-foot easement that you granted  
22 to the County. That 25-foot easement was located  
23 completely on your property; is that correct?

24 A Yes, sir.

25 Q And where the C7750 property is here, you

1 don't have any question as to that boundary line; do  
2 you? In other words, your property --- where your  
3 property ends the Coop property begins and that  
4 boundary line is pretty well established; correct?

5 A Correct.

6 Q And so the 25 feet on this, I guess it  
7 would be the southern boundary of this 25-foot  
8 easement, to the best of your knowledge, that's the  
9 common border between your property and the Coop  
10 property?

11 A Yes, sir.

12 Q Okay.

13 MR. WILLIAMS: Thank you, sir. I  
14 appreciate it. Those are all the questions I  
15 have.

16 THE COURT: Anything?

17 MR. ROBINSON: Unfortunately.

18 THE COURT: All right.

19 BY MR. ROBINSON:

20 Q Mr. Oberman, would you say --

21 (Laughter)

22 (Discussion off the record.)

23 Q Mr. Heyward, would you say that you're a  
24 poor country boy who has done well?

25 A Yes, sir, I would say so.

1 Q What's highest level of education you had?

2 A Twelfth grade.

3 Q Where do you go to school?

4 A Promise Land, Yonges Island. I might have

5 said St. John's but St. John opened next year.

6 Promise Land, Haut Gap.

7 Q When did you graduate from Haut Gap?

8 A '63?

9 Q When you -- when the 25-foot right-of-way  
10 came into existence, the box came into existence,  
11 was it more or less grown up than it is now?

12 A Is it more --

13 Q More or less grown up than it is now?

14 A Not more grown up.

15 MR. OBERMAN: I'll stipulate Your Honor,  
16 that between 1996 and present trees have grown.

17 THE COURT: All right. Okay.

18 Q Has the county thinned out the trees in  
19 that box?

20 A (Nods negatively.)

21 Q Is that a no?

22 A Nope.

23 Q Has the county graded the property or  
24 anything inside the box except where the dirt path  
25 comes through?

1 A Nope.

2 MR. OBERMAN: I object to the use of the  
3 word path, Your Honor.

4 Q Did you ask the county to put a sign up on  
5 Resurrection Road?

6 A No, sir.

7 Q Did you ask the county to spend taxpayer  
8 funds to maintain the dirt road?

9 A No, sir.

10 Q Did someone have you sign a deed giving  
11 the 25-foot right-of-way to Charleston County?

12 A I don't remember signing a deed. I mean,  
13 whatever it takes for me to get -- when I went to  
14 the planning board, Seabrook, I didn't have to do  
15 that.

16 Q Hopefully for the last time, if you would  
17 look at Defendant's Exhibit 15. Just read it to  
18 yourself, and when you're done I'm going to ask you  
19 a question.

20 (pause)

21 A Okay.

22 Q All right. Does that document anywhere in  
23 it use the word acceptance?

24 A No.

25 Q No, sir. Exhib. 778 2A, which you previously

1 have seen, you identified the recording marks on it;  
2 right?

3 A Yes.

4 Q Is there a recording mark on Defendant's  
5 Exhibit 15?

6 A No.

7 Q Do you consider the neighbors who use your  
8 dirt road trespassers?

9 A Trespass, no.

10 Q Were you trying to fool the County when  
11 you got a permit to rebuild your burned down house  
12 in 1996?

13 A Not intentionally.

14 Q You trying to pull a con job?

15 A No, sir.

16 Q Trying to con your neighbors?

17 A By no means.

18 Q You trying to take away their property  
19 rights?

20 A No, sir.

21 Q From 1996 to the present have you ever  
22 gotten a reduction in your taxes on the property  
23 that you have?

24 A Not to my knowledge, I don't remember  
25 getting any reduction. 779

1 Q You said you didn't necessarily mind if  
2 the County used the 25-foot right-of-way, but to  
3 your knowledge -- the right-of-way except where the  
4 dirt path is, but have they used it for anything?

5 A No, sir.

6 Q Has anyone from the County ever told you  
7 they intended to use it for anything?

8 A Not anyone from the County, no.

9 Q You disagree with calling the dirt road a  
10 county road; correct?

11 A Correct.

12 Q You disagree with calling it a public  
13 road; correct?

14 A Correct.

15 Q Do you agree with calling it a private  
16 road?

17 A Way I see it, if that dirt road wasn't a  
18 private road why would someone -- and I just say  
19 someone pay me 600 to get an easement through there?  
20 Don't make a whole lot of sense to me. I wouldn't  
21 have to explain all that because I know why. But  
22 that's what I'm saying. It's not a public road nor  
23 a county road, to my knowledge.

24 Q Thank you. Is it a problem that the  
25 County uses the dirt road <sup>780</sup> the Resurrection Road

1 dirt path because it would be cheaper than building  
2 a road in the 25-foot right-of-way?

3 A Definitely.

4 MR. ROBINSON: That's all the questions I  
5 have.

6 MR. OBERMAN: Sir, I have to ask two  
7 questions. Maybe three.

8 THE COURT: No more than that.

9 BY MR. OBERMAN:

10 Q How long have you lived -- when did you  
11 live in this area?

12 A What area?

13 Q Resurrection Road.

14 A '73, house burned down in 1996.

15 Q Prior to '73 didn't you live in that same  
16 area?

17 A Born and raised across the street from  
18 there. After that I went to New York.

19 Q That's what I'm trying to get to. How  
20 long were you born and raised across the street from  
21 Resurrection Road?

22 A I guess that's when I was born, 1944.

23 Q And was the road there -- were you old  
24 enough to remember there being a road there?

25 A Yes. Mr. Simmons used to ride his wagon

1 down there. Was very few cars. Nobody had no cars.

2 Q Resurrection Road, to your memory, has  
3 been there since --

4 A The road been there. They didn't name it  
5 Resurrection Road.

6 Q The road has been there, used by members  
7 of the public since we said, since dirt was new; is  
8 that not correct?

9 A Correct.

10 Q Mr. Limehouse said it was used by the  
11 British to haul over their munitions over that road.  
12 Do you remember that testimony?

13 A Go ahead.

14 Q So is it fair to say that road has been a  
15 public road as long as you can remember and as long  
16 as Mr. Limehouse can remember and as long as anyone  
17 else can remember; is that not correct?

18 A I'll answer your question yes or no;  
19 correct. But I would like to make a remark after  
20 it.

21 Q I didn't hear the last part, sir?

22 A I say yes, with explanation.

23 Q Okay. You have all the right. The Judge  
24 will tell you, you can go on and on and on as long  
25 as you want.

1           A     I don't have long. The road has been  
2 there, true. I don't deny that. Before I was born.  
3 But for me to build my house back that's the reason  
4 I have to give up the 25-foot right-of-way. And  
5 that's what I did.

6           Q     When you bought that property the road was  
7 there; wasn't it, sir?

8           A     I bought the property, the whole road was  
9 there, the property was there. That's why I bought  
10 the property with the road.

11          Q     With the road?

12          A     Right.

13          Q     And the public was going up and down that  
14 road when you bought the property; is that correct,  
15 sir?

16          A     Correct.

17          Q     You notice that road had been there, as we  
18 call a prescriptive use, for years and years and  
19 years; is that correct, sir?

20          A     Correct.

21          Q     And you bought it with knowledge that that  
22 road had been used for years and years and years;  
23 did you not?

24          A     Yes, sir, with explanation. Explanation  
25 is the road was there for 783ars and years before I

1 was born, whatnot. And it's still going to be there  
2 when I'm gone, but the situation is when they asked  
3 for the right-of-way I give them the right-of-way.  
4 I pay for the property however low when I got it, I  
5 bought it and I give them the right-of-way. They  
6 had 25-foot right-of-way from the point to the back,  
7 from me. And when they got the right-of-way, I  
8 think it from 1996 it was 2006 is 10, 2006, 2012,  
9 that's 20 years. 2013 be 21 years and you know  
10 property itself, you get a pine tree and an oak  
11 tree, all of it to certain extent how much time it  
12 take for them to grow? So you're saying I give them  
13 junk. They know what they got. I didn't fool  
14 nobody. Didn't try to gip anybody. And I'm not  
15 trying to oppose them by no means from using the  
16 right-of-way. That's what they want. County tell  
17 me if in future development it be in the road  
18 right-of-way. Like I said again, I ain't land  
19 locking anyone. Ain't trying to stop the doctor,  
20 Johnson or no one. If they want it for nothing they  
21 have to take it. Ain't going to give it to them.  
22 You said what that little piece going to do to me if  
23 it's any use. It's my property. If you got  
24 property and you don't want nobody to put foot on it  
25 it's yours. Where it's at

1 Q Are your finished, sir?

2 A Yes, sir.

3 Q One last question. When you went before  
4 County Council and the County recorded the survey  
5 and plat showing the 25-foot right-of-way you  
6 intended that the County have that 25-foot  
7 right-of-way; didn't you?

8 A I intended?

9 Q Yes, sir. You meant for them to have it?

10 A A member of County Council tell me what to  
11 do. I did what I had to do. All I wanted, to get  
12 my permit for my house. Ain't trying to jump nobody  
13 with nothing.

14 Q My question is you intended?

15 A No, no, sir.

16 Q You didn't intend them to have that  
17 25-foot?

18 A No, I didn't intend them to have anything.  
19 I give them what I had to do.

20 MR. OBERMAN: I promise that's all the  
21 questions I have.

22 BY MR. MITCHELL:

23 Q Mr. Heyward you just testified you have  
24 not had a reduction in taxes on your property;  
25 correct?

1           A     Not that I know of I said. I don't know  
2 for sure. My wife pay the tax.

3           Q     Not that you know of, so you haven't seen  
4 a tax bill?

5           A     She pay the taxes. If I have deduction  
6 and then I have, but I don't know. I don't know  
7 what deduction I have. Tax been going up and up and  
8 up.

9           Q     Now, before you subdivided do you know  
10 what the TMS number of your property was?

11          A     No, I don't remember that. I know one  
12 thing, since I had to have it subdivide it went up  
13 higher. I don't see how you say deduction. Because  
14 if I had it in the whole just like I want to do it  
15 with six, seven acres it wouldn't be as much as it  
16 is now. So however the deduction is, it wasn't the  
17 deduction it would be from the get go.

18          Q     Would you agree the TMS number prior to  
19 the subdivision was 204-00-018?

20          A     I don't know. You've got it. What's  
21 that?

22          Q     Lot J. Before the subdivision all you  
23 had -- Lot J1 was not in there; correct?

24          A     Correct.

25          Q     So it was all this area here and Lot J

1 plus J1 correct?

2 A Right.

3 Q So the TMS number before the subdivision  
4 was 204-00-00-018?

5 A Right.

6 Q After the subdivision there was two TMS  
7 numbers?

8 A Tax went up.

9 Q Second one, Lot J1 was 204-00-00-033?

10 A Yes.

11 Q I want you to take a look at this. What  
12 does it say on the top?

13 A You talking about cost? Six point --

14 Q Do you recognize this document?

15 A You've got 6.45. That's acres.

16 Q Do you see where there is a name where it  
17 says name and address?

18 A Name and address, yes.

19 Q This is a notification of classification  
20 appraisal and assessment of real estate from the  
21 County; correct?

22 A Go ahead.

23 MR. MITCHELL: Your Honor, I would like to  
24 offer this as Charleston County Exhibit 2.

25 (County Exhibit Num787: 2 marked.)

1 Q Mr. Heyward, do you see upper right-hand  
2 corner it says tax year. Very upper right-hand  
3 corner, says 1994 tax year; correct?

4 A 1994, '93.

5 Q Up at the very right-hand corner. Right  
6 here says 1994 tax year; correct?

7 A Yes. Go ahead.

8 Q Do you see where it says total assessment?  
9 What number does it have there next to the total  
10 assessment?

11 A \$5008?

12 Q Do you agree that's how much you paid in  
13 taxes for in 1994?

14 A Yes, I mean, that's what they got for the  
15 tax. That's what you pay.

16 Q I'll show you another document that looks  
17 very similar. Have you seen that document?

18 A '96? '97.

19 MR. MITCHELL: Your Honor --

20 THE COURT: Number 3?

21 (County Exhibit Number 3 marked.)

22 (County Exhibit Number 4 marked.)

23 Q I want you to look at Charleston County  
24 Number 3. The upper right hand corner it says 1997  
25 tax year; correct?

1 A Yes.

2 Q What does the TMS number say?

3 A Where would that be?

4 Q Here it's identified as parcel

5 identification.

6 A Yes.

7 Q Could you read that for us?

8 A Read what?

9 Q The parcel identification number.

10 A 204-00-00-018.

11 Q Now, do you agree that that's the same  
12 parcel number that was on Charleston County Exhibit  
13 Number 2?

14 A Yes.

15 Q What was the assessment in 1997 for your  
16 property?

17 A Right here?

18 Q What is that number?

19 A 1700.

20 Q Is that less than five thousand?

21 A Yes, all of them being less.

22 Q You've got a reduction; correct?

23 A Not only me get a reduction. The property  
24 and the property what's going on now, the County  
25 they been going up and down, that's true. It's

1 less. That's not because of me.

2 Q That's not because of you? Why would  
3 taxes go up on your property?

4 A Because of value.

5 Q Do you believe your property is more  
6 valuable than it was when you first purchased it?

7 A When I first purchased it, yes. At the  
8 time it was more valuable.

9 Q How many acres did you own before the  
10 subdivision?

11 A When I first bought it, it was eight acres  
12 then I cut one acre off for my brother and about the  
13 same thing for Clem, James (phonetic) so should have  
14 been six, something like that.

15 Q According to Plaintiff's Exhibit 2A let's  
16 look at Lot J. How many acres does it denote on  
17 there?

18 A 1.05.

19 Q What about Lot J1?

20 A 1.33.

21 Q Now, please look at Charleston County  
22 Exhibit Number 3. How many acres does that show  
23 that you're being taxed for?

24 A Total acres, 15.

25 Q Right here in 790 block right above the

1 top?

2 A Fifteen.

3 Q Says total acres is -- what's the number  
4 after that?

5 A Is five.

6 Q That's for TMS number ending in 018?

7 A Yes.

8 Q Is that the same amount you show on Lot J,  
9 five acres?

10 A Five acres.

11 Q Now, please look at Charleston County  
12 Number 4. That's for parcel number ending in 133  
13 which is Lot J1; correct. How many acres does it  
14 show?

15 A 1.3.

16 Q You started with eight?

17 A Yes.

18 Q And now your down to 6.3; is that correct?

19 A Correct. Started with eight.

20 Q So there is some area that when you gave  
21 up in 1997 this right-of-way that you're no longer  
22 taxed for; correct?

23 A I believe so. I don't know that I was  
24 taxed for that.

25 Q Okay.

1 MR. MITCHELL: Nothing else, Your Honor.

2 THE COURT: All right, Mr. Robinson.

3 MR. ROBINSON: Very briefly, Your Honor.

4 Follow up on this tax issue.

5 BY MR. ROBINSON:

6 Q Mr. Heyward, looking at Plaintiff's  
7 Exhibit 2A, the 1996 plat, if you look at Lot J1 how  
8 many acres does it say it has?

9 A 1.3.

10 Q If you look in the Resurrection Road  
11 right-of-way how many acres does it say it has?

12 A .51.

13 Q What about Lot J residual?

14 A .5.

15 Q No, try that again. Would it be 5.0?

16 A 5.0.

17 MR. ROBINSON: Your Honor, we would ask  
18 the Court to take judicial notice that the  
19 total surface area on the Seabrook plat from  
20 1996 adds up to 6.81 acres.

21 THE COURT: Okay. All right.

22 MR. ROBINSON: We would also ask the Court  
23 to take judicial notice that the acreage added  
24 up by Mr. Mitchell in testimony was 6.3 acres,  
25 and that the total for 1994 acreage before the

1 subdivision was 6.45 acres.

2 THE COURT: All right.

3 MR. ROBINSON: That's all I have.

4 THE COURT: .15 difference. All right. I  
5 note that the assessment -- I would say this  
6 for the record. The assessment figures, that  
7 doesn't necessarily translate into what the  
8 bill is. That, in fact, is shown in the middle  
9 of the document underneath the date of the  
10 notice, and it's one notice -- Exhibit 2 is  
11 January 25, '95. Estimate the tax 904 on  
12 Exhibit 3, the date of notice is June 6 of '97.  
13 And for the five-acre tract the tax bill  
14 predicted to be 339 and for the 1.3 it's 121.  
15 So that's 460. So it is less, then. Okay.  
16 I'm assuming the house ain't built yet. Okay.  
17 All right. Very good.

18 Are we finished with Mr. Heyward? Mr.

19 Heyward, thank you, sir. You may step down.

20 A Thank you, sir.

21 (Discussion off the record.)

22 THE COURT: Anything further?

23 MR. ROBINSON: No, Your Honor. Other  
24 than, if given the opportunity, the ability to  
25 make conclusion statements.

1           THE COURT: I'll give you that chance in  
2 just a second.

3           Mr. Williams, I don't expect you're going  
4 to put forth any evidence. But what I'm  
5 assuming is as long as status quo remains the  
6 same you all can get access to your site there  
7 you-all are happy with the status quo?

8           MR. WILLIAMS: Yes, sir, Your Honor. Just  
9 as we advised Mr. Neal when we got that letter,  
10 that we are neither for or against it. Our  
11 trucks go in and out occasionally to the  
12 substation there, and Mr. Heyward acknowledged  
13 he has no problems with that, and that's -- the  
14 rest of it is between the two of them.

15          THE COURT: Right. Access by Berkeley  
16 Electric Coop is through the road right-of-way.  
17 The road, first and foremost, then you cross  
18 across the 25-foot right-of-way that we've been  
19 talking about the last three days; is that  
20 right?

21          MR. WILLIAMS: Yes, sir. Where the road  
22 actually goes into the right-of-way, we cross  
23 over and up over the berm and onto the  
24 property. I'm not sure exactly back there  
25 where -- how close the road comes to our

1 property, but we access the property from the  
2 dirt road that exists; yes, sir.

3 THE COURT: Got it. Let's take about five  
4 minutes. We'll come back and you all can do  
5 some conclusionary -- you want to make closing  
6 statements? I'll give you five minutes each.

7 MR. OBERMAN: I don't think I need to do  
8 closing statements, Your Honor. He's welcome.

9 MR. ROBINSON: Before we go off the  
10 record, so I don't forget, Mr. Mitchell and I  
11 had discussed earlier the statutory process for  
12 abandonment. I have shown him the documents  
13 related to that, the notice that provided -- he  
14 agrees we would ask the Court take judicial  
15 notice Mr. Heyward has proceeded through a  
16 statutory process and that procedurally  
17 everything was served, regardless of the  
18 substantive issues.

19 THE COURT: You published all that?

20 MR. ROBINSON: We had it published in the  
21 Post and Courier. They amended that in the  
22 last couple months since we've done that,  
23 because now you have to get the agreement of  
24 the government authority. At the time we did  
25 it all you had to do was publish in a newspaper

1 and open circulation. In addition to that you  
2 have to send a letter with a green card, return  
3 receipt requested to every effected landowner  
4 and we did that as well. That is on record and  
5 filed in Affidavit of Service, Affidavit of  
6 Publication with the Court.

7 MR. MITCHELL: I have not seen it but I'm  
8 trusting Mr. Robinson's representation that  
9 he's done that.

10 MR. OBERMAN: Your Honor, I've not seen it  
11 either and I don't think we've been served.

12 THE COURT: You-all take about five  
13 minutes to talk. Rather than doing closing  
14 arguments I'll ask you what it is you-all each  
15 seek. We'll summarize like that. Okay? I'll  
16 be right back.

17 (Short break.)

18 THE COURT: All right. Let's do a little  
19 summation in the form of what rights are  
20 sought, what is being sought at this point in  
21 time as to where we stand at the end of all the  
22 testimony.

23 MR. OBERMAN: Being the Plaintiff I guess  
24 I go forward first?

25 THE COURT: Please do.

1           MR. OBERMAN: Your Honor, you have the  
2           ability as a court of equity to do what is  
3           equitable, what is right, what is just. And  
4           that's all that the Plaintiffs, being Mr. Frank  
5           Johnson and Dr. Ralph Haynes are asking for.

6           They are asking that Resurrection Road,  
7           that has been there forever, and that the judge  
8           or the court has previously ruled was a  
9           prescriptive roadway. The only question that  
10          we were supposed to address today was the  
11          extended location of that roadway.

12          We have come in and shown to this Court  
13          that the roadway is not a private road. It is  
14          a public road and has been a public road by  
15          prescription forever. And we have asked that  
16          the intention of the parties, that the people  
17          served by this prescriptive road, Resurrection  
18          Road, be served in allowing them to develop it  
19          as was put forth before County Council.

20          It is our contention that Mr. Heyward came  
21          before County Council, actually came before all  
22          the different agencies of the County and said I  
23          want to build my house, I understand a permit  
24          is needed. And I understand that you're  
25          requesting a 50-foot wide right-of-way, as was

1 the case back in 1996, be given. The purpose  
2 of that would be to give the right-of-way from  
3 Betsy Kerrison Parkway or boulevard to my house  
4 and to 25 acres behind my house, so that those  
5 people who own that property can develop their  
6 property as they see fit.

7 He went further and said, as a favor from  
8 the County Council, as a request we're asking  
9 that that 50-foot requirement be reduced to  
10 25 feet. And County Council, in its ultimate  
11 wisdom, agreed with that and reduced its  
12 requirement of the 50-foot right-of-way to  
13 25-foot right-of-way.

14 Mr. Heyward, through the advice of  
15 someone, and possibly Mr. Seabrook or others,  
16 said thank you for giving me that favor of  
17 reducing it from a 50-foot right-of-way to a  
18 25-foot right-of-way, and I'm going to give  
19 that easement through the bongo trail, through  
20 the jungle, which at that time in '96, to the  
21 present, is unusable. It would take the  
22 County --

23 THE COURT: It can clearly be used. Let  
24 me make sure I'm clear on your position. There  
25 is a 25-foot dedicated<sup>798</sup> public right-of-way;

1 correct?

2 MR. OBERMAN: Correct.

3 THE COURT: Your position is it's been  
4 dedicated to the County, accepted by the County  
5 and in the public sphere.

6 MR. OBERMAN: Correct.

7 THE COURT: In addition to that, is the  
8 prescriptive easement to the north of that?  
9 What I need to hear from you there is, one,  
10 you've said it's a public right-of-way. I need  
11 to hear from you as to how and when it is.  
12 That's by use, became public by use or became  
13 by dedication or acceptance by the County,  
14 however you want to use it, in 2011.

15 MR. OBERMAN: It became a public  
16 right-of-way by prescription, Your Honor. And  
17 for --

18 THE COURT: Because the public has used it  
19 prescriptively for a hundred years?

20 MR. OBERMAN: Yes, sir.

21 THE COURT: All right.

22 MR. OBERMAN: I think I used the term --

23 THE COURT: Old as dirt. How did you get  
24 your 50 feet when it's measured off as 24 feet  
25 on the front and 8 feet in the back? How do

1           you get to 25 feet?

2           MR. OBERMAN: The way we get there, Your  
3           Honor, is two ways. Number one, the rear  
4           portion of that prescriptive easement runs into  
5           and is incorporated within the 25-foot  
6           right-of-way.

7           THE COURT: Okay.

8           MR. OBERMAN: And we ask that the Court --

9           THE COURT: You're talking about moving  
10          the road, then?

11          MR. OBERMAN: No. No, Your Honor. If you  
12          remember now, the prescriptive easement set a  
13          line of Resurrection Road cuts into the 25-foot  
14          dedicated right-of-way.

15          THE COURT: Got that.

16          MR. OBERMAN: So got that portion right  
17          there.

18          We're not looking for a 50-foot  
19          right-of-way, Your Honor. We're looking for a  
20          25-foot right-of-way. The prescriptive  
21          easement, the public road varies from Betsy  
22          Kerrison, 21 feet wide, and it goes down  
23          through different things.

24          THE COURT: Right.

25          MR. OBERMAN: What we're asking this Court

1 to do, through its power of equity and justice,  
2 is to incorporate what I have facetiously  
3 referred to as a radish patch, into that  
4 prescriptive easement enough so as to give us  
5 25 feet.

6 THE COURT: All right. Plaintiff  
7 acknowledges that property is owned by Mr.  
8 Heyward.

9 MR. OBERMAN: We're acknowledging that  
10 it's there. Acknowledging that he took a deed  
11 subject to the prescriptive easement and that  
12 is a residual crescent off to the right of the  
13 prescriptive roadway.

14 THE COURT: Not been used; right?

15 MR. OBERMAN: It has not been used, has no  
16 use, has very little of any value, and by  
17 moving it over that would give us that 25 feet  
18 in that area.

19 THE COURT: All right.

20 MR. OBERMAN: We're asking the Court,  
21 through its powers of equity, to where the  
22 prescriptive Resurrection Road bottle necks  
23 further down the road, to give us some of that  
24 to the right of the road to have a 25-foot road  
25 all the way down, Y801: Honor.

1 THE COURT: All right. All right. So you  
2 seek the power of the Court's equity to grant  
3 this radish patch -- to add to the prescriptive  
4 easement for the 25-foot right-of-way.

5 MR. OBERMAN: That is correct.

6 THE COURT: All right.

7 MR. OBERMAN: And then where it passes the  
8 overhead utility lines to put, again, that I  
9 call it the right boundary of that road into  
10 the dedicated 25-foot easement.

11 Your Honor, I think that's what the  
12 intention of the government was, to require  
13 that 25-foot right-of-way -- that parties on  
14 the part of Dr. Haynes who bought after in this  
15 case, he had a right to look at the recorded  
16 survey and plat, say I've got a 25-foot road  
17 going to my property.

18 Mr. Johnson always thought he had the  
19 right to that, and we're asking that that be  
20 the case. We feel that it's the equitable  
21 thing to do.

22 It's justice to expand the prescriptive  
23 road bed where necessary, some areas its  
24 necessary, other areas it's not necessary. And  
25 to do that it would be absolutely no harm to

1 Mr. Heyward. We feel -- I've used the word --  
2 I hope I wasn't insulting -- that he committed  
3 a fraud on the County Council when he gave the  
4 required 25-foot right-of-way through unusable  
5 land. But I think that that can be rectified  
6 by expanding the prescriptive road bed to its  
7 required width of 25 feet.

8 THE COURT: All right.

9 MR. OBERMAN: Your Honor, we feel that Mr.  
10 Johnson, as per the Court's order, showed the  
11 width of the road bed only on his surveys and  
12 plats, where it goes from --

13 THE COURT: All right. That's good. I  
14 understand.

15 MR. OBERMAN: You understand? What I  
16 didn't bring out, Your Honor, is that the --  
17 through over the years the County of Charleston  
18 has graded, scraped and used more than the road  
19 bed. They have said they have cut down trees,  
20 they've cut down grasses, whatever. And it  
21 would do no harm to anybody to have that  
22 25-foot road going back to the line BC.

23 THE COURT: Got you. Okay. Thank you,  
24 sir.

25 MR. OBERMAN: Thank you.

1 THE COURT: Mr. Robinson.

2 MR. ROBINSON: Thank you, Your Honor.

3 You have encouraged us -- we have  
4 testified today mostly on the nature and scope  
5 of this easement or we've tried to. This Court  
6 certainly -- well, I certainly do not question  
7 your authority and your ability to make any  
8 ruling in equity and will show sound judgment.

9 I would say that there are certain maxims  
10 and that there are -- they are obviously  
11 precedent to how we look at the nature and  
12 scope of an easement. The primary question in  
13 the cases that I have read is how is the  
14 property presently used? How's the servient  
15 tenement burdened and what is showing is  
16 thereby owner of the dominant tenement, that  
17 the property is not suitable to the uses for  
18 which it is presently used.

19 The question is not what could be  
20 developed or what should be developed. The  
21 question is what is in the nature and keeping  
22 of the property and what burden have you shown  
23 on yourselves?

24 Mr. Johnson, by his owned admission, has  
25 testified that he ir<sup>804</sup>nded to retire onto the

1 property, although he made plans at a later  
2 date to develop the property. He bought the  
3 property for only \$10,000. Even with inflation  
4 it appears there is not material difference in  
5 his lay opinion as to the value of the property  
6 over the past decade. It is still usable. It  
7 is usable for agricultural purposes, it is  
8 usable for forest. It is usable to put one  
9 house on. It is possibly usable to put  
10 additional houses on. I'm not qualified to  
11 answer that, but that would certainly be in  
12 keeping with the surrounding property.

13 Same is true of Dr. Haynes' property. At  
14 the time that both of these men had initial  
15 interest in the property, the case of Mr.  
16 Johnson the 25-foot right-of-way did not exist  
17 and in the case of Dr. Haynes the first time  
18 that he had an interest in the property the  
19 25-foot right-of-way did not exist. Dr.  
20 Haynes' testimony reveals he did not use the  
21 service of a South Carolina attorney to close  
22 his real estate transaction. He has a quit  
23 claim deed in the file for his property. The  
24 Court should not reward an inequitable act or  
25 an act where a party<sup>805</sup> had the ability to have

1 performed due diligence as to the nature and  
2 quality of title, the right to do future  
3 development. That's why people get title  
4 insurance policies. Title insurance policies  
5 often get hit up and they often pay out a lot.  
6 There hadn't been testimony about that. Old  
7 Republic is not in this room and Great American  
8 Title is not, because the parties did not avail  
9 themselves of a guarantee to the title of their  
10 property. Buyer beware. Neither of them has  
11 testified in the deposition or in Mr. Johnson's  
12 statements before the Court that they cannot  
13 presently access the property and use it for  
14 what they've used it for since they owned it,  
15 Dr. Haynes, agricultural purpose. Mr. Johnson,  
16 pay a visit. Maybe build a house. No one is  
17 stopping him from doing that.

18 Moving on to the issue of the  
19 right-of-way, the 25-foot right-of-way, whether  
20 or not it has been abandoned and the dirt road  
21 and what bearing that has on this. My client  
22 has said repeatedly, and hopefully to  
23 everyone's satisfaction, that it is not his  
24 intent to deny access along the existing dirt  
25 road to anyone who lig<sup>06</sup> on the road, which is

1 in conformity with the present uses of the  
2 property. No one has testified as to how they  
3 are unduly burdened by the existing road. No  
4 one. Other than for future uses that do not  
5 presently comport with the land.

6 There is no document, other than the  
7 Seabrook plat, which is a deeding document to  
8 the County of Charleston or to the public for  
9 Resurrection Road. As the Court is aware there  
10 are specific requirements for dedication of a  
11 right-of-way. This is important because in the  
12 County's Answer, which it has not amended, the  
13 County does a general denial, but then it says,  
14 in response to our allegation that they had  
15 abandoned the dedication. To the extent a  
16 response is required Charleston County denies  
17 the allegation and demands strict proof.  
18 Charleston County affirmatively alleges that  
19 the purported dedication was merely an offer to  
20 dedicate the property and that if argumentative  
21 there was a dedication there is no acceptance  
22 of the property offered for dedication. That  
23 has not changed. That is what is plead. Not  
24 been orally amended at trial.

25 Secondly, and related the that, Judge, is

1 nowhere in that pleading is there specific  
2 reference to the dirt road by the County. I  
3 don't know how we can try an issue of whether  
4 the County has a right to use the public road  
5 if that hasn't been plead.

6 I recognize the quandary the County is in.  
7 The 1965 community road program was ostensibly  
8 designed, I think, probably to prevent graft  
9 and do business for the public. I know of many  
10 instances where private roads have been  
11 maintained by the county even those these  
12 gentlemen, and I do not doubt the voracity of  
13 what they said, had not personally participated  
14 in that.

15 It is apparent to me from reading County  
16 Council's enactments over the last few years,  
17 again trying to do their job for the public,  
18 that they have enacted a process to absorb  
19 roads, whatever their status are, to make them  
20 community or public roads or non-standard roads  
21 and segregate out those roads that are private  
22 roads. The thing that bothers me, and that I  
23 think should be troublesome to every property  
24 owner, is the county basically said we have the  
25 ability to arbitrar808/ decide whether a road is

1 public or private. That is what much of the  
2 testimony that I heard here was. I don't think  
3 that's fair to private property owners. I  
4 think that it's not fair because it is kind of  
5 a stealth exaction, it is a stealth  
6 encroachment. It is a stealth condemnation of  
7 property.

8 So to come to the point of what I'm  
9 asking, what my client is asking, is that  
10 Resurrection Road be used in the same form,  
11 same shape, same dimensions that it has been  
12 since our recorded history. Certainly to the  
13 widths on the dirt road as it exists now.  
14 Whether it's a County road or not, whether  
15 public road or not, I don't know. I defer in  
16 your wisdom to that. My view is it's  
17 prescriptive. To my mind there is a difference  
18 between generic term public and all the people  
19 on that road who have used the road over the  
20 20-year prescriptive time for consistent  
21 purposes versus a mailman coming down the road  
22 or even county employees coming down the road  
23 on occasion.

24 What about the -- moving the road as Mr.  
25 Oberman has talked about? Well, that, too,

1 going back to your 2010 ruling, would amount to  
2 an exaction, because if you merge the dirt road  
3 as it exist, a prescriptive easement, with what  
4 the County alleges to be a non-abandoned  
5 right-of-way, you take an arc of Mason  
6 Heyward's land at two points even though it be  
7 very small, and you basically allow a private  
8 landowner to develop a public right-of-way.  
9 Mr. Heyward is not going to be compensated for  
10 that. If you widen the existing dirt road  
11 presumably the County, if in this pleading if  
12 the Court entertains the County's position that  
13 there is an implied dedication of the existing  
14 dirt road, which I believe it is attempting to  
15 assert, if the Court agrees with that any  
16 widening of that road traditionally would be  
17 subject to a condemnation action. A  
18 condemnation action is not before the Court.  
19 But it's very similar to what would happen if  
20 you merge the right-of-way with the dirt road.

21 In concluding on the abandonment and  
22 public use, the standard for abandonment is a  
23 (inaudible). But we can imply abandonment in  
24 this case because the County has preferred to  
25 use an existing dirt road rather than develop a

1 right-of-way that is dedicated to it. Not only  
2 have they not improved the area, they have  
3 prevented it from sinking into a state which  
4 presumably makes it more difficult to turn into  
5 a dirt road.

6 Mr. Heyward divided his property because  
7 the County told him to, so he could rebuild it.  
8 He relied on Mr. Seabrook, obviously, for some  
9 advice and, appears, on Ms. Kerrison for some  
10 advice. I think at the time they probably did  
11 best of what they told him. But I think if  
12 they were all here testifying and if you asked  
13 Mr. Heyward again directly if he intended to  
14 give the County of Charleston, or Mr. Johnson  
15 or anyone else on the road, a total of, at it's  
16 widest spot appears to be 48 feet of road, I  
17 think they would all tell you no. I would also  
18 think that such a taking, Mr. Heyward would be  
19 unduly burdensome by his own testimony as to  
20 the amount of traffic up and down the road, the  
21 encroachment on his property the taking of  
22 trees be they grand or just be trees that he  
23 likes. It takes away parts of his property  
24 that he can use, and probably most importantly  
25 it is the gateway to irrevocably changing the

1 nature of the property, which brings us full  
2 circle to the first point, which is in  
3 examining the scope, nature of the easement and  
4 how people have used it no one has demonstrated  
5 an undue burden to this Court other than Mason  
6 Heyward if the relief sought in widening this  
7 road unilaterally is granted.

8 Thank you.

9 THE COURT: All right. Mr. Mitchell.

10 MR. MITCHELL: Your Honor, first I would  
11 like to thank Mr. Robinson for bringing forth  
12 allegations against the County in his closing  
13 arguments by saying he has witnessed county  
14 employees doing public work on private  
15 property; has yet failed to provide anybody  
16 here to testify to that.

17 I'll be short Your Honor. You asked us to  
18 come out here and tell us what we want. I'll  
19 go straight to the point, not going to sit here  
20 and fill this room full of a bunch of different  
21 words.

22 When we started out on Monday, asked for  
23 two different things, saw two different issues.  
24 Saw the right-of-way, and we saw the road bed.  
25 The question was whether we had abandoned all

1 or portion of that 25-foot right-of-way. I  
2 think you've heard facts that, from the other  
3 side, that might indicate we have not used it  
4 and that might be the case. However, what you  
5 heard from the County was for the last since  
6 1984 and possibly before, that they have  
7 continually maintained that road up and down  
8 all the way back to Mr. Limehouse's culvert in  
9 the back. In the alterative, if the Court  
10 finds that front portion's been abandoned then  
11 the County's asking for -- declare the travel  
12 way, a public road, as it merges into where the  
13 back portion of that right-of-way where we were  
14 maintaining and there is active roadway on  
15 that, continues through 25-foot right-of-way  
16 all the way back to the back portion where  
17 Mr. Limehouse's property is at? It's just that  
18 simple, Your Honor.

19 THE COURT: Okay. So let me make sure I'm  
20 clear. As it relates to the front portion of  
21 the right-of-way, the 25-foot dedicated  
22 right-of-way, you're acknowledging that that  
23 may have been abandoned through lack of use and  
24 maintenance up until a point on that  
25 right-of-way? 813

1 MR. MITCHELL: I do not want to  
2 acknowledge that. However --

3 THE COURT: The facts seem to point that  
4 way.

5 MR. MITCHELL: The facts could possibly  
6 point that way.

7 THE COURT: Okay. Here's my question for  
8 you. In order to get full rights to the public  
9 you need to have three items. You have to have  
10 the offer to dedicate. It's got to be clear,  
11 cogent and convincing, so we have a plat to  
12 that effect. Then there has to be an  
13 acceptance of the dedication by the County.  
14 The dedication is by the landowner. The  
15 acceptance would be by the County. Then you  
16 get to the issue of abandonment. What evidence  
17 of acceptance do you point to?

18 MR. MITCHELL: We're talking about the  
19 25-foot right-of-way?

20 THE COURT: Yes.

21 MR. MITCHELL: Where you see that is where  
22 we've talked about cases, that non-taxation of  
23 that property is a factor of acceptance.

24 THE COURT: That's what you look to?

25 MR. MITCHELL: 814<sup>s</sup>, sir. On the back

1           portion not only do we have non-taxation of  
2           that portion, but we also have maintenance and  
3           use of that portion.

4           THE COURT: All right. On the back, I've  
5           got no problem with that. The question I think  
6           I raised earlier in the week is can you have a  
7           partial acceptance or a partial abandonment of  
8           a dedicated right-of-way?

9           MR. MITCHELL: I think I said in the  
10          alternative, if you did find that front portion  
11          was abandoned by the County, then we wish the  
12          Court to find that the travel way -- and as we  
13          heard testimony, it's not just a travel way one  
14          or two feet on either side, all the way back to  
15          where the second culvert on Ms. Bennet's  
16          property.

17          THE COURT: As to the road bed,  
18          Mr. Mitchell, it is the County's position that  
19          it is a prescriptive easement?

20          MR. MITCHELL: Yes, sir.

21          THE COURT: But that is now owned by the  
22          public?

23          MR. MITCHELL: Public roadway; yes, sir.

24          THE COURT: Therefore, properly workable,  
25          usable by the county.

1 MR. MITCHELL: Yes, sir.

2 THE COURT: When we talk about the scope  
3 of that easement what's your position relative  
4 to the width of that roadway and the length of  
5 that road way?

6 MR. MITCHELL: I think the surveyors layed  
7 down width of the road bed from dirt side to  
8 dirt side.

9 THE COURT: No real objection?

10 MR. MITCHELL: No objection to that. As  
11 we heard from our road grader operator their  
12 maintenance just doesn't stop there. They need  
13 to go further to maintain, mowing, tree  
14 trimming on the side to be able to maintain  
15 that road.

16 THE COURT: So acknowledged width plus one  
17 or two feet?

18 MR. MITCHELL: On both sides; yes, sir.

19 THE COURT: Okay. Can you help me with  
20 math on the taxable aspect of it? Looked to me  
21 like we're missing some land there somewhere.

22 MR. MITCHELL: The point of that was, Your  
23 Honor, is that he was taxed for his five acres  
24 and 1.3 acres. Whatever was left over, whether  
25 it was .51, which h<sup>816</sup>plat indicates, but there

1 is also mistakes on that plat, wrong TMS number  
2 on there. The point is, he's paying -- he's  
3 being taxed on property for that five acres and  
4 that 1.3. When you add up what he had before,  
5 even if it adds up to .51 it's still less than  
6 what he's being taxed on now. So whether it's  
7 .15 or .51, it's still a non-taxed area.

8 THE COURT: Got you. All right.

9 MR. OBERMAN: Your Honor --

10 THE COURT: Just one second. Let me hear  
11 from Mr. Williams.

12 MR. WILLIAMS: Your Honor, as I said, our  
13 main concern is just being an abutting property  
14 owner and that we have used the road to come in  
15 and out and access our property. The width of  
16 it, we're not involved in arguing how wide it  
17 is or is not.

18 THE COURT: As it relates to your access,  
19 however, do you have a position on the width of  
20 that? I think it's 21 feet is what is shown on  
21 the front end and clearly you've got a gravel  
22 road to get on there. I assume you take trucks  
23 across that road.

24 MR. WILLIAMS: Yes, sir. The big trucks  
25 you have to change 817: equipment in there and

1 even the smaller service trucks, crew truck  
2 going in and out of there, it's just an  
3 oversized pick-up, but they all use  
4 Resurrection Road to access the substation  
5 there.

6 THE COURT: All right. Thank you, sir.

7 MR. OBERMAN: Your Honor, I did want to  
8 call to your attention the two cases, Tupper  
9 versus Dorchester County. And the case of --  
10 your case, Your Honor, Youngblood versus County  
11 of Charleston. And both cases stand for the  
12 proposition the use, repair and working of the  
13 streets by the public authorities is a mode of  
14 acceptance. And we feel that with the  
15 recording of the plat and holding out to the  
16 public that it was granted, and the County  
17 setting out it's letter that it's been  
18 approved, together with 34 years of use, repair  
19 and working of the streets, meets the criteria  
20 of acceptance, and if Your Honor wishes I can  
21 give you copies of these cases.

22 THE COURT: I got them. I've looked at  
23 them. Let me give you-all some -- I'm not  
24 going to give you a final ruling today. I do  
25 want to make some finding of facts I want to

1 put on the record, because I think these will  
2 be of benefit to you-all. I think you've been  
3 in here and know the way I usually operate is  
4 to give you-all some time to present me with  
5 proposed orders. I think that's what I want  
6 here. But I want to try to get you-all focused  
7 on the area I'm really interested in.

8 This case presents -- it's an interesting  
9 case. It's a road case. It's an easement  
10 case, and a lot of those are interesting.

11 It seems to have started in this fashion.  
12 First of all, I think throughout the trial  
13 we've talked about, really, two different road  
14 ways or right-of-ways. One's been there since  
15 dirt was new, as the term Mr. Oberman has used  
16 consistently throughout this five-year-old  
17 case, and that is the roadway which is  
18 designated as Resurrection Road, used and  
19 maintained by those people who live along it,  
20 and I found in a prior trial that there was a  
21 prescriptive easement across that roadway, and  
22 I have had nothing to change my mind about  
23 that.

24 What I asked this case to do was to deal  
25 with the extent of 1819 scope of the easement,

1           which I generally determine to be how long and  
2           how wide.

3           It would appear to me that there has been  
4           virtually no disagreement as to the width of  
5           the roadway as shown on the plat prepared by  
6           Steven Johnson. I think that's Exhibit 1 and  
7           1A which is in evidence. There may be some  
8           additional foot or so on either side for  
9           maintenance purposes that extends beyond the  
10          road way. But at the front on Bohicket Road  
11          it's 24 feet. At the point in which the road  
12          turns to go into the Berkeley Electric Coop  
13          property it's 21 feet. On the back side of  
14          that driveway it becomes 14 feet. I'm using  
15          round numbers here. Clearly the road way  
16          diminishes substantially there. Then it goes  
17          from 14 feet all the way back to a width of at  
18          best 8 feet as both of the motor grader  
19          operators testified today. They only go down  
20          and they may back out and turn around. It's  
21          not wide enough for two blades. The blades are  
22          six feet. So it's breaking about six feet back  
23          there. That would be my finding.

24          Now, how did we get to the 25-foot  
25          right-of-way? Well, <sup>820</sup> think Mr. Robinson used

1 that term, I've been thinking about it all day,  
2 it was an exaction which was obtained by  
3 Charleston County when Mr. Heyward went to get  
4 his plat approved so he could rebuild his home  
5 which had burned down in the 1996 timeframe.

6 What is an exaction? Well, I'm looking at  
7 Blacks. This one relates to an exaction -- has  
8 to do with subdivisions.

9 A subdivision exaction, a charge that a  
10 community imposes on a subdivider as a  
11 condition for permitting recordation of the  
12 subdivision map and sale of the subdivided  
13 parcels.

14 In this case it was requesting that Mr.  
15 Heyward give up 25 feet of his property in  
16 order that he could get his subdivision so his  
17 house could be rebuilt. Don't have any  
18 knowledge, no testimony as to why that was  
19 done, just that that was done.

20 The usual definition of exaction, and this  
21 also comes out of Blacks, this is going to be  
22 one of the concerns I've got as I decide this  
23 case, is an exaction is defined by Blacks is  
24 the act of demanding more money than is due.  
25 That is extortion. 821, 2, a fee reward or

1 other compensation arbitrarily or wrongfully  
2 demanded.

3 Evidently, it's constitutional if you get  
4 in the subdivision process and it would be  
5 unlawful if you just do it outright. Okay?  
6 That's one of the concerns I've got in this  
7 case. Because I don't know and I don't see  
8 how, Mr. Oberman, I widen a roadway, which is  
9 not 25 feet, without compensation. I think  
10 that's just a constitutional question. I think  
11 it's a taking question.

12 Now, if it has little or no value or use  
13 it might be something, but I think ultimately  
14 if that roadway is going to be -- road bed is  
15 going to be widened it's going to -- and to the  
16 extent that road bed is on Mr. Heyward's  
17 property I think it is legal for him to pursue  
18 some type of compensation for that.

19 Then, just to briefly revisit the issue I  
20 denied -- I granted the motion to direct a  
21 verdict on a cause of action for civil  
22 conspiracy. I found no evidence of an ulterior  
23 purpose or any type of willful abuse of process  
24 that would entitle the Plaintiffs to any  
25 compensation under t<sub>822</sub> conspiracy cause of

1           action. And this case is, I think -- one case  
2           I looked at that was surprisingly similar to  
3           this one. I don't know if it was the Fox  
4           versus -- Pie versus Fox case we referenced  
5           before or not. But I point that out to you.

6           So what I'm wrestling with is still the  
7           scope of the prescriptive easement and whether  
8           a prescriptive easement can then become a  
9           public easement, and if so how; continuous use,  
10          maintenance, whatever. I'm not sure -- I don't  
11          think, Mr. Mitchell, that it becomes public  
12          because the County declares it so.

13          MR. MITCHELL: I don't think that's my  
14          argument at all.

15          THE COURT: I don't think it becomes that  
16          way because in December of '11 the County says,  
17          okay, these county community roads are going to  
18          be public roads.

19          MR. MITCHELL: I think my intention was  
20          continuous use, not through that act.

21          THE COURT: Very good.

22          Then as to the 25-foot public  
23          right-of-way, as I've gone through here, I  
24          think repeatedly, is has there been a  
25          dedication? On the 823 cord I'm willing to say I

1 think there has been. Has there been an  
2 acceptance? That's the main question I have  
3 open on the dedication, on the 25-foot  
4 right-of-way. And then, ultimately, has there  
5 been an abandonment as to any part of that road  
6 way? And I think, again, we covered this the  
7 other day, can it be a partial or does it have  
8 to be a total abandonment of the road way?

9 Let me refer you-all to some cases in that  
10 regard. I'll read these into the record. I'll  
11 give you the names and state citations. These  
12 are cases that I've found. These are in  
13 addition to the ones we've talked about today  
14 already which is Youngblood and Tupper.

15 First of all, there is Davis versus  
16 Epting, 317 South Carolina 315. There is  
17 Myrtle Beach versus Parker, 260 South Carolina  
18 475. The next three cases I give you I think  
19 are probably the most on point I've seen.  
20 Tyler versus Guerry from 1968.

21 MR. OBERMAN: The cite?

22 THE COURT: I must have not written that  
23 one down. I apologize. I'll get it for you in  
24 a second.

25 Hodge versus M824ing. I do have that one.

1           That's 241 South Carolina 142. And that cites  
2           Outlaw versus Moise. Those are all cases I  
3           found under dedication or right-of-way  
4           acceptance, abandonment. And I will state for  
5           the record that there clearly seems to be a  
6           distinction between public and private roads.  
7           The law seems to distinguish those two. But a  
8           dedication by definition, I think, is to the  
9           public. All right?

10           The other issue ultimately that I wrestle  
11           with, and this is in every easement case, the  
12           law states that the existence of an easement is  
13           a matter of law, and also that an express  
14           easement cannot be altered by the court. A  
15           prescriptive easement, however, can be moved  
16           and altered by the court, and that's where Mr.  
17           Oberman seeks equitable relief.

18           Therefore, I know that I can take the  
19           prescriptive easement and place it on top of  
20           the 25-foot road-right-of-way. Okay? I know  
21           that I can do that. I know that I have the  
22           legal authority to do that. And, in fact, in  
23           one of the documents, I think it's Plaintiff's  
24           Exhibit Number 9. I think it's Plaintiffs.  
25           Might be a Defendant's document. But it's the

1 agreement, I think it's part of the deed -- the  
2 agreement that Mr. Heyward had with the  
3 Limehouse predecessors, that was Mr. and  
4 Ms. Kerrison. It clearly states at the bottom  
5 of that document that in the event the  
6 25-foot -- the road's ever placed upon the  
7 25-foot road-right-of-way the old prescriptive  
8 easement would end. That I know I can do.  
9 That is an option for all of you-all. Not a  
10 very good one, but it's an option.

11 What I don't know I can do is take that --  
12 if I find there is a 25-foot road right-of-way  
13 that's expressly been granted, I don't know  
14 that I can place that on top of the  
15 prescriptive easement. Okay? That's what I  
16 don't think I can do. You-all may be able to  
17 convince me otherwise. Therein lies the  
18 ultimate test in this case.

19 Okay? All right. That's my ruling for  
20 today.

21 MR. ROBINSON: Thank you, Your Honor.

22 THE COURT: Thank you-all. Appreciate  
23 your-all's attention. Thank you for your  
24 patience.

25 The cite on Ty<sup>826</sup> vs Guerry is 251 S.C.

1           120.  
2                   (Hearing concluded.)  
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STATE OF SOUTH CAROLINA )

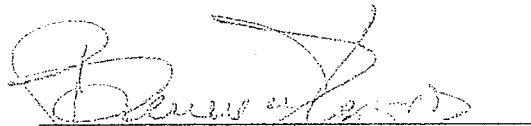
C E R T I F I C A T E

COUNTY OF CHARLESTON )

I, Bernadette Cali Leland, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this September 20th, 2015.



Bernadette Cali Leland, CSR  
Notary Public

My Commission Expires  
April 5, 2020

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 your-all's [1] 258/23  
 yours [3] 10/2 44/14 216/25  
 yourself [5] 50/17 96/5 103/21 190/22  
 210/18  
 yourselves [1] 236/23  
 Yup [1] 136/13

Plaintiff's Exhibit 1

Pursuant to Rule 210 (f), the following exhibit is intentionally omitted as it is oversized, and has been filed separately with the Court of Appeals

Plaintiff's Exhibit 1A

Pursuant to Rule 210 (f), the following exhibit is intentionally omitted as it is oversized, and has been filed separately with the Court of Appeals

Plaintiff's Exhibit 2

Pursuant to Rule 210 (f), the following exhibit is intentionally omitted as it is oversized, and has been filed separately with the Court of Appeals

Plaintiff's Exhibit 2A

Pursuant to Rule 210 (f), the following exhibit is intentionally omitted as it is oversized, and has been filed separately with the Court of Appeals

Plaintiff's Exhibit 3A

Resurrection Rd

OPEN FOR PRAYER

865

PLAINTIFF'S EXHIBIT 3A 1/14/13

Plaintiff's Exhibit 4

Sign

**Subject:** Sign  
**From:** Marvin Oberman <moberman@comcast.net>  
**Date:** 1/12/2013 5:53 PM  
**To:** moberman@comcast.net

— photo.JPG —



Sent from my iPhone



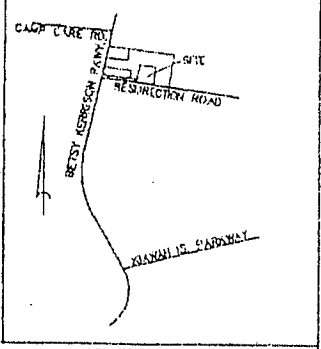
Plaintiff's Exhibit 5

Pursuant to Rule 210 (f), the following exhibit is intentionally omitted as it is oversized, and has been filed separately with the Court of Appeals.

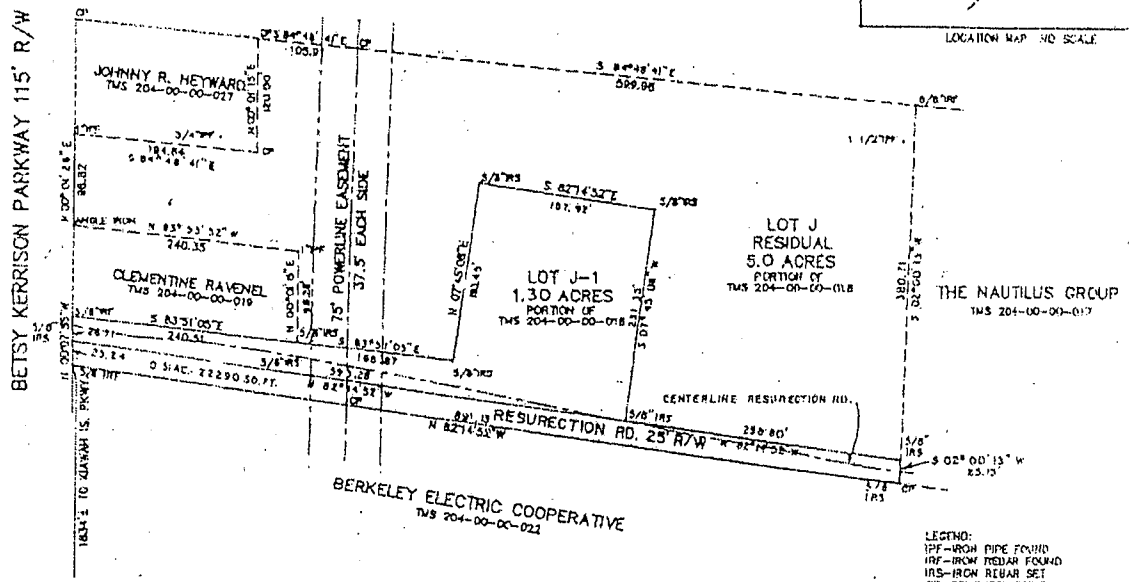
**Plaintiff's Exhibit 6**

GA 269PG290

Charleston, South Carolina  
Office of Register Mesne Conveyances  
Plat recorded in Vol. 197 of Map 1976 at  
2:52 p.m. in Plat Book 242 page 747, and being a doh  
copy filed in File 2 Drawn 47 Folio 47 Drawing  
No. 242 Original plat in white (print) delivered  
to Thomas P. Haskins, Esq.  
*Charles C. Leonard*  
Register Mesne Conveyances



EDGAR A. & MARGARET B. BUCK  
TMS 204-00-00-047



WARNING! APPROVAL OF THIS PLAT BY THE PLANNING BOARD AND/OR COUNTY COUNCIL DOES NOT INDICATE APPROVAL NOR ADJUDICATE TITLE OF THE ACCESS OR RIGHT-OF-WAY SHOWN HEREON. (THIS NOTE TO BE PLACED ON PLAT).

THIS APPROVAL IN NO WAY OBLIGATES THE COUNTY OF CHARLESTON TO MAINTAIN THIS RIGHT-OF-WAY UNTIL IT HAS BEEN CONSTRUCTED TO COUNTY STANDARDS.

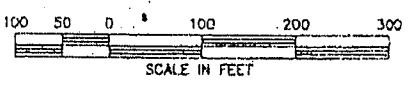
LEGEND:  
IPF - IRON PIPE FOUND  
IRF - IRON REBAR FOUND  
IRS - IRON REBAR SET  
CP - COMPUTED POINT

- REF. PLATS:
- 1. PLAT BY SOUTHEASTERN SURVEYING, INC. DATED 02/05/91 REVISED 05/29/92 PLANNING BOARD # 04724 RECORDED IN PLAT BOOK 01 PAGE 24
  - 2. PLAT BY SOUTHEASTERN SURVEYING, INC. DATED 03/21/91 REVISED 04/27/92 PLANNING BOARD # 04733 RECORDED IN PLAT BOOK 01 PAGE 23
  - 3. PLAT BY SOUTHEASTERN SURVEYING, INC. DATED 03/21/91 REVISED 04/27/92 PLANNING BOARD # 04734 RECORDED IN PLAT BOOK 01 PAGE 28

### JOHNS ISLAND CHARLESTON COUNTY, S. C.

PLAT OF THE SUBDIVISION OF LOT J OWNED BY MASON G. HEYWARD INTO LOT J-1 CONTAINING 1.30 ACRES AND AN APPROXIMATELY 5.0 ACRE RESIDUAL TRACT AND A 0.51 ACRE R/W

SCALE: 1"=100'      JANUARY 18, 1996  
REVISED FEB. 27, 1996



APPROVED FINAL PLAT  
*William W. Miller*  
CLERK, CHARLESTON COUNTY OFFICE  
DIRECTOR OF PLANNING  
CHARLESTON COUNTY PLANNING BOARD  
DATE: MAY 7, 1996  
PB# 16467

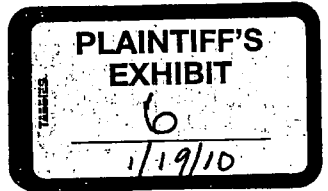
I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein.

*Lewis E. Seabrook*  
LEWIS E. SEABROOK  
CIVIL ENGINEER & LAND SURVEYOR  
S. C. REG. NO. 00860  
P. O. BOX 94  
WY. PLEASANT, S. C. 29465  
(803) 864-4490



E. M. SEABROOK, JR., INC.  
ENGINEERS - SURVEYORS - PLANNERS

THIS LOT DOES MEET MINIMUM HEALTH DEPARTMENT STANDARDS FOR A SLOPED CONVENTIONAL SUB-SURFACE DISPOSAL SYSTEM ONLY.



Plaintiff's Exhibit 7

Barrett S. Lawrimore - Chairman  
Anne T. Alford  
John O. Conlen  
Ruth C. Glover  
Thomas J. Masi  
Timothy E. Scott  
Michael M. Smith  
Charles T. Wallace, M.D.  
Charles C. Wannamaker, M.D.



Beverly T. Craven, Clerk  
(803) 723-6772  
1-800-524-7832  
FAX (803) 724-0654

CHARLESTON COUNTY COUNCIL  
O.T. WALLACE COUNTY OFFICE BUILDING  
2 COURTHOUSE SQUARE  
CHARLESTON, SOUTH CAROLINA  
29401

May 8, 1996

E. M. Scabrook  
P. O. Box 96  
Mt. Pleasant, SC 29465

204-0-0-18

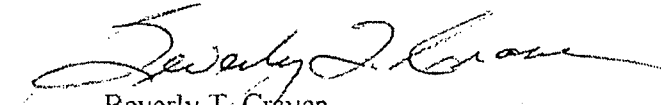
Re: #16467 - Lands of Mason Heyward

DA 789

Dear Mr. Scabrook:

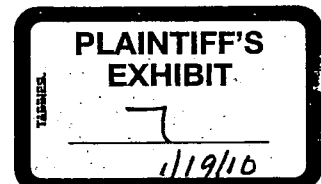
County Council at their meeting on May 7, 1996 granted APPROVAL of a 25' road right-of-way being dedicated to the public. Resurrection Road serves as access to approximately 25 acres of property with high developmental potential.

Very truly yours,

  
Beverly T. Craven  
Clerk of Council

BTC/slw  
cc:\planning.brd\cltr

cc: County Planning Department  
Public Works Department  
Mason Heyward



Plaintiff's Exhibit 8

Pursuant to Rule 210 (f), the following exhibit is intentionally omitted as it is oversized, and has been filed separately with the Court of Appeals

Plaintiff's Exhibit 10

STATE OF SOUTH CAROLINA )  
 ) CONFIRMATION AND GRANT  
COUNTY OF CHARLESTON ) OF ACCESS EASEMENT

WHEREAS, MASON C. HEYWARD (referred to as the "Grantor") is the owner of the fee simple interest in certain real property located on John's Island, in Charleston County, South Carolina and more particularly described in Schedule A attached hereto and referred to herein as "Lot 018";

WHEREAS, WILLIAM L. KERRISON (referred to as the "Grantee") is the owner of the fee simple interest in certain real property located at 3205 Resurrection Road, John's Island, in Charleston County, South Carolina and more particularly described in Schedule B attached hereto and referred to herein as "Lot 016";

WHEREAS, Resurrection Road is the only existing route of access for ingress and egress between Lot 016 and a public right-of-way and has been used for such access by Grantee and its predecessors in interest since the creation and initial conveyance of Lot 016 by deed from Nat G. Peoples to John R. Raybourne dated June 14, 1968 and recorded June 14, 1968 in the RMC Office for Charleston County, SC in Book M90 at Page 135; and

WHEREAS, portion of Resurrection Road crosses Lot 018 and the parties desire to set forth and confirm of record the rights of Grantee to use such portion of Resurrection Road for access to and from Lot 016.

NOW, THEREFORE, in consideration of the within covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and confirm unto the said Grantee, its successors and assigns, a perpetual, permanent, assignable commercial, non-exclusive easement appurtenant to Lot 016 for the purpose of pedestrian and motor vehicle ingress and egress on, over, and across that portion of Resurrection Road crossing Lot 018 in the location where it currently exists shown and designated as "Centerline Resurrection Rd" and over that portion of Lot 018 shown and designated as "RESURECTION RD. 25' R/W" on a plat entitled "Plat of the Subdivision of Lot J Owned by Mason C. Heyward into Lot J-1 Containing 1.30 Acres and an Approximately 5.0 Acre Residual Tract and a 0.51 Acre R/W" made by Lewis E. Seabrook, Civil Engineer and Land Surveyor dated January 18, 1996, revised February 27, 1996 and recorded May 20, 1996 in the RMC Office for Charleston County, SC in Plat Book DA at Page 789. The foregoing easement shall not include any right to park vehicles or otherwise obstruct the follow of traffic on Resurrection Road.

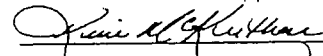
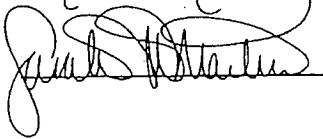
The easement granted herein shall be conditioned upon the continued use of Lot 016 for residential purposes. The easement granted herein over any portion of Resurrection Road currently lying outside the area shown and designated as "RESURECTION RD. 25' R/W" on the said plat shall expire in the event the road is relocated so as to lie wholly with the area shown and designated as "RESURECTION RD. 25' R/W" on the said plat. Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever.

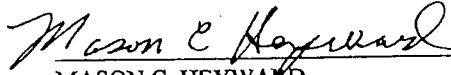


TO HAVE AND TO HOLD, all and singular, the said easement before mentioned unto the said Grantee, and their heirs, successors and assigns forever.

WITNESS the hand and seal of the Grantor on this the 29<sup>th</sup> day of April, 1999.


SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

  
\_\_\_\_\_  
  
\_\_\_\_\_

  
\_\_\_\_\_  
MASON C. HEYWARD

THE STATE OF SOUTH CAROLINA    )  
  )    ACKNOWLEDGMENT  
COUNTY OF CHARLESTON            )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of April, 1999 by Mason C. Heyward.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires 11-30-08

**Schedule A**

All those certain parcels of real property situate, lying and being on John's Island, in Charleston County, South Carolina and shown and designated as "LOT J, RESIDUAL 5.0 ACRES PORTION OF TMS 204-00-00-018" and "LOT J-1, 1.30 ACRES PORTION OF TMS 204-00-00-018" on a plat entitled "Plat of the Subdivision of Lot J Owned by Mason C. Heyward into Lot J-1 Containing 1.30 Acres and an Approximately 5.0 Acre Residual Tract and a 0.51 Acre R/W" made by Lewis E. Seabrook, Civil Engineer and Land Surveyor dated January 18, 1996, revised February 27, 1996 and recorded May 20, 1996 in the RMC Office for Charleston County, SC in Plat Book DA at Page 789

BEING a portion of the same property conveyed to Mason C. Heyward by deed of C.E. Ward dated October 26, 1970 and recorded October 26, 1970 in the R.M.C. Office for Charleston County in Book J95 at Page 251.

TMS # 204-00-00-018

Grantee's Address: William L. Kerrison  
285 King Street  
Charleston, SC 29401

## Schedule B

ALL that certain piece, parcel or lot of land together with the buildings and improvements thereon, situate, lying and being on Johns Island, in the County of Charleston, State of South Carolina, Measuring and Containing 1.6 acres, more or less, and known in the present numbering system as 3205 Resurrection Road, Johns Island, South Carolina.

SAID lot Butting and Bounding to the North on access road, 397 feet; to the East on lands now or formerly of Nat G. Peebles, 287.7 feet; to the Southeast on marsh on front of Haulover Creek, 125 feet; and to the South on lands now or formerly of Ravenel Smith, 194 feet, all distances being a little more or less.

ALL that triangular lot, piece or parcel of land, situate, lying and being on Johns Island, in the County of Charleston, State aforesaid, which is more particularly described as follows: Beginning at a point, which point is located on the edge of the marsh as the southwest corner of the tract of land now or formerly owned by John R. Raybourne, Sr.; thence running North 78°00' West for a distance of one hundred and eighty-seven (187') feet; thence running south 35°00' East for a distance of one hundred thirty-one (131') feet; thence running along the edge of the marsh in a northeasterly direction for a distance of one hundred twenty-five (125') feet to the point of beginning, all distances being a little more or less. The property hereby conveyed being triangular in shape, and consisting of .19 acres, more or less, and also now being combined with the earlier described property and known in the present numbering designation as 3205 Resurrection Road, Johns Island, South Carolina.

SAVING AND EXCEPTION therefrom, .18 acres, more or less, heretofore conveyed by John R. Raybourne, Sr. to Ravenel Smith and Linnie Smith, by deed dated March 20, 1969; and recorded in the RMC Office for Charleston County in Book E-95, at Page 273 on September 28, 1970.

BEING the same property conveyed to William L. Kerrison by Deed of Distribution dated December 15, 1992 and recorded December 16, 1992 in the Charleston County RMC Office in Book N221 at Page 780 and Confirmatory Deed of Distribution dated April 8, 1994 and recorded April 13, 1994 in the RMC Office for Charleston County in Book M241 at Page 839.

TMS # 204-00-00-016

Grantee's Address: William L. Kerrison  
285 King Street  
Charleston, SC 29401

KERRISON & KERRISON, PC  
310 Broad Street, Suite 8  
Charleston, SC 29401

BK N 325 PG 754

FILED

N325-750

99 APR 30 PM 4:01

CHARLIE LYBRAND  
REGISTER  
CHARLESTON COUNTY SC

10<sup>00</sup>  
B

per  
Kerrison  
sec. 11.5  
p. 2. c. of p. 4  
5-3-66

4

Plaintiff's Exhibit 13

Pursuant to Rule 210 (f), the following exhibit is intentionally omitted as it is oversized, and has been filed separately with the Court of Appeals

Defendant's Exhibit A

Pursuant to Rule 210 (f), the following exhibit is intentionally omitted as it is oversized, and has been filed separately with the Court of Appeals

Defendant's Exhibit 9

## Title Summary Sheet

**Type of Search: Resurrection Road aka Resurrection Road Easement Acquisition  
(Charleston County Common Pleas Case 2008-CP-10-1054)**

Client: McDowell Law Offices  
Effective Date: January 05, 2010 @ 4PM  
Current Owner: Mason C. Heyward  
Property Description: Resurrection Road aka Resurrection Road  
Plat(s): Tin Can #2, CH/025, DA/789\*  
Property Card shows Plat to be DA/798 (SIC: should be 789)  
County: Charleston  
TMS: a portion of 204-00-00-018

### DERIVATION:

Deed from C. E. Ward to Mason C. Heyward dated October 26, 1970 and recorded October 26, 1970 in Book J95 at Page 251.

### Chain of Title for 204-00-00-018:

**Mason C. Heyward (October 26, 1970 to present)**  
J95 at 251  
8 acres John's Island District 21

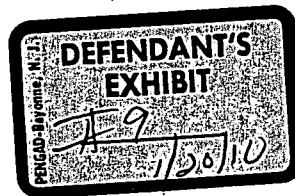
Conveyances and Exceptions found during ownership time period of Mason C. Heyward:  
Deed from Mason C. Heyward to Clementine Ravenel recorded July 07, 1971 in Book A97 at Page 077 (0.68 acres; TMS: 204-00-00-019; Plat(s): O/083 and CH/033).

Deed from Mason C. Heyward to Johnny Heyward recorded December 01, 1978 in Book R117 at Page 309 (Lot X, 0.68 acres; TMS: 204-00-00-027; Plat: S/012).

Deed from Mason C. Heyward to the County of Charleston recorded June 27, 1991 in Book Y203 at Page 285 (0.186 acres to be added to S.C.H.D. Rd. S-10-20 known as Betsy Kerrison Parkway; Plat CH/025

Easement to Berkeley Electric Cooperative recorded in Book A106 at Page 258 and Book P150 at Page 242 (75' powerline easement as shown on plat DA/789).

Confirmation and Grant of Access Easement by and between Mason C. Heyward and William L. Kerrison recorded April 30, 1999 in Book N325 at Page 750:  
Mason C. Heyward is owner of TMS 204-00-00-018 (labeled "Lot 018")  
William L. Kerrison is owner of TMS 204-00-00-016 (labeled "Lot 016")  
Easement grants a perpetual, permanent, assignable commercial, non-exclusive easement appurtenant to "Lot 016" for the property entitled "Centerline Resurrection Rd" and "RESURRECTION RD. 25' R/W" on Plat Book DA/789 (all contained within the boundary lines of TMS 204-00-00-018 aka "Lot 018").



Easement specifically states that..."Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever."

**C. E. Ward (March 02, 1957 to October 26, 1970)**

D64 at 386

8 acres John's Island District 21

Conveyances and Exceptions found during ownership time period of C. E. Ward:

None

**SURVEY MATTERS:**

**Tin Can #2** hold old "McCrary Plats" from the early 1900's back to the 1700's (approximately). Tin Can #2 does not have a plat for Heyward property or any other property along what is now known as Resurrection Road aka Resurrection Road; all plats associated with Tin Can #2 are of Sullivan's Island, acreage now known as Mount Pleasant and property located within the downtown City limits of Charleston, SC. Some of the "McCrary Plats" located within the Tin Cans in the Charleston County RMC have been misplaced over several decades.

**DA/789:**

Subdivision of TMS 204-00-00-018 to create Lot J-1 containing 1.30 acres, owned by Mason C. Heyward (TMS: 204-00-00-133 and a 25' RW entitled RESURRECTION RD containing 0.51 acres. Residual acreage of TMS 204-00-00-018 is now 5 acres). RESURRECTION RD. 25' RW does not fall completely within the centerline of Resurrection Road; Plat recordation does not indicate approval nor adjudicate title of the access or right-of-way shown hereon; Approval of the RW in no way obligates the County of Charleston to maintain this right of way until it has been constructed to county standards.

**OTHER MATTERS:**

Acquisition of the chain of title, plats and ownership information of all property located on Resurrection Road from the property line of William L Kerrison up to Betsy Kerrison Road and property now owned by Ralph L. Haynes, as Trustee of Atlanta Respiratory Care, P. C. Profit Sharing Plan (adjacent to lands owned by Mason C. Heyward):

**1) TMS: 204-00-00-016**

Unrecorded Gilliard Plat 7-22-68, AH/014, ED/255; 1.981 acres

**TITLE OF OWNERSHIP (from acquisition of title by William L. Kerrison forward; property card research only):**

William L. Kerrison: Book N221 at Page 780 (Deed of Distribution from the Estate of Elizabeth M. Kerrison; Probate: 1991-ES-10-01256; 1.86 acres)

William L. Kerrison: Book M241 at Page 839 (Corrective Confirmatory Deed of Distribution from the Estate of Elizabeth M. Kerrison; Probate: 1991-ES-10-01256; 1.6 acres saving and excepting 0.18 acres conveyed to Ravenel Smith and Linnie Smith recorded in Book E95 at Page 273)

Robert Lawrence Smith and Melanie M. Miller: Book L325 at Page 397 (from William L. Kerrison; 1.6 acres, together with 0.19 acres, saving and excepting 0.18 acres conveyed

to Ravenel Smith and Linnie Smith recorded in Book E95 at Page 273; survey recorded within deed at Page 400 to show 2.005 acres)

Melanie M. Miller: Book P340 at Page 433 (Quitclaim Deed from Robert Lawrence Smith; 1.6 acres, together with 0.19 acres, saving and excepting 0.18 acres conveyed to Ravenel Smith and Linnie Smith recorded in Book E95 at Page 273)

Melanie M. Miller: Book B383 at Page 301 (Confirmatory Deed from Robert Lawrence Smith; 1.6 acres, together with 0.19 acres, saving and excepting 0.18 acres conveyed to Ravenel Smith and Linnie Smith recorded in Book E95 at Page 273)

Louise Donny Bennett: Book B383 at Page 229 (from Melanie M. Miller; 1.6 acres, together with 0.19 acres, saving and excepting 0.18 acres conveyed to Ravenel Smith and Linnie Smith recorded in Book E95 at Page 273)

NOTES:

ED/255 is the most current plat showing property to have 1.981 acres

Book E95 at Page 273 to Ravenel Smith and Linnie Smith for 0.18 acres which is now a portion of TMS 204-00-00-015 (NOTE: this conveyance shows that the 0.18 acres is bounded to the north by a road and was recorded September 28, 1970 from John R. Raybourne. John R. Raybourne purchased the 1.6 acres of which this property comes out of at Book M90 at Page 135 which is the first reference to a road existing prior to the recordation of Plat Book DA at Page 789 found during this search request time period)

Confirmation and Grant of Access Easement recorded in Book N325 at Page 744 from the Nautilus Group (12.86 acres; Plat AG/091)

Confirmation and Grant of Access Easement recorded in Book N325 at Page 750 from Mason C. Heyward (see above conveyances out of Mason C. Heyward)

**2) TMS: 204-00-00-014**

V45/173; 5.3 acres

TITLE OF OWNERSHIP (from Acquisition of Francis O. Johnson forward; property card research only)

Francis O. Johnson: Book L114 at Page 102 (Deed from Erlene S. Manigault, William Simmons, Jr., Maybelle Mitchell and Ethelee Jenkins aka Ethel Lee Jenkins; 5.3 acres; Plat V45 at Page 173)

**3) TMS: 204-00-00-022**

V/109, CH/037, CH/025; 4.226 acres

TITLE OF OWNERSHIP (from Acquisition of Berkeley Electric Cooperative forward; property card research only)

Berkeley Electric Cooperative: Book A104 at Page 154 (deed from the heirs of Margaretha Andell; 1.932 acres with 70' right of way to Kiawah Road; Plat V/109)

**4) TMS: 204-00-00-017**

Tin Can #2 (see above Survey Matters), AG/091; 12.86 acres

TITLE OF OWNERSHIP (from Acquisition of Nat G. Peeples forward; property card research only)

Nat G. Peeples: Book L89 at Page 095 (12 acres)

Louis R. Andrews: Book N103 at Page 354 (from Estate of Nat G. Peeples; 12 acres less and excepting 1.6 acres conveyed to John R. Raybourne, Sr. recorded in Book M90 at Page 135)

Margaret H. Beckett: Book N116 at Page 382 (from Louis R. Andrews; 12.86 acres, Plat AG/091)

The Nautilus Group: Book P162 at Page 464 (from Margaret H. Beckett; 12.85 acres, Plat AG/091)

Ralph L. Haynes, as Trustee of Atlanta Respiratory Care, P. C. Profit Sharing Plan: Book U325 at Page 436 (from The Nautilus Group; 12.85 acres, Plat AG/091)

**Additional Exceptions:**

Encroachments, overlaps, boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of the premises.

Rights or claims of parties in possession not shown by the public records.

Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

Easements, or claim of easements, not shown by the public records.

Judgments and Pending Litigation filed in any court other than the local County Court.

Water and Sewer Bills not filed in the RMC Office.

Errors and Omissions, which include but are not limited to, instruments not filed in the public records and instruments not properly indexed in the public records.

NOTE: A Summary of Title does not guarantee title or certify the validity and/or marketability of the title to the property. Said Summary of Title is designed to disclose documents filed in the public records. This Title Summary is intended exclusively for the client to whom it is addressed on page one of Summary of Title, pursuant to the request and specific instructions of stated client. Transfer of summary is expressly prohibited. No other individual and/or entity are entitled to rely upon said summary.

Defendant's Exhibit 15

Barrett S. Lawrence, Chairman  
Anne T. Alford  
John C. Conlon  
Ruth C. Glover  
Thomas I. Mize  
Frederic E. Scott  
Michael M. Smith  
Charles T. Wallace, M.D.  
Charles C. Wannamaker, M.D.



Beverly T. Craven, Clerk  
(803) 733-6772  
1-800-524-3512  
FAX (803) 734-2654

CHARLESTON COUNTY COUNCIL  
O.T. WALLACE COUNTY OFFICE BUILDING  
2 COURTHOUSE SQUARE  
CHARLESTON, SOUTH CAROLINA  
29401

May 8, 1996

E. M. Seabrook  
P. O. Box 96  
Mt. Pleasant, SC 29465

Re: #16467 - Lands of Mason Heyward

Dear Mr. Seabrook:

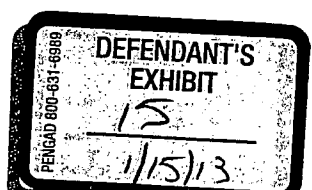
County Council at their meeting on May 7, 1996 granted APPROVAL of a 25' road right-of-way being dedicated to the public. Resurrection Road serves as access to approximately 25 acres of property with high developmental potential.

Very truly yours,

Beverly T. Craven  
Clerk of Council

BTC:slw  
cc: planning and cchus

cc. County Planning Department  
Public Works Department  
Mason Heyward



Johnson Plat of October 20, 2015

Pursuant to Rule 210 (f), the following exhibit is intentionally omitted as it is oversized, and has been filed separately with the Court of Appeals.

**RECEIVED**

SEP 11 2020

**SC Court of Appeals**

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material,

S/ John Edward Robinson  
John Edward Robinson  
36 Broad St.  
Charleston, SC 29401  
843-723-5152  
Attorney for Appellant

September 10, 2020