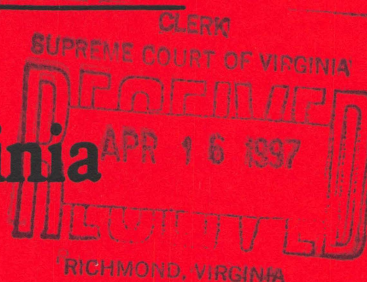


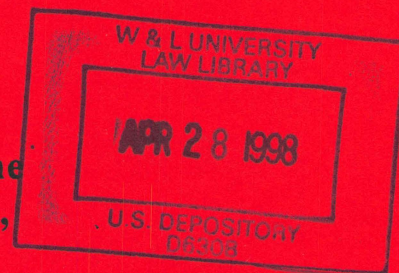
254 Va 198

IN THE  
**Supreme Court of Virginia**  
AT RICHMOND



RECORD NO. 962217

C. LEONARD WILLIS, Trustee of the  
C. Leonard Willis, Inc. Pension Plan,



and

HAMPTON PROMOTIONS, INC.,  
a Virginia Corporation,  
*Appellants,*

v.

ROBERT L. MAGETTE, Trustee

and

REA PARKER, JR.,  
*Appellees.*

**JOINT APPENDIX**

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*Counsel for Appellees*



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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT

ROBERT L. MAGETTE, Trustee  
and  
REA PARKER, JR.

Plaintiffs.

V.

C. LEONARD WILLIS, Trustee of  
C. LEONARD WILLIS, INC. PENSION PLAN

VALIDATE CASE PAPERS  
RCPT : 95000007748  
DATE : 10/19/95 TIME: 16:11  
CASE : 093CH95000145-00  
ACCT : MAGETTE, ROBERT L  
AMT. : \$59.00

SERVE: C. LEONARD WILLIS  
Willis & Associates  
8837 Eclipse Drive  
Suffolk, Virginia 23433

and

HAMPTON PROMOTIONS, INC.,  
a Virginia Corporation

SERVE: ROBERT W. JONES, JR.  
1600 S. Church Street  
Smithfield, Virginia 23430

Defendants

BILL OF COMPLAINT TO ESTABLISH AN EASEMENT OF RIGHT OF WAY

Comes now the Plaintiffs, ROBERT L. MAGETTE ("Magette"),  
Trustee and REA PARKER, JR. ("Parker"), and for their Bill of  
Complaint shows unto this Honorable Court the following:

1. That Plaintiff, Rea Parker, Jr. and Robert L. Magette,  
as Trustee are the owners of a certain 590.55 acre farm known  
as "Mackelsfield", Parker having purchased same on the 15th day  
of October, 1956, by deed being duly of record in Deed Book 149,



at page 551 in the records of the Clerk's Office of this Court. The subject land is situate in Newport Magisterial District, Isle of Wight County, Virginia, and more particularly described in a copy of said deed of October 15, 1956 attached hereto and incorporated herein in haec verba as Exhibit A ("the Parker Parcel"). On October 17, 1995 Parker conveyed part of the Parker Parcel to Robert L. Magette as Trustee of P.R. Land Trust. Mr. Magette is include as a Plaintiff on that basis.

2. That on the 23rd day of March, 1991, Rodham T. Delk, Jr., a Special Commissioner of this Court conveyed to C. Leonard Willis, Trustee of the C. Leonard Willis, Inc. Pension Plan and Hampton Promotions, Inc., a Virginia Corporation ("Willis") 4 parcels as designated in that certain deed dated as above and of record in the Clerk's Office of this Court in Deed Book 385 at page 97, a copy of which said deed is attached hereto and incorporated herein in haec verba as Exhibit B.

3. That the foregoing, Parker, Magette and Willis are the only parties in interest in this suit and the land which is the subject hereof lies within the jurisdiction of this Court.

4. That for as long as anyone known by the Plaintiffs can remember, the Parker Parcel has used as access a certain road extending from the southerly edge of the right of way of State

Route 665 to the northerly boundary of the Parker Parcel, but, although said road is clearly and indisputably shown on all surveys of the area, beginning with that certain plat dated "Feb. 18; May 23-25, 1928 scale 1"=500'" made by John E. Buck, Henderson North Carolina, which said plat is duly of record in the Clerk's Office of this Court in Plat Book 1 at pge 63, bearing the legend "Spivey Farm, known as Mackelfield", a copy of which said plat is attached hereto and designated as Exhibit C and on which said plat said road is shown as an unlabeled dotted line no reference to said road or lane has ever been made in the deed descriptions in the chain of title of Plaintiffs or of Defendants.

5. That parcels 2 and 3 of the deed into Willis are situate between the southwestern boundary of the Parker parcel and the easterly right of way of State Route 665, and the Plat attached hereto as Exhibit D, shows the southeasterly boundary of parcel 2, east of Route 665 as center line of dirt road, which dirt road, the subject of this suit, is the sole entry way into the Parker Parcel.

6. That said road and easement thereunder has been in existence since prior to 1928 and has always been the sole method of entry and exit to the Parker Parcel and used

exclusively by Parker and his predecessors in title for vehicles, tractors, farm implements and all persons having Parker's permission and desiring entry to or exit from the Parker Parcel, and has been in continuous and uninterrupted use since prior to said time in excess of twenty (20) years, to-wit: 48 years, and has recently been improved and renewed for purposes of said use. Such possession, use and dominion by Parker and his predecessors in title has been hostile, exclusive, lasting, continuous, visible, adverse and actual and under claim of rights and used by Parker, residents, hunters permitted by Parker, and those farming the Parker Parcel. Said parcel has been in continuous cultivation since prior to its purchase by Parker in 1956 and upon information and belief, has been cultivated since prior to 1905. In 1951, the deed from Namie E. Simmons, who had owned the land since 1903 recited in her deed to Parker's grantor that she reserved to her lifetime use "the lane leading to the public road". Said deed is attached hereto in haec verba as Exhibit E, and of record in the Clerk's Office of this Court in Deed Book 136, at page 81. There are a number of aerial photographs of the area showing the continuing use of said road.




7. Nothing exists in the chain of title from which a claim of permissive use could arise. Plaintiffs' represent that their use of the roadway is exclusive and not enjoyed in common with any other persons; that Plaintiffs' use of the roadway has been with the full knowledge and acquiescence of Defendants and their predecessors in title and therefore Plaintiffs have acquired an easement by prescription for the use of said road.

WHEREFORE, your Plaintiffs pray that this Honorable Court enjoin the Defendants from preventing Plaintiff's, their heirs and assigns from blocking or interfering with Plaintiff's use of said easement and road pending this Court's final determination of Plaintiffs' rights to such use, that the Court declare that a prescriptive easement for ingress and egress to the Parker Parcel exists by virtue of continuous, exclusive, open, hostile, visible, and notorious use for a period in excess of twenty (20) years, that said easement is of reasonable width and configuration to allow the passage of vehicles and farm implements used to access and cultivate the Parker Parcel, but not less than 15', and that said right of way exists as a matter of right in the Plaintiff's for access to their land, and for whatever and further relief as may be appropriate.

ROBERT L. MAGETTE  
REA PARKER, JR.

By 

Of Counsel



WILLIAM C. COWARDIN, JR.  
OVERMAN, COWARDIN AND MARTIN, P.L.C.  
VSB #1180  
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Newport News, Virginia 23606  
(804) 873-1188

OVERMAN, COWARDIN &  
MARTIN, P.L.C.  
ATTORNEYS AT LAW  
739 THIMBLE SHOALS BOULEVARD  
SUITE 507  
NEWPORT NEWS, VIRGINIA 23606

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight, October 13, 1956 at 11:00 o'clock A.M. this deed was received and with certificate annexed, admitted to record.

Testes: Walter E. Heltman, Clerk.

Verified and sworn to  
by Walter E. Heltman  
this 13 day of October 1956  
Testes: Walter E. Heltman  
Clerk

Algie J. Murphy, et ux.  
TO: # 645  
Rea Parker, Jr.

State Tax \$88.50

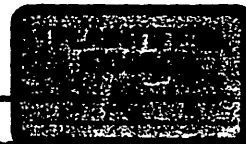
THIS DEED, made this 15th day of October, 1956, by and between Algie J. Murphy and Beulah E. Murphy, his wife, and Beulah E. Murphy and Algie J. Murphy, her husband, of the County of Isle of Wight, State of Virginia, parties of the first part; and, Rea Parker, Jr., of the Town of Smithfield, County and State aforesaid, party of the second part:

# WITNESSETH:

That, for and in consideration of the sum of Ten (\$10.00) Dollars, the assumption of a certain Deed of Trust hereinbelow mentioned, and other valuable consideration, receipt of all of which is hereby acknowledged, the said parties of the first do, each in his or her own rights and as the spouse of the other, grant, bargain, sell and convey, with GENERAL WARRANTY, unto the said party of the second part the following described Real Property, to-wit:

**FIRST:** All that certain tract, piece or parcel, of land which was conveyed from Josiah W. Jordan and wife to "Nannie E. Simmons under the name of Nannie E. "Johnson" by Deed dated January 1, 1903, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County in Deed Book 71, at Page 142, which said property consists of two contiguous tracts described in said Deed as follows, to-wit:

All of a certain piece or parcel of land situated and being in the County of Isle of Wight in Newport District in the State of Virginia, containing three hundred and sixty-six (366) acres more or less, and bounded as follows: on the north by balance of Marsh Creek, on the West by the land of W. T. Martin, Mrs. Sadie Haynes and also on the south by the land of D. P. Cherman and the estate of H. K. Parker, deceased, known as Plainfield and on the East by the land of William A. Johnson.





"2nd A piece or lot of land containing six (6) acres more or less and bounded as follows: on the West, South and North, by the land of William A. Johnson, and on the East by Kings Creek and the marsh of said W. A. Johnson, it being a narrow strip of high or arable land running parallel with Kings Creek and bordering thereon. The above mentioned land is a part of the Backsfield tract, and was conveyed to the said Josiah W. Jordan by H. G. Parker and also by their Deed dated March 25, 1901, and admitted to record in the Clerk's Office of the County Court of Isle of Wight on the 6th day of May, 1901, in Deed Book 66, Page 393."

SECOND: All that certain tract, piece or parcel, of land conveyed to Nannie E. Simmons under the name of Nannie E. "Johnson" by Deed from William A. Johnson and wife, dated January 19, 1905, and recorded in said Clerk's Office in Deed Book 71, at page 346, and by Deed from J. J. Jordan et al dated December 17, 1913, and recorded in said Clerk's Office in Deed Book 83, page 312, which said property consists of two contiguous tracts described in said Deeds as follows, to-wit:

"All of a certain piece or parcel of land situated and being in the County of Isle of Wight, in Newport District, State of Virginia, containing one hundred and fifty (150) acres, more or less, and described as follows (viz:) commencing at the mouth of shipyard landing creek, following the meanderings of said creek or cove to a causeway or road, across marsh, thence in a south east direction across said marsh to a gut or cove, thence along said gut or cove to King's Creek, thence down King's Creek to a stub on bank of said creek at the S. W. Edge of a piece of high or arable land, thence following along the edge of said high land, around to old landing at house on said creek thence down said Kings Creek to Balance of Marsh Creek, thence up said Balance of Marsh Creek to the point of beginning.

"2nd a piece or lot of land, containing two (2) acres, more or less, and described as follows commencing at the marsh gate running thence in a South rly direction to a maple tree in swamp thence down said swamp to edge of marsh, thence in a northerly direction along edge of marsh to the causeway or road mentioned above, thence along said road or causeway in a westerly direction to the point of beginning."

All of the tracts of Real Property which are described hereinabove and conveyed by this Deed compose what is known as the "Backsfield Farm" which is located on State Highway No. 665 leading from Carrollton to Kennebec, in Newport District, Isle of Wight County, Virginia, and contains a total of Five Hundred Ninety and Fifty-five Hundredths (590.55) acres, more or less, according to a plat of survey made by John E. Duck, Surveyor, on February 18th, and May 23-25, 1928, bearing the legend "Solway Farm Known as 'Backsfield'" and recorded in said Clerk's Office in Plat Book No. 1, at Page 63. This being the same property conveyed from Nannie E. Simmons to the said parties of

the first part by Deed dated April 30, 1951, and duly recorded in the Clerk's Office of the Circuit Court of Isle of Wight County in Deed Book No. 136, at Page 81.

The above described property is conveyed subject to a Deed of Trust against the same made by and between Algie J. Murphy and Paulah E. Murphy, of the first part, and George F. Whitely, Jr., Trustee, of the second part, dated April 30, 1951, and recorded in said Clerk's Office in Deed Book 136, at Page 83, for the sum of Thirty-seven Thousand, Five Hundred (\$37,500.00) Dollars, which said sum, with interest from the 30th day of April, 1956, remains unpaid, and the aforesaid Grantee hereby agrees to assume and pay the same as part of the consideration of this conveyance.

The said parties of the first part covenant that they are seized in fee of the property hereby conveyed, and that they have the right to convey the same to the Grantee herein; that they have done no act to encumber the same with the exception of the aforementioned Deed of Trust; that the said party of the second part shall have quiet and peaceful possession thereof, free from all encumbrances, subject to said Deed of Trust; and that they, the said parties of the first part, will execute such further assurances of title thereto as may be requisite and consistent with the provisions hereof.

WITNESSE, the following signatures and seals:



*Algie J. Murphy* (SEAL)  
*Paulah E. Murphy* (SEAL)  
*Rea Parker, Jr.* (SEAL)

STATE OF VIRGINIA,  
COUNTY OF ISLE OF WIGHT, To-Wit:

I, Mary V. Batten, a Notary Public in and for the County of Isle of Wight, in the State of Virginia, whose commission as such expires the 29th day of January, 1958, certify that Algie J. Murphy and Paulah E. Murphy, and Rea Parker, Jr., whose names are signed to the foregoing writing bearing date the 15th day of October, 1956, have acknowledged the same before me, in my County aforesaid.

Given under my hand this 15<sup>th</sup> day of October, 1956.

*Mary V. Batten*  
Notary Public

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight, October 15, 1956 at 3:45 o'clock P.M. this deed was received and with certificate annexed, admitted to record.

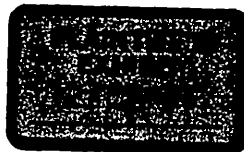
Teste: *Arthur E. Hall*, Clerk.

THIS DEED, made and entered into this 25th day of March, 1991, by and between RODHAM T. DELK, JR., Special Commissioner, of the first part, Grantor; and C. LEONARD WILLIS, TRUSTEE OF C. LEONARD WILLIS, INC. PENSION PLAN and HAMPTON PROMOTIONS, INC., a Virginia corporation, of the second part, Grantee; and C. LEONARD WILLIS, of the third part, also a Grantor:

WITNESSETH, that whereas, by a decree entered on September 30, 1987, in the Circuit Court for Isle of Wight County, Virginia, in the chancery cause therein pending under the name and style of Samuel E. Hawks, et al. v. Christine E. Hawks, et al., Chancery No. 3443, Rodham T. Delk, Jr. was appointed as Special Commissioner and authorized to sell the real estate hereinafter described in the manner and upon the terms and conditions set forth in the decree; and,

WHEREAS, after having given bond as required by the decree, the Special Commissioner, pursuant to the decree, proceeded to advertise and conduct the sale strictly as provided in the decree; and the Special Commissioner, pursuant to the decree, exposed the property to sale by public auction on May 6, 1988, at which auction C. Leonard Willis was the high bidder for the sum of \$330,000.00; and, C. Leonard Willis has requested that a deed for the real estate be delivered to C. Leonard Willis, Trustee of C. Leonard Willis, Inc. Pension Plan and Hampton Promotions, Inc. as evidenced by his joinder in this instrument; and,

NOW, THEREFORE, THIS DEED FURTHER WITNESSETH: That for and in consideration for the sum of \$330,000.00, cash in hand paid by Grantee to the Clerk of the Circuit Court for Isle of Wight County, Virginia, for deposit to the credit of the court in this cause, receipt being acknowledged, Rodham T. Delk, Jr., Special Commissioner, hereby grants and conveys unto Grantee, an undivided one-half interest to C. Leonard Willis, Trustee of C. Leonard





Willis, Inc. Pension Plan and an undivided one-half interest to Hampton Promotions, Inc., with Special Warranty of title, the following described real estate:

Parcel One (designated as Parcel 70 in suit papers)

All of that certain tract, parcel or piece of land situate, lying and being in Newport Magisterial District, Isle of Wight County, Virginia, containing approximately 4 acres, more or less, fronting on the south side of Route 665, designated on the Isle of Wight County Tax Map as Parcel 23-01-070, and bounded on the north by Route 665, on the west by the land of the Annie V. Hawks Estate, and on the south and east by the land of Wayman Parks and B. S. Parks.

See  
Plot  
Cabinet  
1-397-7

The parcel is also described in Deed Book 81, page 367 as follows:

...all that certain tract, piece or parcel of land situate, lying and being in the County of Isle of Wight and State of Virginia, in Smith's Neck, bounded by the lands of Mrs. Sadie M. Hayes, the County Road and other land of Fletcher Hawkes, it being the same tract of land conveyed to the said Charles F. Brock by Sadie M. Haynes, and estimated to contain four acres on the land book of the said County, more or less.

Being the same land in all respects as that conveyed by deed from Charles F. Brock to Fletcher Hawkes, dated April 11, 1913, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed Book 81, page 367.

Parcel Two (designated as Parcel 71 in suit papers)

All of that certain tract, parcel or piece of land situate, lying and being in Newport Magisterial District, Isle of Wight County, Virginia, containing approximately 10 acres, more or less, fronting on the north side of Route 665, designated on the Isle of Wight County Tax Map as Parcel 23-01-071, and bounded on the south by Route 665, on the west by other property of the Annie V. Hawks Estate, and on the north by property of Lawrence E. Starks, and on the east by property of Ernestine E. Chapman.

The parcel is also described in Deed Book 87, page 26 as follows:

All of that certain tract, piece or parcel of land situate, lying and being in the County of Isle of Wight, State of Virginia, and bounded as follows: on the north by the lands of Titus Holloway's estate; on the east by Mackelfield and the Parker estate; on the south by the lands of Mrs. Sadie M. Haynes; and on the west by the county road leading from Carrollton to Rescue. It being the same land which was conveyed to the said party of the

first part by deed from Benjamin F. Brock, bearing date February 24, 1897, and on record in the Clerk's Office of the Circuit Court of the County of Isle of Wight in Deed Book 61, page 432, to which reference may be had.

Being the same land in all respects as that conveyed by deed from Mollie G. Brock to Annie Hawks and William Bradley, dated January 2, 1917, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed Book 87, page 26, William Bradley having conveyed his one-half interest therein to Annie Hawks by deed dated February 28, 1922, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed book 93, page 82.

Parcel Three (designated as Parcel 72 in suit papers)

All of that certain tract, parcel or piece of land situate, lying and being in Newport Magisterial District, Isle of Wight County, Virginia containing approximately 30 acres, more or less, fronting on the east sides of Route 668 and lying on both the north and south side of Route 665, designated on the Isle of Wight County Tax Map as Parcel 23-01-072, and bounded on the west by Route 668, and the property of Lawrence E. and Beulah M. Starks, on the north by property of Lawrence Starks, on the east by other land of the Annie V. Hawks Estate, on the south by Route 665, and on the east by the Edward Hicks Estate, and on the south by the head waters of Titus Creek.

The parcel is also described in Deed Book 119, page 477 as follows:

All of that certain tract, piece or parcel of land situate, lying and being in Newport Magisterial District, County and State aforesaid, containing thirty (30) acres, more or less, sale and conveyance in gross and not by the acre, and bounded by the lands now or formerly belonging to Louisa Drew and others, and is the same land of which Indianna Holloway, the wife of Titus Holloway, died seized and possessed and the same described as "19" in a certain deed from Estelle D. Gwaltney, et als. to Howard W. Gwaltney, bearing date the 1st day of September, 1936, and duly recorded in the Clerk's Office of the County aforesaid in Deed Book 111, page 251. 477

Being the same land as that conveyed by deed from Howard W. Gwaltney and Katherine L. Gwaltney to Annie V. Hawks, dated February 28, 1942, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed Book 119, page 477, LESS, SAVE and EXCEPT 0.79 acres acquired by the Commonwealth of Virginia to widen Route 668 by Certificate of Deposit No. C-10979, dated December 29, 1965, and recorded in the Clerk's Office aforesaid in Deed Book 182, page 37.

Parcel Four (designated as Parcel 69 in suit papers)

All of that certain tract, parcel or piece of land situate, lying and being in Newport Magisterial District, Isle of Wight County, Virginia containing approximately 20

acres, more or less, fronting on the south side of Route 665, designated on the Isle of Wight County Tax Map as Parcel 23-01-069, and bounded on the north by Route 665, on the east by the Edward Hicks Estate, on the south by the head waters of Titus Creek, on the west by the Millie Coston Estate, by the land of Wayman Parks and B. S. Parks and by other land of the Annie V. Hawks Estate.

The parcel is also described in Deed Book 117, page 374 as follows:

...all of that certain tract, piece or parcel of land situate, lying and being in Newport Magisterial District, County and State aforesaid, containing fifty (50) acres, known as the Frank Whitney tract, and bounded on the east by Sadie Haines, on the north by Smith Neck Road, on the west by Titus Holloway, and on the south by a cove, emptying into Jones' Creek, and...the said Edward Hicks and the widow and heirs aforesaid of the said Fletcher Hawks, deceased, agreed to partition and divide the above-described tract of land among and between themselves, and to that end have established a line running generally north and south and which begins at a point on the road leading from Rescue to Carrollton, indicated by an iron axle, and following a line of marked trees (said trees having been marked around the year 1908, consisting of an oak, gum and three pines), to a cove, sometimes referred to as Titus Creek, and the said Edward Hicks has agreed to take for his part and portion of said tract of land so much thereof as lies to the westward of the line aforesaid, consisting of approximately eighteen (18) acres, and the said heirs of Fletcher Hawks have agreed to take for their part and portion of said land so much of said tract as lies to the eastward of said line, consisting of approximately twenty (20) acres...and is bounded on the north by the county road leading from Rescue to Carrollton, on the east by the lands of Joe Rawls on the south by Titus Creek and on the west by the dividing line aforesaid.

Being the same land in all respects as that conveyed by deed of partition between Edward Hicks, of the first part, and Annie V. Hawks, Malcolm Hawks, Christine Hawks, Maude H. Rawls, Joe Rawls, Hattie H. Lee, Roy Lee, James C. Hawks and Geraldine Hawks, Edna H. Mitchell, now Edna Hawks Green, Rudolph F. Mitchell, Edward Hawks and Laura Hawks, of the second part, dated May 3, 1940, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed Book 117, page 374.

This conveyance is made to the said Trustee for the use and purposes set forth herein and in the aforesaid C. Leonard Willis, Inc. Pension Plan.

Full power and authority are hereby granted to the Trustee and his successors, to protect and conserve the property, to sell, contract to sell and grant options to purchase the property, and any



right, title, or interest therein on any terms; to exchange the property or any part thereof for any other real estate or personal property upon any terms; to convey the property to any grantee, with or without consideration; to mortgage, pledge or otherwise encumber the property or any part thereof; to lease, contract to lease, grant options to lease and renew, extend, amend and otherwise modify leases on the property or any part thereof from time to time, for any period of time, for any rental and upon any other terms and conditions; to release, convey, or assign any other right, title, or interest whatsoever in the property or any part thereof.

No party dealing with the Trustee in relation to the property in any manner whatsoever, and (without limiting the foregoing) no party to whom the property or any part thereof or any interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Trustee shall be obliged (a) to see to the application of the purchase money, rent or money borrowed or otherwise advanced on the property; (b) to see that the terms of this Pension Plan have been complied with; (c) to inquire into the authority, necessity or expediency of any act of the Trustee; nor shall any such party be privileged to inquire into any of the terms of the Pension Plan.

Every deed, mortgage, lease or other instrument executed by the Trustee in relation to the property shall be conclusive evidence in favor of every person claiming any right, title or interest thereunder; (a) that at the time of the delivery thereof this Pension Plan was in full force and effect; (b) that such instrument was executed in accordance with the terms and conditions hereof and of the Pension Plan and is binding upon all Beneficiaries thereunder; (c) that the Trustee was duly authorized and empowered to execute and deliver every such instrument; and (d) if a conveyance has been made to a successor or successors in trust,


that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in Trust.

The Trustee shall have no individual liability or obligation whatsoever arising from his ownership, as such Trustee, of the legal title to the said property or with respect to any act done or contract entered into or indebtedness incurred by him in dealing with said property or in otherwise acting as such Trustee except only so far as said Pension Plan's property in the actual possession of the Trustee shall be applicable to the payment and discharge thereof.

The interest of every beneficiary hereunder and under the Pension Plan and of all persons claiming under any of them shall be only in the earnings, avails and proceeds arising from the rental, sale or other disposition of the property. Such interest is hereby declared to be personal property and no Beneficiary hereunder shall have any right, title or interest, legal or equitable in or to the property as such but only in the earnings, avails and proceeds thereof as provided in the Pension Plan.

Pursuant to Section 8.01-111 of the Code of Virginia, this deed is made on behalf of Samuel E. Hawks, Christine Hawks, Edna Hawks Green, Maude Hawks Rawls, Geraldine Hawks, Roy Lee, Roy Lee, Jr., James Fletcher Lee and Vivian Lee McCrimmons, Barbara Jean Smith, Laura B. Hawks and the heirs, if any, of Rudolph F. Mitchell.

Witness the following signature and seal:

  
Rodham F. Dolk, Jr., Special  
Commissioner (SEAL)

  
C. Leonard Willis (SEAL)

BOOK 385 PAGE 103

COMMONWEALTH OF VIRGINIA,

COUNTY OF ISLE OF WIGHT, to-wit:

The foregoing deed was acknowledged before me this 16<sup>th</sup>  
day of July, 1991, by Rodham T. Delk, Jr., Special Commissioner.

My commission expires: September 5, 1992.

Polly Ann Beasley  
Notary Public

COMMONWEALTH OF VIRGINIA,

COUNTY OF ISLE OF WIGHT, to-wit:

The foregoing deed was acknowledged before me this 17<sup>th</sup>  
day of July, 1991, by C. Leonard Willis.

My commission expires: JANUARY 31, 1995.

Robert W. Jones, Jr.  
Notary Public

VIRGINIA: Clerk's office of the Circuit Court of Isle of Wight County: July 18, 1991,  
at 11:25 o'clock A.M., this Deed was received and with the certificate annexed, admitted to record.  
State Tax: \$ 495.00 Tax \$ 330.00 Imposed by Section 58.1-802 has been paid.  
Local Tax \$ 165.00 Verified and mailed to: Robert T. Jones  
8/1/91

TESTE: W. E. Laine, Jr., CLERK, By: Anthony P. Chilla, D.C.

- 7 -

**"This Is A Credit Line Deed Of Trust"**

**This Deed Of Trust**, made this 17th day of July, 1991, by and between C. LEONARD WILLIS, TRUSTEE OF C. LEONARD WILLIS, INC., PENSION hereinafter referred to as "Grantor", and ROBERT E. SPENCER, JR., OF ISLE OF WIGHT COUNTY, VIRGINIA AND LINDA J. DUNNING OF ISLE OF WIGHT COUNTY, VIRGINIA hereinafter referred to as "Trustees", any one of whom may act, and BANK OF ISLE OF WIGHT, "NOTEHOLDER" hereinafter referred to as "beneficiary", whose address for communications is 1803 South Church Street, Smithfield, Virginia 23430.

**\*PLAN AND HAMPTON PROMOTIONS, INC., A VIRGINIA CORPORATION**

WHEREAS, Grantor is presently indebted to the Beneficiary, and at the request of Grantor the Beneficiary may, at its option, at any time while the lien of this Deed of Trust remains unreleased, make additional future advances of money to Grantor, and this Credit Line Deed of Trust is given to secure the payment to the Beneficiary of all such advances as well as all other existing or future indebtedness of Grantor as hereinafter defined as "Secured Indebtedness".

WITNESSETH: That for and in consideration of the provisions of this Deed of Trust and of Ten Dollars (\$10.00) cash in hand paid and other valuable consideration, the receipt whereof is hereby acknowledged, the Grantor does hereby grant and convey unto the Trustees, with General Warranty, the property described with particularity on Schedule "A" which is attached hereto, made a part hereof and to be recorded herewith.

Together with all buildings, improvements and fixtures now or hereafter erected thereon, including all apparatus, equipment, fixtures or articles, whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and any other thing now or hereafter therein or thereon, the furnishing of which by lessors to lessees is customary or appropriate, including screens, window shades, storm doors and windows, affixed floor coverings, screen doors, venetian blinds, awnings, stoves and water heaters, including all replacements and additions thereto (all of which are declared to be a part of said real estate whether physically attached thereto or not); and also together with all easements, rights, appurtenances and the rents, issues and profits of said property as well as any unearned hazard insurance premium with respect to such property, all of which are hereby pledged, assigned, transferred and set over unto the Trustees, whether now due or hereafter to become due. All of the foregoing is hereinafter referred to as the "Property".

**Secured Indebtedness.** In trust to secure the payment to the Beneficiary of the indebtedness described immediately below in Paragraphs (a) and (b) which indebtedness, in the aggregate, is sometimes herein referred to as the "Secured Indebtedness" and the maximum aggregate amount of principal to be secured hereby at any one time shall be \$150,000.00.

(a) **Indebtedness Arising Under Deed of Trust.** All indebtedness to the Beneficiary and to the Trustees which arises under the provisions of any of the Grantor's covenants and agreements herein, including fees of their attorneys and agents and other expenses respectively incurred by them in connection with the performance by them of their respective rights and/or duties as set forth in this Deed of Trust.

(b) **Other Indebtedness.** All other liabilities of Grantor to the Beneficiary, whether now existing or hereafter incurred, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, whether original, renewed or extended, whether contracted by Grantor alone or jointly and/or severally with another or others, whether originally contracted with the Beneficiary or acquired by the Beneficiary by assignment, transfer, or otherwise from another or others, whether or not represented or evidenced by negotiable instruments or other writings.

**TO HAVE AND TO HOLD** the Property unto the said Trustees and to their use, in fee simple; provided, however, that Grantor shall remain in quiet and peaceful possession of the Property so long as hereunder or under this Deed of Trust.

As further security for this payment of the Secured Indebtedness and performance of the obligations, covenants and agreements secured hereby, Grantor hereby transfers, sets over and assigns to the Trustees, all rents, royalties, issues and profits of the Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, provided that until default be made as hereinafter provided, Grantor may use and occupy the Property and receive and retain all rents, royalties, issues and profits thereof.

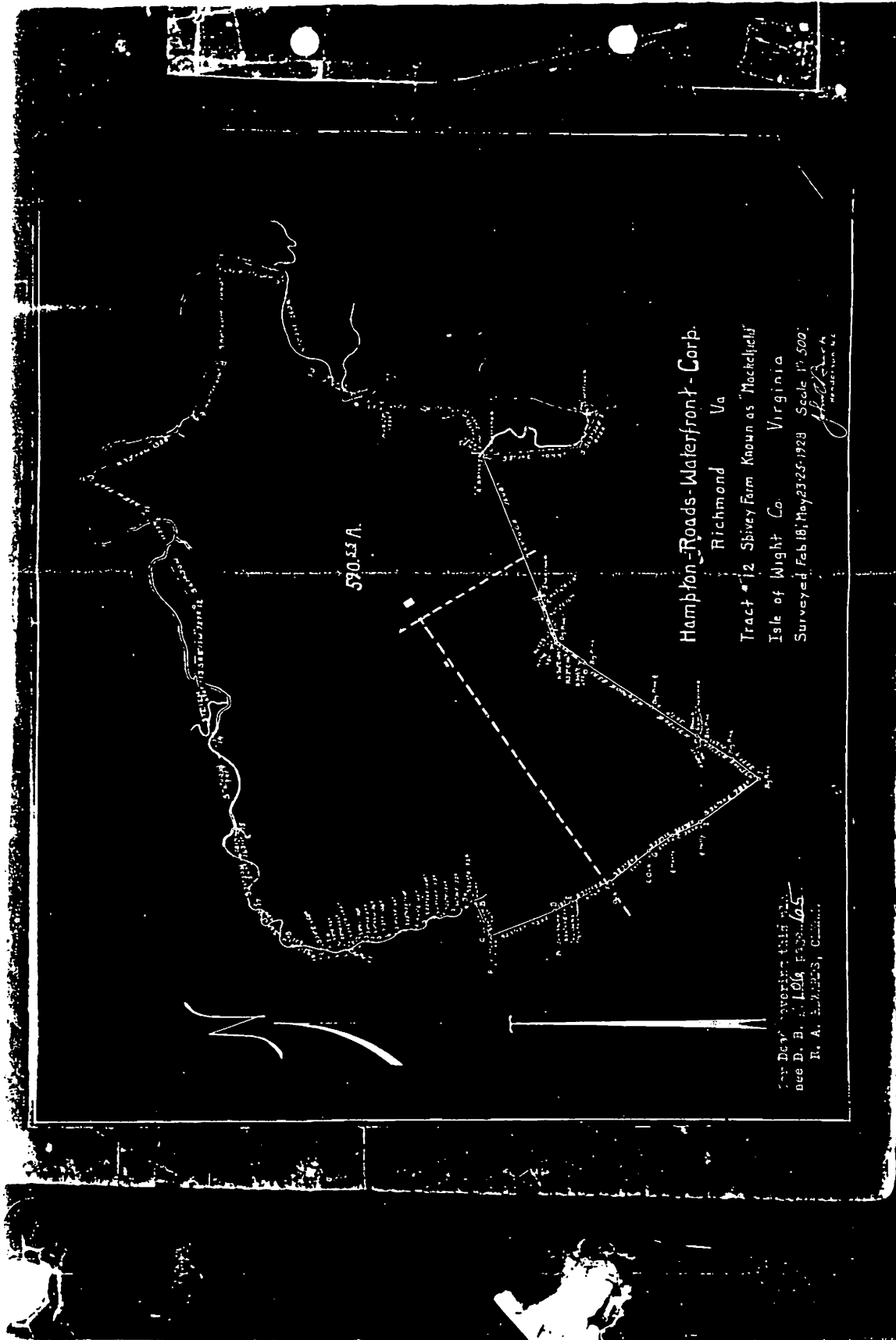
**1. Grantor's Warranty.** Grantor warrants that it is lawfully seized of an indefeasible estate in fee simple, free from all encumbrances, has good right and power to convey the Property, does hereby warrant generally the same and will execute such further assurances as may be requisite.

**2. Grantor's Covenants.** Grantor covenants and agrees as follows:

(A) That Grantor will pay when due, all sums secured hereby.

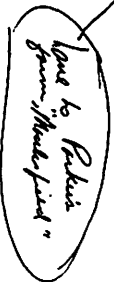
(B) That Grantor will, at Grantor's expense, keep the improvements on said property insured against fire (with extended coverage) in amounts and forms satisfactory to Beneficiary and against such other hazards, casualties and contingencies (including but not limited to rent insurance and war-risk insurance if available) in such amounts as Beneficiary may from time to time require all such insurance to be with an insurance company or companies satisfactory to Beneficiary, which shall hold the policies of insurance; and in the event any claim shall become payable under any of said policies, the same shall be paid to the extent of the Secured Indebtedness then remaining unpaid, whether then due or not to Beneficiary and at Beneficiary's sole option, may be applied to the Secured Indebtedness or released for repairing or rebuilding said improvements. Grantor will obtain from the insurance companies such assurances as may be required by Beneficiary that the policies will not be cancelled without notice to Trustees or Beneficiary. In the event of foreclosure hereunder, Beneficiary may surrender all such insurance and receive all refunds with respect thereto to the extent of Grantor's unpaid obligations hereunder or under this note. Renewal policies and any replacement policies shall be delivered to Beneficiary seven (7) days prior to expiration of existing policies. Grantor appoints Beneficiary as attorney-in-fact to endorse in the name of Grantor any insurance draft or check.

(C) That Grantor will pay, when due, all taxes and assessments, both general and special, now or hereafter assessed against said Property and all improvements; all premiums on insurance of any type which Grantor may be required to carry under the terms of this Deed of Trust; all charges against the Property which might become a lien thereon prior to the lien of this Deed of Trust; and all other sums which are required to be paid by Grantor under the terms of this Deed of Trust or of said notes. In default of any such payment, the Beneficiary is permitted, but shall not





10



DATE: MAY 6, 1991

said parties of the first part further covenant that they are seized in fee of the property hereby conveyed, that they have the right to convey the same to the Trustee herein for the purposes herein contained, that they have done no act to encumber the title thereto and that they will execute such further assurances of title thereto as may be requisite.

In event of the resignation, or death, incapacity, disability, removal or absence from the State of Virginia of the Trustee named herein, the said parties of the first part do, hereby, grant unto the beneficiary hereunder, its successors or assigns, the right and power to appoint a substitute Trustee or Trustees herein in accordance with the provisions of Section 26-49 of the Code of Virginia of 1950 and Acts amendatory thereof.

In event no default is made in the payment of said debt, interest, insurance premiums, duties, obligations and covenants imposed upon the parties of the first part hereunder, including all expenses preparatory to sale, then upon the request of the said parties of the first part, a good and sufficient legal release shall be made and executed to them at their own proper cost and charge.

Witness the following signatures and seals:

Alfred E. Crocker (SEAL)

Blanche J. Crocker (SEAL)

STATE OF VIRGINIA,

County of Isle of Wight, to-wit:

I, A. D. Johnson, a Commissioner in Chancery for the Circuit Court of the County of Isle of Wight, in the State of Virginia, do, hereby certify that Alfred E. Crocker and Blanche J. Crocker, whose names are signed to the foregoing writing, bearing date the 26th day of April, 1951, have this day acknowledged the same before me in my said County.

Given under my hand this 26th day of April, 1951.

A. D. Johnson

Commissioner in Chancery

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight April 28th., 1951, at 10:30 o'clock a.m. this deed was received and with the certificate annexed, admitted to record.

Testes: R. G. Edwards Clerk

State Tax \$60.00

Nannie E. Simmons

TO: # 236

Algie J. Murphy, et ux.

Verified and Subscribed to  
Henry F. Whaley Jr.  
 this 7th day of May 1951  
 Testes: R. G. Edwards Clerk

THIS DEED, made this 30th day of April, 1951, by and between Nannie E. Simmons, (widow, who is sometimes known as Nannie E. "Johnson" and as Nannie E. "Spivey"), of the County of Isle of Wight, State of Virginia, party of the first part; and Algie J. Murphy and Beulah M. Murphy, husband and wife, of said County and State, parties of the second part:

# W I T N E S S E T H

That, for and in consideration of the sum of Ten (\$10.00) Dollars, and other valuable consideration, the receipt whereof is hereby acknowledged, the said party of the first part does grant, bargain, sell and convey to the said Algie J. Murphy

and Boulah M. Murphy as tenants by the entirety, in Fee Simple, with the right of survivorship as at common law, with GENERAL WARRANTY, but subject to the reservations hereinafter mentioned, the following Real Property, to-wit:

FIRST: All that certain tract, piece or parcel of land which was conveyed from Josiah W. Jordan and wife to the said Nannie E. Simmons under the name of Nannie E. "Johnson" by deed dated January 1, 1903, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County in Deed Book 71, at page 342, which said property consists of two contiguous tracts described in said Deed as follows, to-wit:

"All of a certain piece or parcel of land situated and being in the County of Isle of Wight in Newport District in the State of Virginia, containing three hundred and sixty-six (366) acres more or less, and bounded as follows; on the north by balance of Marsh Creek, on the West by the land of W. T. Martin, Mrs. Sadie Haynes and als. on the south by the land of B. P. Chapman and the estate of H. R. Parker, deceased, known as Plainfield and on the East by the land of William A. Johnson.

"2nd A piece or lot of land containing six (6) acres more or less and bounded as follows: on the West, South and North, by the land of William A. Johnson, and on the East by Kings Creek and the marsh of said W. A. Johnson, it being a narrow strip of high or arable land running parallel with Kings Creek and bordering thereon. The above mentioned land is a part of the Macklesfield tract, and was conveyed to the said Josiah W. Jordan by H. G. Parker and als by their Deed dated March 25, 1901, and admitted to record in the Clerk's Office of the County Court of Isle of Wight on the 6th day of May, 1901, in Deed Book 66, page 393."

SECOND: All that certain tract, piece or parcel, of land conveyed to the said Nannie E. Simmons under the name of Nannie E. "Johnson" by Deed from William A. Johnson and wife, dated January 19, 1905, and recorded in said Clerk's Office in Deed Book 71, at page 346, and by Deed from J. W. Jordan et al dated December, 1913, and recorded in said Clerk's Office in Deed Book 83, page 312, which said property consists of two contiguous tracts described in said Deeds as follows, to-wit:

"All of a certain piece or parcel of land situated and being in the County of Isle of Wight, in Newport District, State of Virginia, containing one hundred and fifty (150) acres, more or less, and described as follows (viz): commencing at the mouth of shipyard landing creek, following the meanderings of said creek or cove to a causeway or road, across marsh, thence in a south east direction across said marsh to a gut or cove, thence along said gut or cove to King's Creek, thence down King's Creek to a stub on bank of said creek at the S. W. Edge of a piece of high or arable land, thence following along the edge of said high land, around to old landing at house on said creek thence down said Kings Creek to Balance of Marsh Creek, thence up said Balance of Marsh Creek to point of beginning.

"2nd a piece or lot of land, containing two (2) acres, more or less, and described as follows commencing at the Marsh gate running thence in a Southerly direction to a maple tree in swamp thence down said swamp to edge of marsh, thence in a northerly direction along edge of marsh to the causeway or road mentioned above, thence along said road or causeway in a westerly direction to a point of beginning."

All of the tracts of Real Property which are described hereinabove and conveyed by this Deed compose what is known as the "Macklesfield Farm" which was conveyed from Watson P. Jordan and wife to George W. Parker by Deed dated February 26, 1859, and recorded in said Clerk's Office in Deed Book 40, at page 128, and which by his

Will and by subsequent Deeds became the property of the said Nannie E. Simmons, said property being located on State Highway No. 665 leading from Carrollton to Rescue, in Newport Magisterial District, Isle of Wight County, Virginia, and contains a total of Five Hundred Ninety and Fifty-five Hundredths (590.55) acres, more or less, according to a plat of survey made by John E. Buck, Surveyor, on February 18th, and May 23-25, 1928, bearing the legend "Spivey Farm Known as 'Mackelfield,'" and recorded in said Clerk's Office in Plat Book No. 1, at page 63.

The said Nannie E. Simmons doth hereby reserve unto herself for and during her life, for her exclusive use and enjoyment, that part of the dwelling house in which she now resides that is located on the right side of the hall as one enters the front door, that is to say, two rooms and a kitchen on the first floor and two rooms on the second floor. The said Nannie E. Simmons doth also reserve unto herself for and during her life, for her use jointly with the parties of the second part, the halls, the bathroom the basement and the porches, as well as the yard surrounding the house, and the lane leading to the public road.

The said party of the first part covenants that she is seized in Fee and has the right to convey the said Real Property hereby conveyed; that the same is free and clear of all encumbrances with the exception of the reservations hereinbefore mentioned; that the said parties of the second part shall have quiet and peaceful possession of said land, subject to said reservations; and, that, she, the said party of the first part, will execute such other and further assurances of the said land hereby conveyed as may be requisite.

WITNESS the following signature and seal:

Nannie E. Simmons (SEAL)

State of Virginia,

County of Isle of Wight, to-wit:

I, Mary V. Batten, a Notary Public in and for the County of Isle of Wight in the State of Virginia, whose commission as such expires the 26th day of January, 1954, do certify that Nannie E. Simmons, whose name is signed to the foregoing writing, bearing date the 30th day of April, 1951, has acknowledged the same before me in my County aforesaid.

Given under my hand this 30th day of April, 1951.

Mary V. Batten

Notary Public

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight April 30, 1951, at 3:15 o'clock p.m. this deed was received and with the certificate annexed, admitted to record.

Teste: R. G. Edwards, Clerk.

\$44.00 requisite amount of revenue stamps affixed and cancelled.

State Tax \$56.25

Algie J. Murphy, et ux.

TO: # 237

George F. Whitley, Jr., Trustee

THIS DEED OF TRUST, made this 30th day of April, 1951, between Algie J. Murphy and Beulah M. Murphy, husband and wife, of the County of Isle of Wight, State of Virginia, parties of the first part; and George F. Whitley, Jr., Trustee, of the said County and State, party of the second part:

Verified and  
Signed by Whitley Jr.  
this 4th day of May 1951  
Teste: R. G. Edwards

*Planned  
tax for return*

WITNESSETH: that the said parties of the first part, each in his or her own right and as the spouse of the other, do grant unto the said party of the second part, with General Warranty, the following Real Estate, to-wit:

FIRST: All that certain tract, piece or parcel of land which was conveyed from Josiah W. Jordan and wife to the said Nannie E. Simmons under the name of Nannie E. "Johnson" by Deed dated January 1, 1903, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County in Deed Book 71, at page 342, which said property consists of two contiguous tracts described in said Deed as follows, to-wit:

"All of a certain piece or parcel of land situated and being in the County of Isle of Wight in Newport District in the State of Virginia, containing three hundred and sixty-six (366) acres more or less, and bounded as follows; on the north by balance of Marsh Creek, on the West by the land of W. T. Martin, Mrs. Sadie Haynes and als. on the south by the land of B. P. Chapman and the estate of H. R. Parker, deceased, known as Plainfield and on the East by the land of William A. Johnson.

"2nd A piece or lot of land containing six (6) acres more or less and bounded as follows: on the West, South and North, by the land of William A. Johnson, and on the East by Kings Creek and the marsh of said W. A. Johnson, it being a narrow strip of high or arable land running parallel with Kings Creek and bordering thereon. The above mentioned land is a part of the Macklesfield tract, and was conveyed to the said Josiah W. Jordan by H. G. Parker and als by their Deed dated March 25, 1901, and admitted to record in the Clerk's Office of the County Court of Isle of Wight on the 6th day of May, 1901, in Deed Book 66, page 393."

SECOND: All that certain tract, piece or parcel, of land conveyed to the said Nannie E. Simmons under the name of Nannie E. "Johnson" by Deed from William A. Johnson and wife, dated January 19, 1905, and recorded in said Clerk's Office in Deed Book 71, at page 346, and by Deed from J. W. Jordan et al dated December 17, 1913, and recorded in said Clerk's Office in Deed Book 83, page 312, which said property consists of two contiguous tracts described in said Deeds as follows, to-wit:

"All of a certain piece or parcel of land situated and being in the County of Isle of Wight, in Newport District, State of Virginia, containing one hundred and fifty (150) acres, more or less, and described as follows (viz:) commencing at the mouth of shipyard landing creek, following the meanderings of said creek or cove to a causeway or road, across marsh, thence in a south east direction across said marsh to a gut or cove, thence along said gut or cove to King's Creek, thence down King's Creek to a stob on bank of said Creek at the S. W. Edge of a piece of high or arable land, thence following along the edge of said high land, around to old landing at house on said creek thence down said Kings Creek to Balance of Marsh Creek, thence up said Balance of Marsh Creek to point of beginning.

"2nd a piece or lot of land, containing two (2) acres, more or less, and described as follows commencing at the Marsh gate running thence in a Southerly direction to a maple tree in swamp thence down said swamp to edge of marsh, thence in a northerly direction along edge of marsh to the causeway or road mentioned above, thence along said road or causeway in a westerly direction to point of beginning."

All of the tracts of Real Property which are described hereinabove and conveyed by this Deed of Trust compose what is known as the "Nacolesfield" Farm which is located on State Highway No. 665 leading from Carrollton to Rescue, in Newport Magisterial District, Isle of Wight County, Virginia, and contains a total of Five Hundred

I hereby release the firm of this deed  
as they del. ~~they~~ ~~supplies~~ ~~the~~ ~~id.~~

I certify that the evidence of date furnished by this card has been practiced before me and the same has been duly recorded this 23 day of June 1906

Town Sweet's Academy Clerk  
R. D. Brown Est. mrsd & Co  
Tutor Beck & Caldwell Clerk  
Con. Dickinson To Educate & Co

Ninety and Fifty-five Hundredths (90.55) acres, more or less, according to a plat of survey made by John E. Buck, Surveyor, on February 18th, and May 23-25, 1928, bearing the legend "Spivey Farm Known as 'Mackelfield,'" and recorded in said Clerk's Office in Plat Book No. 1, at page 63. This being the same Real Property conveyed from Nannie E. Simmons to the said parties of the first part by Deed of even date herewith, to be recorded simultaneously with this Deed of Trust; this Deed of Trust being given to secure the balance of the purchase price for said Real Property.

IN TRUST to secure to Nannie E. Simmons, the payment of the sum of Thirty-seven Thousand, Five Hundred (\$37,500.00) Dollars, evidenced by one (1) Bond of even date herewith, payable to the said Nannie E. Simmons, her heirs or assigns, fifteen (15) years after date, that is to say on April 30, 1966, with interest on the unpaid balance of the principal at the rate of four (4) per centum per annum, payable on the 30th day of April of each year beginning on April 30, 1952; provided, that the obligors may anticipate the payment of said principal amount in whole or in part on any interest payment date with a proper abatement of interest, said Bond being signed by the said Algie J. Murphy and Beulah M. Murphy and containing a waiver of the Homestead Exemption, and being signed by the Trustee for the purpose of identification.

In the event that default shall be made in the payment of the aforesaid debt, or any installments of the principal or interest thereof, then the Trustee, on being required to so do by the legal holder of the said Bond, shall sell the property hereby conveyed. And it is covenanted that in case of sale the same shall be made after first advertising the time, terms and place thereof for fifteen (15) days by hand-bills posted in three (3) or more public places in the said County of Isle of Wight, and upon the following terms, to-wit: for cash; and out of the proceeds of sale pay first the cost of sale, including a commission of five per centum (5%) of gross amount to the Trustee, and pay the fees for drawing and recording this Deed of Trust if then unpaid, and then pay off said debt, with all accrued interest and legal charges, and pay the balance, if any, as the law directs.

It is also covenanted that this Deed of Trust shall secure any Bond, or Bonds, given in renewal, or extension, or curtail of the aforementioned debt.

The said parties of the first part covenant to pay all taxes, assessments, dues and charges, upon the said property hereby conveyed so long as they, or their heirs or assigns, shall hold the same; and further covenant and agree to keep the buildings on the property hereby conveyed insured for the full amount of Fifteen Thousand (\$15,000.00) Dollars, for the further protection of the legal holder of the said Bond, and in the event of their failure to do so, then the Trustee, or the beneficiary under this Deed of Trust, may effect or renew such insurance from time to time, so long as the said debt, or any part thereof, remains unpaid; and the insurance premiums shall constitute a part of the lien created by this Deed of Trust, to be paid out of the proceeds of the property, if sold, or to be recoverable by all the remedies in law or equity, by which the debt aforesaid may be recoverable.

In the event of the resignation, or death, incapacity, disability, removal or absence from the State, of the Trustee herein, the said parties of the first part do hereby grant unto the beneficiary hereunder, her heirs or assigns, the right and power to appoint a substitute trustee in accordance with the provisions of Chapter 216 of the 1934 Acts of the General Assembly of Virginia, page 162 of said Acts.

If no default shall be made in the payment of the above-mentioned debt, or in any installment of the principal or interest, or insurance premiums, then, upon the request of the parties of the first part, a good and sufficient legal release shall be executed to them at their own proper costs and charges.

WITNESS the following signatures and seals:

Algie J. Murphy (SEAL)

Beulah M. Murphy (SEAL)

State of Virginia,

County of Isle of Wight, to-wit:

I, Mary V. Batten, a Notary Public in and for the said County of Isle of Wight, whose commission as such expires the 26th day of January, 1954, do certify that Algie J. Murphy and Beulah M. Murphy, whose names are signed to the foregoing writing, bearing date the 30th day of April, 1951, have acknowledged the same before me in my County aforesaid.

Given under my hand this 30th day of April, 1951.

Mary V. Batten

Notary Public

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight April 30th., 1951, at 3:15 o'clock p.m. this deed was received and with the certificate annexed, admitted to record.

Teste R. C. Eakin, Clerk.

State Tax \$4.80

C. D. Jordan, et als.

TO: # 238

R. A. Jordan

Verified and recorded  
By R. A. Jordan  
this 7 day of June 1951  
Teste R. A. Jordan

THIS DEED, Made this 5th day of January, 1951, by and between C. D. Jordan and Marie S. Jordan, his wife; W. A. Jordan and Dorothy O. Jordan, his wife; Ellen C. Glascock and A. L. Glascock, her husband; Florence M. Jordan, unmarried; Lillian J. Britton and R. G. Britton, her husband; Edna W. Cornett and G. P. Cornett, her husband; S. P. Jordan and Anne W. Jordan, his wife; Virginia J. Bailey and C. F. Bailey, her husband; and Annie A. Jordan, widow, parties of the first part, and R. A. Jordan, of Isle of Wight County, Virginia, party of the second part:

WITNESSETH: That in consideration of the sum of TEN (\$10.00) DOLLARS and other valuable considerations, the receipt whereof is hereby acknowledged, the said parties of the first part do grant, sell and convey unto the said party of the second part, with GENERAL WARRANTY, the following property, to-wit:

All that certain tract, piece or parcel of land located in Newport Magisterial District, Isle of Wight County, Virginia, on Secondary Highway No. 620, and beginning at a point on said road and opposite Oak at Road; thence, North 31° E 825 feet to a Pine Stump; thence North 12° 30' W 731 feet along wire fence to a Pine; thence, North 60° 30' E 394 feet to a Gum; thence North 15° 30' W 216 feet to a stob; thence North 80° 30' W 1334 feet along a line of marked trees to a stob; thence, South 7° W 109 feet to a Hickory; thence South 8° W 274 feet to an Oak; thence South 8° 30' W 1462 feet along a line of marked trees to a point on said road opposite Oak at road; thence South 76° 30' E 100 feet to a point; thence South 81° E 400 feet to a point; thence South 84° 30' E 350 feet to a point; thence South 72° 30' E 100 feet to a



**VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT**

**ROBERT L. MAGETTE, Trustee,**

and

**REA PARKER, JR.,**

Plaintiffs,

v.

CHANCERY NO. 95-145

**C. LEONARD WILLIS, Trustee of**

**C. LEONARD WILLIS, INC. PENSION PLAN,**

and

**HAMPTON PROMOTIONS, INC.,**

a Virginia Corporation,

Defendants.

FILED  
VIRGINIA: In the Clerk's Office  
of the Circuit Court of the  
County of Isle of Wight  
11/17, 1995, 10:45 AM  
W. E. Jones, Jr., Clerk  
D.C.

**ANSWER AND GROUNDS OF DEFENSE**

COMES NOW the defendants, C. Leonard Willis, Trustee of the C. Leonard Willis, Inc. Pension Plan, hereinafter referred to as "Willis", and Hampton Promotions, Inc., a Virginia corporation, hereinafter referred to as "Hampton Promotions", by and through its counsel, and for answer to the bill of complaint filed against it answers and says:

1. After reasonable investigation, the defendants are without sufficient information to form a belief as to the truth or falsity of the averments contained in paragraph 1 of the bill of complaint filed in this action, the allegations are therefore denied with strict proof thereof demanded at the time of trial.

2. Defendants admit the allegations contained in paragraph 2 of the bill of complaint filed in this action.

MICHAEL P. JONES  
ATTORNEY AT LAW  
NEWPORT NEWS, VIRGINIA

3. After reasonable investigation, the defendants are without sufficient information to form a belief as to the truth or falsity of the averments contained in paragraph 3 of the bill of complaint filed in this action, the allegations are therefore denied with strict proof thereof demanded at the time of trial.

4. After reasonable investigation, the defendants are without sufficient information to form a belief as to the truth or falsity of the averments contained in paragraph 4 of the bill of complaint filed in this action, the allegations are therefore denied with strict proof thereof demanded at the time of trial.

5. After reasonable investigation, the defendants are without sufficient information to form a belief as to the truth or falsity of the averments contained in paragraph 5 of the bill of complaint filed in this action, the allegations are therefore denied with strict proof thereof demanded at the time of trial.

6. Willis and Hampton Promotions specifically deny that use of said path has been hostile, exclusive, lasting, continuous, visible, adverse, and under actual claim of rights by any resident of the Parker parcel for a period of at least twenty (20) years. With regards to the remaining allegations of paragraph 6, the defendants are without sufficient information to form a belief as to the truth or falsity of the averments contained therein, the allegations are therefore denied with strict proof thereof demanded at the time of trial.

7. After reasonable investigation, the defendants are without sufficient information to form a belief as to the truth or falsity of the averments contained in paragraph 7 of the bill of complaint filed in this action, the allegations are therefore denied with strict proof thereof demanded at the time of trial.

AND NOW, having fully answered the bill of complaint, the defendants, C. Leonard Willis, Trustee, and Hampton Promotions, Inc., by and through its counsel, for its grounds of defense states as follows:

8. Defendants assert that plaintiffs' use of the path was not continuous in nature and without interruption for a period in excess of twenty (20) years. Defendants further assert that plaintiffs' use of said path was sporadic and of an indefinite nature, not long enough so as to provide the defendants reasonable notice that a right adverse to its interest was being exercised.


9. Without waiving its allegations contained in paragraph 8, the defendants specifically assert that it has not acquiesced to any improvement of said path by plaintiff for a period in excess of twenty (20) years.

10. Without waiving its allegations contained in paragraphs 8 and 9, defendants asserts that the Parker parcel has not been used for residential purposes continuously and without interruption for a period in excess of twenty (20) years.

11. Defendants will rely on such other and further defenses as may be revealed upon discovery procedures, or upon further investigation or as may be disclosed by the evidence during the trial of this case.

WHEREFORE, the defendants, C. Leonard Willis, Trustee, and Hampton Promotions, Inc., pray that this Honorable Court for judgment in its favor and its costs expended in this action.

C. LEONARD WILLIS, TRUSTEE  
HAMPTON PROMOTIONS, INC.

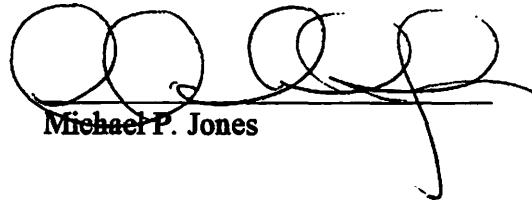
By   
Of Counsel

-3-

Michael P. Jones, Esquire  
753 Thimble Shoals Boulevard  
Suite 2A  
Newport News, Virginia 23606  
(804) 873-2333

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer and Grounds of Defense was mailed to counsel for the plaintiff, William C. Cowardin, Jr., Esquire, at OVERMAN, COWARDIN AND MARTIN, P.L.C., 739 Thimble Shoals Boulevard, Suite 507, Newport News, Virginia 23606, by first class mail, postage prepaid, this 7<sup>th</sup> day of November, 1995.



Michael P. Jones

962217

CLERK

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF  
ISLE OF WIGHT

15650  
RICHMOND, VIRGINIA

-----  
ROBERT L. MAGETTE, TRUSTEE  
AND  
REA PARKER, JUNIOR

v.

CHANCERY NO.  
95-000145

C. LEONARD WILLIS, TRUSTEE OF  
C. LEONARD WILLIS, INC., PENSION PLAN  
AND  
HAMPTON PROMOTIONS, INC., A VIRGINIA CORP.  
-----

Stenographic report of all the testimony,  
together with all the motions, objections and exceptions on  
the part of the respective parties, the action of the Court  
in respect thereto, and all other incidents during the trial  
in the above-styled cause, heard in the Circuit Court for the  
County of Isle of Wight, at Isle of Wight, Virginia, on April  
22, 1996, before the Honorable Wesbrook J. Parker, Judge of  
said Court.

PRESENT:

Mr. William C. Cowardin, Junior,  
Attorney for the Plaintiffs

Mr. Richard E. Railey, Junior,  
Attorney for the Plaintiffs

Mr. Michael P. Jones,  
Attorney for the Defendants

- - - oOo - - -

CHERYL A. LEASURE  
SCHNEIDER AND ASSOCIATES  
107 TELFORD DRIVE  
NEWPORT NEWS, VIRGINIA 23602

FILED  
VIRGINIA: In the Clerk's Office  
of the Circuit Court of the  
County of Isle of Wight  
10-3-96, 1996, 2:35 PM  
W. E. Laing, Jr., Clerk  
*[Signature]* D.C.

## I-N-D-E-X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DENNIS SPADY -----	14	19		
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DEFENDANTS' EXHIBITSPAGE

NUMBER 1 -----	PHOTOGRAPH -----	35
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1 since the last time that there was any residential structure.  
2 My clients had no way of knowing they used it other than  
3 potentially agricultural use. And we'd ask that the Court,  
4 after hearing all the evidence, find in my clients' favor.

5 THE COURT: All right. Who is the  
6 first witness?

7 MR. RAILEY: Dennis Spady.  
8  
9  
10 - - -

11 DENNIS SPADY,  
12 called as a witness by the Plaintiff, having been first duly  
13 sworn, was examined and testified as follows:  
14

15 DIRECT EXAMINATION  
16

17 BY MR. RAILEY:

18 Q Would you state your name please,  
19 sir?

20 A Dennis Spady.

21 Q And where do you reside, Mr. Spady?

22 A Smithfield, Virginia.

23 Q What's your occupation?

24 A Farmer.

25 Q How long have you been farming?

1 A Since '76.

2 Q So 20 years this year?

3 A Yes.

4 Q Are you familiar with the  
5 Mackelsfield farm owned by Dr. Rea Parker?

6 A Yes.

7 Q Do you farm that farm?

8 A I used to. I still have it on my  
9 books. I'm not farming it this year.

10 Q How long --

11 A As of yet, that is. I might still  
12 farm it. It's under discussion.

13 Q How long have you farmed that farm?

14 A Since '69.

15 Q And what have you farmed on the  
16 farm?

17 A Corn, wheat, peanuts, soy beans.

18 Q How do you gain access to that farm?

19 A I have two -- I have two options of  
20 getting to this farm. I have gotten -- from 665, which is  
21 called Parker Farm Lane, and I go down Yellow Rock Lane, which  
22 is adjacent to Parker Farm Lane, and come through the back  
23 side.

24 Q Now, the Parker Farm Lane that you  
25 referred to, was that your exclusive access from '69 to, say,

1 1990?

2 A Well, actually we used it more than  
3 those years because it was a quicker entrance than that, but  
4 the three farms, the Parker farmer, the Vellins farm, and then  
5 another Vellins farm all joined each other in the back so you  
6 can actually use one farm to get to the next one, to get to  
7 the next one, so I still had an option. But like I said, I  
8 mainly used the Parker Farm Road through maybe '89, or some  
9 part of the '80s we stopped using it.

10 Q And you mentioned two other farms  
11 that you could access the Parker farm by. Who owns those  
12 farms?

13 A Presently Kuesal owns one of them,  
14 Mr. Kuesal.

15 Q That would be Dan Kuesal, the  
16 gentleman from Maryland?

17 A Correct. He had sold it off in  
18 different lots. And the Vellins estate still owns the other  
19 Vellins farm.

20 Q Do you farm both of those farms?

21 A Yes.

22 Q How long have you farmed those  
23 farms?

24 A Probably about the same time as the  
25 Parker farm. I think we farmed the Parker farm first and then

1       picked up the Vellins farms.

2                       Q               Say prior to 1990, is it -- why  
3       didn't you just go across the Vellins farm as opposed to going  
4       down Parker Lane?

5                       A               Well, like I was -- well, you know,  
6       I might come in on the Vellins farm and the Vellins farm will  
7       end up on the Parker farm and go out on Parker Farm Road.

8                       Q               Have you used Parker Lane since  
9       1990, 1991?

10                      A               Not really. Last year I did because  
11       the roads have been refixed. But before that, I couldn't --  
12       the road was so rough we didn't want to take our equipment  
13       down it, so we had an option and we used the Vellins lane.

14                      Q               So you didn't use that lane and --  
15       for 1994 and 1993 and 1992?

16                      A               No.

17                      Q               But that has been -- it would be  
18       three years you didn't use it. Perhaps '91. I know you can't  
19       remember precisely.

20                      A               If it was used, you'd have to have a  
21       four-wheel drive.

22                      Q               Did you use it any with a four-wheel  
23       drive?

24                      A               Yeah, I probably did.

25                      Q               Do you have hunting rights back

1       there?

2                   A               We did.

3                   Q               All right. When you say you farmed  
4       peanuts and soy beans and corn, did you use that lane to, say,  
5       carry a grain combine?

6                   A               No, not during those years.

7                   Q               But I mean in prior years.

8                   A               Oh, yes.

9                   Q               And how much road does a grain  
10       combine need?

11                  A               Fifteen to 20 feet.

12                  Q               What about -- what type of peanut  
13       combine do you have?

14                  A               Well, I have a four-row, which  
15       probably takes 15 to 20 feet.

16                  Q               You have an eight-row peanut combine  
17       though?

18                  A               Four-row.

19                  Q               Just four-row?

20                  A               (The witness nodded his head up and  
21       down.)

22                  Q               All right. And you would drive  
23       tractors down there?

24                  A               Yes, sir.

25                  Q               And do you drive also disc harrows,

1 and breaking plows and all types of equipment?

2 A Yes.

3 Q What would be the widest you would  
4 need a path?

5 A Well, the widest piece of equipment  
6 I have is probably around 20 feet.

7 Q What's that?

8 A The planter is 24 feet, but when  
9 they fold it up, it's around ten feet.

10 Q Is there any planters that you plant  
11 peanuts with or cotton or something like that and they can put  
12 down two to three different chemicals in the seed all at the  
13 same time?

14 A Yes.

15 MR. RAILEY: All right. That's all  
16 I have of this witness.

17 THE COURT: All right. Answer  
18 Mr. Jones, please.

19

20 CROSS-EXAMINATION

21

22 BY MR. JONES:

23 Q Okay. You said you've got some  
24 equipment that's 20 feet wide. How long have you owned that  
25 equipment?

1                   A           Well, we've been planting with  
2 eight-row planters for probably 20 years.

3                   Q           Are you for sure about that answer?

4                   A           Yeah, I'm very sure about that  
5 answer.

6                   Q           Okay. And you stated that you  
7 accessed the Parker parcel and Mackelsfield through other  
8 farms?

9                   A           Right.

10                  Q           How often would you use the other  
11 farms to gain access?

12                  A           What time period are you speaking  
13 of?

14                  Q           From say 1990 up until the end of  
15 '94?

16                  A           I used the Vellins Road.

17                  Q           Exclusively?

18                  A           Yes. It's just so much smoother.

19                  Q           And you stopped using what you've  
20 identified as the Parker path because you couldn't get your  
21 equipment down it; is that right?

22                  A           Well, you might be able to get it  
23 down there, but you know, why go the rough road when you can  
24 take a smooth road.

25                  Q           When you say a rough road, what does

1 the road look like?

2 A It was terrible. I mean, we  
3 didn't -- so many other people had been trespassing through  
4 there, they just tore the road up. I think you'd be taking a  
5 real risk to take a two-wheel drive down there. I don't think  
6 you could make it.

7 Q Don't think you could drive a car?

8 A Through that time period, no. I  
9 mean, yeah, I guess you could. Some people got down there  
10 some kind of way. They don't all got four-wheel drives.

11 Q But you don't know what they were  
12 driving to get down there?

13 A No. I wouldn't drive my car down  
14 there.

15 Q Okay. And when you leave Route 665  
16 through what you call the Parker Lane, whose property were you  
17 on at that point; do you know?

18 A I know now, but I didn't know until  
19 a few years ago.

20 Q Did you believe you were  
21 trespassing?

22 A It never really crossed my mind.  
23 The road, you know, I've always -- we've always used it.

24 Q And was there any markings on the  
25 ground that established the lane in 1992 or whenever you



1 stopped using it? What did it look like? Was it a gravel  
2 lane or what was it?

3 A You mean in 1992?

4 Q Right.

5 A Just a dirt, muddy road.

6 Q Muddy road. Was it a clear road or  
7 was there tire tracks or --

8 A It was -- it's always been tire  
9 tracks. Somebody is always getting back there some way.

10 Q So there was tire tracks?

11 A Yeah.

12 Q Was there any vegetation grown up  
13 around it?

14 A Yeah, I think so.

15 Q And there is a utility line; is that  
16 correct?

17 A Correct.

18 Q How close to the utility lines would  
19 the right-of-way that you speak of, how close --

20 A Well, they kind of meet each other.

21 Q They adjoined each other?

22 A I would say so. The road was  
23 against the woods, and then the utility line was probably 15  
24 feet off -- 15, 20 feet up the road and the utility people  
25 kept that path cut.

1 Q In this alleged right-of-way, does  
2 it pass between some trees or something?

3 A Yeah, all the way down.

4 Q Would wide would you say that  
5 clearing is?

6 A From the road?

7 Q From tree line to tree line.

8 A Tree line to tree line it's probably  
9 50 feet.

10 Q And how much of that 50 feet would  
11 the tire tracks take up?

12 A I would say 15, 20 feet.

13 Q When you say 15 to 20 feet, how far  
14 apart were the tire tracks? Is that 15 to 20 feet between the  
15 tire tracks?

16 A Well, tire tracks are the width of a  
17 tire -- of a car.

18 Q Well, from the left tire to the  
19 right tire, is that what you're measuring, 15 to 20?

20 A No, no. I guess you're trying to  
21 ask me to measure the road.

22 Q Yeah.

23 A I guess the road is around 15 to 20  
24 feet wide.

25 Q And did you ever drive -- did you

1 always go down where the tire tracks were, or did you one time  
2 go on the left side of the telephone poles; the next time you  
3 go to the right side?

4 A No, we usually went down the path.

5 MR. JONES: Okay. I have no further  
6 questions.

7 THE COURT: Anything further of  
8 Mr. Spady?

9 MR. RAILEY: I have nothing further  
10 and I'd ask that he be excused. He's in the process of  
11 planting peanuts and cotton.

12 THE COURT: Any objection?

13 MR. JONES: No objection.

14 THE COURT: Thank you, Mr. Spady.  
15 You are free to go. Who's next?

16 MR. COWARDIN: I would like to call  
17 R. L. Magette.

18 THE COURT: All right. Mr. Magette,  
19 come on up here and have a seat.

20  
21 - - -  
22

23 ROBERT L. MAGETTE,  
24 called as a witness by the Plaintiffs, having been first duly  
25 sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. COWARDIN:

Q Would you state your name for the  
Court, please?

A Robert L. Magette.

Q And where do you live, Mr. Magette?

A In Smithfield.

Q How long have you lived here?

A Forty-six years.

Q And are you related to Rea Parker?

A He's a cousin.

Q And are you familiar with the  
Mackelsfield farm?

A Yes.

Q How long have you known the property  
in general?

A From the early 50s.

Q And how were you familiar with it?

A L. T. Murphy, when he owned it, he  
called me to come down. He asked me to come down about his  
water system. He wanted a deep well.

Q You're in the water business, right?

A Right.

MR. JONES: Mr. Magette, could you

1 speak up so that I can hear you?

2 THE WITNESS: I'll try and do that.

3 MR. JONES: Thank you.

4 BY MR. COWARDIN:

5 Q At that time when you went on the  
6 farm, how did you gain access to the farm?

7 A Through the long way that goes from  
8 665 into the land.

9 Q Could you point out to the Court, is  
10 the lane pictured on this picture?

11 (Document tendered to the witness.)

12 BY MR. COWARDIN:

13 Q Is this the lane right here?  
14 (Indicating.)

15 A That's a lane there.

16 THE COURT: For the record, he's  
17 showing the aerial photograph that was agreed would be --

18 THE WITNESS: I went straight from  
19 there. (Indicating.)

20 BY MR. COWARDIN:

21 Q And this is -- if this is Route 665  
22 and 668, this is the lane?

23 A Yeah.

24 Q And approximately what year was  
25 that, Mr. Magette, if you recall?

1                   A           It was in the early 50s, '53, '54,  
2                   somewhere in there.

3                   Q           To your knowledge was there any  
4                   other way into that farm at that time?

5                   A           Not to my knowledge.

6                   Q           And when you traveled this road, did  
7                   you do it in a car or a truck or?

8                   A           In my automobile.

9                   Q           In your automobile.

10                  Q           And was the lane passable at that  
11                  time?

12                  A           Oh, yeah.

13                  Q           Were there signs that the lane was  
14                  used by others at that time?

15                  A           I didn't pay that much attention,  
16                  but I assume it was used regularly.

17                  Q           And was there a house on the  
18                  property?

19                  A           Yes.

20                  Q           And Mr. Murphy lived there?

21                  A           Yes.

22                  Q           Did Mr. Murphy farm the property?

23                  A           I assume he did.

24                  Q           Were you familiar when Dr. Parker  
25                  bought the property?

1 A Uh-huh.

2 Q Did you have occasion to go on it  
3 after he bought it?

4 A On certain occasions.

5 Q And at that time was there a lane  
6 there to access the farm?

7 A The same one.

8 Q Did you use it then?

9 A Oh, yes.

10 Q And how many times have you been on  
11 the property since 19 -- since your first visit in the early  
12 50s, if you could tell us?

13 A A dozen, a dozen and a half times.

14 Q And each time you've been able to  
15 pass down the lane and reach the property?

16 A Yes.

17 Q Did you ever ask anybody's  
18 permission to go down the lane?

19 A No.

20 Q Do you ever know a time the lane was  
21 not there?

22 A Not to my knowledge.

23 Q Did you become -- were you aware of  
24 plans to develop this property that came about in the late  
25 '80s?

1 A Yes.

2 Q And Mr. Kuesal was going to do that?

3 A Yes.

4 Q And at that time were you aware that  
5 Mr. Willis had bought the land which stood between the farm  
6 and Route 665?

7 A He had not bought it at that time.

8 Q He had not bought it at that time?

9 A No.

10 Q But he did buy it later on?

11 A I understand that.

12 Q And that project by Mr. Kuesal, do  
13 you know what happened to it?

14 A Only through hearsay. You know, I  
15 understood that he was going to develop some 14 or 17 hundred  
16 houses, and then the County approved it. And then I heard  
17 later that they down-graded -- down-zoned it and had taken  
18 that away, you know. And then they were looking for  
19 alternative ways to --

20 Q And what sort of health is your  
21 cousin in now?

22 A He's not in very good health. He is  
23 having quite a few physical problems.

24 Q Is that the reason that you became  
25 trustee of a land trust on this property so that you can --



1 Q Mr. Magette, you stated that you've  
2 been to the property half a dozen times or a dozen times?

3 A Or more.

4 Q Okay. And why did you go to the  
5 property?

6 A On several occasions I went with him  
7 down there.

8 Q Were you hunting or just --

9 A I'm not a hunter.

10 Q Just riding around?

11 A He wanted me to look at something on  
12 different occasions down there.

13 Q Okay. And you said you were unaware  
14 of any other access to the property; is that right?

15 A I've never heard of any.

16 Q Are you aware of any now?

17 A Other than what I've heard about the  
18 farmers going from farm to farm.

19 Q Would it surprise you that  
20 Dr. Parker has purchased an access via Yellow Rock Road?

21 A I've heard that too.

22 Q Okay. And Mr. Jones' and  
23 Mr. Willis' property isn't the only property that adjoins  
24 Mackelsfield, is it? It's got property on the other side of  
25 Mackelsfield. Mackelsfield is not a peninsula where it's only

1 way one in and one way out.

2 MR. RAILEY: If Your Honor please,  
3 I'm not trying to hold this back from the Court, and certainly  
4 as to what Mr. Magette has testified, we will stipulate to,  
5 but it's actually -- this is a prescriptive easement case.  
6 It's irrelevant and immaterial as to whether there's another  
7 access. The question is whether we have this access. The  
8 pleadings don't ask for easement implication or assessment.

9 MR. JONES: Your Honor, I'm not  
10 asking the Court to find either of those. I'm just trying to  
11 show that this isn't the sole means of when -- if there was a  
12 house back there, there was other accesses that they could be  
13 using. They didn't have to use this one.

14 THE COURT: Well, that's  
15 Mr. Railey's objection, that that wouldn't make any  
16 difference.

17 MR. JONES: But I'm just saying,  
18 Judge, that for a prescriptive easement they've got to have  
19 used this land. The fact that there may have been a house  
20 back there and that Mr. Murphy may have lived back there  
21 doesn't mean he was using this land.

22 THE COURT: Well, that's not  
23 evidence that he may have done it. Somebody's got to tell me  
24 he did it.

25 MR. JONES: I was just asking if

1       there was the opportunity for him to have done that.

2                       MR. RAILEY: But he's talking about  
3       something that's just come about.

4                       THE COURT: It doesn't -- let's move  
5       on.

6                       MR. RAILEY: I mean, it's not that  
7       I'm trying to hold it back. I'm just trying to move this  
8       thing along.

9                       THE COURT: Yeah. I agree. It's  
10      not an issue. The matter is whether or not y'all can prove  
11      they've got a right by prescription.

12      BY MR. JONES:

13                      Q           Are you aware that there's utility  
14      lines that run next to the --

15                      A           Yes.

16                      Q           What side of the road are the  
17      utility lines on?

18                      A           On the right side, if I remember  
19      correct.

20                      Q           And how far from the roadway are the  
21      utility lines?

22                      A           I don't know. I really don't know  
23      how far they are.

24                      Q           And prior to the filing of this  
25      lawsuit, how wide is the lane?

1                   A            I don't have any idea. It mostly --  
2    what I saw there is where the vehicles went in and tracks, you  
3    know.

4                   Q            The side tracks?

5                   A            They -- the tires, wheels, wheel  
6    tracks.

7                   Q            When is the last time you went down  
8    to Dr. Parker's farm prior to the filing of this action?

9                   A            I really don't know.

10                  Q            Is it true that the house that was  
11   back there burnt back in 1960?

12                  A            I don't know when. It burned, yes.

13                  Q            Was it more than 35 years ago?

14                  A            I don't have the slightest idea when  
15   it burned. There was a barn that burned, too.

16                  Q            Is anybody living back there now?

17                  A            Not to my knowledge.

18                  Q            Okay. Was anybody living in the  
19   house when it burned?

20                  A            I really don't know.

21                  Q            Okay. I'm going to show you a  
22   photograph. Can you identify that photograph?

23                               (Document tendered to the witness.)

24                               THE WITNESS: Not really.

25   BY MR. JONES:

1 Q You don't know what that is?

2 A It looks like a telephone or light  
3 lines going in, and it looks -- I see where the path goes  
4 through here. (Indicating.)

5 Q Is that the path that leads to  
6 Mackelsfield?

7 A It looks similar, but I don't....  
8 MR. JONES: I'd ask the Court to  
9 mark this at this point.

10 THE COURT: Do you want to --

11 MR. RAILEY: It's not in evidence  
12 yet.

13 MR. JONES: Right. It's for  
14 identification.

15 (Defendant's Exhibit Number 1 was  
16 marked for identification.)

17 BY MR. JONES:

18 Q How often would you view the  
19 property?

20 A The same time that I told you that I  
21 went down there.

22 Q How often would you go -- so you've  
23 only viewed the property a dozen times or so?

24 A That's correct.

25 Q Okay. Do you have any personal

1 knowledge of Mr. Murphy ever using the land?

2 A He was using it regularly when --  
3 for several years.

4 Q How do you know that?

5 A That was, to my knowledge, the only  
6 way in and out.

7 Q Did you see him --

8 A It was well worn and you could see  
9 it was used a lot.

10 Q Did you see him?

11 A Huh?

12 Q Did you ever see him use the land?

13 A He was always at home.

14 Q So you never saw Mr. Murphy use the  
15 land?

16 A I assume that was the only way in  
17 and out.

18 Q Okay. So your answer would be no?

19 A No, I didn't see him use the land.  
20 In fact, I didn't see anybody use it.

21 Q How wide is the clearing and the  
22 trees that leads down to Mackelsfield; do you have any idea?

23 A It's looks like -- as you call it  
24 tree line to tree line, about 50 or 60 feet. Now, I'm  
25 guessing. I don't know, but that's what it looks like.

1 Q Okay.

2 A I know that the light is always  
3 sitting way out from the wood line, toward the path.

4 Q Are you aware of any plans to  
5 develop Mackelsfield beyond the lots that are there now?

6 A No. Nineteen lots, I think it is.

7 Q And prior to this, Mackelsfield was  
8 a farm; is that right? Mr. Spady was farming it?

9 A Yes.

10 Q And are you aware of any  
11 improvements that may have been made to the lane in the last  
12 12 months?

13 A Yes.

14 Q What improvements were made?

15 A Well, they're having a logging  
16 operation in there now and the loggers put down rocks, I  
17 think, that --

18 Q And did they have to expand it so  
19 they could get the trucks in and out?

20 A Not that I -- it looks the same to  
21 me as it did before.

22 Q Other than it's covered in rocks.

23 A That's right. And I've been down  
24 there two or three times since this has gone on, and it --  
25 they did a little road work before they put the rocks down and

1 filled the holes in the road.

2 Q Are you aware of whether Dr. Parker  
3 ever lived at Mackelsfield?

4 A Never lived there.

5 MR. JONES: All right. I have  
6 nothing further.

7 THE COURT: Anything further?

8 MR. COWARDIN: Just one, Your Honor.

9

10 REDIRECT EXAMINATION

11

12 BY MR. COWARDIN:

13 Q Mr. Magette, where -- did the lane  
14 lead right to the house?

15 A Straight into the house, yes.

16 MR. COWARDIN: That's all, Your  
17 Honor.

18 THE COURT: Thank you. Now I think  
19 they are finished with you.

20 THE WITNESS: Thank you.

21 THE COURT: Okay. Who's next?

22 MR. COWARDIN: Mr. Harold Reynolds.

23

24

25



1 HAROLD REYNOLDS,  
2 called as a witness by the Plaintiffs, having been first duly  
3 sworn, was examined and testified as follows:

4

5 DIRECT EXAMINATION

6

7 BY MR. COWARDIN:

8 Q Good morning, Mr. Reynolds. Would  
9 you state your name for the Judge, please?

10 A James Harold Reynolds.

11 Q Where do you live, Mr. Reynolds?

12 A 10288 Clark Street, Battery Park,  
13 Virginia.

14 Q And how long have you been a  
15 resident of Isle of Wight County?

16 A Seventy-seven years.

17 Q And are you familiar with the  
18 Mackelsfield farm?

19 A Yes.

20 Q And how long have you been familiar  
21 with that farm?

22 A At least 65 years. Since I was a  
23 kid growing up.

24 Q When you were a kid growing up, what  
25 did you know about it? What connection did you have with it?

1                   A           Well, I knew the people that lived  
2 down there. I think the Spires first, that I remember, and  
3 the Simmons. And we used to go down there when we were kids,  
4 you know, and roam around.

5                   Q           I'm going to move over here so that  
6 you can talk to the Judge.

7                   THE COURT: That's all right. I can  
8 hear him fine.

9 BY MR. COWARDIN:

10                  Q           And when you were a kid you went  
11 down into the -- onto the farm?

12                  A           Yes. We used to go down there.

13                  Q           And was there a driveway or a road  
14 leading to the farm?

15                  A           Yeah, uh-huh.

16                  Q           And I'm going to show you what's  
17 been marked as Plaintiffs' Exhibit 1, and do you recognize the  
18 farm and the lane?

19                  A           I'm not much on that.

20                  Q           Okay. If this is Route 665 down  
21 here, and this road, and then this goes down to --  
22 (Indicating.)

23                               MR. JONES: I object, Your Honor.  
24 He's leading the witness.

25                               MR. COWARDIN: I think I can point

1 out the physical points on the --

2 THE COURT: If he can't identify it,  
3 he can't identify it, but we all know what it is.

4 THE WITNESS: I'm not much on these  
5 pictures but -- I don't know which way you're going here.

6 MR. COWARDIN: Can I prompt him a  
7 little bit, Judge?

8 THE COURT: Show him where the road,  
9 the hard surfaced road is.

10 BY MR. COWARDIN:

11 Q This is 665 that runs to the trees,  
12 right in here, and these houses. See it right there? It runs  
13 right along there. (Indicating.)

14 A Okay.

15 Q Now, do you know where you are now?

16 A Yes.

17 Q Do you recognize this picture right  
18 there?

19 A Yeah.

20 Q What is that?

21 A That's the road going to  
22 Mackelsfield, isn't it?

23 Q And was the road there when you  
24 played there as a child 65 years ago?

25 A Oh, yes. It's been there.

1 Q And what did it look like then?

2 A Well, it was a narrow road in there,  
3 but a lot of people lived there, you know, and -- in and out  
4 and then people farmed the land and took farm equipment in and  
5 out of there.

6 Q Did you know a lady by the name of  
7 Annie Hawks?

8 A Yes.

9 Q Where did she -- is her place, where  
10 her house was, identifiable in this photograph?

11 A It was right across 665. I think  
12 that opening there, that's right where her house was.  
13 (Indicating.)

14 Q Could she see the opening and start  
15 of this lane from her house?

16 A Yes.

17 Q She was a black woman?

18 A Yes.

19 Q And you told me that she was -- she  
20 had -- your mother was a friend of hers?

21 A Oh, yes. She used to stop by and  
22 talked to my mother.

23 Q Did you know of Nannie Simmons?

24 A I -- faintly. I think she used to  
25 teach Sunday school class down at the church. We'd go down

1       there every once in a while, you know, when she was teaching.

2                       Q               Now, how many times in the course of  
3       your life have you been down this road?

4                       A               Oh, I don't know. A lot of times.

5                       Q               And from 65 years ago until  
6       recently?

7                       A               I guess I -- I've been down there  
8       recently.

9                       Q               When was the last time you went down  
10      before, say, October of '95? In other words, prior to October  
11      '95, when was the last time you had been down there?

12                      A               I don't know because when you're  
13      growing up, you remember these places and every once in a  
14      while I'd ride, not only there, but other places, you know. I  
15      don't know. To see what it looked like after a few years, you  
16      know.

17                      Q               But you could identify the road?

18                      A               Oh, yeah. Well, I used to hunt down  
19      there, too, you know.

20                      Q               And what years did you hunt down  
21      there?

22                      A               I don't know. I used to hunt down  
23      there before Rea Parker bought it. And then after Rea bought  
24      it, I had a written hunting permission to hunt out there. I  
25      didn't need it before he bought it, you know.

1 Q You were familiar that people were  
2 living on the farm?

3 A Oh....

4 Q People lived on the farm?

5 A Yeah. Mr. Murphy used to live  
6 there, too. I think Rea bought it from him, you know.

7 Q And they farmed it?

8 A Yes.

9 Q Were you aware of any logging  
10 operations that took place on the property?

11 A I don't remember any of that.

12 Q How did people move up and down the  
13 road?

14 A Well, back -- first, of course, you  
15 didn't have any cars, but when cars came out they had them,  
16 but you know, horse and buggy, carts, farm equipment, and it  
17 was fare-through. I mean, it wasn't room to pass. I think  
18 there was a place there you could pull off, you know, and let  
19 somebody by.

20 Q Now, how did you get up and down the  
21 road over the years?

22 A Well, I was -- before I got a car I  
23 used to walk it all the time. But after I got, you know, a  
24 car, I used to drive there. It was rough because, you know,  
25 farm equipment and everything down there.

1 Q Did you ever hear of anyone asking  
2 or giving permission to use the road?

3 A No. It's always been there, you  
4 know.

5 Q With respect to the width, were  
6 there any places that two cars could pass on the road?

7 A I don't think so. If they could,  
8 the only place would be from the road 665 to the woods. That  
9 was a little wider. You could pass there.

10 Q You could pass there?

11 A Yeah.

12 Q Now, would you identify that on the  
13 photograph, that part? (Indicating.) Can you see it there?

14 A Yeah. Here? Yeah. (Indicating.)

15 Q Uh-huh. And the woods -- by the  
16 woods, you mean the end of this field?

17 A Yeah, this field. There was a gate  
18 or a fence at one time.

19 Q But two cars could pass there?

20 A Yeah, from the road to the woods,  
21 yeah.

22 Q And how did the condition of this  
23 area compare with the condition of the lane back further, in  
24 your experience?

25 A From the road to the woods it was in

1 pretty good shape. But from then on, it was rough.

2 Q So am I right in saying that from  
3 this area to this area is in better shape than back down here?  
4 (Indicating.)

5 A Yes. It's been in constant use as  
6 far -- as far back as I can remember. It was the only place  
7 in and out of there.

8 MR. COWARDIN: Thank you,  
9 Mr. Reynolds.

10

11 CROSS-EXAMINATION

12

13 BY MR. JONES:

14 Q Mr. Reynolds, are you friends with  
15 Mr. Magette?

16 A Yes.

17 Q And your wife works for Mr. Magette;  
18 is that right?

19 A Yes.

20 Q How many times have you hunted  
21 there?

22 A I don't know.

23 Q Ten?

24 A Ten, 12 times.

25 Q Okay. And you said every now and



1 then you just decided to ride down there; is that right?

2 A Yes, and other places, too, I would  
3 ride down and look --

4 Q Sight-seeing?

5 A Yeah.

6 Q In the last 30 years or so, have you  
7 ridden down there?

8 A Oh, yes.

9 Q Is there a house there?

10 A The house burned. I don't know how  
11 long it's been. When I first started going down there, there  
12 was a house there.

13 Q Right. But at some point the house  
14 burned down; is that right?

15 A Yeah.

16 Q Do you know who was living there  
17 when the house burnt down?

18 A No, I don't.

19 Q You don't know if the house was  
20 vacant or --

21 A No.

22 Q Okay. And you said that the road  
23 was narrow. What did the road look like?

24 A Well, just a country lane really.

25 Q Tire tracks?

1                   A           Well, not no tracks but ruts, big  
2   tire tracks.

3                   Q           Were you ever aware of it being more  
4   than one house back in there?

5                   A           That's all I remember is the home  
6   place, the main house back there.

7                   Q           And the people that lived there,  
8   were they farming the property?

9                   A           I don't remember whether they, the  
10   Spires and the Simmons -- I don't know. They might have  
11   rented it out.

12                  Q           But the property was being farmed?

13                  A           Yeah. Murphy bought it and he  
14   farmed it himself.

15                  Q           Okay. When was the last time you  
16   drove down the lane?

17                  A           Well, I've been down there since  
18   they started cutting timber.

19                  Q           Before, say, 1995, when was the last  
20   time you had driven down there?

21                  A           Maybe a couple of years. I didn't  
22   go down there too often.

23                  Q           Why is that?

24                  A           I don't know. It's just every once  
25   in a while I would ride down and see what was going on.

1 Q And was the lane in the same  
2 condition it was back when you were a kid?

3 A Yes. It never was good.

4 Q I want to show you a photograph.

5 THE COURT: Defendant's Exhibit 1,  
6 for the court reporter.

7 (Document tendered to the witness.)

8 BY MR. JONES:

9 Q Can you identify that?

10 A Not really. I don't see any of the  
11 things on it. That could be a road down anybody's place.

12 Q Okay. So you're not sure what that  
13 is?

14 A No.

15 MR. JONES: Okay. I have no further  
16 questions.

17 MR. COWARDIN: That's all, Your  
18 Honor.

19 THE COURT: Is he free to go or do  
20 you want him to stay?

21 MR. COWARDIN: He's free as far as  
22 we're concerned, Your Honor.

23 MR. JONES: No objection.

24 THE COURT: Thank you very much,  
25 sir. You are free to leave. Who is next?

1 MR. COWARDIN: Harry DeShields.

2  
3 - - -

4  
5 HARRY G. DESHIELDS, JUNIOR,  
6 called as a witness by the Plaintiffs, having been first duly  
7 sworn, was examined and testified as follows:

8  
9 DIRECT EXAMINATION

10  
11 BY MR. COWARDIN:

12 Q Would you state your name for the  
13 Court, please?

14 A Harry Garland DeShields, Junior.

15 Q And were you born in Smithfield,  
16 Mr. DeShields?

17 A Yes, I was.

18 Q How long have you lived here now?

19 A This last time, I've been here two  
20 years. Prior to that, I was here off and on most of my life.  
21 I was working away from here. I worked, ran the farm here, so  
22 I've been here altogether about -- of 70 years, I've been here  
23 about 40 of them.

24 Q And are you familiar with the  
25 Mackelsfield farm?

1                   A           Yes, I am. Well, I know where it is  
2   and what it is.

3                   Q           And did you ever have occasion to go  
4   on it regularly? Was there a period of time when you did?

5                   A           I went on it several times on duck  
6   hunting trips.

7                   Q           And what years were that?

8                   A           I guess the first time was around  
9   1959, '58 maybe, but probably as late as '59 or '60, and I  
10   went on it in the late 60s, several different trips down  
11   there.

12                  Q           Did you go on there with the owner?

13                  A           Once or twice with -- well, the  
14   first time I went I didn't know he was the owner. I was  
15   surprised we went down there. I didn't know he owned it. But  
16   I went a couple of times with Dr. Parker and then I went on my  
17   own.

18                  Q           And how did you traverse the road?  
19   How did you go down it?

20                  A           I drove.

21                  Q           In a vehicle?

22                  A           In a vehicle.

23                  Q           What kind of vehicle?

24                  A           It seems to me at that time I had a  
25   Ford convertible.

1 Q And did you have any difficulty -- a  
2 difficult time passing down the road?

3 A From time to time it got pretty  
4 muddy.

5 Q Did you know of the road prior to  
6 that time?

7 A I had it pointed out to me back  
8 prior to World War II, riding through there. My mother was a  
9 historian in the county here. She did a lot of work. She  
10 knew all these things and she used to drive by there and point  
11 out that this was the Mackelsfield farm down that road. I  
12 never went down it then.

13 Q And that was the same road that you  
14 finally did go down in the 50s?

15 A To the best of my remembrance and  
16 knowledge that was the same road.

17 Q When you went down the road, did you  
18 observe any activities other than hunting being carried on?

19 A Well, I went down there mostly in  
20 the wintertime. There's not -- on a farm, there's not a whole  
21 lot of activity going on.

22 Q Were the fields cleared?

23 A There were cleared fields, yes.

24 Q And they were not overgrown?

25 A Not all of them.

1                   Q           Was there a house on the property  
2 when you went down there?

3                   A           The first two or three times I  
4 remember a house on the property. I can't be sure now, but it  
5 seems to me the last time I was down there, there was no house  
6 on it. It had burned down I think, but I -- the time when all  
7 that changed from a house to a burned house, I can't -- I  
8 don't remember. I don't know.

9                   Q           When you saw the house, did it  
10 appear to be people living in it?

11                  A           I thought people were living in it.  
12 I never went in and saw anybody in the house. But the times  
13 going through there, I thought the house was occupied.

14                  Q           Did you ever observe any logging  
15 operations or evidence of logging operations when you were on  
16 the property?

17                  A           No.

18                  Q           Was there any other access point to  
19 the farm to your knowledge during those years?

20                  A           Not that I know of. I only used  
21 that one road.

22                  Q           Did you know of anyone using another  
23 road?

24                  A           No, I did not.

25                  Q           Were there places on the road where

1 two vehicles could pass each other?

2 A Yeah. There are -- there was parts  
3 that the road was flat on out into the field and -- in several  
4 areas along that, particularly on the front end of it where  
5 you could get by it. Two cars couldn't meet -- I cannot  
6 recall ever meeting a car on it. I may have, but I don't  
7 know. But yes, there were parts on there wide enough you  
8 could get by.

9 Q I'm going to ask you to look at this  
10 photograph that's been marked as Plaintiffs' Exhibit 1. If  
11 this is Route 665 up here and 668 going that way, do you  
12 recognize that property? (Indicating.)

13 (Document tendered to the witness.)

14 THE WITNESS: I would have a hard  
15 time recognizing that from the air view of it. Is this Smith  
16 Neck Road up here? (Indicating.)

17 BY MR. COWARDIN:

18 Q This is Smith Neck Road. It runs  
19 right along there. That's Smith Neck Road right there behind  
20 the trees. It runs right there.

21 A Well, you turned into a road, came  
22 through the little open land up here and you went to the woods  
23 back there. (Indicating.) I remember that part, but other  
24 than that, I -- that could be anywhere as far as I know. I  
25 never saw an aerial view of it before.



1 MR. COWARDIN: I have no further  
2 questions.

3  
4 CROSS-EXAMINATION

5  
6 BY MR. JONES:

7 Q Mr. DeShields, are you aware --  
8 you're aware that a part of the county, Smith Neck Road and  
9 665, are you familiar with that part?

10 A I have been through it a number of  
11 times, yes.

12 Q Have you ever seen a lane, Yellow  
13 Rock Road or Yellow Rock Lane?

14 A I don't know. Yellow Rock Road, no,  
15 I can't recall a particular Yellow Rock. I remember there  
16 were several coming off of there, but -- Rescue and James  
17 River Bridge Road.

18 Q But you don't know where those lanes  
19 would lead to, do you?

20 A Well, I know one of them went down  
21 to, I think, it was Mr. King's house. And then there was  
22 another one, Mackelsfield. And then there was another one,  
23 but I don't know where it went.

24 Q What is your relationship to  
25 Dr. Parker?

1                   A           Well, he grew up in Smithfield two  
2 or three years ahead of me. I knew him when he was in school,  
3 and when I moved back to Smithfield after -- in the 50s, late  
4 50s, I knew him then. I went duck hunting with him from time  
5 to time.

6                   Q           Would you say you were friends?

7                   A           Sure. I guess so. We had very  
8 small high school classes then. Most -- I was friends with  
9 most of them.

10                  Q           And how many times do you think you  
11 went duck hunting?

12                  A           Five, maybe ten. I don't know.

13                  Q           Okay.

14                  A           I went duck hunting a lot every  
15 winter. I didn't always go to the same place.

16                  Q           Okay. And you said that you were  
17 able to drive your convertible?

18                  A           Yeah, I drove it down there.

19                  Q           You said that it was muddy?

20                  A           Parts of it were in the winter-time  
21 with the rain. Parts of it were muddy, yes.

22                  Q           Did it appear that -- you just had a  
23 set of tire tracks that you followed back to go duck hunting?

24                  A           Parts of it was just going through  
25 ruts down the road. You got particular -- you got back

1       towards the road.

2                   Q               How many sets of ruts were there?

3                   A               Back then on the back end it was  
4       probably just one. Up front they weren't ruts. The ground  
5       was a little harder and it didn't -- I don't remember it being  
6       very muddy when you turned off of the road, but I can remember  
7       thinking a couple of times, I wonder if I'm going to be able  
8       to back up and get out of here, after I got further down the  
9       road.

10                  Q               Did it look like the lane had been  
11       used daily?

12                 A               It's hard to -- obviously it was  
13       used fairly regularly because there were pronounced wheel  
14       tracks in it and pronounced clear spots, I mean, where there  
15       was no grass growing on it. It was easy to follow. There was  
16       no problem with that.

17                 Q               And from your personal knowledge,  
18       did you ever see anyone living in the house?

19                 A               No. I just said I did not -- I  
20       never went in there and saw anybody that lived -- I saw some  
21       people around there from time to time. I guess I assumed they  
22       were living in the house.

23                 Q               Did you ever pass any traffic on  
24       that lane?

25                 A               Not that I can recall.



1 BY MR. RAILEY:

2 Q Would you state your name, please,  
3 sir?

4 A Jerry Rose.

5 Q Where do you reside, Mr. Rose?

6 A Sedley.

7 Q Between Sedley and --

8 A Courtland.

9 Q What is your occupation?

10 A I'm a logger.

11 Q And in that capacity of a logging  
12 contractor, are you familiar with Mackelsfield or Dr. Rea  
13 Parker's farm in Isle of Wight County?

14 A Yes, I am.

15 Q Have you recently logged there?

16 A Yes, I have. Probably worked there  
17 December and January.

18 Q Have you finished logging?

19 A No.

20 Q When did you first look at this  
21 property?

22 A It was probably in October, maybe.

23 Q And at that time did -- was there a  
24 road from the highway giving access?

25 A Yes.

1 Q Do you recall what road that access  
2 ran from?

3 A I can't think of the name of the  
4 road.

5 Q Was it 665?

6 A Yeah, 665.

7 Q I want to show you an aerial  
8 photograph which is Plaintiffs' Exhibit 1. Assuming that is  
9 665 over here, does is this the road going into the farm?  
10 (Indicating.)

11 A Exactly.

12 Q No question about it?

13 A Uh-uh.

14 Q What condition did you find the road  
15 in when you first looked at it?

16 A You could basically travel it, if  
17 the weather was dry. If it got wet, you know, it was somewhat  
18 slippery or what have you. It made some improvements on the  
19 road.

20 Q When you first looked at it, were  
21 you able to drive on it?

22 A Yeah.

23 Q Was it grown up in vegetation?

24 A No.

25 Q Did any trees obstruct the path?

1 A No.

2 Q How wide was it?

3 A My best estimate, probably 14, 15,  
4 16 feet, something like that.

5 Q Mr. Rose, how long have you been  
6 involved in logging?

7 A Twenty years.

8 Q All right. When you first looked at  
9 this track, is it possible that you could make a determination  
10 as to when it was last logged?

11 A I would probably estimate that it  
12 had been at least 25, 30 years.

13 Q So if you looked at it in the fall  
14 of '95 you would be talking about '60 or '65, sometime in that  
15 time period?

16 A My best estimate, yeah.

17 Q And what did you do to improve upon  
18 the path?

19 A We made a deal with Vulcan Material  
20 to haul some rock in there. What we used is called railroad  
21 balance. It's like a number 3 stone, and we put some 44 loads  
22 on there on the path from the path leading all the way back to  
23 the field.

24 Q And how wide was the path after you  
25 put the load?

1                   A                   I would say it was pretty close to  
2 what I mentioned a few minutes ago. When a dump truck comes  
3 in and drops the rock, of course it spreads a little bit wider  
4 than what the dump truck is. And I have a motor grade and I  
5 go along and work, and you know, try to keep it pulled up, I'm  
6 going to say, pretty close to 16 feet maybe.

7                   Q                   You are a chip contractor, aren't  
8 you?

9                   A                   Uh-huh.

10                  Q                   That means that you take something  
11 called a chipper and put the forest materials in and then turn  
12 it into chips, which then turns into paper?

13                  A                   That is correct.

14                  Q                   In your logging operation you use a  
15 chipper and what we call Franklin loggers, trucks, and that  
16 type of thing?

17                  A                   (The witness nodded his head up and  
18 down.)

19                  Q                   How wide does the path have to be  
20 for your type of logging operation?

21                  A                   At the very minimum what you're  
22 talking about is -- what we just talked about, but you can't  
23 hardly get by with that. If we happen to have -- and which  
24 happens a lot of times -- an empty truck coming in the woods  
25 and a loaded truck going out, of course I mean, in that

1 scenario you would need -- the truck is probably eight and a  
2 half foot wide, so 17 feet if it's just right together. Of  
3 course you would need a little bit in between them. And then  
4 of course you've got a shoulder on each side of the road you  
5 would need.

6 Q So you're talking about 25 feet?

7 A I wouldn't think that two trucks  
8 could really meet on the road with just 25 feet including your  
9 shoulder and your ditch.

10 Q All right. When you finish your  
11 logging operation and it's re-seeded, how long before you can  
12 re-log this area again?

13 A Well, by the time the trees or  
14 whatever would grow back it would be another 25 or 30 years at  
15 minimum.

16 MR. RAILEY: All right, sir. Answer  
17 Mr. Jones.

18

19 CROSS-EXAMINATION

20

21 BY MR. JONES:

22 Q Mr. Rose, you don't have any  
23 personal knowledge that the property had ever been timbered.  
24 You weren't involved in any previous timbering operation?

25 A No.



1 Q And you would have no knowledge of  
2 how they entered and exited the property?

3 A No.

4 Q Other than the alleged --

5 A I saw some old log trails there  
6 through the woods. There's some trails and what have you, but  
7 I mean, it indicated maybe it came back up the main path. I  
8 just assumed it came back up the main path.

9 Q And --

10 A There was an old location -- an old  
11 sawdust pile on the track probably about 300 yards from the  
12 property line on the left-hand side of the road that we found.

13 Q And you don't have any personal  
14 knowledge of what the path looked like prior to October of  
15 '95; is that correct?

16 A No.

17 Q You don't know if any improvements  
18 have been made to the lane to make it --

19 A Prior to that point, no.

20 Q Okay. And you stated that the lane  
21 was 14, 15, 16 feet wide; is that right?

22 A My best estimate.

23 Q And it would take at least 25 feet  
24 to have a logging operation; is that right?

25 A To get by with the bare minimum like

1       that, but you don't have the proper drainage and all.

2                       Q               You didn't find it a 25 foot wide  
3       lane?

4                       A               I would say probably not.

5                       Q               In fact, you said you found it 14 or  
6       15, 16 foot.

7                       A               Uh-huh.

8                       Q               And that's not consistent with the  
9       25 foot that's needed to log the property?

10                      A               Probably not.

11                                      MR. JONES: No further questions.

12                                      MR. RAILEY: Your Honor, that's all  
13       I have. I'd ask Mr. Rose be excused, too.

14                                      THE COURT: Any objection?

15                                      MR. JONES: No objection.

16                                      THE COURT: Thank you, Mr. Rose.  
17       You are free to go.

18                                      THE COURT: Whose next?

19                                      MR. RAILEY: S. V. Camp. One thing  
20       I would tell the Court, this could be a little bit longer than  
21       the rest of the witnesses.

22                                      THE COURT: Okay. We will take a  
23       short break.

24                                      (Recess.)

25                                      THE COURT: S. V. Camp.

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- - -

S. V. CAMP,  
called as a witness by the Plaintiffs, having been first duly  
sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RAILEY:

Q You are S. V. Camp?

A Yes.

Q And you live between Courtland and  
Sebrell?

A Yes.

Q And Mr. Camp, are you a surveyor by  
occupation?

A Yes.

Q And how long have you been a  
surveyor?

A 1960.

Q That's 36 years?

A (The witness nodded his head up and  
down.)

Q Did you go to Virginia Tech to  
become a surveyor?

1 A Yes.

2 Q You are a civil engineer also?

3 A No.

4 Q You're not. But you took your  
5 surveying education at Virginia Tech?

6 A Yes.

7 Q And in addition, did you take  
8 courses in aerial photography?

9 A Yes.

10 Q And in addition, do you have any  
11 military experience with aerial photography?

12 A Yes.

13 Q And what would that be?

14 A Aerial observer mainly, using aerial  
15 photography as locating targets and range features.

16 Q And have you -- after leaving the  
17 military, have you stayed involved in aerial photography  
18 throughout your professional career?

19 A Yes, I have.

20 Q Do you have any assessment of the  
21 value of an aerial photograph as opposed to a plat, say, that  
22 was prepared by a surveyor?

23 A Well, there's a place for both of  
24 them. I personally would rather work off an aerial photograph  
25 than a survey because you've got a picture of what you're

1 dealing with. And any time you're doing preliminary plans,  
2 I'd prefer to have an aerial photograph over the plat. But  
3 what we normally do is superimpose a plat over the top of your  
4 aerial photograph. There's a place for both of them.

5 Q All right. Moving to the matter at  
6 hand, are you familiar with the Mackelsfield farm?

7 A Yes, I am.

8 Q Have you actually been on the ground  
9 at Mackelsfield?

10 A Yes.

11 Q And you actually participated in  
12 surveying the property?

13 A Yes.

14 Q And you're familiar with the  
15 topography, the means of access, the lay of the land in  
16 general?

17 A Yes, I am.

18 Q Are you also familiar with a map,  
19 which I will refer as the Buck map, which was done of this  
20 farm in 1928? (Indicating.)

21 A Yes, I am.

22 Q And does that reflect what this  
23 piece of property looks like today?

24 A Yes, it does.

25 Q On the map, do you see two paths

1 that traverse the piece of property?

2 A Yes, I do.

3 THE COURT: For the record, he's  
4 showing Plaintiffs' 2.

5 BY MR. RAILEY:

6 Q And now I want to show you just for  
7 purposes of illustration, this is an aerial photograph which  
8 is Plaintiffs' 1 which was done in 1994.

9 A Yes.

10 Q And it shows a path of road running  
11 from what's been determined as 665 into Mackelsfield?

12 A That is correct.

13 Q And does that photograph accurately  
14 portray the farm as you found it from physical inspection?

15 A All right. One exception, this path  
16 right here that comes to the property line -- I'm referring to  
17 this path that leads to the house which is right here.  
18 They're the same points. (Indicating.) This path right here  
19 is illustrated by that path down here and connects right in  
20 here. This path right here is not passable at this point in  
21 time.

22 Q All right.

23 A And it has not been, to my  
24 knowledge, for the last 15 or 20 years.

25 Q The path you're referring on the

1 Buck plat is the longer path?

2 A This path here is not usable. This  
3 path right here is. (Indicating.)

4 Q That right there is this?  
5 (Indicating.)

6 A That's correct.

7 Q All right. Now, have you determined  
8 the distance of this road?

9 A Yes, I have. Could I get my notes  
10 from my pad?

11 Q Yes, sir.

12 (Off the record.)

13 (Documents tendered to the witness.)

14 THE WITNESS: Okay. The question  
15 was did I determine the length of this? (Indicating.)

16 MR. RAILEY: Yes.

17 THE WITNESS: Yes, I did. I  
18 determined the length of this off of a survey, a current  
19 survey, and we know where it is physically on the ground.

20 BY MR. RAILEY:

21 Q Does this path extend beyond the  
22 boundaries of Mackelsfield?

23 A Yes, it does. It extends out to  
24 Highway 665. It's the number of that road. (Indicating.)

25 The termination point of that line right there was scaled

1 exactly as the terminating point on 665.

2 Q All right. Now, this line that you  
3 say goes from 665 to the boundaries -- or the boundary of  
4 Mackelsfield, how long did you determine that line to be?

5 A 559 feet. This plat here shows only  
6 450 feet, but they're short about a hundred feet. But we used  
7 this survey as our reference survey. (Indicating.)

8 THE COURT: And again, he's pointing  
9 to Plaintiffs' 2.

10 BY MR. RAILEY:

11 Q All right. In distance here, when  
12 you performed your scaling exercise --

13 A Yeah.

14 Q -- it corresponds exactly to the  
15 measurement on the ground or from the boundary --

16 A To 665.

17 Q 665?

18 A Yes, it does.

19 Q And one further question from this  
20 plat, this road here, does it -- is that exactly where the  
21 path is now? (Indicating.)

22 A It is.

23 Q And so this 1928 map would  
24 accurately portray what it looks like on the ground today?

25 A That's exactly correct.



1 Q All right. What is this document?

2 A Well, this is an aerial photograph.  
3 This photograph here is taken at an oblique angle. This is  
4 the photograph that you should use. This is an additional  
5 photograph taken directly from over here to depict the whole  
6 shooting match in an active manner.

7 Q So what you're telling the Court is  
8 that this photograph, which was introduced as Plaintiffs'  
9 Exhibit 1, is not good for scaling purposes?

10 A That is correct.

11 Q All right.

12 A Good for illustration only.

13 Q It's a piece of demonstrative  
14 evidence. Now, looking at the 1956 aerial photograph.

15 A Yes.

16 Q And I believe that's been referred  
17 to as identification as --

18 A This is 1954.

19 Q 1954 and that's --

20 MR. JONES: I would object to any  
21 dates unless it's --

22 THE WITNESS: It's written on the  
23 map here.

24 THE COURT: Yeah. Wait a minute.

25 MR. RAILEY: Yeah. That was

1       Plaintiffs' Exhibit --

2                               THE COURT:   We have not marked it  
3       yet because we didn't know what -- where you wanted to use it.  
4       But if you're ready to mark it --

5                               MR. RAILEY:   Yeah.   We're ready to  
6       mark it.

7                               THE WITNESS:   Same plat, same plat,  
8       1954 on both of them.

9                               MR. RAILEY:   This will be?

10                              THE COURT:   Plaintiffs' 3.

11                              (Plaintiffs' Exhibit Number 3 was  
12                              marked in evidence.)

13                              THE WITNESS:   That number right  
14       there gives you the date of the aerial photograph.  
15       (Indicating.)

16       BY MR. RAILEY:

17                              Q               Now, looking at Plaintiffs' 3, does  
18       that accurately portray this farm?

19                              A               Yes, it does.

20                              Q               All right.   Now, would you show us  
21       the road going from 665 into Mackelsfield on the aerial  
22       photograph?

23                              THE WITNESS:   Your Honor, could I  
24       use the bottom one?

25                              THE COURT:   Sure.

1 BY MR. RAILEY:

2 Q The bottom one that you're referring  
3 to --

4 A The same copy, blow-up.

5 Q Okay.

6 A And the road in question is from  
7 this point right here, which is the intersection of the  
8 right-of-way with 665 and extends back to where the old house  
9 would be, which the old house was located at a point I'm  
10 indicating on the map here. (Indicating.) It's not been  
11 designated as ARB but it's the extension of the right-of-way  
12 from 665 to a terminal point. Right there. (Indicating.)

13 Q And what you're referring on the  
14 aerial photograph is the same road as shown on the 1928 --

15 A That is correct.

16 Q Did you make a determination as to  
17 the width of the road as shown on the aerial photograph?

18 A Yes.

19 Q And would you advise us of how you  
20 did your computation?

21 A First of all we had to determine the  
22 scale of the map. The scale of this map is one inch equals  
23 800 feet. And after determining the scale of the map, I  
24 simply took five places and scaled from tree line to tree line  
25 at five different intervals on there and averaged those to get

1 an average there. I didn't pick the widest and I did not pick  
2 the narrowest point. By average width -- some of them are  
3 two-tenths.

4 After I averaged them, I got an  
5 average width of .158 and I divided it by five. I took five  
6 measurements, divided by five. The average .158 times 800  
7 gives you 126.4 feet wide from tree line to tree line, all the  
8 way from 665 to where the house was.

9 Q And is that measurement constant  
10 with the measurement that you would see from looking at that  
11 road on the ground today?

12 A Well, no. In that right-of-way  
13 you've got a VEPCO easement that's in there.

14 Q How wide is that?

15 A There is no given measurement on it,  
16 but you're talking VEPCO, 30 foot maximum. Thirty foot  
17 maximum -- this is back there when they got blanket easements  
18 to go across farms. And they -- there's no specific  
19 measurement on it. In talking to VEPCO, they said maximum 30  
20 feet.

21 All right. Now, what was the  
22 question?

23 Q My question is, is that scale of, I  
24 think 126 feet, consistent with what you find on physical  
25 inspection today at this time?

1                   A           From tree line to tree line, yes.

2                   Q           So it remains the same?

3                   A           Yes. There's other evidence that  
4 indicates the road map.

5                   Q           Right. What other evidence are you  
6 referring to there?

7                   A           If you look at this aerial  
8 photograph real close, if you look very close where we are  
9 fussing about, and if you look very close without -- you can  
10 see the ditch line to ditch line. Those dark areas there  
11 indicate wetness. On an aerial, if you look at a field, there  
12 are wet places in a field. If you look very closely at this  
13 map right there, you can see two dark streaks entering from  
14 665 going to the property line, which the property line is  
15 right here. (Indicating.) And there's a streak there, and  
16 there's a well defined streak there, all the way down there.

17                               And if you will scale that, that  
18 will give you the width of that right-of-way in 1954. I did  
19 the same thing as I did on the previous map. I scaled that.  
20 I got .075 times 860 foot wide from ditch line to ditch line.  
21 The roadway is not that big, but what occupied that  
22 right-of-way is 60 feet wide.

23                   Q           All right. You bring up an  
24 interesting point then. How do you -- you say the roadway is  
25 not that wide but what took up the right-of-way. What do you

1 mean by that?

2 A Well, most people say the road is 20  
3 feet wide; that's the roadway. But in any construction of a  
4 road you've got a shoulder and you've got a ditch on either  
5 side. That constitutes a right-of-way.

6 Q So the roadway itself may be --

7 A Twenty feet.

8 Q And the road -- or the right-of-way  
9 may be 60 feet?

10 A It's total elements that compromise  
11 a road. You can't put a ditch right up next to the roadway  
12 because it would stop off. You have usually a minimum of a  
13 three foot shoulder. Then you have a ditch on either side  
14 that goes down and out that usually occupies six to ten feet  
15 on either side. They are the conditions that I found.

16 Q All right. Mr. Camp, the Buck  
17 survey, what's the date on that?

18 A 1928.

19 Q And that showed where that road was  
20 in 1928?

21 A That's correct.

22 Q In looking at the aerial photograph  
23 that -- the one done in -- the one that you made your  
24 computations --

25 A 1954.

1                   Q           -- from, are there any indications  
2 of logging paths on them?

3                   A           Yes, it is. This salt log right  
4 here at the end shows a road extending across the salt marsh  
5 to an island. And that's roughly a thousand feet from the  
6 high bank on the farm. That road is not there today. It's  
7 activity of logging in -- previous to 1954, I don't know the  
8 significance of this, but you can see little logging trails  
9 over there going through the woods. And it's no physical  
10 evidence of that today. (Indicating.)

11                  Q           All right. Now, Mr. Camp, I'm going  
12 to -- if your testimony is that you need a road surface of 20  
13 feet or 25 feet, how wide does the right-of-way have to be?

14                  A           For the State Highway Department, 50  
15 feet.

16                  Q           No, just for common usage.

17                  A           Common usage, two road -- two cars  
18 need to pass, that's 20 feet and that's about what it was when  
19 I first saw this path. And you've got a five foot shoulder on  
20 each side at 30, and then you got a ditch line going down on  
21 both sides and out. I would say if you could get it in 40  
22 feet. Fifty feet is desirable for two reasons; that's what  
23 the Virginia Department of Highways require, and you need a  
24 minimum of 40 feet to construction a farm road, really.

25                  Q           And you've testified that the tree

1 line on the aerial photograph is --

2 A 126.

3 Q -- 126 feet, and you've also  
4 indicated that the ditch line to ditch line is --

5 A Sixty feet. And you've got a 30  
6 feet VEPCO easement, which would be 90. But it's still 126  
7 feet, which is indicated on the 1954 aerial and 1990 aerial,  
8 whatever date this is. (Indicating.)

9 MR. RAILEY: All right. Answer  
10 Mr. Jones.

11

12 CROSS-EXAMINATION

13

14 BY MR. JONES:

15 Q Mr. Camp, when did you get involved  
16 in this?

17 A 1988.

18 Q 1988. Is that the first time you  
19 saw the property?

20 A Approximately. I don't know. Most  
21 Mr. Kuesal, I got involved through him. Nothing to do with  
22 the present arrangement.

23 Q And you're a beneficiary under the  
24 land trust; is that correct?

25 A Indirectly.



1 Q Okay.

2 A Resource Management of Virginia is a  
3 company that I have some equity interest in, but I'm sort of  
4 semi-retired.

5 Q Okay. And you weren't present when  
6 the photo that you've been testifying about was taken, were  
7 you?

8 A Was I present?

9 Q Yeah.

10 A No.

11 Q You've testified to, I believe it's  
12 Plaintiffs' 2, the plat. You've indicated that there's a  
13 dotted line on there that indicates the lane that everybody  
14 has been discussing, right?

15 A Right.

16 Q And the dotted line represents the  
17 lane?

18 A Uh-huh.

19 Q And there's also a second dotted  
20 line.

21 A Uh-huh.

22 Q Would that also be consistent with  
23 being a lane of access to the property?

24 A It's not been used.

25 Q I'm just asking is that consistent

1 with being an access lane. Can you differentiate, looking at  
2 this plat, between that line and that line, or are they any  
3 different?

4 A On that plat they're not, but  
5 physically --

6 Q That's the only question I'm asking.  
7 And on the 1954 photograph, the one you've testified about --

8 A Same map that everybody uses. It's  
9 confirmation. This is an accepted map.

10 Q Okay. And you're talking tree line  
11 to tree line is the measurement you're taking?

12 A Yes.

13 Q Would you please point out where the  
14 defendant's property is located?

15 A From this road -- well, you got a  
16 discrepancy here.

17 Q I'm just asking.

18 A Well, you asked me where it's  
19 located.

20 Q In your opinion.

21 A I say you got more land than you say  
22 you got.

23 Q In your opinion where --

24 A It may well --

25 Q It may very well be. In your

1 opinion, where is the defendant's property?

2 A All right. It's either from this  
3 point to the edge of the woods or a hundred feet further.

4 Q So if we're talking to the edge of  
5 the trees, where are you measuring tree line to tree line on  
6 our property? Are you measuring this? (Indicating.)

7 A Well, it's obvious I can't see from  
8 tree line to tree line on the property that your client has  
9 got.

10 Q So you're suggesting that the --

11 A However, I can see the ditch line on  
12 that property.

13 Q But the tree line to tree line  
14 measurement then is not applicable to our property; is that  
15 correct?

16 A Yes. But you've got a better one,  
17 ditch line to ditch line that is in the middle of your  
18 property.

19 Q And these ditches, are you aware --

20 A That point to that point is on your  
21 property. (Indicating.)

22 Q Okay. And this area here, in your  
23 opinion, could you characterize that piece of property?

24 A In what manner?

25 Q What does it appear to be?

1                   A           It appears to be a field with a path  
2 through the middle of it.

3                   Q           Okay. And this field, you said that  
4 the dark areas in the field shows there's wetness or moisture  
5 of some sort; is that correct?

6                   A           That's dead straight lines. I  
7 mean --

8                   Q           No. I'm asking you if your  
9 testimony is that dark spots indicate moisture?

10                  A           Moisture and also there are straight  
11 lines which are just as important as moisture. The darkness  
12 indicates moisture at the bottom of the ditch. That's  
13 straight -- perfectly straight lines there, ditch lines.

14                  Q           Based on there's moisture present?

15                  A           Based on physical observations of  
16 two straight lines that show dark, which indicates moisture at  
17 the bottom of the ditches.

18                  Q           Okay. There could be moisture  
19 anyway?

20                  A           Yeah.

21                  Q           And you stated that there's a VEPCO  
22 easement down in there?

23                  A           Yeah.

24                  Q           And there are utility lines?

25                  A           Yeah.

1 Q And on your field inspection of the  
2 property, what did the roadway look like?

3 A At what point in time?

4 Q When you viewed the property in  
5 1988.

6 A In 1988 I drove down it, rough.

7 Q Was it rutted?

8 A Yes.

9 Q Is it possible for water to stand in  
10 those ruts?

11 A Yes.

12 Q Okay. Did you ever take a physical  
13 survey of my client's property?

14 A Take one? You mean make one?

15 Q Make one.

16 A To the extent that we established  
17 the back property line.

18 Q And would that be -- would that be  
19 this plat? (Indicating.)

20 A That is correct.

21 Q And was it your son that prepared  
22 this plat?

23 A Correct.

24 Q Based on your personal knowledge,  
25 did he ever measure -- take the measurements of the clearing

1 on my client's property?

2 A The clearing?

3 Q What you talked about tree line to  
4 tree line.

5 A Let me show you a note on his map.

6 Q Okay.

7 A And let me tell you the purpose of  
8 his map. If you read this part right here. (Indicating.)  
9 Subdivision plat.... Deeds and plats only. It does not  
10 represent a field survey. This thing was prepared to  
11 circumvent a subdivision ordinance of -- denied 21 acre  
12 subdivision.

13 Q The purpose of this was not to  
14 establish property lines. However, the property line was one  
15 on the -- see the discrepancy here? See that distance there?  
16 (Indicating.)

17 Q Yes, sir.

18 A Your survey will show 400 and  
19 something feet. We show 500 and something feet, so you're  
20 losing quite a bit of land back there.

21 Q And --

22 A This is the 1928 survey that we  
23 produced on the ground.

24 Q Okay. So all these measurements are  
25 based off of the 1958 --

1                   A           The old plats and there's no intent  
2 to establish property, no conveyances off of it. It was  
3 simply to....

4                   Q           And you're saying that this was  
5 based off a search of the records and deeds?

6                   A           That's correct.

7                   Q           Did you assist in that procedure?

8                   A           Only in researching the deeds.

9                   Q           And can you tell me which deed shows  
10 a 50 foot right-of-way?

11                  A           Which deed? None of them show a 50  
12 foot right-of-way.

13                  Q           Did you just not tell me that this  
14 was based on the search of the records?

15                  A           This --

16                  Q           Or deeds?

17                  A           This is correct.

18                  Q           Okay. And does this show a 50 foot  
19 easement?

20                  A           Well, that's better than showing  
21 zero. Your plat is showing zero. I showed 50. You show  
22 zero.

23                  Q           I'm asking -- you stated that it's  
24 based on a deed. I'm asking you what deed.

25                  A           The property line here. Any

1 measurements that are shown in here. (Indicating.)

2 Q So this is just --

3 A I'm not --

4 Q -- a guess?

5 A By that note on the map is not made

6 to indicate that it's 50 foot wide. This is simply a

7 proposal. It's not intended to show 50 feet, 20 feet or

8 anything. It's just a map to put on record like I indicated a

9 while ago. Now, the research was done on the boundaries.

10 Q Okay.

11 A Not the --

12 Q So this was just a proposal?

13 A That's correct.

14 Q And are you aware of any lots being

15 sold off -- through Mackelsfield at this point?

16 A I don't know.

17 Q Okay. Have you personally gone out

18 and measured tree line to tree line to substantiate your

19 aerial photography measurements, your scale?

20 A Of a scale. I didn't -- I quit

21 surveying.

22 Q Okay.

23 A What I did was stepped it.

24 Q And when you stepped it off, it was

25 approximately 126 feet?



1                   A            I didn't do it in five places. I  
2 would -- if you want to know what I did, I went down there and  
3 picked a place and stepped it one time.

4                   Q            And what was your measurement then?

5                   A            It was over a hundred feet.

6                   Q            All right.

7                   A            Thirty-three steps.

8                               MR. JONES: I have no further  
9 questions.

10                              MR. RAILEY: Just one further  
11 question. Did you introduce the package?

12                              THE COURT: Not yet.

13                              MR. COWARDIN: Yes. Well, I did of  
14 the package of --

15                              THE COURT: I'm trying to leave it  
16 in an order so that y'all can use it. At the end of all this  
17 if nothing has been formally stated, I'm going to mark them.

18                              MR. COWARDIN: Number 2, Your Honor,  
19 is the Isle of Wight County tax map or a copy of it as it  
20 appears in the records with the county.

21                              MR. RAILEY: All right. Is it both  
22 the same one, just blown up a little bit?

23                              MR. COWARDIN: Well, one is two  
24 pages and one is one because our road crosses over to the next  
25 page.

1 MR. RAILEY: Why don't we use the  
2 one that's one page.

3 THE COURT: All right. That's going  
4 to be Plaintiffs' 4. You can mark it, Mr. Railey, if you want  
5 to use it because the aerial photo is Number 3.

6 MR. COWARDIN: You might be better  
7 with the other one because it shows the --

8 THE COURT: All right. I will mark  
9 this Plaintiffs' 4-A.

10 (Plaintiffs' Exhibit Numbers 4 and  
11 4-A were marked for identification.)

12 BY MR. RAILEY:

13 Q All right. Now Mr. Camp, I want  
14 show you Plaintiffs' Exhibit 4 and Plaintiffs' Exhibit 4-A,  
15 which are copies of the Isle of Wight County tax map. Are  
16 these maps -- look at them. Do these maps reflect the  
17 Mackelsfield property and the adjoining property belonging to  
18 Willis and Hampton Roads Promotions, the defendants?

19 A Get me started at another --

20 Q All right. There's 665. There's  
21 where it meets 680 or 668. (Indicating.)

22 A Is this the road in question?

23 Q Right. Right there.

24 A You-all didn't piece it together too  
25 good.

1                   Q           Right. Well, look at this one.  
2   That will be easier. (Indicating.)

3                   A           Okay.

4                   Q           Yeah, that's --

5                   A           Okay. Now, what is the question?

6                   Q           Does that show, in your opinion, the  
7   way the property appears on the ground? Does the tax map  
8   actually reflect that?

9                   A           (No audible response.)

10                  Q           What you're looking at is right down  
11   here. (Indicating.)

12                  A           You're damn right because that sure  
13   don't look right. Here you go now. Now, you've got it.  
14   Where is the other part of this?

15                               MR. COWARDIN: It's on the other  
16   page. It goes from one page to the other. See, this is the  
17   page -- right here.

18                               THE WITNESS: Okay.

19                               MR. COWARDIN: You're looking right  
20   there.

21                               THE WITNESS: Yeah, this does, and  
22   this is their two parcels out front. It absolutely does.

23   BY MR. RAILEY:

24                  Q           And it's divided by the same path  
25   that we've been referring -- or the same road that we've been

1       referring?

2                       A               Yeah. This is the same point right  
3       here. This is the rest of it. (Indicating.) It does not  
4       show the right-of-way going out from the house back out to --  
5       it does not show that. This is what I testified to.

6                       THE COURT: That's the one you've  
7       drawn on.

8                       THE WITNESS: This is the one that  
9       it shows. (Indicating.)

10                      THE COURT: Okay.

11                      MR. RAILEY: All right. We'd ask  
12       that that be introduced as Plaintiffs' Exhibit 4 and 4-A.

13                                      (Plaintiffs' Exhibit Numbers 4 and  
14       4-A were marked in evidence.)

15                      THE WITNESS: You might note that  
16       that break right there is really straight. You did a pretty  
17       poor paste job there.

18                      MR. COWARDIN: Mr. Camp, you don't  
19       have to keep pointing that out.

20                      THE WITNESS: Okay.

21                      MR. COWARDIN: I realize that.

22                      MR. RAILEY: That's all the  
23       questions I have of Mr. Camp.

24                      MR. JONES: I have one follow up.

25

RECROSS-EXAMINATION

BY MR. JONES:

Q Okay. You stated that this is no longer in use, this short dotted line on Plaintiffs' Number 2; is that correct?

A Well, I think some road -- truck -- vehicular traffic has been going through there.

Q So it is passable?

A Well, in 1988 and in 1991 it was not.

Q Do you know where this would lead to?

A Yes. It would lead out into the Kuesal development.

Q The one that Magette and Dr. Parker have now purchased?

A Who?

Q That Dr. Parker has purchased.

A Not that I know of.

MR. JONES: No further questions.

THE WITNESS: I don't know who owns the land, but I have seen vehicular traffic through there, but not in 1988 when I was out there.

MR. JONES: When did you see them?

1 THE WITNESS: This past year.

2 MR. JONES: Okay. No further  
3 questions.

4 MR. RAILEY: Before I want to see  
5 what else we had here that we haven't -- that's all for  
6 Mr. Camp.

7 MR. JONES: Is plaintiff moving for  
8 the introduction of all that at this point?

9 MR. RAILEY: Yes.

10 MR. JONES: All right. What are we  
11 talking about, the 1954 photograph?

12 THE COURT: That's already in.

13 MR. JONES: That's been moved? I  
14 would object, Your Honor. I thought it was just being  
15 identified at this point.

16 THE COURT: Plaintiffs' 3 is the  
17 aerial photograph.

18 MR. JONES: I would object to its  
19 introduction. There's been no testimony that that's what the  
20 property looked like in 1954. This individual is not in  
21 authority to state that that's what the property looked like.  
22 He can testify to its stamp, but he has no personal knowledge  
23 of what the property looked like in 1954.

24 MR. RAILEY: Well, he's testified  
25 that he's an expert on aerial photography and he's testified

1       that it accurately depicts the way the farm appears today.

2                       THE WITNESS: That's good enough for  
3       the U.S. Government.

4                       MR. RAILEY: If you apply Mr. Jones'  
5       rule, then you could have -- 20 years from now there would be  
6       no way to get that photograph there.

7                       THE COURT: It's admitted as  
8       Plaintiffs' 3.

9                       (P Plaintiffs' Exhibit Number 3 was  
10       marked in evidence.)

11                      MR. RAILEY: Your Honor, I'm through  
12       with Mr. Camp. You can step down.

13                      THE WITNESS: Can I go?

14                      MR. RAILEY: Yeah, you can go as far  
15       as I'm concerned.

16                      MR. JONES: No objection.

17                      MR. RAILEY: I would like to hold  
18       you here for a while for rebuttal.

19                      THE WITNESS: Okay. Do I need to  
20       leave any of this?

21                      MR. RAILEY: Let's see what you've  
22       got.

23                      THE COURT: Take your notes, sir.

24                      THE WITNESS: The comment I made  
25       about no distance on this. (Indicating.)

1 THE COURT: That didn't come in.

2 MR. RAILEY: Hold that.

3 THE COURT: Hold that and I'll take  
4 this.

5 MR. RAILEY: All right. If Your  
6 Honor please, we would also move for introduction of the 1938  
7 timber deed. That's one that is Mr. Cowardin referred to in  
8 his opening statement and that's part of the records of this  
9 court, and I think the Court can introduce that. The 1949  
10 VEPCO easement, which is part of the records of this court,  
11 and the 1951 deed from Simmons to Murphy whereby she reserves  
12 the right-of-way, and then the deed from Murphy to Rea Parker,  
13 and all of these are from the clerk's office and I would ask  
14 that they be introduced.

15 THE COURT: Any objection to them?

16 MR. JONES: No objection, Your  
17 Honor.

18 THE COURT: I'm going to mark them  
19 all as Plaintiffs' 5.

20 (Plaintiffs' Exhibit Number 5 was  
21 marked in evidence.)

22 THE COURT: Is there going to be any  
23 use of these other than to establish the title, changes, and  
24 that type of thing?

25 MR. RAILEY: Except for the deed





1 All right. Who is your first  
2 witness?

3 MR. JONES: Mr. Cargill.  
4  
5 - - -  
6

7 ALFONSO CARGILL,  
8 called as a witness by the Defendants, having been first duly  
9 sworn, was examined and testified as follows:  
10

11 DIRECT EXAMINATION  
12

13 BY MR. JONES:

14 Q Please state your name for the  
15 record.

16 A My name is Alfonso Cargill.

17 Q And how are you employed,  
18 Mr. Cargill?

19 A I'm employed with VDOT.

20 Q What do you do there on your job  
21 with VDOT?

22 A I appraise property for them.

23 Q And have you had the occasion to  
24 view Parcel 71 and 72 off of Route 665, which are owned by  
25 Mr. Leonard Willis and Hampton Promotions?

1 A That is correct.

2 Q And during that time, did you  
3 prepare an appraisal back in the early 1990s?

4 A In 1991, yes.

5 Q Okay. And to do that, you went out  
6 and physically observed the property; is that correct?

7 A That's correct.

8 Q And when you did so, did you view  
9 any access to that property?

10 A Yes.

11 Q And could you describe what that  
12 access looked like?

13 A Roughly ten foot, rough farm land.

14 Q When you say rough, can you please  
15 describe that?

16 A It was infrequent use. It appeared  
17 to be basically two tire tracks, grown up in the center, and I  
18 guess that was from infrequent use, and I only traversed a  
19 portion of the Willis property and walked the remainder the  
20 path.

21 Q Okay. And why did you not continue  
22 down the path?

23 A It was rough, potholes.

24 Q What were the conditions out there?  
25 Was it dry? Was it wet? Was it raining?

1                   A           At the time that I did it, it had  
2                   rained, but it was fairly dry except for the water that was  
3                   standing in the hole.

4                   Q           Okay. And the roadway consisted of  
5                   a set of tire tracks; is that correct?

6                   A           Pretty much.

7                   Q           And did you observe any utility  
8                   easements on the property?

9                   A           There appeared to have been a  
10                  Virginia Power line to the left of it.

11                  Q           And you state that the path ran next  
12                  to those power lines; is that correct?

13                  A           I didn't put a lot of emphasis on  
14                  the --

15                  Q           If you're not --

16                  A           -- power line at that particular  
17                  time.

18                  Q           Okay. And when you came off of the  
19                  State maintained highway, did it appear to be a maintained  
20                  entrance?

21                  A           An entrance was there but it wasn't  
22                  something that anybody had maintained recently.

23                               MR. JONES: Okay. That's all the  
24                  questions I have.

25                               THE COURT: Any questions,

1 gentlemen?

2

3

CROSS-EXAMINATION

4

5 BY MR. RAILEY:

6

Q

Now, I understand that you went onto

7

the property belonging to Dr. Rae Parker?

8

A

No.

9

Q

You did not enter that?

10

A

I entered the driveway.

11

Q

But -- all right. When you -- did

12

your inspection of the Willis and Hampton Roads Promotions

13

property, did you follow that path to its end?

14

A

No.

15

Q

The path was still going on when you

16

stopped?

17

A

Right.

18

Q

And isn't it true that that path is

19

actually the dividing line between Parcel 71 and 72?

20

A

Not according to my research.

21

Q

Did you ever look at a plat of the

22

property that is reported in the clerk's office of this court?

23

A

I'm not at liberty to get into that.

24

MR. RAILEY: All right. That's all

25

the questions I have.

DIRECT EXAMINATION

BY MR. JONES:

Q Would you please state your name for the record?

A Steven Edwards.

Q And how are you employed, Mr. Edwards?

A I'm a real estate broker and real estate appraiser.

Q Are you familiar with the Mackelsfield property?

A Yes.

Q How did you become aware of the property? Why did you have contact with the property?

A Well, I had been asked to appraise it a couple of times in -- since I appraised it, I believe, back in the mid '80s and then again in the early '90s.

Q And how did you access that property?

A I went down a small lane that comes off of Route 665.

Q Was this a maintained road or?

A No, no. Not at the point of my later appraisal, not in 1991.

1                   Q           What vehicle were you driving to  
2   access the property?

3                   A           I was driving a Jeep Grand Wagoneer,  
4   four-wheel drive.

5                   Q           And were you able to access the  
6   property after it rained?

7                   A           The day I went in there, if I  
8   remember correctly, it wasn't a rainy day. It probably would  
9   have been tough, in my opinion, to get in there on a rainy  
10   day.

11                  Q           When you went back there, what  
12   did -- what you described as the land that you went down, what  
13   did it look like?

14                  A           In the early '90s -- I believe the  
15   appraisal was done in '91 -- it was overgrown, grass and  
16   weeds, basically.

17                  Q           Did it appear like anybody was using  
18   that land?

19                  A           If -- it did not appear that it was  
20   used on a regular basis, to my best recollection.

21                  Q           Let me show you Defendants' Number  
22   1. Can you identify that photograph?

23                  A           That's the photograph I took. It's  
24   an enlargement of the photograph I took for this appraisal,  
25   looking down this lane that I accessed the property with. I

1 believe it's -- this item -- looking towards the highway.

2 Q Okay. So that would be from  
3 Dr. Parker's property back towards Route 665?

4 A Yes.

5 Q And looking at -- do you see any  
6 utility easement or utility lines, holes, anything of that  
7 nature in the photograph?

8 A I believe this hole here, I believe  
9 that's a telephone pole or power line pole.

10 Q Okay. And to your knowledge, where  
11 were those utility lines located in the clearing? Were they  
12 on the left side, the right side, the middle?

13 A My best recollection, in the  
14 appearance of this photo coming from 665 to Mackelsfield down  
15 this lane, they were on the right side of the lane.

16 Q And does the photo show any signs of  
17 travel where cars were being driven back and forth in that  
18 lane?

19 A No, not on a regular basis. There  
20 was -- I believe this track right here is from my Jeep.  
21 (Indicating.) It's -- I won't say that -- but you know,  
22 bogging down a little bit in the mud. You know, you could see  
23 some tracks maybe here. (Indicating.) I think that --

24 Q It's not a worn path in that photo  
25 there?

1 A No.

2 Q And is this an accurate  
3 representation of what that clearing looked like in 1991?

4 A That picture I took, yes.

5 Q To the best of your knowledge, was  
6 anyone living there in 1991?

7 A Oh, no, not in Mackelsfield.

8 Q Okay. Have you had an opportunity  
9 to view that same access since 1991?

10 A No, I have not, although I pass by  
11 it and that's --

12 Q When you pass by it, does it appear  
13 to be in the same condition that it was when the photograph  
14 was taken?

15 A Well, I think it remained the same  
16 basically until, you know, some sort of operation, logging  
17 operation or something, you know. I believe it's gravel down  
18 in there now.

19 Q Okay.

20 A Again, that's -- I haven't taken  
21 specific notice of it and I did not go back to the property  
22 when all this came up.

23 Q How long did it take you to prepare  
24 your appraisal? How long were you in the field?

25 A About a day.



1 Q Did you see anybody using the land  
2 that day?

3 A No.

4 MR. JONES: That's all the questions  
5 I have.

6

7

CROSS-EXAMINATION

8

9 BY MR. COWARDIN:

10 Q Mr. Edwards, where were you standing  
11 when you took this photograph?

12 A Well --

13 Q I mean, how far were you from Route  
14 665, if you recall?

15 A I don't recall exactly, but I  
16 believe I was standing near the division line between the  
17 Mackelsfield farm and the piece of property that --

18 Q And this road is fairly straight,  
19 isn't it?

20 A Yeah.

21 Q It's almost pipe straight?

22 A Yeah.

23 Q So you were standing -- if the tree  
24 line converge is here, you were standing over to the side a  
25 little bit because you can't quite see the end right there,

1 can you?

2 A Right.

3 Q In other words, you're off to the  
4 side of it just a little bit?

5 A Yeah.

6 Q Now, when you said this was the  
7 tracks of your vehicle, was --

8 A It's possible.

9 Q -- your vehicle over to the side? I  
10 mean, the road runs down the side, more or less, or the  
11 opening of it.

12 A Uh-huh.

13 Q So was this --

14 A Well, actually my best recollection,  
15 the road, the tracks, are going to be as you're entering.  
16 They're going to be on the left-hand side or so because of  
17 this easement. This line that was coming down here.  
18 (Indicating.)

19 Q And --

20 A So my -- you know, yes, I have  
21 apparently pulled over here because of this wood line right  
22 here. (Indicating.)

23 Q Now, is this shadow or woods line?  
24 In other words, your photograph is a little overexposed so  
25 you've got some real dark places here. (Indicating.) Do you

111

1 know if that's -- can you tell if that's shadow or wood line  
2 on that right side?

3 A I thought it would be wood line.

4 Q Well, it looks like the track goes  
5 into it is the reason I asked. This looks like a shadow,  
6 though.

7 A This coming through here, yeah.  
8 That is a track. (Indicating.) But you can see some -- it  
9 looks to be branches right through here. (Indicating.)

10 Q You also appraised this property in  
11 the '80s, didn't you?

12 A Uh-huh.

13 Q And of course you used the same road  
14 to get in, didn't you?

15 A Uh-huh.

16 Q In fact, you appraised the  
17 Mackelsfield property in the '80s?

18 A Right.

19 Q Were you appraising the Mackelsfield  
20 property this time?

21 A Well, I was appraising the  
22 Mackelsfield plus two other properties.

23 Q Did you go all the way down the  
24 lane? Could you get down this lane? (Indicating.)

25 A Uh-huh, yeah.

1 Q So you passed it on your vehicle?

2 A I came down the lane in my  
3 four-wheel drive.

4 Q And also you passed it back in the  
5 '80s when you did the previous appraisal?

6 A Right.

7 Q You've been able to get down it  
8 whenever you needed to, haven't you?

9 A Yes, sir.

10 Q You know that it was farmed -- you  
11 observed it being farmed at those times, didn't you, both  
12 times?

13 A Yes, sir.

14 Q Do you recall the date of the  
15 picture?

16 A Not the specific date, but the  
17 appraisal was dated -- that this picture came from --  
18 September 23rd, 1991.

19 Q Is that another picture of this area  
20 that you have got there? (Indicating.)

21 A Yes.

22 Q Let me look at those a second.

23 (Document tendered to Mr. Cowardin.)

24 BY MR. COWARDIN:

25 Q What is this? Is this a corn field

1 on the property?

2 A Yes.

3 Q So it was being farmed at that time?

4 A Right.

5 Q And then this is another corn field  
6 on the property?

7 A Right.

8 Q September would have been when the  
9 corn would have been harvested?

10 A Yeah.

11 (Documents tendered to  
12 Mr. Cowardin.)

13 BY MR. COWARDIN:

14 Q Did you take pictures of  
15 Mackelsfield?

16 A In '91, yes, sir.

17 Q Okay. Now, do you have anything  
18 from your appraisal in the '80s in that folder?

19 A Yes, sir, I do.

20 Q Didn't you take some pictures that  
21 you used with that appraisal?

22 A Yes, sir, I did.

23 Q Okay. Let's turn it over and take a  
24 look at them just a second. I think I've seen that. You took  
25 some pictures of the lane, I think, in the '80s. Yeah, isn't

1 this it? (Indicating.)

2 A That would represent it so that --  
3 this is the property line of the farm.

4 Q When was that taken, '85?

5 A Thereabout, August of '85.

6 Q Those are fresh tracks right there,  
7 aren't they?

8 A Uh-huh.

9 Q And so these pictures are taken in  
10 '91 when the farmer was in there farming it, and these were  
11 taken in '85?

12 A Uh-huh.

13 Q Do you have any of the entrance? I  
14 thought I saw on your previous appraisal an entrance --

15 A I believe there's going to be a  
16 copy.

17 Q So this is '85? (Indicating.)

18 A Uh-huh.

19 Q Those are the tracks and this is the  
20 clearing and that's the power pole, right?

21 A Uh-huh.

22 Q Of course, this is pretty much  
23 indistinguishable here. But these are tracks, right? This is  
24 the way it was in '85?

25 A Right.

1 MR. COWARDIN: If the Court please,  
2 I think they are probative. I think he took them and they  
3 represent how it looked on the date then, don't they? Don't  
4 they represent how it looked in '85 right there?

5 THE WITNESS: Yeah.

6 THE COURT: Do you want to ask to --

7 MR. COWARDIN: I would like to  
8 introduce those. I think we could make copies of them and  
9 return them to Mr. Edwards, but I would like to introduce  
10 them.

11 THE COURT: All right. The two of  
12 the corn field will be Plaintiffs' 6, I think.

13 (Plaintiffs' Exhibit Number 6 was  
14 marked in evidence.)

15 THE COURT: And do you want those  
16 also?

17 MR. COWARDIN: Just this one, I  
18 think, Your Honor. And then this copy, I think, shows  
19 actually the lane.

20 BY MR. COWARDIN:

21 Q Mr. Edwards, do you know where you  
22 were standing when you took this photograph?

23 A That -- I don't know exactly where I  
24 was standing, but it was looking into the farm. And this is  
25 more than likely the property in front of the farm.

1                   Q                   So then these tracks would be on the  
2 property in front of the farm?

3                   A                   That's my best recollection.

4                   MR. COWARDIN: Judge, I'd like to --  
5 the Court to have those in the record also. I would like to  
6 introduce those. That's all the questions I have, if Your  
7 Honor please.

8                   THE COURT: The two corn fields were  
9 Plaintiffs' 6, I think. The one of the field with the tracks  
10 in the middle of it is Plaintiffs' 7, and the copy which is  
11 entitled Lane Leading Into Farm is Plaintiffs' 8.

12                   (P Plaintiffs' Exhibit Numbers 7 and 8  
13 were marked in evidence.)

14                   MR. JONES: Okay.

15                   THE COURT: Okay. The pictures of  
16 the corn field is Plaintiffs' 6. The picture of the field  
17 with a path in the middle of it is Plaintiffs' 7. The copy of  
18 the picture which says Lane Leading Into Farm is 8.

19

20                   REDIRECT EXAMINATION

21

22                   BY MR. JONES:

23                   Q                   The photograph that's been  
24 identified as Plaintiffs' Number 7, it shows the lane leading  
25 into the field; is that correct?



1 A Right.

2 Q Do you know where that lane leads  
3 to?

4 A My best recollection -- I believe I  
5 was standing up near where the old home site was shooting back  
6 towards the woods line on the lane that was leading out on  
7 665.

8 Q This would be looking at a farm road  
9 back to the field? Is that the lane -- I mean is that what --

10 A No. This is -- again, this is a  
11 1985 picture and it's -- actually it was a division point  
12 between the two fields and the lane would come up, and then I  
13 think it came up and beared towards the south, going over to  
14 the Vellins' property, I believe.

15 Q Does that lane --

16 A Well, this was the lane that would  
17 come over to the old home site.

18 Q And would be the -- eventually led  
19 to the Vellins' property?

20 A I think it beared on over towards  
21 the Vellins' property.

22 Q Okay. Which was adjacent to  
23 Mackelsfield?

24 A Right.

25 Q So this photograph that you're

1 describing is on Mackelsfield, not on either Parcel 71 or 72  
2 which is owned by Mr. Willis and Hampton Promotions?

3 A No, it's not.

4 Q And the photograph that was  
5 identified as a Lane Leading Into Farm, which would be  
6 Plaintiffs' 8, this photograph here, describe what that shows.

7 A It shows a lane, two tracks, and a  
8 telephone or a power line easement running down on the right  
9 side.

10 Q Does it appear to be a maintained  
11 road?

12 A Maintained?

13 Q (Counsel nodded his head up and  
14 down.)

15 A It appears that there's been some  
16 travel on it, but I mean the word "maintained," no.

17 Q Okay. I want to direct your  
18 attention to Defendants' 1. Does that show more or less use  
19 than the 1985 photograph?

20 A It shows less use.

21 Q Based on what?

22 A Based on the fact that there's no  
23 clear cut tracks on that road as there were in '85.

24 Q You stated that you accessed the  
25 property whenever you had to make these appraisals; is that

1 right?

2 A Right.

3 Q And it took you approximately a day  
4 on the 1990 appraisal. Did it take you about the same time on  
5 the first appraisal?

6 A Yes.

7 Q And both times you accessed it with  
8 a four-wheel drive?

9 A Yes, once in a Bronco and once in a  
10 Jeep.

11 Q Did you ever have any trouble going  
12 down the lane?

13 A Well, in '85 it was -- it was a  
14 little easier, a little bit less bumpy than in early '90s. In  
15 '91 it was rather tough.

16 Q How fast were you --

17 A There were a few ruts in that road,  
18 if I remember correctly, that were either full of water or  
19 just that were right bad.

20 Q How fast were you able to drive down  
21 the lane?

22 A Five miles an hour.

23 MR. JONES: No further questions.

24 THE COURT: Anything further?

25 MR. COWARDIN: Just a minute, Your



1 Court.

2 A My name is Stephen I. Boone.

3 THE COURT: Don't worry about that  
4 microphone. It doesn't work anyway.

5 BY MR. JONES:

6 Q And what is your occupation?

7 A Land surveyor.

8 Q How long have you been a land  
9 surveyor?

10 A I was licensed to practice surveying  
11 in 1979.

12 Q Okay. And what schooling did you  
13 have to complete to become a surveyor?

14 A I've had three years of college and  
15 continuing education courses in surveying.

16 Q And you're licensed by the State; is  
17 that correct?

18 A Yes.

19 Q And I want to direct your attention  
20 to Parcel 71 and 72 off Route 665, the property owned by  
21 Leonard Willis and Robert Jones. Are you familiar with that  
22 property?

23 A Yes, sir, I am.

24 Q And did you have an opportunity to  
25 survey that property?

1                   A           Yes, sir.

2                   Q           And during your survey, what -- the  
3 property line between Parcel 71 and 72, can you describe what  
4 you saw on that portion of the property?

5                   A           Yeah. It was dirt. Do I have a  
6 drawing or something in front of me?

7                   Q           Did you bring yours?

8                   A           I've got a file.

9                   MR. RAILEY: I've got the same thing  
10 if you would like to use mine.

11                               (Document tendered to the witness.)

12                   THE WITNESS: Yeah. This property  
13 line --

14                   MR. RAILEY: They're all copies of  
15 the same thing.

16                   THE WITNESS: Yeah, I see. The  
17 property line runs down the center of the dirt road there.

18 BY MR. JONES:

19                   Q           Okay. And when you say dirt road,  
20 could you describe that dirt road?

21                   A           This dirt road is a potholed old --  
22 old farm road.

23                   Q           Did it appear to be in use?

24                   A           Only occasionally maybe by hunters  
25 or something like that.

1 Q Were you able to drive down the dirt  
2 road?

3 A Yes.

4 Q What type of vehicle were you in?

5 A I was in a pickup truck.

6 Q Was it a smooth lane or --

7 A No. It was just an old potholed  
8 farm road.

9 Q How fast were you able to drive down  
10 that?

11 A I would say less than five miles an  
12 hour. I had to keep my foot on the brake because my truck  
13 might have idle too fast.

14 Q And have you had the opportunity to  
15 go back and measure the clearing and the trees at the rear of  
16 the property line?

17 A Again or now?

18 Q Now.

19 A Now, yeah.

20 Q And do you recall how wide that was?  
21 Do you have your notes?

22 A Yeah. I thought I did, but they're  
23 out there. I will go get them, if you don't mind.

24 THE COURT: Yeah. That would be  
25 fine. Thank you.

1 THE WITNESS: I have field notes. I  
2 did not personally go out and measure the distance between the  
3 trees out there.

4 MR. JONES: Okay.

5 THE WITNESS: I had one of my  
6 employees do that.

7 BY MR. JONES:

8 Q What's your employee's name that did  
9 that?

10 A Timothy Frye.

11 Q And he's present here today?

12 A Yeah.

13 Q Okay. How wide was it from tree  
14 line to tree line?

15 A From tree line to tree line I would  
16 say it's about 38 feet.

17 Q You say about?

18 A Within a half a foot.

19 Q And in that 38 feet, are there  
20 located any utility lines or poles?

21 A Sure. There's an overhead wire,  
22 telephone, power.

23 Q How far from the edge of the tree  
24 line would the utility lines be?

25 A I would have to do some math.

1       Probably 15 feet. Fifteen feet, that's correct.

2                       Q               Okay. Try to speak up louder. How  
3       wide is the area today that's I guess encompassed by the  
4       gravel and everything that lay on the ground at this point?

5                       A               The actual road today appears to be  
6       about 17 feet, 18 feet wide.

7                       Q               Is that the same width that the lane  
8       was when you first viewed the property back in 1991?

9                       A               I can say that the road back then  
10      was much smaller than it is now.

11                      Q               When you say much smaller, was it --

12                      A               It was a dirt road. It wasn't a  
13      gravel road.

14                      Q               Was it maintained where it looked  
15      like it had been cleared, or was it established by tire  
16      tracks?

17                      A               It was pretty much established by  
18      tire tracks. I mean, there was trees running against you on  
19      one side. It wasn't, you know, a cleared right-of-way or  
20      anything.

21                      Q               And in your opinion how far apart  
22      were the tire tracks?

23                      A               About seven feet apart, six or seven  
24      feet.

25                      Q               And did you observe any other area



1 other than those tire tracks being used?

2 A I'm not understanding --

3 Q Was there any other area that you  
4 observed a set of tire tracks leading through --

5 A No. They were the only set of tire  
6 tracks out there.

7 Q Did it appear that more than one  
8 vehicle could pass on those tire tracks at the same time?

9 A No at all.

10 MR. JONES: I have no further  
11 questions.

12

13 CROSS-EXAMINATION

14

15 BY MR. RAILEY:

16 Q Mr. Boone, how many times have you  
17 been to the property?

18 A I have been to that property several  
19 times over the past -- well, since I did my original survey  
20 for other things.

21 Q Well, prior to 1991, how often had  
22 you been to the property?

23 A Probably none.

24 Q So your testimony would be, as I  
25 understand it, that prior to 1991 you have no idea of what the

1 path looked like?

2 A No.

3 Q And so when you say you've been  
4 there several times, it would all be from 1991 to 1996?

5 A Yes, sir.

6 Q All right. I noticed that you have  
7 testified from a map that appears to be drawn on a yellow  
8 piece of paper. Is that in front of you?

9 A This is a recent survey that we --  
10 the most latest time that we'd been out there.

11 Q Did you personally prepare that map?

12 A Mr. Frye did.

13 Q So when -- and you've already  
14 testified that you didn't make the measurement of the field?

15 A No, sir, I haven't, but I have very  
16 recently been out there.

17 Q But when you went out there, did you  
18 make any measurements?

19 A No, not me personally.

20 Q Okay. Do you know where that  
21 measurement was made? Where was it made on the Willis and  
22 Hampton Promotions property? Was it made 10 feet from the  
23 road? 20 feet? I talking about between secondary Highway 6.

24 A Right. We made one, two, three,  
25 four, five measurements of the width of that road from the

1 highway and back to the rear of the property line.

2 Q What were the widths on those  
3 various measurements?

4 A They were between, like I said  
5 before, 17 and 18 feet.

6 Q All right. When you made those,  
7 what did you measure? From what to what?

8 A From the edge of the road to the  
9 other edge of the road.

10 Q And that would be just a road -- the  
11 top of the road?

12 A Yeah.

13 Q Did you take into account the ditch  
14 lines?

15 A I don't think there's any ditches  
16 there that I recall -- not a lot. There may be some small  
17 swells, but....

18 Q Well, it's your testimony there's no  
19 ditch out there?

20 A There may or may not be a ditch.  
21 They didn't show that on the field notes. Like I said,  
22 ditches there may just be swells, or you know --

23 Q But your testimony is you really  
24 don't personally know?

25 A I didn't recall seeing any.

1 Q Did you take into account the tree  
2 line?

3 A Yes, sir.

4 Q And did you make any measurement  
5 from tree line to tree line right on the boundary between the  
6 Mackelsfield property and the Willis property?

7 A Repeat that question.

8 Q Did you make a measurement of the  
9 distance from tree line to tree line on the boundary between  
10 the Willis property and the Mackelsfield property?

11 A Yes, sir.

12 Q And what was that measurement?

13 A That measurement was an accumulation  
14 of two measurements. It was 38 and a half feet to be exact.

15 Q When you say an accumulation of two  
16 measurements, what do you mean by that?

17 A They measure from the property line,  
18 which goes down the center road, and they have an iron stop  
19 there. By their field notes, they know from the iron stop  
20 that this tree line of eight feet. The same iron stop over  
21 from the tree line, 30 and a half feet.

22 Q And --

23 A I would add those two measurements  
24 together.

25 Q And it is your testimony that there

1 is a tree line that runs right to the boundary between the  
2 Parker property and the Willis and Hampton Promotions  
3 property?

4 A Yeah. The tree line, according to  
5 my man's field notes, does run -- I don't understand your  
6 property question.

7 Q All right. I'm going to show you an  
8 aerial photograph which has been accepted into evidence as  
9 Plaintiffs' Exhibit Number 3. Have you ever seen this aerial  
10 photograph before?

11 (Document tendered to the witness.)

12 THE WITNESS: No, sir.

13 BY MR. RAILEY:

14 Q All right. Are you familiar --  
15 would that appear to be --

16 A Yeah, this looks like it. That  
17 looks like -- what's your question?

18 Q My question is I want you to show me  
19 the tree line that exists on the boundary between the Parker  
20 property and Willis and Hampton Promotions property

21 A Could you show me their property  
22 first on here?

23 Q Does this appear to be the path that  
24 traverses the Parker property and ultimately the Willis and  
25 Hampton Promotions property? (Indicating.)

1                   A                   Yeah. This does look like the field  
2 up at the roadway. That's the dirt road right there.  
3 (Indicating.) Yeah. I would say that's the field there that  
4 separates the tree -- the map -- this is the Hampton Roads  
5 property.

6                                   THE COURT: You need to speak up so  
7 the young lady over there can hear you.

8 BY MR. RAILEY:

9                   Q                   Hampton Roads Promotions and Willis?

10                   A                   Uh-huh. Yeah, that's their property  
11 up here. (Indicating.)

12                   Q                   All right. Where would you, on this  
13 map, if you can recall, where would the measurement have been  
14 made as to -- where would the boundary be?

15                   A                   Right here. (Indicating.)

16                   Q                   That would be the boundary right  
17 there?

18                   A                   That would be the measurement from  
19 tree line to tree line.

20                   Q                   Is that where the boundary is  
21 between the Parker --

22                   A                   Yeah. The boundary runs -- if I had  
23 to use the tree line on this map to indicate the boundaries,  
24 the boundary would be right behind by this tree line right  
25 here, right up in here. (Indicating.)

1 Q And so that's where you say you  
2 measured your -- the employees measured --

3 A Yeah.

4 Q It was only 38 feet?

5 A That's right.

6 Q You testified there was no ditch  
7 line out there?

8 A No. I think I testified that -- I  
9 meant to say I didn't recall a ditch line out there.

10 Q But you're -- now, the survey that  
11 you have referred -- I don't believe that's been introduced --  
12 but it is a survey prepared by you in 1991 and that's of  
13 Parcel 72. That shows the boundary of 72 and this other  
14 boundary as being the dirt road, the center line of the dirt  
15 road?

16 A Right.

17 Q And would the normal or the -- I  
18 also want to show you this. This didn't make too good of a  
19 copy, but this is a map that you did of the other parcel  
20 belonging to these -- belonging to the defendants, and what  
21 is -- the boundary that separates 71 and 72 as shown on that  
22 map, the dirt road?

23 A Right.

24 Q Once again. (Indicating.)

25 A Uh-huh.

1                   Q           And when you did the survey, you  
2   thought that the dirt road was of sufficient monument to be  
3   included in your survey?

4                   A           Uh-huh.

5                   Q           And when something is a monument,  
6   you're talking about something that's been there for some  
7   duration in time?

8                   A           Yeah.

9                   MR. RAILEY: That's all the  
10   questions I have.

11                   THE COURT: Anything further of this  
12   witness?

13                   MR. JONES: Just a couple of follow  
14   up.

15

16                   REDIRECT EXAMINATION

17

18   BY MR. JONES:

19                   Q           When you say on the plat that you  
20   prepared -- you indicate a dirt road. When you say dirt road,  
21   are you referring to the set of tire tracks between the  
22   property lines?

23                   A           Uh-huh.

24                   Q           Could you speak up so that --

25                   A           Oh, yes, I'm sorry.



1 Q And then you refer to the tree lines  
2 at the rear portion of the Willis property; is that correct?

3 A That is correct.

4 Q And it measures 38 and a half feet  
5 wide?

6 A Yes.

7 MR. JONES: I have no further  
8 questions.

9 THE COURT: Is this fella free to  
10 go?

11 MR. RAILEY: As far as I'm  
12 concerned.

13 (Mr. Jones nodded his head up and  
14 down.)

15 THE COURT: Thank you very much. I  
16 appreciate you coming.

17 MR. JONES: The next witness would  
18 be Timothy Frye.

19 THE COURT: Have a seat in the  
20 chair, Mr. Frye.

21  
22 - - -

23  
24 TIMOTHY FRYE,  
25 called as a witness by the Defendants, having been first duly

1 sworn, was examined and testified as follows:

2

3

DIRECT EXAMINATION

4

5 BY MR. JONES:

6

Q Good morning, Mr. Frye -- or good  
7 afternoon now. Please state your name for the record.

8

A Timothy M. Frye.

9

Q And how are you employed, Mr. Frye?

10

A I'm a party chief of Steve Boone and  
11 Associates.

12

Q And what do you do?

13

A I'm a survey crew chief. I go out  
14 with the crew and we perform surveys for the company.

15

Q How long have you done that?

16

A I've been with Mr. Boone now for  
17 nine years.

18

Q And during that nine years, have you  
19 had an opportunity to go out off of Route 665 and do some  
20 survey work for Mr. Willis and Mr. Jones?

21

A Yes, I have.

22

Q And that was a survey known as the  
23 Annie Hawks property?

24

A Yeah, Annie Hawks estate.

25

Q Can you describe the boundaries

1       between Parcel 71 and 72?

2                       A               Parcel 71 and 72?

3                       Q               The access to which you gained --

4                       A               Okay. There was a dirt road there  
5       that dissected the property.

6                       Q               And can you describe that dirt road?

7                       A               A very small farm lane. What I  
8       would call a farm lane.

9                       Q               Did it appear to be actively used?

10                      A               Not much. It was --

11                      Q               And why do you say not much?

12                      A               Because of the very poor condition,  
13       rutted, sort of grown up on either side of it, not very wide  
14       at all.

15                      Q               How wide was it?

16                      A               Basically just about as a vehicle  
17       and a truck.

18                      Q               How wide would you say that would  
19       be?

20                      A               Ten foot at the most, maybe ten --  
21       ten, 12 feet maybe, at the most.

22                      Q               And how long were you out there?

23                      A               We worked on that job probably for a  
24       good month right at the beginning, I would say.

25                      Q               Did you see anybody else using the

1 lane?

2 A No, I didn't, not while I was there.

3 Q Okay. And since that time, have you  
4 had an opportunity to go back and view the property again?

5 A Yes, I have.

6 Q Is the land in the same condition  
7 now as it was back when you initially performed the survey  
8 back in '91?

9 A Right. No, it's not. Very  
10 different.

11 Q How is it different?

12 A Well, it's got quite a bigger road  
13 in there, I would say.

14 Q Wider?

15 A Wider and in better condition,  
16 improved quite a bit. I was really surprised when I saw it.

17 Q Okay. And did you have an  
18 opportunity to take the measurement between the -- along the  
19 rear property line approximately where the tree line is?

20 A I'm not sure I understand exactly  
21 what you mean.

22 Q The tree line that runs on the rear  
23 of the Willis property where it -- where there's a clearing  
24 where utility lines run and where there's an alleged  
25 right-of-way that passes, did you measure from tree line to

1 tree line?

2 A In the initial survey?

3 Q At any point.

4 A At any point. We went back and did  
5 a little bit of measuring in there back -- I guess it's been  
6 back in March, March of this year.

7 Q Okay. What did you find at that  
8 point? How wide was the clearing?

9 A Let's see. I've got some notes  
10 here. From the center of the road it looks like we got about  
11 30.5 feet from the center of the road over to the tree line  
12 there to the -- it would be to the right of the road.

13 Q Okay. How far to the left?

14 A To the left, about eight feet, I  
15 guess.

16 Q And those measurements were taken on  
17 the ground?

18 A Yes.

19 Q Did you physically --

20 A Taking an average of the tree line  
21 there.

22 Q And you physically --

23 A Physically, yes.

24 Q And how wide was the road surface?

25 A The actual road itself, about 18

1 feet wide.

2 Q And when you performed the survey  
3 back in 1991, did you place pins along the boundary between  
4 Parcel 71 and 72?

5 A We had placed some on one parcel.  
6 We hadn't on the other.

7 Q And --

8 A On the right-hand side.

9 Q Where were those pins placed?

10 A Well, we had one pin that went just  
11 about in the middle of the road there.

12 Q And did you go back and locate that  
13 pin?

14 A Yes, I did.

15 Q Recently?

16 A Yes, I did.

17 Q Did it appear to be in the center of  
18 the road now?

19 A Yes.

20 Q Based on your observation, was the  
21 lane in the same position now as it was when you originally  
22 did your survey work?

23 A Basically in the same position but  
24 wider.

25 Q Did you have an opportunity to

1 observe any underbrush or any clearing of any sort along the  
2 right-of-way?

3 A Along the lane.

4 Q Did you observe any, I guess,  
5 evidence of whether there had been clearing or not along that  
6 lane?

7 A Right. Well, it definitely had been  
8 cleared a lot, more than what I remembered.

9 Q Why did you come to that conclusion?

10 A Well, it was pretty evident that it  
11 had just recently been cleared. There was some logging  
12 activity going on behind us there.

13 Q What type of vehicle did you use  
14 when you performed the initial survey in 1991?

15 A It was a GMC pickup work truck.

16 Q And were you able to travel without  
17 any problem along that lane?

18 A Very carefully.

19 Q And why did you have to go  
20 carefully?

21 A The road was in fairly poor  
22 condition, potholes and ruts.

23 MR. JONES: I have no further  
24 questions.

25

CROSS-EXAMINATION

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BY MR. RAILEY:

Q I understand that you went out, and after the road had been improved, made measurements from tree line to tree line at the point where the boundary between the Willis property and the Parker property traverses the path; is that correct?

A Yes.

Q And when you say that it was 38.5 feet, was that measurement made right at the boundary line?

A Very close to it. Right there at the boundary line.

Q When you say very close to it, how far is very close?

A I would say within 10 feet of the boundary there.

Q That would be 10 feet on the Willis side of the boundary?

A Yes, sir.

Q And there -- was there still any distinct tree line running into the Willis property?

A There was a tree line there, yes, sir.

Q Was it a distinct tree line?



1 A Yes, sir, distinct enough.

2 Q If you could look down that tree  
3 line going into the Parker acreage, it was about as straight  
4 as a tunnel, wasn't it?

5 A That's on the back side of the  
6 property?

7 Q Yes, sir.

8 A Yes, sir, fairly straight.

9 Q And how far did that tunnel, for  
10 lack of a better term, continue into the Willis property?

11 A I'm not really sure I understand.  
12 At that same --

13 Q How far did that same tree line  
14 continue?

15 A I guess all the way to the end of  
16 the woods there which was --

17 Q How far did the woods continue to  
18 the Willis property?

19 A Well, one side there maybe -- I  
20 don't know, maybe 50, 75 feet.

21 Q What about the other side?

22 A The other side a little bit longer,  
23 probably 200 feet.

24 Q All right. When you say you  
25 measured from tree line to tree line, what type of tree did

1     you measure from?

2                     A             What type of tree?

3                     Q             Yeah. Was it a pine tree or an oak  
4     tree or --

5                     A             Well, I don't really -- I wasn't  
6     distinguishing what type of tree it was.

7                     Q             How did you decide where the tree  
8     line was to start your measuring?

9                     A             The tree line -- just an average of  
10    the growth.

11                    Q             How did you determine that average?

12                    A             Just by sight, just taking an  
13    average of the tree line there.

14                    Q             Which way did you look to  
15    determine -- did you look back towards the Parker property or  
16    back towards the road?

17                    A             We would have been looking probably  
18    back towards the road, I would say.

19                    Q             So you're looking at a tree line  
20    that would continue on one side 50 to 75 feet, as I understand  
21    you, and on the other side, a little bit further. I believe  
22    that was your wording.

23                    A             As far as tree line being a little  
24    bit wider on the Parker side.

25                    Q             Well, you were talking about where

1 the tree line continued into the Willis property and you  
2 indicated on one side it went 50 to 75 feet, and on the other,  
3 a little bit further.

4 A Yes, sir.

5 Q But you looked at the tree line --  
6 you looked into the Willis property as opposed to looking back  
7 into the Parker property to determine where the tree line was?

8 A That is correct.

9 Q How many different places did you  
10 measure the tree line? Just that one?

11 A If I recall, probably just that one  
12 right there at the....

13 Q So you didn't -- even though you had  
14 50 to 70 more feet and a little bit further on that side, you  
15 didn't try to measure it any further back?

16 A No. We just took it an average  
17 measurement.

18 Q What about -- is there a ditch line  
19 that defines that path?

20 A Yes, sir. There was a ditch, I  
21 believe, running down the side of the road, a small ditch on  
22 the right-hand side.

23 Q What about on the left-hand side, is  
24 there a ditch?

25 A Not really a ditch per se, just a

1 little swell, I would say.

2 Q Did you measure from the swell to  
3 the ditch?

4 A From the swell to the ditch?

5 Q Yes, sir.

6 A Actually all I measured was just the  
7 road, just the limits of the road.

8 Q Well, you just testified you  
9 measured from tree line to tree line.

10 A Tree line to tree line.

11 Q So that would be different from the  
12 limits of the road, wouldn't it?

13 A Yes, sir. I wasn't concerned with  
14 the ditch. I wasn't asked to --

15 Q That ditch runs all the way across  
16 the Willis property to the Virginia secondary highway, doesn't  
17 it? Does it not?

18 A All the way out to the main road?

19 Q Yes, sir.

20 A Yes, sir.

21 Q And the swell runs all the way out  
22 to the main road, doesn't it?

23 A I believe it does, yes, sir.

24 Q But you weren't concerned with  
25 measuring that?

1                   A                   No, I wasn't asked to, so I didn't.  
2                                       MR. RAILEY: All right. That's all  
3 the questions I've got.

4  
5                                       REDIRECT EXAMINATION

6  
7 BY MR. JONES:

8                   Q                   Just briefly. The tree line runs on  
9 the left and right-hand side of the lane. Is that a  
10 consistent tree line or does it jut in and out?

11                   A                   It juts in and out.

12                   Q                   And when you took your measurement,  
13 did you take it from the nearest to the center trees or did  
14 you take it at a point which was halfway between the closest  
15 and farthest distances?

16                   A                   What I was doing was just taking an  
17 average of foliage, is what I would call the tree line,  
18 foliage.

19                   Q                   And you attempted to do that at the  
20 rear of the property line?

21                   A                   Yes, sir. At around the rear of the  
22 property line.

23                   Q                   From the rear of the property,  
24 looking toward the State maintained road, toward 665, is the  
25 tree line fairly consistent, or is it just a single tree here

1 and there?

2 A It's....

3 Q Were you able to determine a tree  
4 line?

5 A Yes, just an average. It's sparse.  
6 in there.

7 MR. JONES: I have no further  
8 questions.

9 MR. RAILEY: Just one.

10

11 RECROSS-EXAMINATION

12

13 BY MR. RAILEY:

14 Q When you say foliage, did you  
15 measure for the tree itself or did you measure from where the  
16 tree extends out over the ground?

17 A I'm referring to where the tree  
18 extends out over the ground.

19 Q Okay. So if you had had an oak tree  
20 that had branches that extended 20 feet out, you would have  
21 measured from 20 feet out as opposed to the trunk of the tree?

22 A Yes, sir.

23 MR. RAILEY: That's all the  
24 questions I've got.

25 MR. JONES: I don't have any other

1 questions.

2 THE COURT: Is Mr. Frye free to go?

3 MR. JONES: Yes, sir.

4 MR. RAILEY: Yes, sir.

5 THE COURT: Thank you very much.

6 You are free to leave.

7 MR. JONES: Leonard Willis.

8  
9 - - -

10  
11 LEONARD WILLIS,  
12 called as a witness by the Defendants, having been first duly  
13 sworn, was examined and testified as follows:

14  
15 DIRECT EXAMINATION

16  
17 BY MR. JONES:

18 Q Please state your name for the  
19 Court.

20 A Leonard Willis.

21 Q And are you the owner or the trustee  
22 for C. Leonard Willis Pension Plan which owns Parcel 71 and 72  
23 in Isle of Wight County located along Route 665?

24 A I'm the managing trustee.

25 Q Okay. And when was that property

1 purchased?

2 A It was approximately 1989.

3 Q Okay. And did you have an  
4 opportunity to view the property before you purchased it?

5 A Yes, I did. I received the public  
6 announcement. I visited all the parcels that were involved in  
7 the sale.

8 Q And based upon your observation,  
9 could you please describe what Parcel 71 and 72 looked like,  
10 the Annie Hawks estate?

11 A It was -- there were six parcels, I  
12 believe, in the Annie Hawks sale. Parcel 71 and 72 were  
13 adjacent on the -- what would be in the, I believe, the north  
14 side of Route 665, and they would be partially pie shaped. By  
15 that I mean deeper where they join each other in the center  
16 and they taper to a smaller dimension to the right and left  
17 if you're facing the dividing line between the properties.

18 Q Did you observe any roadway across  
19 either of the parcels?

20 A There was a set of tire tracks  
21 essentially down the property line, dividing line. And at  
22 that time I was driving a Jeep Grand Wagoneer, four-wheel  
23 drive, and I could only go approximately 20 yards into the  
24 wooded portion of the property to the rear of the property  
25 because there were trees fallen across the lane so I could not



1 drive through. So I got out and walked to the rear of the  
2 property. It was very narrow. The foliage was in fact  
3 scrapping the side of my vehicle.

4 Q And how wide were the tire tracks?

5 A The tire tracks were as wide as a  
6 normal passenger vehicle which is less than six feet from  
7 center to center. There was no ditch. There were water  
8 filled potholes, but there was no drainage ditch. There was  
9 no evidence that the property -- that the road was being used  
10 for any access of any particular type or regular frequency.

11 Q Did you observe anybody use the  
12 property?

13 A I went -- I made a survey around the  
14 entire property, and I drove up and down the lanes to get a  
15 fix in my mind of where the lines were. I saw no individuals  
16 at all. I would note that I did visit that same property --  
17 I'm a quail hunter -- I did visit that same property in the  
18 early 1980s and accompanied Dr. Larry Sharp, who then had  
19 permission to hunt it. And he was driving a Chevrolet  
20 Suburban four-wheel drive and we could not traverse the lane  
21 then.-- So I have never seen anyone use the lane at the time  
22 that I was familiar with the property or since I have been the  
23 owner of the property.

24 I might also say that I've been a  
25 property owner in Isle of Wight County since 1976. I own 350

1        acres running between Gatling Point and the Smithfield town  
2        line, so I regularly go down that road to visit my property.

3                        Q                        How often would you say you drive by  
4        your property located on 665?

5                        A                        In the hunting season, a half a  
6        dozen times a month. And the rest of the year, infrequently,  
7        every two weeks.

8                        Q                        And at no point have you ever seen  
9        anybody else on your property; is that correct?

10                      A                      I have seen about -- a year ago -- a  
11       black man was -- had a pickup parked just off the highway and  
12       was attending a garden on the parcel. If you are facing from  
13       the highway, the parcel on the left. And I noticed him and I  
14       didn't stop and talk to him because I didn't really care if he  
15       was gardening. Harold Griffin was renting the farm and if he  
16       was allowed to do it, that was okay with me, but that was the  
17       only person I've ever seen on that road.

18                      Q                      Okay. And have you had an  
19       opportunity to view the property in the last six months?

20                      A                      Yes, I have.

21                      Q                      Could you describe what the property  
22       looks like today?

23                      A                      It's been graded, graveled, ditches  
24       have been constructed or a ditch has been constructed. There  
25       has been trees cut on our property and it is a fairly level --

1 although there was some ruts the last time I saw that gravel  
2 carried by some heavy trucks. But it has been significantly  
3 modified in the last several months.

4 Q And the improvements or  
5 modifications to the lane, have they benefited your property  
6 in any way?

7 A (The witness shook his head from  
8 side to side.) I believe they are obviously a detriment to  
9 the property. They shorten the turning radius for the farmer.  
10 And also the contiguous pieces of property as they are, have a  
11 different and higher market value than if they were separated  
12 by a street or a road or something that detracts from the  
13 common use as a single parcel, so I think there's been a  
14 degradation in the value.

15 Q And when you first traveled over the  
16 property prior to your purchasing it, was there any gravel  
17 placed upon the ground?

18 A Absolutely not.

19 Q What would you describe the lane's  
20 condition? What was it made up of?

21 A It was visible that vehicles had  
22 passed and traversed the lane, but it was grown up. The weeds  
23 were well above the hood of an automobile in the center, so  
24 that indicated to me a very infrequent passage. And as we  
25 already mentioned, the actual weeds and the trees and pines,

1 foliage and so forth was, in fact, scrapping the side of my  
2 Grand Wagoneer so that I stopped and backed out.

3 Q Was there any room for another  
4 vehicle to pass --

5 A No.

6 Q -- on either side of you?

7 A Certainly not.

8 Q Were you able to turn your vehicle  
9 around to exit?

10 A I had to back all the way to the  
11 highway.

12 MR. JONES: Please answer Mr. Railey  
13 or Mr. Cowardin's questions.

14

15 CROSS-EXAMINATION

16

17 BY MR. COWARDIN:

18 Q Mr. Willis, you indicated that you  
19 first saw this property in 1989, but the fact of the matter is  
20 that the sale was held in 1988, wasn't it?

21 A I said approximately 1989.

22 Q If May 6th, 1988 is on this deed;  
23 would that be correct?

24 A I'm certain that it is correct. I  
25 remember I knew it was quite a while ago, though.

1                   Q                   And when you went down this road,  
2                   you could see that it went a long way, couldn't you, all the  
3                   way down to a farm?

4                   A                   Certainly not. You could not see  
5                   all the way down because the trees had fallen across it. And  
6                   I had no reason to go beyond the boundary of the property. I  
7                   was looking at the --

8                   Q                   In other words, your testimony is  
9                   that you were a perspective buyer for this property and you  
10                  didn't look down this lane to see how far it went?

11                  A                   I had no interest in that. I had a  
12                  survey or a boundary line that told me the property was going  
13                  to be offered for sale, so that was the only -- and I don't  
14                  trespass on other people's property, so I didn't go beyond  
15                  that.

16                  Q                   And you didn't look either, did you?  
17                  Is that your testimony?

18                  A                   I don't recall looking. There was  
19                  nothing to see and I didn't have any idea there was anything  
20                  down there.

21                  Q                   Well, did you see the pole line that  
22                  ran down there?

23                  A                   I saw a single power line which --  
24                  I'm a certified electrical engineer and I saw no reason to  
25                  decide or view where the pole was going. It appeared to be

1 carrying a line to serve a transformer somewhere and I had no  
2 idea where it went. I just knew that I had -- content with  
3 the property that I was going to bid on. That's the only  
4 interest I had in it.

5 Q Well, naturally as a perspective  
6 landowner here -- and in fact you paid \$330,000 for this  
7 property; is that correct?

8 MR. JONES: I'm going to object,  
9 Your Honor, as to relevancy as to what he paid for his  
10 property.

11 MR. COWARDIN: I think I can tie it  
12 in, Judge.

13 BY MR. COWARDIN:

14 Q The deed says that you paid \$330,000  
15 for the property; is that correct?

16 A All of the properties involved in  
17 that sale I paid \$331,000 I believe.

18 Q And that was about 20 acres, some up  
19 Route 668 and then these two parcels?

20 A No. It was 62 and a half acres.

21 Q Sixty-two and a half acres. But you  
22 investigated what was going on around there at the time that  
23 you bought this, didn't you?

24 A I investigated the boundaries of the  
25 property, and of course, as I testified, I am a long time

1 property owner of a home about three miles from there, so I  
2 knew what was happening in Isle of Wight County and I knew  
3 that I wanted to be in that end of the County for possible  
4 potential growth in the future. I had no further interest in  
5 who was doing what around the property.

6 Q Well, you weren't interested in the  
7 fact that Mr. Kuesal had proposed a 1,400 unit development for  
8 Mackelsfield and other property behind or adjacent to this  
9 property?

10 MR. JONES: Your Honor, I object  
11 again --

12 THE COURT: What's the relevancy?

13 MR. JONES: What's the purpose of my  
14 my client --

15 MR. COWARDIN: If the Court please,  
16 I think that -- I'm trying to show this that witness would  
17 have investigated a situation and would -- it appears to be  
18 the point of his testimony that he didn't observe or care  
19 about this dirt road that's now become the subject of this  
20 suit. I think I'm -- I'm trying to show --

21 THE COURT: A credibility issue? A  
22 credibility issue, I assume?

23 MR. COWARDIN: Right. He would have  
24 been interested in the adjacent property because he paid so  
25 much money for the 60 acres.

1 THE COURT: Okay. Go ahead.

2 BY MR. COWARDIN:

3 Q You didn't hear about the rezoning  
4 or down zoning of Mackelsfield and other adjacent parcels  
5 adjacent this property?

6 A I didn't say that. I was in fact  
7 involved in that. Dan Kuesal came to me and asked for my help  
8 on --

9 Q No. My question was did you -- did  
10 you investigate that down zoning? Did you understand that it  
11 was happening?

12 A I went to the -- came to this room  
13 and testified on Dan Kuesal's behalf that I thought it should  
14 be done. And the reason I did that is because I knew exactly  
15 what Dan was going to do. I, in fact, had verified where he  
16 was going to build his access. He has another access to this  
17 property.

18 Q I didn't ask that question. I --

19 A And I investigated that --

20 THE COURT: Hold on a second. We  
21 don't want to get into the specifics of the deal. The idea is  
22 he would have looked down the road if he was paying that much  
23 money for the property. That's the end of that.

24 MR. COWARDIN: Yes. That's all,  
25 Your Honor.



1 THE COURT: Okay.

2 MR. JONES: Yes, sir.

3

4 REDIRECT EXAMINATION

5

6 BY MR. JONES:

7 Q When you drove your four-wheel drive  
8 back towards the rear of the property, you eventually said it  
9 came to a point where it was impassable; is that correct?

10 A Yes. I think it was two or three  
11 car lengths into the -- past the tilled field.

12 Q Did you observe some utility lines  
13 running back continuously through the woods?

14 A Actually I only looked at the  
15 utilities lines from the highway to determine whether or not  
16 it would be -- where the poles were; how closely they were set  
17 to determine whether they would be something that would  
18 adversely impact possible partition of those properties  
19 because I was aware that under the Isle of Wight zoning laws,  
20 those being separate pieces of property, had to cut each one  
21 of them into three pieces without having to have any approval  
22 from the County, so I only looked at it from that standpoint.

23 Q All right. Prior to your purchase,  
24 did you make an inquiry as to the title of the property -- or  
25 subsequent to closing?

1                   A                   Subsequent to closing I certainly  
2 engaged an attorney to determine title. But at that time I  
3 relied on the fact that it was going to be commissioner sale  
4 and I felt that I would have good title.

5                   Q                   Okay. So prior to buying it, you  
6 did have an opportunity to view the property, the utility  
7 lines which transversed the property, and you attempted to  
8 drive the boundaries to inspect your property; is that  
9 correct?

10                  A                   That was pretty much the extent of  
11 the analysis that I did at that point.

12                                   MR. JONES: Okay. I have no further  
13 questions.

14

15                                   RECROSS-EXAMINATION

16

17 BY MR. COWARDIN:

18                  Q                   Mr. Willis, the deed recites that  
19 the public auction was on May 6th of '88, and then this deed  
20 was done on March the 25th of 1991; does that sound correct?

21                  A                   I know there was an extended period  
22 when we believed that the public announcement had not  
23 adequately defined the property, and we were investigating  
24 whether we wanted to attempt to overturn the sale. We  
25 eventually decided to go through with it, and it was several

1 months or years after the actual sale.

2 Q And in the meantime you -- a  
3 surveyor had been hired to do a survey on Parcel 71 and 72?

4 A I believe that's correct. I hired a  
5 surveyor to do a boundary survey on all the property in the  
6 sale.

7 MR. COWARDIN: That's all I have,  
8 Your Honor.

9 THE COURT: All right. Anything  
10 further?

11 (Mr. Jones shook his head from side  
12 to side.)

13 THE COURT: All right. Thank you,  
14 sir. Step down.

15 MR. JONES: Robert Jones.

16 THE COURT: All right. It's 1:00.  
17 How many witnesses do you got?

18 MR. JONES: We can take him now or  
19 we can take him after lunch.

20 THE COURT: Do you-all have any  
21 rebuttal or do you know at this point?

22 MR. RAILEY: I don't think so, but I  
23 can't absolutely approach that until --

24 THE COURT: All right. What we're  
25 going to do is break for lunch. Be back at 2:00.

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(Lunch Recess.)

THE BAILIFF: The Court is back in session. Take your seats, please.

MR. JONES: I call Robert Jones.

- - -

ROBERT JONES,  
called as a witness by the Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q	State your name for the record.
A	R.W. Jones.
Q	And are you the president of Hampton Promotions, Incorporated?
A	Yes.
Q	And are you co-owners of the property that's in question here today?
A	Yes.
Q	When did you purchase the property?
A	In -- sometime in '88.
Q	And how did you become aware of the

1 sale of that property?

2 A Through an add in the paper.

3 Q Okay.

4 A And Mr. Magette told me, too,  
5 because I saw it and Mr. Magette told me that they had a  
6 contract on something -- something happening in the back.

7 Q Okay. And after you learned of the  
8 sale, what action did you take?

9 A They had the sale on the courthouse  
10 steps or the -- in town and I went to the sale.

11 Q Prior to the sale, did you ever have  
12 an opportunity to view the property?

13 A I went and I could get my car off of  
14 the highway, but I didn't have a four-wheel drive, and I got  
15 off the highway, but that's all I could do.

16 Q What type of vehicle were you  
17 driving?

18 A I was driving a Lincoln.

19 Q And when you say you got off the  
20 highway, how far did you travel?

21 A A couple of car lengths, a couple of  
22 car lengths.

23 Q And could you observe any  
24 right-of-way across the property?

25 A You could see there's been something

1 there, but a lot of rubbish had fallen. Tree limbs and all  
2 had fallen. And at that time I don't believe you could drive  
3 through there other than a four-wheel drive.

4 Q Okay. So after viewing the  
5 property, you eventually purchased the property; is that  
6 correct?

7 A That's correct.

8 Q And at some time later you closed on  
9 the property; is that --

10 A In '91, I believe.

11 Q Why was there a delay?

12 A It was some question about part of  
13 the title. I'm not sure. The lawyers were handling that.

14 Q To the best of your knowledge, do  
15 you know if it was dealing with the actual sale of the  
16 property with the advertisement and the --

17 A It was something about that, the way  
18 it had been advertised.

19 Q Okay. And since you closed on the  
20 property in 1991, have you gone back and visited the property  
21 since then?

22 A I haven't been on the property, no,  
23 other than just in December, I think, when we went back.

24 Q Well, prior to December did you ever  
25 see the property or --

1                   A               I go to Newport News three to four  
2 times a week so I see it on the way to Newport News and on the  
3 way back.

4                   Q               Okay. Have you ever seen anybody  
5 driving over your property?

6                   A               No.

7                   Q               Now, directing your attention to the  
8 spring of 1995, did you ever have occasion to have a  
9 conversation with Art Rawlings?

10                  A               He called me to ask permission to  
11 cut some ditches along the existing path, and I told him  
12 that -- he asked me did I think ditches would be helpful and I  
13 said it would, but I'd have to get my partner's permission,  
14 too, because I only owned half of it.

15                  Q               Okay. And then after you had that  
16 conversation, did you ever observe any ditches or improvements  
17 to the path being made?

18                  A               About the same time that they went  
19 in with a motor grader and shaped the path up, and I don't  
20 think they pulled ditches. I think it just got a -- kind of a  
21 swell on each side.

22                  Q               And in December of this past year,  
23 did you go to the property and --

24                  A               After they put gravel down, I went  
25 and measured -- I measured 14 feet.

1                   Q                   And when you measured 14 feet, what  
2                   were you measuring at that point?

3                   A                   I was measuring gravel.

4                   Q                   So not inclusive of any swell or  
5                   anything?

6                   A                   I don't remember it really being a  
7                   true swell.

8                   Q                   Okay. And have you ever -- have you  
9                   personally gone out there and measured the opening and the  
10                  clearing of the rear of your property line?

11                  A                   After they started the logging, I  
12                  measured, it spread out to about 18 feet back to the property  
13                  line and the -- up by the highway where they put the maps  
14                  down. It was over 30 feet there.

15                  Q                   Okay. And the clearing and trees,  
16                  did you measure that?

17                  A                   At the back property line, when I  
18                  measured the gravel, it was from 45 to maybe 50 feet to the  
19                  trees, not --

20                  Q                   When you say tree, what part of the  
21                  tree?

22                  A                   To the base of the tree.

23                  Q                   Where approximately were you at  
24                  the -- how did you establish the rear property line?

25                  A                   There was pins back there. They had



1 pins; one in the center and some on both sides.

2 Q And that's where you took your  
3 measurements?

4 A Right.

5 Q And it's your testimony that the  
6 clearing was approximately 50 feet from --

7 A Through --

8 Q -- the base of the tree on one side  
9 of the lane to the base of the tree on the opposite side of  
10 the roadway?

11 A Right.

12 Q And did you have the opportunity to  
13 have a conversation with a Mr. Dan Kuesal?

14 A Back right -- I guess not long after  
15 we bought the property. I think it was even before we got  
16 title to it because it was a subject of us having title, and  
17 he wanted to --

18 MR. RAILEY: I'm going to object to  
19 any conversation that occurred with Mr. Kuesal. Mr. Kuesal is  
20 not a party in interest. What he says would certainly be  
21 hearsay, and I don't know of any exception of the hearsay rule  
22 that would allow his -- any comments made by him into  
23 evidence.

24 MR. JONES: I will withdraw the  
25 question.

1 THE COURT: Okay.

2 BY MR. JONES:

3 Q After your contact with Mr. Kuesal,  
4 did you enter into an agreement with Mr. Kuesal?

5 A We did.

6 Q And based on that, what were you  
7 supposed to do?

8 A We were supposed to give him a  
9 right-of-way --

10 MR. RAILEY: Any agreement between  
11 Mr. Kuesal and Mr. Jones would be irrelevant and immaterial to  
12 the controversy that exists between these parties. Mr. Kuesal  
13 is not a party in interest.

14 THE COURT: I assume it has to do  
15 with this road?

16 MR. JONES: Yes, Your Honor.

17 THE COURT: Okay. Go ahead. What  
18 did you agree to do?

19 THE WITNESS: We agreed to sell him  
20 a right-of-way and -- for money, plus he was going to put a  
21 State maintained road in and give us sewer and water  
22 connections for the property we had there.

23 BY MR. JONES:

24 Q Okay. And when you purchased this  
25 property at the sale, were these the only two parcels that you

1 purchased?

2 A No, I believe it was six. We bought  
3 some on 668, and then these two and across the street we  
4 either -- it was either broken up into two or three parcels on  
5 the opposite side of 665.

6 Q And you purchased that with the --  
7 what was your intent when you -- why did you buy the property?

8 A Well, we're speculators and we just  
9 bought it hoping something was going to happen.

10 Q Have you, since the time you bought  
11 it, sold any of the property off?

12 A Yes.

13 Q And where are those parcels located?

14 A In front on 668, and the parcel that  
15 fronts on 668 and 665, on the corner piece.

16 Q And what are those parcels being  
17 used for now?

18 A Residential.

19 Q Okay. Prior to the improvements to  
20 the alleged right-of-way, what did the path look like across  
21 your property?

22 A What I observed was just a one lane  
23 with ruts, really.

24 Q And you said you were able to pull  
25 in roughly a couple of car lengths?

1 A Correct.

2 Q Were you able to turn around?

3 A No, I backed out.

4 Q Was there any room for anyone to  
5 pass you on either side?

6 A No.

7 Q Did you observe anything which would  
8 indicate that anyone had traveled along that path?

9 A I didn't think anybody was using it.  
10 I never saw anybody.

11 Q Did you see any other tire tracks  
12 across your property?

13 A No, sir.

14 MR. JONES: That's all the questions  
15 I have.

16

17 CROSS-EXAMINATION

18

19 BY MR. RAILEY:

20 Q There's no question that it was a  
21 path across on your property?

22 A It was something there.

23 Q There's no question it was a path?

24 A It was ruts, yes.

25 Q Ruts made by an automobile?

1 A Right.

2 Q Or a truck, something of that  
3 nature?

4 A Right.

5 Q Do you recall when you talked to  
6 Mr. Kuesal, the deal that you've alluded to, that he wanted  
7 his right-of-way to be 125 or 126 feet wide?

8 A No. My recollection is of -- it is,  
9 I guess, a copy of the option he had. I think it was 75 feet.

10 Q His was going to be 75 feet and he  
11 was going to pay you \$10,000 for it; is that correct?

12 A Right, give us a sewer on there and  
13 a State maintained road that we could butt to and sewer and  
14 water.

15 Q I believe it's your testimony that  
16 on the property line from tree to tree as opposed to foliage  
17 to foliage, you approximate the distance as 45 to 50 feet?

18 A Right.

19 Q You didn't actually measure it?

20 A I did measure it. What I'm saying  
21 is if you go -- it's some trees, but I took two measurements.  
22 One, the closest ones I saw to the back property line was 45  
23 feet. If you move maybe five or 10 feet, it was 50 feet. So  
24 I took actually two measurements. But I think if you take the  
25 measurement right at the back property line, you will find it

1     45 feet.

2                     Q             But I gather when you say you think,  
3     that you don't have --

4                     A             Well, I do. Go ahead.

5                     Q             -- that you don't have an exact  
6     measurement or you wouldn't say "I think"?

7                     A             Maybe I used the wrong word. I did  
8     measure it.

9                     Q             Was it 45 feet?

10                    A             Forty-five feet at one point and 50  
11     feet about 10 feet in.

12                    Q             When you say 10 feet in, is that --

13                    A             That's right. Back by the property  
14     line coming towards the highway, coming towards 665.

15                    Q             So it's your testimony that right on  
16     the property line from base of tree to base of tree is 45  
17     feet?

18                    A             Right.

19                    Q             And your knowledge of this road is  
20     based on your investigation in 1988 or thereabouts as the  
21     property was advertised for sale?

22                    A             Right.

23                    Q             You have no familiarity with it  
24     prior to that day?

25                    A             Other than seeing it passing it, but

1 no, just when I passed it. I actually saw it because I go to  
2 Newport News every day, but I didn't do any investigation of  
3 it. Didn't know anything about the property.

4 MR. RAILEY: All right. That's all  
5 the questions I have.

6  
7 REDIRECT EXAMINATION

8  
9 BY MR. JONES:

10 Q When you say you took a measurement,  
11 how did you take the measurement?

12 A With a tape measure.

13 MR. JONES: No further questions.

14 THE COURT: All right. Thank you,  
15 Mr. Jones.

16 THE COURT: Who's next?

17 MR. JONES: That would be it, Your  
18 Honor.

19 THE COURT: Any rebuttal?

20 MR. RAILEY: No, sir, I don't think  
21 so.

22 THE COURT: Okay. I will hear from  
23 you-all then. I will say this, as I told you earlier, I'm not  
24 going to make a decision today because I want to read the law.  
25 I don't mind you-all arguing or if you want to file a

1 memorandum, fine. I know Mr. Jones has already filed one.  
2 It's always been my practice never to read one memorandum  
3 without the benefit of the other party filing one, too. I  
4 like to read it all at the same time. So you-all can argue  
5 and both file memorandums, or both argue and not file anything  
6 It's up to you-all. But I can tell you, all this has gone on  
7 long enough so as soon as I've heard everything everybody  
8 wants to say, I'm going to make a decision. If you-all want  
9 to argue, that's fine.

10 MR. RAILEY: We will file -- if Your  
11 Honor please, we will file a memorandum, but I think we will  
12 argue this just briefly to --

13 THE COURT: Sure.

14 MR. RAILEY: -- to summarize.

15 THE COURT: Now, one other thing, a  
16 lot of documents were given to me and some of them are in  
17 evidence. But the ones that are not in evidence, number one,  
18 in this hearing anyway, are the photographs from a prior  
19 hearing and a deed from right Rodney Delk, special  
20 commissioner, to Mr. Willis and Hampton Promotions. And the  
21 deed from Rae Parker to R. L. Magette. And the January 1905  
22 deed from Johnson to --

23 MR. COWARDIN: To Nannie Johnson, if  
24 the Court please.

25 THE COURT: I don't know if you-all



1 want all that into evidence or not. You had it up here just  
2 in case it came up. Or if you want it in, we can put it in,  
3 but it hasn't been mentioned other than the fact it was --

4 MR. RAILEY: If Your Honor please,  
5 I'd ask that they come in. They're recorded in the clerk's  
6 office of the court. I think the Court can take them all into  
7 evidence. And I'd ask, since the pictures have been  
8 previously introduced, that they be allowed into evidence.

9 THE COURT: I think they are.

10 MR. RAILEY: Mr. Rawlings testified  
11 on February the 6th that they accurately reflected -- that he  
12 took the pictures and they accurately reflected what was  
13 there. This is a chancery -- a continuing chancery  
14 proceeding, so I don't see any problem with them coming in.

15 THE COURT: Any objection to the  
16 pictures?

17 MR. JONES: I don't have any  
18 objection.

19 THE COURT: All the deeds that I  
20 just mentioned will come in as Plaintiffs' 9, I believe. And  
21 the pictures will be Plaintiffs' 10.

22 (Plaintiffs' Exhibit Numbers 9 and  
23 10 were marked in evidence.)

24 THE COURT: All right. Go ahead,  
25 Mr. Railey.

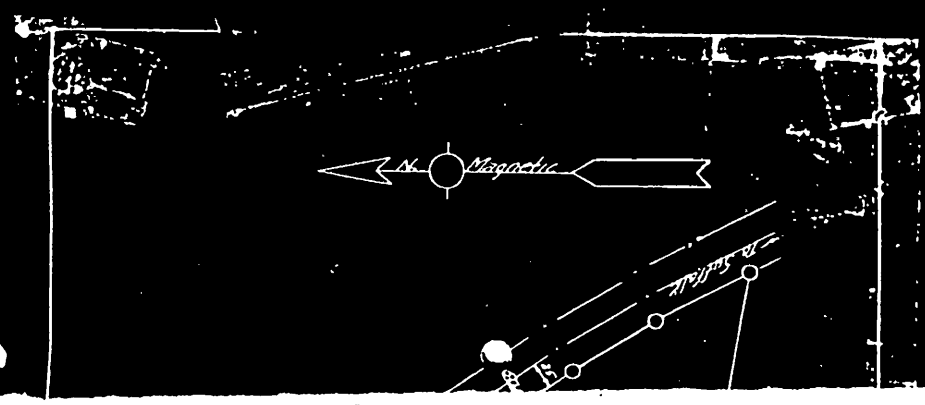
**PLAINTIFF'S EXHIBIT 1**

*Plaintiff's Exhibit No. 1 - Large Foldout Reproduction of Aerial Photograph - is too large to be reasonably reproduced and is available in the Clerk's Office.*

***PLAINTIFF'S EXHIBIT 2***

For Deed, opening this 1921  
see D. B. 1, 106, page 65.  
R. A. L. 12723, C. 12723.

Hampton Roads Waterfront - Corp.  
Richmond Va.  
Tract of 12 Shiver Farm Known as "Mockfield"  
Isle of Wight Co. Virginia  
Surveyed Feb 18; May 23-25-1928 Scale 1" = 500'  
J. H. Smith  
WASHINGTON, D. C.



***PLAINTIFF'S EXHIBIT 3***

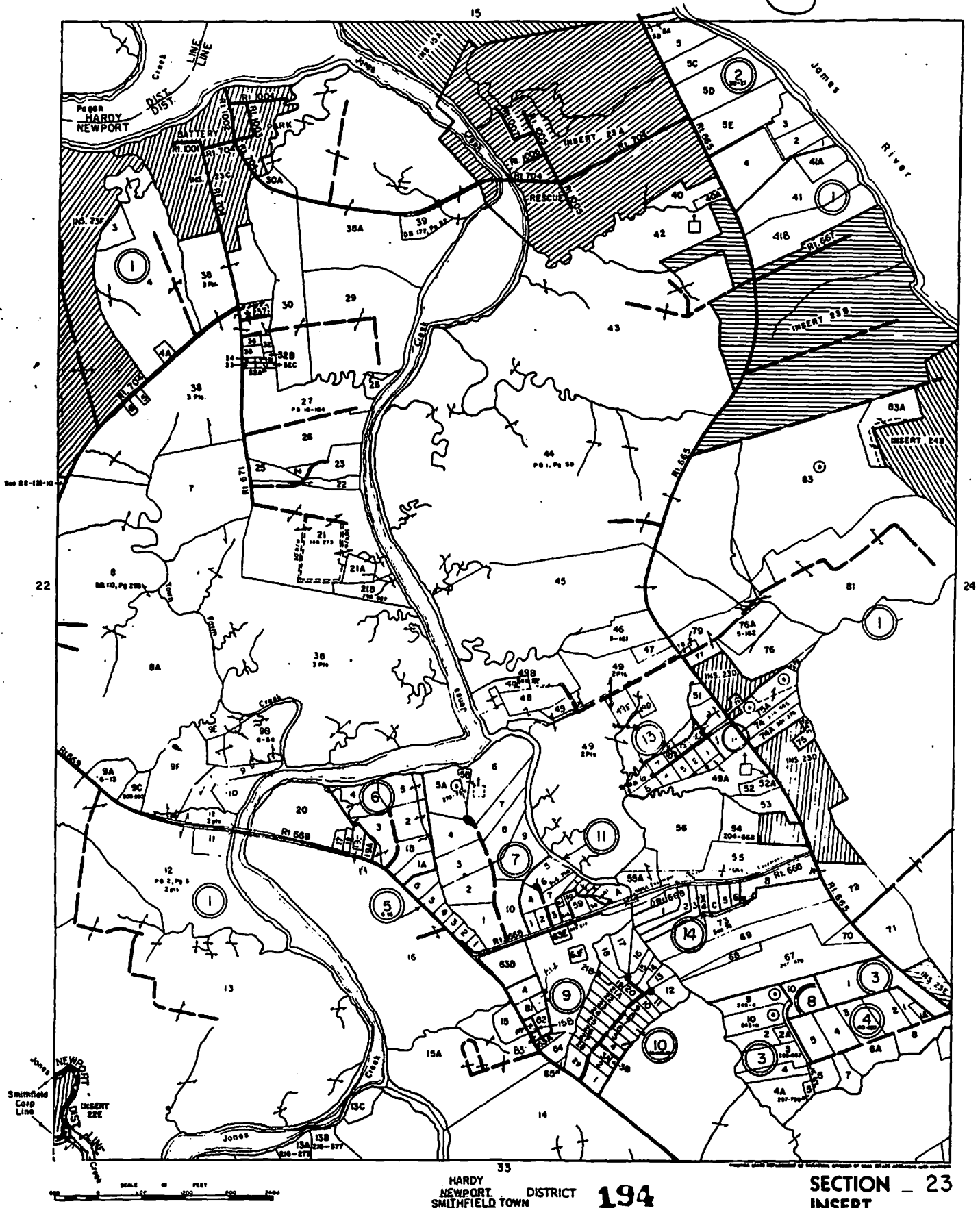
*Plaintiff's Exhibit No. 3 - Large Foldout Reproduction of Aerial Photograph - is too large to be reasonably reproduced and is available in the Clerk's Office.*

***PLAINTIFF'S EXHIBIT 4***



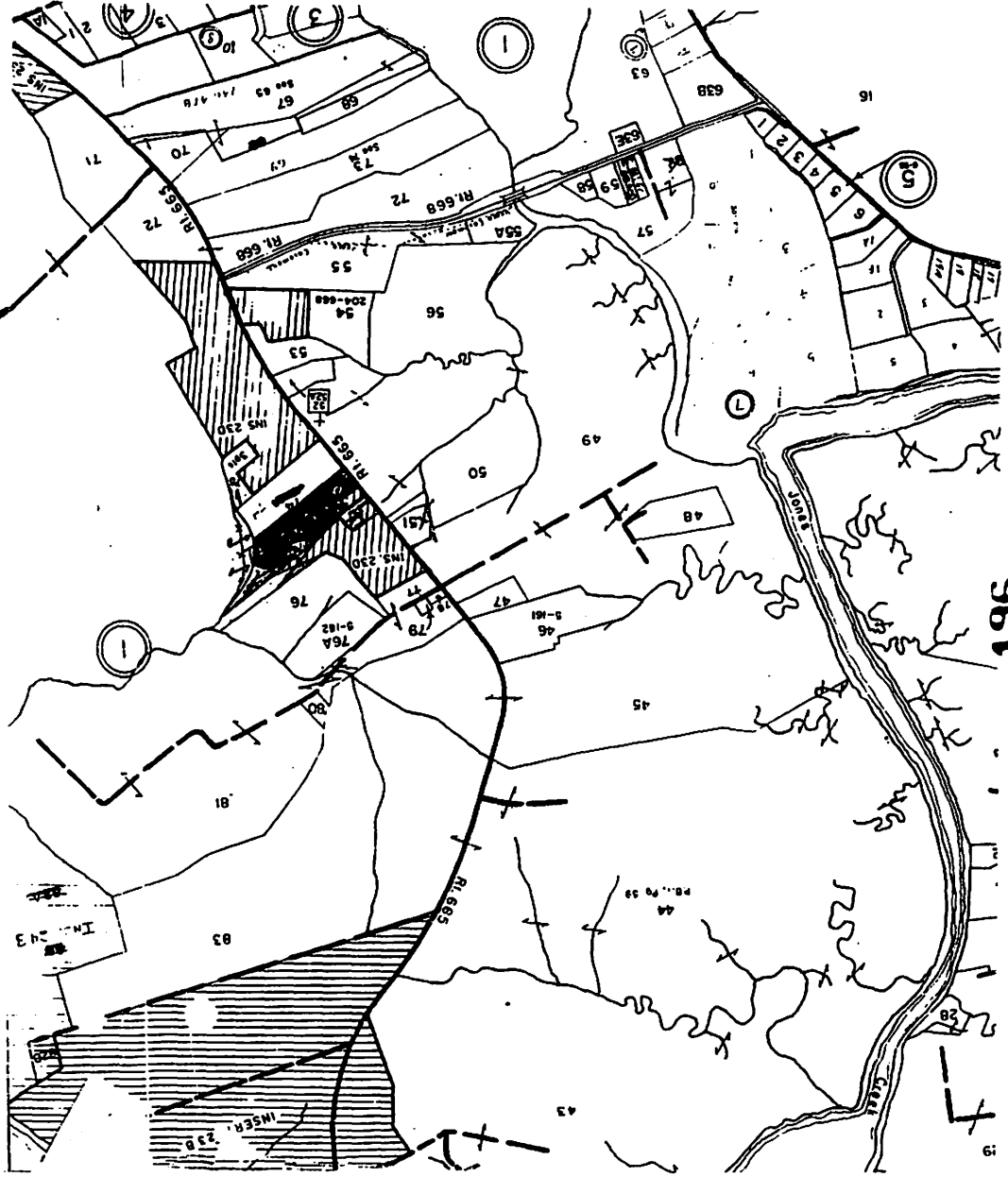
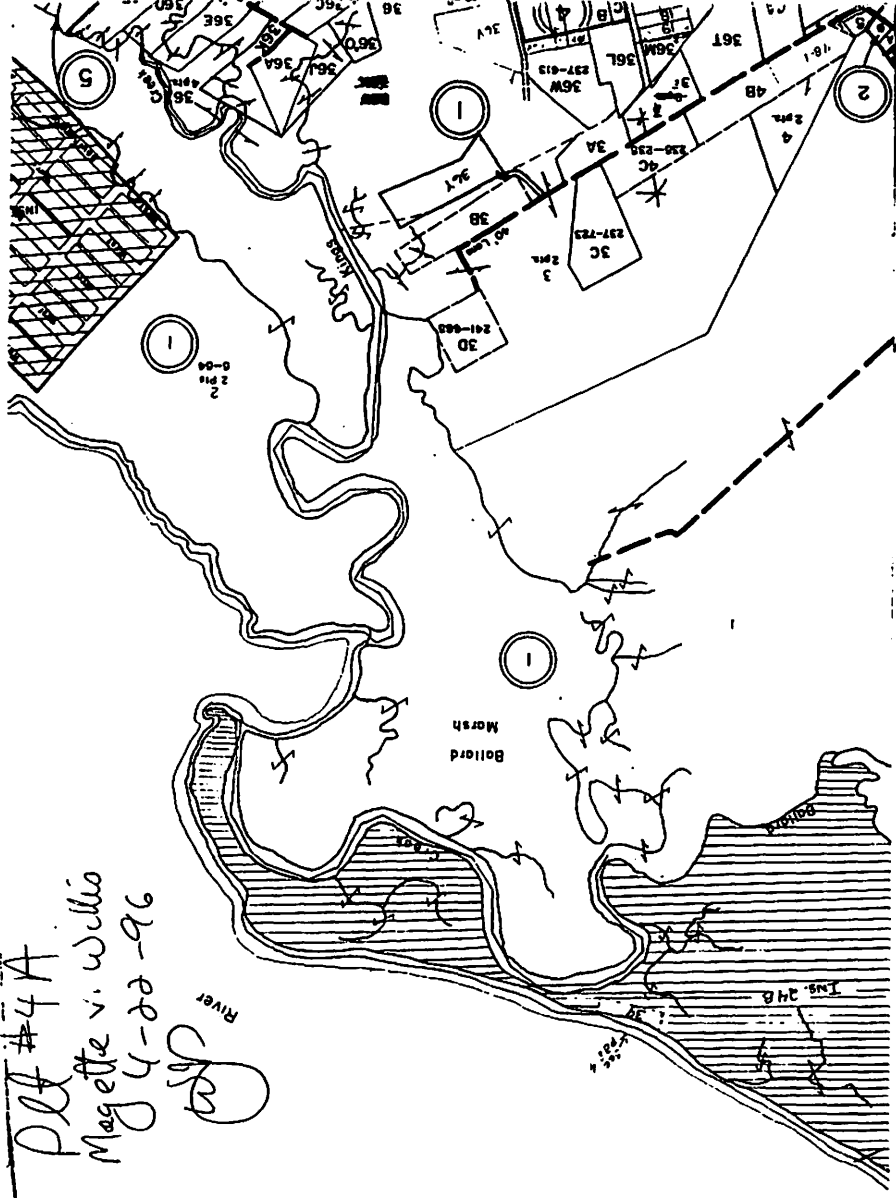
Plt #4  
Magette v. Willis  
4-22-96  
WJO

ISLE OF WIGHT COUNTY



***PLAINTIFF'S EXHIBIT 4A***

Plot #4A  
Magette v. Willis  
4-22-96  
CJG



196

***PLAINTIFF'S EXHIBIT 5***

the receipt whereof is hereby acknowledged, and other good and valuable considerations, the said parties of the first part have granted, bargained, and sold, and, by these presents, do grant, bargain, sell, and convey unto the said party of the second part with General Warranty, the following described real estate, to-wit:

All of that certain tract, piece or parcel of land lying, being and situate in the County of Isle of Wight, Virginia, containing twenty (20) acres, more or less; it being a part of the "Old Rodwell Gray" tract of land, and is bounded as follows: on the north by the lands of B. W. White; on the west by the lands of E. B. Ramsey; on the south by the lands of the Surry Lumber Company and R. M. Jones; and, on the east by the County road leading from Mill Swamp Church to Raynor; it being the same land conveyed to the said Eva S. Lyttle by Deed from C. H. Nurney et ux. bearing date the 14th day of January, 1930, and recorded in the Clerk's Office of the County aforesaid, in Deed Book 103, at page 112.

The said parties of the first part covenant that they have the right to convey the said land; that the said grantee shall have quiet and peaceful possession of the same; that the same is free and clear of all encumbrances; and, that they, the said parties of the first part will execute such further and other assurances of the said land as may be requisite to make the title thereto sure and complete forever.

Witness the following signatures and seals:

Eva S. Lyttle (SEAL)

George W. Lyttle (SEAL)

State of Virginia

County of Isle of Wight, to-wit:

I, A. E. S. Stephens, a commissioner in chancery for the Circuit Court of the County of Isle of Wight, State of Virginia, do, hereby, certify that Eva S. Lyttle and George W. Lyttle, whose names are signed to the writing hereto annexed, bearing date the 9th day of December, 1938, have this day acknowledged the same before me in my said County.

Given under my hand this the 9th day of December, 1938.

A. E. S. Stephens. Commissioner in  
Chancery

VIRGINIA: Clerks office of the Circuit Court of the County of Isle of Wight, December 10, 1938, at 12:30 o'clock P.M. this deed was received and with the certificate annexed admitted to record.

\$1.50 requisite amount of revenue stamps affixed and cancelled.

Teste R. A. Thomas Clerk

State Tax \$8.40

Hannie E. Simmons

To: #400

M. H. Vest

Learned, Valued and Ready to  
Pay. Attest. this 10th day of  
December 1938.  
Teste R. A. Thomas Clerk.

THIS DEED, made this 7th day of December, 1938, between Hannie E. Simmons, of the County of Isle of Wight, State of Virginia, party of the first part; and M. H. Vest, of the County of Prince George, State aforesaid, party of the second part.

WITNESSETH: that for and in consideration of the sum of Seven Thousand (\$7,000.00)

Dollars, the receipt whereof is hereby acknowledged, the said party of the first part does hereby grant, bargain, sell and convey, with General Warranty, unto the said party of the second, the following property, to-wit:

All of the timber and trees of every kind and nature, except cedar and walnut, measuring ten (10) inches and upward across the stump, outside measurement, and twelve (12) inches from the general level of the ground at the time of cutting, now standing and growing, or which may grow to that size, upon all that certain tract, piece or parcel of land situate, lying and being, in Newport Magisterial District of the County of Isle of Wight, State of Virginia, containing five hundred ninety and fifty-five hundredths (590.55) acres, known as "Macclesfield" and being bounded and described as follows: by the lands of Annie Hawks, by the lands of Levy Vellines and brother; the lands belonging to the R. B. Cox Estate; and King's Creek. A more particular description of the above tract of land being shown by a plat of the survey of same as made by John E. Buck, Surveyor, and recorded in the Clerk's Office of the County of Isle of Wight in Plat Book No. 1, at page 63, to which reference is hereby made.

It is covenanted and agreed between the parties hereto, that the said party of the second part, his heirs or assigns, shall have the full term of three (3) years from the date of this Deed, within which to cut and remove the said timber from the said land, with the right of an extension of three (3) additional years within which to cut and remove said timber, upon the payment to the said party of the first part, of an amount equal to three (3%) per centum of the said purchase price for so much of said extension period as may be used in the cutting and removing of said timber.

For the consideration aforesaid, it is covenanted and agreed between the parties hereto that the party of the second part, his heirs or assigns, together with his, or their servants, workmen, team, wagons and other vehicles, shall have the right of ingress and egress in, over, through and upon the wooded land for the purpose of cutting and removing said timber and trees from said land, as well as for the purpose of moving all manufactured lumber, and other wood products; that the said party of the second part, his heirs or assigns, shall have the right to locate and relocate his, or their, mill and lumber yard in such place, or places, as he, or they, may deem necessary for the purpose, upon the wooded land for the purpose of cutting and manufacturing said timber into lumber and other wood products, and shall have the right, after the expiration of this deed, to remove his, or their property, such as mill, team, houses and other personal property from said land.

It is covenanted and agreed between the parties hereto that the said party of the second part, his heirs or assigns shall have the right, if deemed necessary, to use the open fields, driving next to the fences, for the purpose of transporting the said timber and trees, manufactured lumber and other wood products, from said land, it being distinctly understood that no damage is to be done to the growing crops.

It is covenanted and agreed between the parties hereto, that, should the said party of the second part, his heirs or assigns, use the lane or driveway leading from the highway to the residence on the above land in transporting said timber and trees,

manufactured lumber and other wood products, the same shall be kept and left in as good condition as the same was at the time of the beginning of its use for the purpose aforesaid.

It is covenanted and agreed between the parties hereto, that the said party of the second part, his heirs or assigns, shall pay to the said party of the first part, for all damage which may be done growing crops in the cutting and removing of said timber and trees, and should any damage be done to fences, the same shall be repaired and left in as good condition as found.

The said party of the first part covenants that she has the right to convey the said timber and trees hereby conveyed; that the same is free and clear of all encumbrances; that the said party of the second part shall have quiet and peaceful possession of the said timber and trees during the term of this Deed; and, that she the said party of the first part, will execute such further and other assurances of the said timber and trees hereby conveyed, as may be requisite to make the title thereto sure and complete for the period above named.

Witness the following signature and seal:

Nannie E. Simmons

(SEAL)

State of Virginia

County of Isle of Wight, to-wit:

I, Sally W. Wright, a Notary Public in and for the County aforesaid, in the State of Virginia, whose commission as such expires on the 19 day of February, 1941, do hereby certify that Nannie E. Simmons whose name is signed to the foregoing Timber Deed, bearing date the 7th day of December, 1938, has acknowledged the same before me in my county aforesaid.

Given under my hand this 7 day of December, 1938.

Sally W. Wright. Notary Public

VIRGINIA: Clerks office of the Circuit Court of the County of Isle of Wight, December 12, 1938, at 12:45 o'clock P.M. this deed was received and with the certificate annexed admitted to record.

\$7 requisite amount of revenue stamps affixed and cancelled.

Teste R. G. Tamm Clerk

State Tax \$ .24

S. T. Holland et ux

To: #401

Pressley Carr.

Examined, Valid and Recorded  
Pressley Carr, this 11-30 day of  
Dec 1938.  
Trite, R. G. Tamm, Clerk.

THIS DEED, made this 13th day of December, in the year one thousand nine hundred thirty-eight, between S. T. Holland and Gladys J. Holland, his wife, of Windsor, Virginia, parties of the first part, and Pressley Carr, of Isle of Wight County, Virginia, party of the second part.

WITNESSETH: that in consideration of the sum of One Hundred Seventy Five Dollars, cash in hand paid, receipt of which is hereby acknowledged, the said parties of the first part do grant unto the said party of the second part, with General Warranty, all the right, title and interest conveyed to the said S. T. Holland by deed dated April 24, 1927, from John T. Carr, Jr. and Dorothy B. Carr and recorded in the Clerk's

said parties of the first part further covenant that they are seized in fee of the property hereby conveyed, that they have the right to convey the same to the Trustee herein for the purposes herein contained, that they have done no act to encumber the title thereto and that they will execute such further assurances of title thereto as may be requisite.

In event of the resignation, or death, incapacity, disability, removal or absence from the State of Virginia of the Trustee named herein, the said parties of the first part do, hereby, grant unto the beneficiary hereunder, its successors or assigns, the right and power to appoint a substitute Trustee or Trustees herein in accordance with the provisions of Section 26-49 of the Code of Virginia of 1950 and Acts amendatory thereof.

In event no default is made in the payment of said debt, interest, insurance premiums, duties, obligations and covenants imposed upon the parties of the first part hereunder, including all expenses preparatory to sale, then upon the request of the said parties of the first part, a good and sufficient legal release shall be made and executed to them at their own proper cost and charge.

Witness the following signatures and seals:

Alfred E. Crocker (SEAL)

Blanche J. Crocker (SEAL)

STATE OF VIRGINIA,

County of Isle of Wight, to-wit:

I, A. D. Johnson, a Commissioner in Chancery for the Circuit Court of the County of Isle of Wight, in the State of Virginia, do, hereby certify that Alfred E. Crocker and Blanche J. Crocker, whose names are signed to the foregoing writing, bearing date the 26th day of April, 1951, have this day acknowledged the same before me in my said County.

Given under my hand this 26th day of April, 1951.

A. D. Johnson

Commissioner in Chancery

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight April 28th., 1951, at 10:30 o'clock a.m. this deed was received and with the certificate annexed, admitted to record.

Teste: R. C. Edmund Clerk

State Tax \$60.00

Nannie E. Simmons

TO: # 236

Algie J. Murphy, et ux.

Verified and Subscribed  
Henry F. Whaley Jr.  
 this 27th day of May 1951  
 Teste: R. C. Edmund Clerk

THIS DEED, made this 30th day of April, 1951, by and between Nannie E. Simmons, (widow, who is sometimes known as Nannie E. "Johnson" and as Nannie E. "Spivey"), of the County of Isle of Wight, State of Virginia, party of the first part; and Algie J. Murphy and Beulah M. Murphy, husband and wife, of said County and State, parties of the second part:

# W I T N E S S E T H

That, for and in consideration of the sum of Ten (\$10.00) Dollars, and other valuable consideration, the receipt whereof is hereby acknowledged, the said party of the first part does grant, bargain, sell and convey to the said Algie J. Murphy



and Beulah M. Murphy as tenants by the entirety, in Fee Simple, with the right of survivorship as at common law, with GENERAL WARRANTY, but subject to the reservations hereinafter mentioned, the following Real Property, to-wit:

FIRST: All that certain tract, piece or parcel of land which was conveyed from Josiah W. Jordan and wife to the said Nannie E. Simmons under the name of Nannie E. "Johnson" by deed dated January 1, 1903, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County in Deed Book 71, at page 342, which said property consists of two contiguous tracts described in said Deed as follows, to-wit:

"All of a certain piece or parcel of land situated and being in the County of Isle of Wight in Newport District in the State of Virginia, containing three hundred and sixty-six (366) acres more or less, and bounded as follows; on the north by balance of Marsh Creek, on the West by the land of W. T. Martin, Mrs. Sadie Haynes and als. on the south by the land of B. P. Chapman and the estate of H. R. Parker, deceased, known as Plainfield and on the East by the land of William A. Johnson.

"2nd A piece or lot of land containing six (6) acres more or less and bounded as follows: on the West, South and North, by the land of William A. Johnson, and on the East by Kings Creek and the marsh of said W. A. Johnson, it being a narrow strip of high or arable land running parallel with Kings Creek and bordering thereon. The above mentioned land is a part of the Macklesfield tract, and was conveyed to the said Josiah W. Jordan by H. G. Parker and als by their Deed dated March 25, 1901, and admitted to record in the Clerk's Office of the County Court of Isle of Wight on the 6th day of May, 1901, in Deed Book 66, page 393."

SECOND: All that certain tract, piece or parcel, of land conveyed to the said Nannie E. Simmons under the name of Nannie E. "Johnson" by Deed from William A. Johnson and wife, dated January 19, 1905, and recorded in said Clerk's Office in Deed Book 71, at page 346, and by Deed from J. W. Jordan et al dated December, 1913, and recorded in said Clerk's Office in Deed Book 83, page 312, which said property consists of two contiguous tracts described in said Deeds as follows, to-wit:

"All of a certain piece or parcel of land situated and being in the County of Isle of Wight, in Newport District, State of Virginia, containing one hundred and fifty (150) acres, more or less, and described as follows (viz:) commencing at the mouth of shipyard landing creek, following the meanderings of said creek or cove to a causeway or road, across marsh, thence in a south east direction across said marsh to a gut or cove, thence along said gut or cove to King's Creek, thence down King's Creek to a stub on bank of said creek at the S. W. Edge of a piece of high or arable land, thence following along the edge of said high land, around to old landing at house on said creek thence down said Kings Creek to Balance of Marsh Creek, thence up said Balance of Marsh Creek to point of beginning.

"2nd a piece or lot of land, containing two (2) acres, more or less, and described as follows commencing at the Marsh gate running thence in a Southerly direction to a maple tree in swamp thence down said swamp to edge of marsh, thence in a northerly direction along edge of marsh to the causeway or road mentioned above, thence along said road or causeway in a westerly direction to a point of beginning."

All of the tracts of Real Property which are described hereinabove and conveyed by this Deed compose what is known as the "Macklesfield Farm" which was conveyed from Watson P. Jordan and wife to George W. Parker by Deed dated February 26, 1899, and recorded in said Clerk's Office in Deed Book 40, at page 128, and which by his

Will and by subsequent Deeds became the property of the said Nannie E. Simmons, said property being located on State Highway No. 665 leading from Carrollton to Rescue, in Newport Magisterial District, Isle of Wight County, Virginia, and contains a total of Five Hundred Ninety and Fifty-five Hundredths (590.55) acres, more or less, according to a plat of survey made by John E. Buck, Surveyor, on February 18th, and May 23-25, 1928, bearing the legend "Spivey Farm Known as 'Mackelfield,'" and recorded in said Clerk's Office in Plat Book No. 1, at page 63.

The said Nannie E. Simmons doth hereby reserve unto herself for and during her life, for her exclusive use and enjoyment, that part of the dwelling house in which she now resides that is located on the right side of the hall as one enters the front door, that is to say, two rooms and a kitchen on the first floor and two rooms on the second floor. The said Nannie E. Simmons doth also reserve unto herself for and during her life, for her use jointly with the parties of the second part, the halls, the bathroom the basement and the porches, as well as the yard surrounding the house, and the lane leading to the public road.

The said party of the first part covenants that she is seized in Fee and has the right to convey the said Real Property hereby conveyed; that the same is free and clear of all encumbrances with the exception of the reservations hereinbefore mentioned; that the said parties of the second part shall have quiet and peaceful possession of said land, subject to said reservations; and, that, she, the said party of the first part, will execute such other and further assurances of the said land hereby conveyed as may be requisite.

WITNESS the following signature and seal:

Nannie E. Simmons (SEAL)

State of Virginia,

County of Isle of Wight, to-wit:

I, Mary V. Batten, a Notary Public in and for the County of Isle of Wight in the State of Virginia, whose commission as such expires the 26th day of January, 1954, do certify that Nannie E. Simmons, whose name is signed to the foregoing writing, bearing date the 30th day of April, 1951, has acknowledged the same before me in my County aforesaid.

Given under my hand this 30th day of April, 1951.

Mary V. Batten

Notary Public

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight April 30, 1951, at 3:15 o'clock p.m. this deed was received and with the certificate annexed, admitted to record.

Teste: R. G. Edwards, Clerk.

\$44.00 requisite amount of revenue stamps affixed and cancelled.

State Tax \$56.25

Algie J. Murphy, et ux.

TO: # 237

George F. Whitley, Jr., Trustee

THIS DEED OF TRUST, made this 30th day of April, 1951, between Algie J. Murphy and Beulah M. Murphy, husband and wife, of the County of Isle of Wight, State of Virginia, parties of the first part; and George F. Whitley, Jr., Trustee, of the said County and State, party of the second part:

Verified and Ad  
Algie J. Whitley  
this 30 day of April 1951  
Teste: R. G. Edwards

*Beulah M. Murphy  
says for release*

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight, October 13, 1956 at 11:00 o'clock A.M. this deed was received and with certificate annexed, admitted to record.

Teste: James E. Holland, Clerk.

\*\*\*\*\*

Witnessed and Subscribed  
Algie J. Murphy  
 this 3 day of Oct 1956  
 Teste: James E. Holland  
 Clerk

Algie J. Murphy, et ux.  
 TO: # 645  
 Rea Parker, Jr.

State Tax \$88.50

THIS DEED, made this 15th day of October, 1956, by and between Algie J. Murphy and Beulah E. Murphy, his wife, and Beulah E. Murphy and Algie J. Murphy, her husband, of the County of Isle of Wight, State of Virginia, parties of the first part; and, Rea Parker, Jr., of the Town of Smithfield, County and State aforesaid, party of the second part:

#### W I T N E S S E T H:

That, for and in consideration of the sum of Ten (\$10.00) Dollars, the assumption of a certain Deed of Trust hereinbelow mentioned, and other valuable consideration, receipt of all of which is hereby acknowledged, the said parties of the first do, each in his or her own rights and as the spouse of the other, grant, bargain, sell and convey, with GENERAL WARRANTY, unto the said party of the second part the following described Real Property, to-wit:

**FIRST:** All that certain tract, piece or parcel, of land which was conveyed from Josiah W. Jordan and wife to "Nannie E. Simmons under the name of "Nannie E. "Johnson" by Deed dated January 1, 1909, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County in Deed Book 71, at Page 342, which said property consists of two contiguous tracts described in said Deed as follows, to-wit:

All of a certain piece or parcel of land situated and being in the County of Isle of Wight in Newport District in the State of Virginia, containing three hundred and sixty-six (366) acres more or less, and bounded as follows: on the north by balance of Marsh Creek, on the West by the land of W. T. Martin, Mrs. Sadie Haynes and also on the south by the land of B. P. Chapman and the estate of H. R. Parker, deceased, known as Plainfield and on the East by the land of William A. Johnson.

"2nd A piece or lot of land containing six (6) acres more or less and bounded as follows: on the West, South and North, by the land of William A. Johnson, and on the East by Kings Creek and the marsh of said W. A. Johnson, it being a narrow strip of high or arable land running parallel with Kings Creek and bordering thereon. The above mentioned land is a part of the Backfield tract, and was conveyed to the said Josiah W. Jordan by H. O. Parker and also by their Deed dated March 25, 1901, and admitted to record in the Clerk's Office of the County Court of Isle of Wight on the 6th day of May, 1901, in Deed Book 66, Page 393."

SECOND: all that certain tract, piece or parcel, of land conveyed to "Nannie E. Simmons under the name of Nannie E. "Johnson" by Deed from William A. Johnson and wife, dated January 19, 1905, and recorded in said Clerk's Office in Deed Book 71, at page 346, and by Deed from J. W. Jordan et al dated December 17, 1913, and recorded in said Clerk's Office in Deed Book 83, page 312, which said property consists of two contiguous tracts described in said Deeds as follows, to-wit:

"All of a certain piece or parcel of land situated and being in the County of Isle of Wight, in Newport District, State of Virginia, containing one hundred and fifty (150) acres, more or less, and described as follows (viz:) commencing at the south of shipyard landing creek, following the meanderings of said creek or cove to a causeway or road, across marsh, thence in a south east direction across said marsh to a gut or cove, thence along said gut or cove to King's Creek, thence down King's Creek to a stub on bank of said creek at the S. W. Edge of a piece of high or arable land, thence following along the edge of said high land, around to old landing at house on said creek thence down said Kings Creek to Balance of Marsh Creek, thence up said Balance of Marsh Creek to the point of beginning.

"2nd a piece or lot of land, containing two (2) acres, more or less, and described as follows commencing at the Marsh gate running thence in a South rly direction to a maple tree in swamp thence down said swamp to edge of marsh, thence in a northerly direction along edge of marsh to the causeway or road mentioned above, thence along said road or causeway in a westerly direction to the point of beginning."

All of the tracts of Real Property which are described hereinabove and conveyed by this Deed compose what is known as the "Backfield Farm" which is located on State Highway No. 665 leading from Carrollton to Kenesha, in Newport District, Isle of Wight County, Virginia, and contains a total of Five Hundred Ninety and Fifty-five Hundredths (599.55) acres, more or less, according to a plat of survey made by John E. Buck, Surveyor, on February 18th, and May 23-25, 1928, bearing the legend "Survey Farm Known as 'Backfield'" and recorded in said Clerk's Office in Plat Book No. 1, at Page 63. This being the same property conveyed from Nannie E. Simmons to the said parties of

the first part by Deed dated April 30, 1951, and duly recorded in the Clerk's Office of the Circuit Court of Isle of Wight County in Deed Book No. 136, at Page 81.

The above described property is conveyed subject to a Deed of Trust against the same made by and between Algie J. Murphy and Paulah E. Murphy, of the first part, and George F. Whitely, Jr., Trustee, of the second part, dated April 30, 1951, and recorded in said Clerk's Office in Deed Book 136, at Page 83, for the sum of Thirty-seven Thousand, Five Hundred (\$37,500.00) Dollars, which said sum, with interest from the 30th day of April, 1956, remains unpaid, and the aforesaid Grantee hereby agrees to assume and pay the same as part of the consideration of this conveyance.



The said parties of the first part covenant that they are a title in fee of the property hereby conveyed, and that they have the right to convey the same to the Grantee herein; that they have done so not to encumber the same with the exception of the aforementioned Deed of Trust; that the said party of the second part shall have quiet and peaceful possession thereof, free from all encumbrances, subject to said Deed of Trust; and that they, the said parties of the first part, will execute such further assurance of title thereto as may be requisite and consistent with the provisions hereof.



WITNESS, the following signatures and seals:



*Algie J. Murphy* (SEAL)  
*Paulah E. Murphy* (SEAL)  
*Rea Parker, Jr.* (SEAL)

STATE OF VIRGINIA,

CITY OF ISLE OF WIGHT, Town:

I, Mary V. Patton, a Notary Public in and for the County of Isle of Wight, in the State of Virginia, whose commission as such expires the 29th day of January, 1958, certify that Algie J. Murphy and Paulah E. Murphy, and Rea Parker, Jr., whose names are signed to the foregoing writing bearing date the 15th day of October, 1956, have acknowledged the same before me, in my County aforesaid.

Given under my hand this 15<sup>th</sup> day of October, 1956.

*Mary V. Patton*  
 Notary Public

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight, October 15, 1956 at 3:45 o'clock P.M. this deed was received and with certificate annexed, admitted to record.

Teste: *Arch E. Williams*, Clerk.

133/213

Voice Form 227-A  
(Virginia)  
J. P. Bell Co.

State Tax \$0.15

Verified and Mailed  
V.E.P. Co., Richmond, Va.  
This 17 day of May 1950  
Test: R. A. Edwards

293

#172

KNOW ALL MEN BY THESE PRESENTS that Nannie E. Simmons, widow

Grantor, in consideration of One Dollar (\$1.00), receipt whereof is acknowledged, grants to Virginia Electric and Power Company, a Virginia corporation, its successors and assigns, hereinafter called Company, the right to construct, operate and maintain a pole line, at a location to be designated by Company, with all desirable appurtenances for the transmission and distribution of electricity and sound, including the wires and attachments of any other company, over, upon, and across the property of Grantor situated in said county and state, described as follows:

A tract of land containing 700 acres, more or less, located on the East side of State Highway Route No. 665 about 390 miles North of Carrollton in Newport Magisterial District Of Isle of Wight County, Virginia, and adjoining the lands now or formerly owned by O. R. Vellines and Sam Wilson.

It is agreed that said pole line and appurtenances erected hereunder shall be and remain the property of Company and that Company shall at all times have full and free ingress to and egress from and over the said property in order to construct and efficiently maintain and operate said line and appurtenances, with the right to make such changes, additions and alterations therein as Company may from time to time deem advisable; with the further right to trim, cut and keep clear all trees, limbs and undergrowth and other obstructions along said line or adjacent thereto that may in any way endanger or interfere with the proper and efficient operation of the same.

WITNESS the following signature and seal this 31st day of March, 1949.

_____ (Seal)	Nannie E. Simmons _____ (Seal)
_____ (Seal)	_____ (Seal)
_____ (Seal)	_____ (Seal)
_____ (Seal)	_____ (Seal)

STATE OF VIRGINIA }  
County of Isle of Wight } To-wit:

I, W. B. Vaughan, Jr.,  
do hereby certify that Nannie E. Simmons, widow

, a Notary Public in and for the State of Virginia at Large

whose name is signed to the foregoing writing bearing date on the 31st day of March 1949, has acknowledged the same before me in the County and State aforesaid.  
Given under my hand this 31st day of March, 1949.  
My commission expires Jan 8, 1950

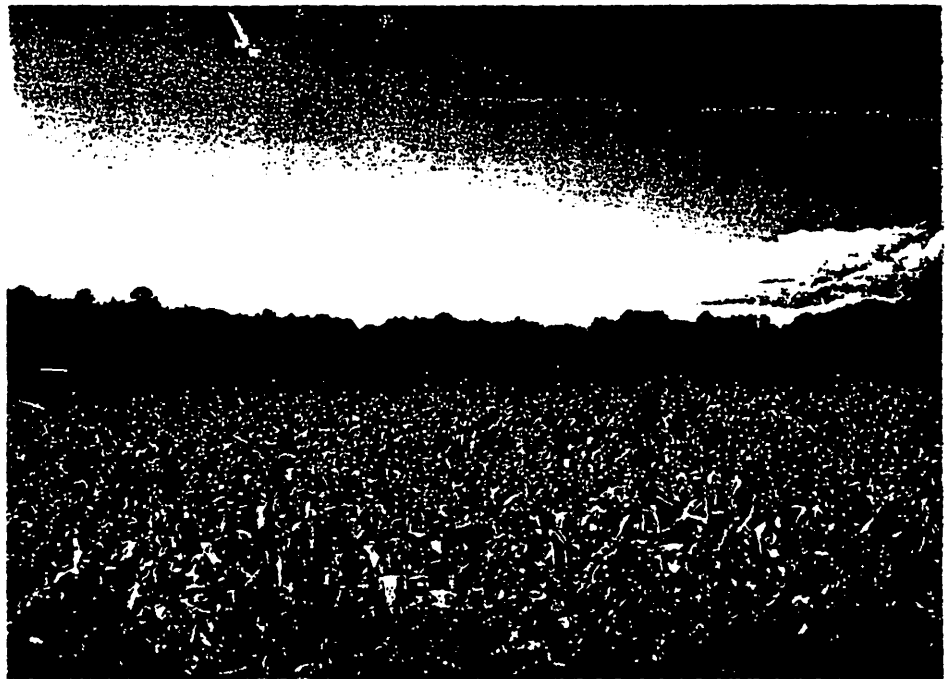
W. B. Vaughan, Jr.  
Notary Public.

I qualified as Notary Public for the State of Virginia at large in the Clerk's Office of the Circuit Court of the City of Suffolk, Va.

VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight, March 27th., 1950, at 10:30 o'clock A. M. this easement was received and with the certificate annexed, admitted to record.

Test: R. A. Edwards Clerk

***PLAINTIFF'S EXHIBIT 6***



Plot 6  
Magette v. Willis  
4-22-96  
WLD



***PLAINTIFF'S EXHIBIT 7***



Plt 7  
Magette v. Willes  
4-22-96  
WLS

***PLAINTIFF'S EXHIBIT 8***

GENERAL VIEWS OF MACCLESFIELD FARM

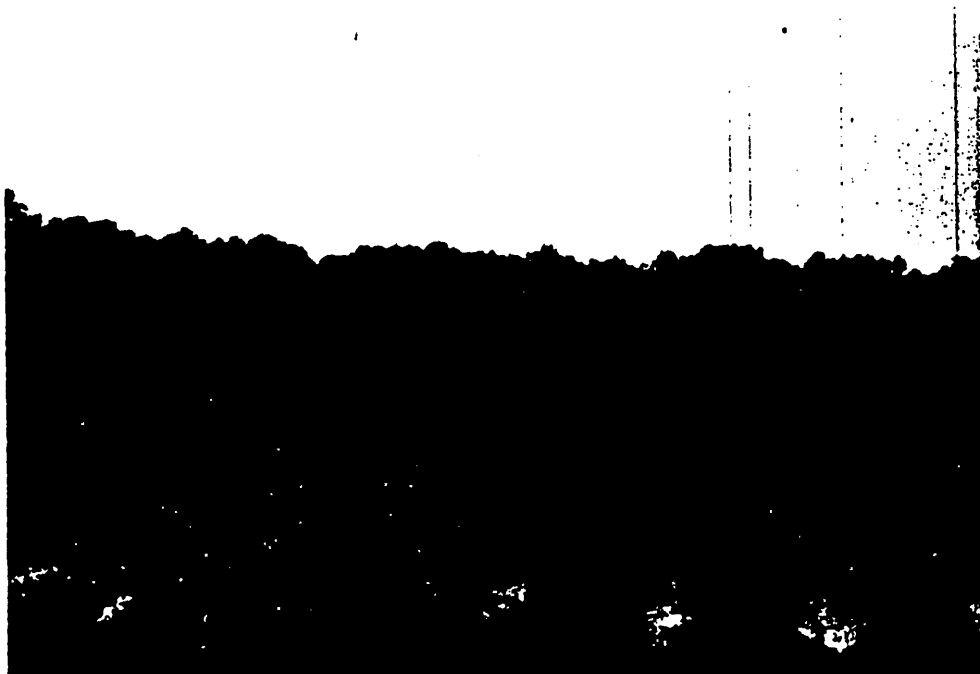
Plt 8  
Magette v.  
Willis

4-22-96

WLD



Lane Leading into Farm



View Looking Westerly

**PLAINTIFF'S EXHIBIT 9**

THIS DEED, made this 6<sup>th</sup> day of October, 1995, by and between REA B. PARKER, JR., unmarried, Grantor, party of the first part, and R. L. MAGETTE, Trustee of the PR LAND TRUST, Grantee, party of the second part.

WITNESSETH: That for the sum of TEN DOLLARS (\$10.00), cash in hand paid and other good and valuable consideration, the receipt whereof is hereby acknowledged at and before the signing, sealing and delivery of this deed, the said party of the first part has bargained and sold and by these presents does hereby grant and convey with General Warranty and English Covenants of Title, unto the said party of the second part, the following described property, to-wit:

SEE ATTACHED LEGAL DESCRIPTION

Every deed, mortgage, lease or other instrument executed by the Trustee in relation to the property shall be conclusive evidence in favor of every person claiming any right, title or interest thereunto (1) that at the time of delivery thereof the Trust created hereunder was in full force and effect; (2) that such instrument was executed in accordance with the terms and conditions of this Agreement and all amendments hereof, if any, and is binding upon the Beneficiary hereunder; (3) that the Trustee was duly authorized and empowered to execute and deliver

THE GRANTOR AND THE GRANTEE CLAIM EXEMPTION UNDER SECTION 58.1-811 A12 OF THE CODE OF VIRGINIA, 1950 AS AMENDED, OF THE TAXES IMPOSED BY SECTION 58.1-801 OF SAID CODE.

OVERMAN, COWARDIN &  
MARTIN, P.L.C.  
ATTORNEYS AT LAW  
739 HUMBLE BIRDALE BOULEVARD  
SUITE 307  
NEWPORT NEWS, VIRGINIA 23606

Plt #9  
Magette v. Willis  
4-22-96  
WJF

every such instrument; (4) if a conveyance has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in trust.

WITNESS the following signatures and seals:

Rea B. Parker, Jr. (SEAL)  
REA B. PARKER, JR.

STATE OF VIRGINIA  
CITY OF RICHMOND, to-wit:

The foregoing deed was acknowledged before me by REA B. PARKER, JR. this 7 day of OCTOBER, 1995.

Vincent L. Tolson, Jr.  
NOTARY PUBLIC

My commission expires: May 31, 1996  
VINCENT L. TOLSON, JR.

## SCHEDULE A

All those certain lots, pieces or parcels of land, situate, lying and being in Newport Magisterial District, Isle of Wight County, Virginia, known and designated as LOT ONE (1), LOT TWO (2), LOT THREE (3), LOT FOUR (4), LOT FIVE (5), LOT SIX (6), LOT SEVEN (7), LOT EIGHT (8), LOT NINE (9), LOT TEN (10), LOT ELEVEN (11), LOT TWELVE (12), LOT THIRTEEN (13), LOT FOURTEEN (14), LOT FIFTEEN (15), LOT SIXTEEN (16), LOT SEVENTEEN (17), LOT EIGHTEEN (18), and LOT NINETEEN (19), inclusive as shown on that certain Plat entitled "PLAT SHOWING SUBDIVISION OF MACKELSFIELD, NEWPORT MAGISTERIAL DISTRICT, ISLE OF WIGHT COUNTY, VIRGINIA" dated July 16, 1995 and duly of record in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Cabinet 2 Slide 24, 25, pages 14-18 and through 1-4 *Respectively.*

Together with right in common with the Grantor to the use of that certain easement for ingress and egress to Route 665, shown on said plat.

Together with all and singular the buildings and improvements thereon, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

It being a part of the same property conveyed to the Grantor by Deed of Algie J. Murphy and Beulah K. Murphy, Husband and Wife dated October 15, 1956 and recorded in the Clerk's Office aforesaid in Deed Book 149, at page 551, et seq.

Verified and mailed to  
*Cowardin, Querman*  
*& Martin*  
 JAS - OCT 19 1995

VIRGINIA  
 IN THE CLERK'S OFFICE OF  
 ISLE OF WIGHT COUNTY  
 CIRCUIT COURT ON THE 18TH DAY OF  
 OCTOBER, 1995 AT 09:13AM  
 INSTRUMENT #950003941 WAS RECEIVED AND  
 UPON CERTIFICATION OF ACKNOWLEDGEMENT  
 THEREBY ANNEXED, ADMITTED TO RECORD.  
 THE STATE TAX IMPOSED BY SEC. 58.1-802  
 OF THE VIRGINIA CODE, HAS BEEN PAID IN  
 THE AMOUNT OF: \$1.00  
 STATE: \$1.00 LOCAL: \$0.00  
 TESTED: WILLIAM F. LAINE JR.  
 (CLERK OF CIRCUIT COURT)



THIS DEED, made and entered into this 25th day of March, 1991, by and between RODHAM T. DELK, JR., Special Commissioner, of the first part, Grantor; and C. LEONARD WILLIS, TRUSTEE OF C. LEONARD WILLIS, INC. PENSION PLAN and HAMPTON PROMOTIONS, INC., a Virginia corporation, of the second part, Grantee; and C. LEONARD WILLIS, of the third part, also a Grantor:

WITNESSETH, that whereas, by a decree entered on September 30, 1987, in the Circuit Court for Isle of Wight County, Virginia, in the chancery cause therein pending under the name and style of Samuel E. Hawks, et al. v. Christine E. Hawks, et al., Chancery No. 3443, Rodham T. Delk, Jr. was appointed as Special Commissioner and authorized to sell the real estate hereinafter described in the manner and upon the terms and conditions set forth in the decree; and,

WHEREAS, after having given bond as required by the decree, the Special Commissioner, pursuant to the decree, proceeded to advertise and conduct the sale strictly as provided in the decree; and the Special Commissioner, pursuant to the decree, exposed the property to sale by public auction on May 6, 1988, at which auction C. Leonard Willis was the high bidder for the sum of \$330,000.00; and, C. Leonard Willis has requested that a deed for the real estate be delivered to C. Leonard Willis, Trustee of C. Leonard Willis, Inc. Pension Plan and Hampton Promotions, Inc. as evidenced by his joinder in this instrument; and,

NOW, THEREFORE, THIS DEED FURTHER WITNESSETH: That for and in consideration for the sum of \$330,000.00, cash in hand paid by Grantee to the Clerk of the Circuit Court for Isle of Wight County, Virginia, for deposit to the credit of the court in this cause, receipt being acknowledged, Rodham T. Delk, Jr., Special Commissioner, hereby grants and conveys unto Grantee, an undivided one-half interest to C. Leonard Willis, Trustee of C. Leonard

Willis, Inc. Pension Plan and an undivided one-half interest to Hampton Promotions, Inc., with Special Warranty of title, the following described real estate:

See  
Plot  
Cabinet  
1-397-7

Parcel One (designated as Parcel 70 in suit papers)

All of that certain tract, parcel or piece of land situate, lying and being in Newport Magisterial District, Isle of Wight County, Virginia, containing approximately 4 acres, more or less, fronting on the south side of Route 665, designated on the Isle of Wight County Tax Map as Parcel 23-01-070, and bounded on the north by Route 665, on the west by the land of the Annie V. Hawks Estate, and on the south and east by the land of Wayman Parks and B. S. Parks.

The parcel is also described in Deed Book 81, page 367 as follows:

...all that certain tract, piece or parcel of land situate, lying and being in the County of Isle of Wight and State of Virginia, in Smith's Neck, bounded by the lands of Mrs. Sadie M. Hayes, the County Road and other land of Fletcher Hawkes, it being the same tract of land conveyed to the said Charles F. Brock by Sadie M. Haynes, and estimated to contain four acres on the land book of the said County, more or less.

Being the same land in all respects as that conveyed by deed from Charles F. Brock to Fletcher Hawks, dated April 11, 1913, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed Book 81, page 367.

Parcel Two (designated as Parcel 71 in suit papers)

All of that certain tract, parcel or piece of land situate, lying and being in Newport Magisterial District, Isle of Wight County, Virginia, containing approximately 10 acres, more or less, fronting on the north side of Route 665, designated on the Isle of Wight County Tax Map as Parcel 23-01-071, and bounded on the south by Route 665, on the west by other property of the Annie V. Hawks Estate, and on the north by property of Lawrence E. Starks, and on the east by property of Ernestine E. Chapman.

The parcel is also described in Deed Book 87, page 26 as follows:

All of that certain tract, piece or parcel of land situate, lying and being in the County of Isle of Wight, State of Virginia, and bounded as follows: on the north by the lands of Titus Holloway's estate; on the east by Mackelfield and the Parker estate; on the south by the lands of Mrs. Sadie M. Haynes; and on the west by the county road leading from Carrollton to Rescue. It being the same land which was conveyed to the said party of the

first part by deed from Benjamin F. Brock, bearing date February 24, 1897, and on record in the Clerk's Office of the Circuit Court of the County of Isle of Wight in Deed Book 61, page 432, to which reference may be had.

Being the same land in all respects as that conveyed by deed from Mollie G. Brock to Annie Hawks and William Bradley, dated January 2, 1917, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed Book 87, page 26, William Bradley having conveyed his one-half interest therein to Annie Hawks by deed dated February 28, 1922, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed book 93, page 82.

Parcel Three (designated as Parcel 72 in suit papers)

All of that certain tract, parcel or piece of land situate, lying and being in Newport Magisterial District, Isle of Wight County, Virginia containing approximately 30 acres, more or less, fronting on the east sides of Route 668 and lying on both the north and south side of Route 665, designated on the Isle of Wight County Tax Map as Parcel 23-01-072, and bounded on the west by Route 668, and the property of Lawrence E. and Beulah M. Starks, on the north by property of Lawrence Starks, on the east by other land of the Annie V. Hawks Estate, on the south by Route 665, and on the east by the Edward Hicks Estate, and on the south by the head waters of Titus Creek.

The parcel is also described in Deed Book 119, page 477 as follows:

All of that certain tract, piece or parcel of land situate, lying and being in Newport Magisterial District, County and State aforesaid, containing thirty (30) acres, more or less, sale and conveyance in gross and not by the acre, and bounded by the lands now or formerly belonging to Louisa Drew and others, and is the same land of which Indianna Holloway, the wife of Titus Holloway, died seized and possessed and the same described as "19" in a certain deed from Estelle D. Gwaltney, et als. to Howard W. Gwaltney, bearing date the 1st day of September, 1936, and duly recorded in the Clerk's Office of the County aforesaid in Deed Book 111, page 251. 477

Being the same land as that conveyed by deed from Howard W. Gwaltney and Katherine L. Gwaltney to Annie V. Hawks, dated February 28, 1942, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed Book 119, page 447, LESS, SAVE and EXCEPT 0.79 acres acquired by the Commonwealth of Virginia to widen Route 668 by Certificate of Deposit No. C-10979, dated December 29, 1965, and recorded in the Clerk's Office aforesaid in Deed Book 182, page 37.

Parcel Four (designated as Parcel 69 in suit papers)

All of that certain tract, parcel or piece of land situate, lying and being in Newport Magisterial District, Isle of Wight County, Virginia containing approximately 20

acres, more or less, fronting on the south side of Route 665, designated on the Isle of Wight County Tax Map as Parcel 23-01-069, and bounded on the north by Route 665, on the east by the Edward Hicks Estate, on the south by the head waters of Titus Creek, on the west by the Millie Coston Estate, by the land of Wayman Parks and B. S. Parks and by other land of the Annie V. Hawks Estate.

The parcel is also described in Deed Book 117, page 374 as follows:

...all of that certain tract, piece or parcel of land situate, lying and being in Newport Magisterial District, County and State aforesaid, containing fifty (50) acres, known as the Frank Whitney tract, and bounded on the east by Sadie Haines, on the north by Smith Neck Road, on the west by Titus Holloway, and on the south by a cove, emptying into Jones' Creek; and...the said Edward Hicks and the widow and heirs aforesaid of the said Fletcher Hawks, deceased, agreed to partition and divide the above-described tract of land among and between themselves, and to that end have established a line running generally north and south and which begins at a point on the road leading from Rescue to Carrollton, indicated by an iron axle, and following a line of marked trees (said trees having been marked around the year 1908, consisting of an oak, gum and three pines), to a cove, sometimes referred to as Titus Creek, and the said Edward Hicks has agreed to take for his part and portion of said tract of land so much thereof as lies to the westward of the line aforesaid, consisting of approximately eighteen (18) acres, and the said heirs of Fletcher Hawks have agreed to take for their part and portion of said land so much of said tract as lies to the eastward of said line, consisting of approximately twenty (20) acres...and is bounded on the north by the county road leading from Rescue to Carrollton, on the east by the lands of Joe Rawls on the south by Titus Creek and on the west by the dividing line aforesaid.

Being the same land in all respects as that conveyed by deed of partition between Edward Hicks, of the first part, and Annie V. Hawks, Malcolm Hawks, Christine Hawks, Maude H. Rawls, Joe Rawls, Hattie H. Lee, Roy Lee, James C. Hawks and Geraldine Hawks, Edna H. Mitchell, now Edna Hawks Green, Rudolph F. Mitchell, Edward Hawks and Laura Hawks, of the second part, dated May 3, 1940, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed Book 117, page 374.

This conveyance is made to the said Trustee for the use and purposes set forth herein and in the aforesaid C. Leonard Willis, Inc. Pension Plan.

Full power and authority are hereby granted to the Trustee and his successors, to protect and conserve the property; to sell, contract to sell and grant options to purchase the property, and any

right, title, or interest therein on any terms; to exchange the property or any part thereof for any other real estate or personal property upon any terms; to convey the property to any grantee, with or without consideration; to mortgage, pledge or otherwise encumber the property or any part thereof; to lease, contract to lease, grant options to lease and renew, extend, amend and otherwise modify leases on the property or any part thereof from time to time, for any period of time, for any rental and upon any other terms and conditions; to release, convey, or assign any other right, title, or interest whatsoever in the property or any part thereof.

No party dealing with the Trustee in relation to the property in any manner whatsoever, and (without limiting the foregoing) no party to whom the property or any part thereof or any interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Trustee shall be obliged (a) to see to the application of the purchase money, rent or money borrowed or otherwise advanced on the property; (b) to see that the terms of this Pension Plan have been complied with; (c) to inquire into the authority, necessity or expediency of any act of the Trustee; nor shall any such party be privileged to inquire into any of the terms of the Pension Plan.

Every deed, mortgage, lease or other instrument executed by the Trustee in relation to the property shall be conclusive evidence in favor of every person claiming any right, title or interest thereunder; (a) that at the time of the delivery thereof this Pension Plan was in full force and effect; (b) that such instrument was executed in accordance with the terms and conditions hereof and of the Pension Plan and is binding upon all Beneficiaries thereunder; (c) that the Trustee was duly authorized and empowered to execute and deliver every such instrument; and (d) if a conveyance has been made to a successor or successors in trust,


that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in Trust.

The Trustee shall have no individual liability or obligation whatsoever arising from his ownership, as such Trustee, of the legal title to the said property or with respect to any act done or contract entered into or indebtedness incurred by him in dealing with said property or in otherwise acting as such Trustee except only so far as said Pension Plan's property in the actual possession of the Trustee shall be applicable to the payment and discharge thereof.

The interest of every beneficiary hereunder and under the Pension Plan and of all persons claiming under any of them shall be only in the earnings, avails and proceeds arising from the rental, sale or other disposition of the property. Such interest is hereby declared to be personal property and no Beneficiary hereunder shall have any right, title or interest, legal or equitable in or to the property as such but only in the earnings, avails and proceeds thereof as provided in the Pension Plan.

Pursuant to Section 8.01-111 of the Code of Virginia, this deed is made on behalf of Samuel E. Hawks, Christine Hawks, Edna Hawks Green, Maude Hawks Rawls, Geraldine Hawks, Roy Lee, Roy Lee, Jr., James Fletcher Lee and Vivian Lee McCrimmons, Barbara Jean Smith, Laura B. Hawks and the heirs, if any, of Rudolph F. Mitchell.

Witness the following signature and seal:

  
Rodham T. Deak, Jr., Special  
Commissioner (SEAL)

  
C. Leonard Willis (SEAL)

BOOK 385 PAGE 103

COMMONWEALTH OF VIRGINIA,

COUNTY OF ISLE OF WIGHT, to-wit:

The foregoing deed was acknowledged before me this 16<sup>th</sup>  
day of July, 1991, by Rodham T. Delk, Jr., Special Commissioner.

My commission expires: September 5, 1992.

Dee Ann Bealey  
Notary Public

COMMONWEALTH OF VIRGINIA,

COUNTY OF ISLE OF WIGHT, to-wit:

The foregoing deed was acknowledged before me this 17<sup>th</sup>  
day of July, 1991, by C. Leonard Willis.

My commission expires: JANUARY 31, 1995.

Robert W. Jones  
Notary Public

VIRGINIA: Clerk's office of the Circuit Court of Isle of Wight County: July 18, 1991,  
at 11:25 o'clock A.M., this Deed was received and with the certificate annexed, admitted to record.  
State Tax: \$ 495.00 Tax \$ 330.00 Imposed by Section 58.1-802 has been paid.  
Local Tax \$ 165.00 Verified and mailed to: Robert T. Jones  
8/1/91

TESTE: W. E. Laine, Jr., CLERK, By: Harvey R. Willis, D.C.

of Hight, to wit:

I, James S. Davis, a Justice of the Peace for the county aforesaid in the State of Virginia, do certify that Thomas Sanford whose name is signed to the foregoing writing above bearing date on the 24<sup>th</sup> day of January, 1903, have acknowledged the same before me in my county aforesaid.

In witness whereof I have this 24<sup>th</sup> day of Jan. 1903,  
James S. Davis J. P.

In the Clerk's office of the Circuit Court of the County of Hight, this 6<sup>th</sup> day of March, 1903, at 4 o'clock P.M. this Deed was received and with the certificate annexed admitted to record.

Attest: H. F. Young, C. C.

Wm. C. Johnson et al  
vs } (B. & S.)  
Hiram E. Johnson

Admitted to record

This Deed, made this 19<sup>th</sup> day of January in the year one thousand nine hundred and ~~four~~ <sup>five</sup>, between William A. Johnson and Carrie S. Johnson, his wife of the County of Dale of Hight in the State of Virginia parties of the first part, and Hiram E. Johnson of Sparrowe Point in the State of Maryland party of the second part,

Witnesseth: That in consideration of the sum of fifteen hundred (\$1500) dollars, the said William A. Johnson and Carrie S. Johnson, his wife doth grant unto the said Hiram E. Johnson with General warranty, all of a certain piece or parcel of land, situate and being in the County of Dale of Hight in Hight District, State of Virginia, containing one hundred and fifty (150) acres, more or less, and described as follows:

(viz:) commencing at the mouth of Shipyard Landing creek following the meanderings of said creek or cove to a causeway or road, across marsh, thence in a south east direction across said marsh to a gum tree, thence along said gut or cove to King's creek thence down King's creek to a stub in land

See index  
Aug 15, 1903



the creek at the S. E. Edge of a piece of l. y. b. or  
the land, thence following along the edge of said  
land, around old landing at house on said  
creek thence down said bridge creek to Balance of  
marsh creek thence up said Balance of marsh creek  
point of beginning.

2<sup>nd</sup> a piece or lot of land, containing two (2) acres or more  
or less, and described as follows commencing at the  
marsh gate running thence in a southerly direction to a  
maple tree in swamp thence down said swamp to edge of  
marsh, thence in a northerly direction along edge of marsh  
to the causeway or road mentioned above, thence along  
said road or causeway in a westerly direction to point  
of beginning; Both of the above mentioned pieces of land  
are a part of the Macklesfield tract and are subject to a  
lien of bond held by Freda D. Davis to secure the  
payment of a certain bond for the sum of four  
hundred dollars and is a part of the same land  
conveyed by H. C. Parker et al. by deed to Josiah H.  
Jordan which is of record in the Clerk's office of State of  
Highland County in Deed book 66 page 393.

The said parties of the first part covenant  
that they have the right to convey the said land to  
the grantee, that they have done no act to encumber or  
the said land; that the grantee shall have quiet  
possession of the said land, free from all encum-  
brances, and that they the said parties of the first  
part will execute such further assurance of the  
said land as may be required.

Witness the foregoing signatures and seals,  
Wm. H. Johnson, (Seal)  
Barrie S. Johnson, (Seal)

State of Virginia,

County of Zale of Highland, D. C.

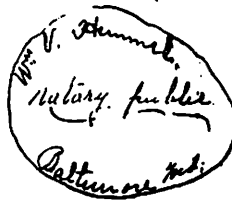
I, James S. Davis, a justice  
of the Peace for the County aforesaid in the State of  
Virginia, do certify that William A. Johnson and  
Barrie S. Johnson whose names are signed to the  
writing hereto annexed, bearing date on the 14<sup>th</sup> day  
of January, 1903, have acknowledged said the same  
before me, my county aforesaid.

Given under my hand this 14<sup>th</sup> day of Jan. 1903.

James W. Dancy, Jr.

State of Maryland }  
County of Baltimore }

I, Wm. V. Hummel, a Notary Public  
for and in the aforesaid State and county, do certify  
that Harmonie L. Johnson, whose name is signed  
to the writing hereto annexed, bearing date of the 19th  
of January nineteen hundred and five, has actually  
signed the same before me in my county aforesaid  
in presence of my hand this 27th day of Feb. A.D.  
1900.



Wm. V. Hummel  
Notary Public

The Clerk's office of the Circuit Court for  
County of Baltimore, this 27th day of March, 1905,  
at 4 o'clock P.M. this Deed was received and  
with the certificate annexed, admitted to record.

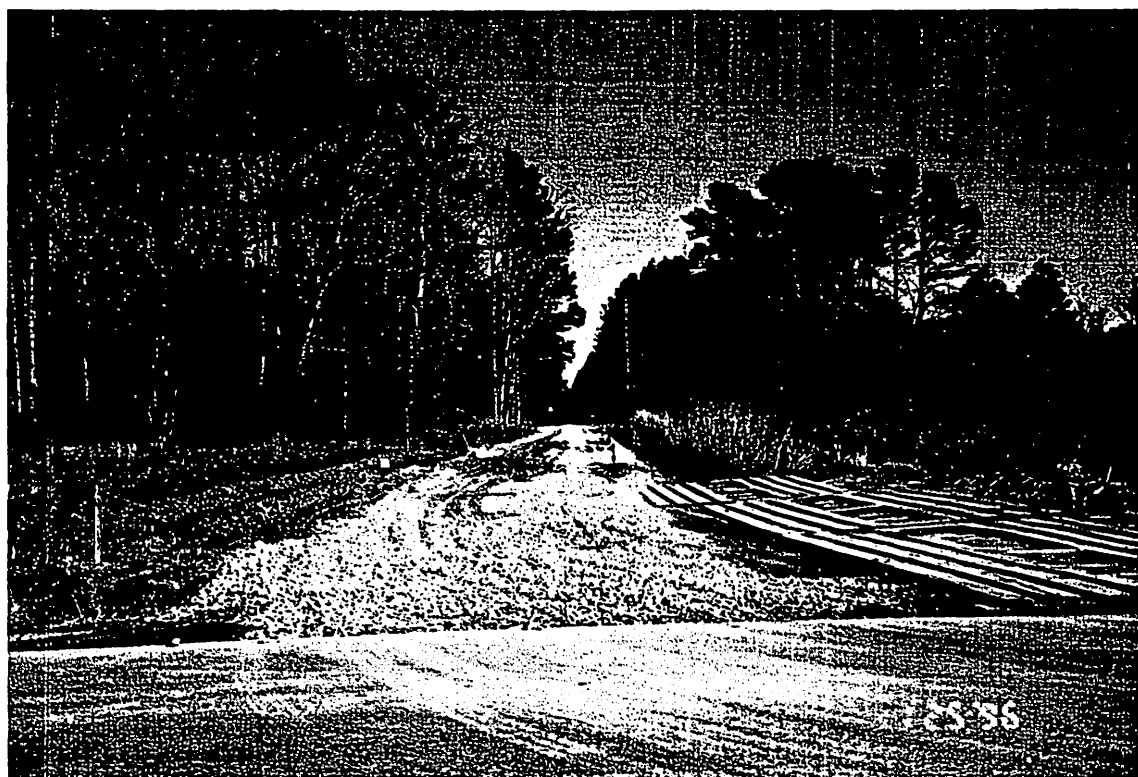
Attest: M. S. Young, C.C.

G. A. Mumford  
Deed of Exchange  
Lemna Johnson.

This Deed, made this 17th day of  
September 1904 between Gashariah A. Mumford, part  
of the first part, and Lemna Johnson, sometimes  
called Louisa Johnson, party of the second part  
Witnesseth: That in consideration of the mutual covenants  
hereinafter contained and also the covenants  
covenants herein contained, and in order to carry out  
the provisions and suggestions contained in the last  
will and testament of Adolph Mumford deceased who  
has been duly proved and recorded in the Clerk's  
office of the Circuit Court of Baltimore county,  
the said party of the first part doth grant with  
general warranty unto the said party of the second  
part all the right, title and interest in equi.

Witnessed by A. Mumford  
17/9/04 Geo. A. Johnson, C.C.

***PLAINTIFF'S EXHIBIT 10***











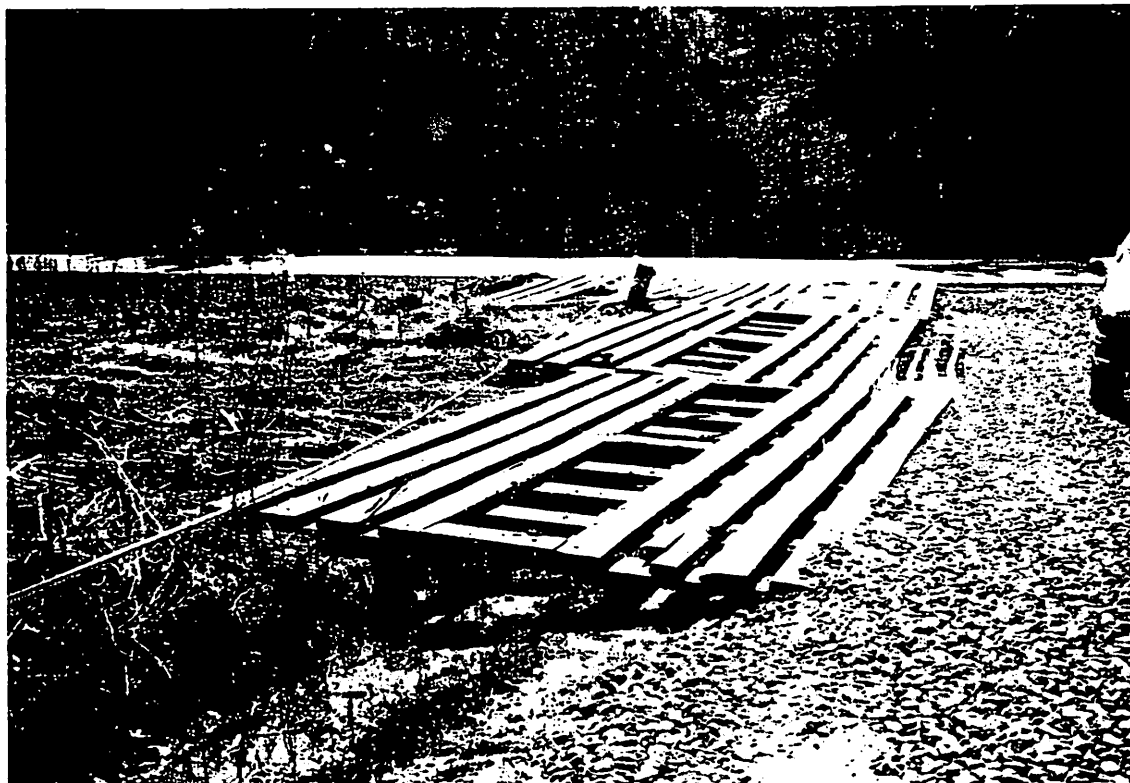


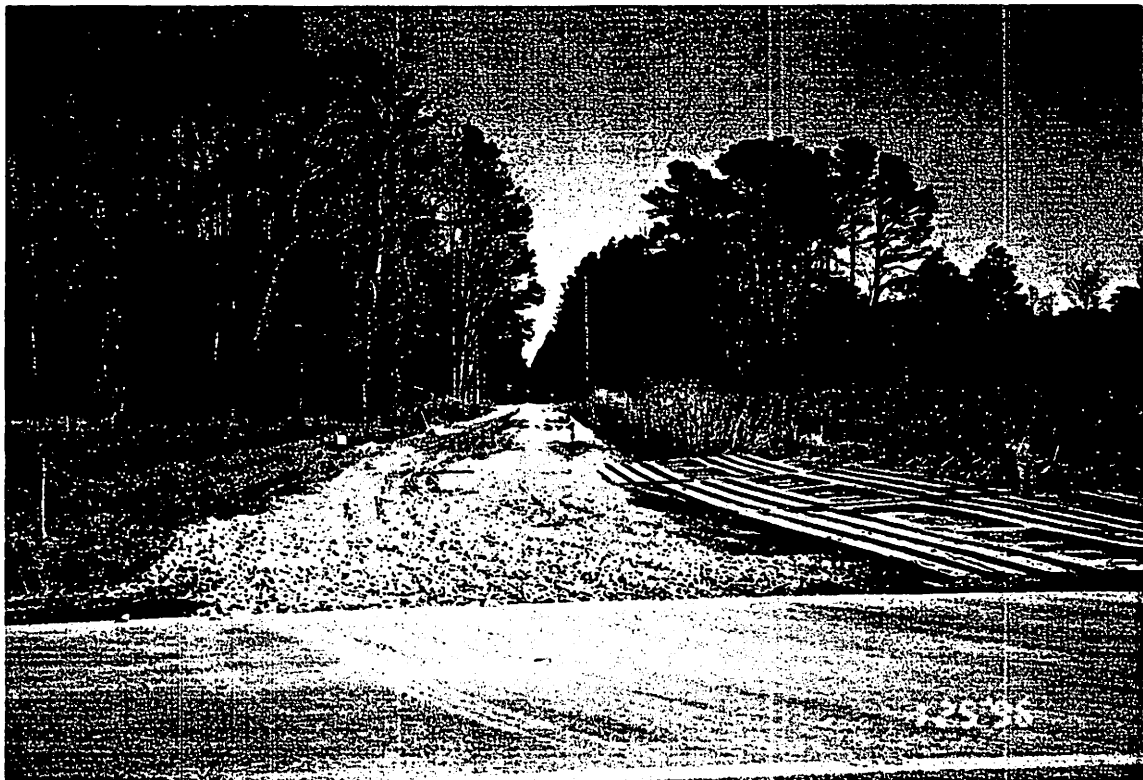












***DEFENDANT'S EXHIBIT 1***





FIFTH JUDICIAL CIRCUIT  
OF VIRGINIA

JUDGES

E. EVERETT BAGNELL  
RODHAM T. DELK, JR.  
POST OFFICE BOX 1814  
SUFFOLK, VIRGINIA 23439-1814  
(804) 925-6306

WESTBROOK J. PARKER  
POST OFFICE BOX 190  
COURTLAND, VIRGINIA 23837  
(804) 653-9176

May 31, 1996

CITY OF SUFFOLK  
CITY OF FRANKLIN  
COUNTY OF ISLE OF WIGHT  
COUNTY OF SOUTHAMPTON

RETIRED JUDGES  
JAMES C. GODWIN  
BENJAMIN A. WILLIAMS, JR.

Michael P. Jones, Esq.  
Attorney at Law  
728-C Thimble Shoals Blvd.  
Newport News, Virginia 23606

Richard E. Railey, Jr., Esq.  
Railey & Railey, P.C.  
P.O. Box 40  
Courtland, Virginia 23837

Re: Robert L. Magette, et als  
v.  
C. Leonard Willis, et als  
Chancery No.: 95-000145  
Isle of Wight Circuit Court

Gentlemen:

I have carefully considered the evidence taken in this matter on April 22, 1996, as well as the briefs and authorities therein which you have submitted.

There is no question that the evidence establishes a prescriptive easement in favor of the plaintiffs and there is no evidence that the easement has ever been abandoned. This lane has been used for many purposes since the 1920's including agricultural, logging, recreational and residential uses. The only issue in this case is the width of the easement.

The evidence suggested many widths for the lane, but it is clear that the distance from tree line to tree line is 125 feet and the distance from the ditch line to ditch line is 60 feet. The defendants want the easement restricted to the 8 to 12 feet used back in the 1920's for the purposes aforementioned and the complainants want the easement established at a width commensurate with their needs today.

FILED  
VIRGINIA: In the Clerk's Office  
of the Circuit Court of the  
County of Isle of Wight  
June 5, 1996  
W. E. Laine, Jr., Clerk  
J. K. [Signature]

Michael P. Jones, Esq.  
Richard E. Railey, Jr., Esq.  
May 31, 1996  
Page Two

In the light of that controversy, I have reviewed the case of Virginia Hot Springs Co. v. Lowman, 126 Va. 424 (1919). Virginia Hot Springs indicates that if the new use is in all respects of the same nature and character as the old, and the difference is in degree only, and no additional burden is put upon the servient estate, then the new use is within the prescriptive use. In the case at bar, the nature and character of the use is the same as it has been over 60 years and the only change is in the degree of the use. Since there is so much property available from ditch to ditch as set forth above and there is no other use for the property lying between the ditches, the granting of a 30 foot easement would not put additional burden on the servient estate.

Therefore, the order of the Court shall be that the complainants have an easement across the property of the defendants 30 feet in width (15 feet on each side of the centerline of the lane) for the purposes set forth herein.

Mr. Railey shall prepare the appropriate order and once it has been signed with proper objections noted by Mr. Jones, I shall enter same.

Yours very truly,



Westbrook J. Parker  
Judge

Copy to: W. E. Laine, Jr., Clerk

962217

FILED  
NOV 22 1996  
RICHMOND, VIRGINIA

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF  
ISLE OF WIGHT

ROBERT L. MAGETTE, TRUSTEE  
AND  
REA PARKER, JUNIOR

v.

CHANCERY NO.  
95-000145

C. LEONARD WILLIS, TRUSTEE OF  
C. LEONARD WILLIS, INC., PENSION PLAN  
AND  
HAMPTON PROMOTIONS, INC., A VIRGINIA CORP.

Stenographic report of all the testimony,  
together with all the motions, objections and exceptions on  
the part of the respective parties, the action of the Court  
in respect thereto, and all other incidents during the hearing  
in the above-styled cause, heard in the County of Isle of  
Wight, Virginia, sitting in its Chambers located in the  
General District Court at Franklin, Virginia, on August  
6, 1996, before the Honorable Westbrook J. Parker, Judge of  
said Court.

PRESENT:

Mr. Richard E. Railey, Junior,  
Attorney for the Plaintiffs

Mr. Michael P. Jones,  
Attorney for the Defendants

- - - oOo - - -

CHERYL A. LEASURE  
SCHNEIDER AND ASSOCIATES  
107 TELFORD DRIVE  
NEWPORT NEWS, VIRGINIA 23602

FILED  
VIRGINIA: In the Clerk's Office  
of the Circuit Court of the  
County of Isle of Wight  
10-3-96, 1996, 2:35 PM  
W. E. Laine, Jr., Clerk  
[Signature]

ORIGINAL

1 I believe, and we'd ask that the Court define what it means by  
2 residential use.

3 THE COURT: Well, that's another  
4 issue altogether. That's a matter of, I guess, another suit.  
5 A number of things need to be said. Number one, I don't know  
6 how many hearings we've had in this case, but I'm not about to  
7 re-try it. We have had hearing after hearing, after hearing  
8 in this case. It is a very simple matter in that it's no  
9 question the plaintiffs are entitled to an easement. The only  
10 real issue in the case is how big the easement.

11 The uncontroverted evidence was from  
12 Mr. Camp. He's an expert and there was no expert to  
13 contradict what he said. We all know that case was tried back  
14 in April and now we're in August. I'm not about to grant a  
15 re-hearing. So I'm going to overrule the defendant's motion  
16 to re-hear, and I'm going to overrule the defendant's motion  
17 to set aside the verdict. Having reviewed Mr. Railey's  
18 decree, which he presented this morning, I'm going to enter  
19 the decree as submitted.

20 And as for Mr. Jones' request that I  
21 indicate what residential means, that's a matter of law, I  
22 think. If that becomes an issue at a later time, then this  
23 Court or some other court can take up what residential means  
24 and how many houses they can build, but that's not what is  
25 before me this morning, so I'm going to enter the decree.

## VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

ROBERT L. MAGETTE,

Trustee,

and

REA PARKER, JR.,

Plaintiffs,

v.

FINAL DECREE  
CHANCERY NO. 95-145C. LEONARD WILLIS, Trustee, of  
C. Leonard Willis, Inc. Pension Plan,

and

HAMPTON PROMOTIONS, INC.,

Defendants.

This cause came on this day on this day to be heard upon the plaintiffs' Bill of Complaint; upon proof of proper service of same upon the defendants; upon the plaintiffs' Motion for Temporary Injunction; upon the order entered on October 25, 1995 enjoining the defendants from blocking, demolishing or otherwise disturbing plaintiffs' use of the established roadway until further decree of this court; upon the defendants' Answer and Grounds of Defense; upon the defendants' Motion for a Temporary Injunction; upon the order entered herein on December 5, 1995 enjoining and restraining the plaintiffs from expanding, improving or broadening the scope of the lane beyond the condition and size of the lane as it existed on December 5, 1995; upon the testimony of witnesses for both parties heard ore tenus on April 22, 1996, together with the exhibits duly filed

therewith; upon the order entered on April 25, 1996 as to said April 22, 1996 hearing; upon the brief filed on behalf of the plaintiffs; upon the brief and the supplemental brief filed on behalf of the defendants; upon the letter opinion of the Court; upon the Motion to Set Aside Verdict or Grant a Re-Hearing filed on behalf of the defendants; and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court, that the plaintiffs have established by clear and convincing evidence a prescriptive easement across the real property of the defendants; that said prescriptive easement is for ingress and egress from "Macclesfield Farm", acquired by plaintiff, Rea Parker, Jr., from Algie J. Murphy and Beulah K. Murphy, by deed, dated October 15, 1956, recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia in Deed Book 149, at page 551 and conveyed, in part, to Robert L. Magette, Trustee, of the P.R. Land Trust by deed, dated October 17, 1995, and recorded in said Clerk's Office in Deed Book 463, at page 475, across the real property of the defendants, C. Leonard Willis, Trustee, of C. Leonard Willis, Inc. Pension Plan and Hampton Promotions, Inc., a Virginia corporation, acquired from Rodham T. Delk, Jr., Special Commissioner, by deed, dated March 25, 1991, recorded in said Clerk's Office in Deed Book 385, at page 97, to Virginia Secondary Highway No. 665; that the plat of "Macclesfield Farm", prepared by John E. Buck on February 18 and May 23-25, 1925, which is recorded in said Clerk's Office in Plat Book 1, at page 63, shows a lane or path crossing said real property of plaintiffs and defendants and providing access to said Virginia Secondary Highway No. 665; that by deed, dated April 30, 1951, recorded in said Clerk's Office in Deed Book 136, at page 81, Nannie Simmons conveyed said "Macclesfield Farm" to Algie J. Murphy and Beulah K. Murphy, subject to certain rights of the grantor, Nannie Simmons, to the use of the access path from said "Macclesfield Farm" to said Virginia Secondary Highway No. 665; that plat

*per objection*

entitled "BOUNDARY SURVEY OF A PORTION OF THE PROPERTY KNOWN AS ANNIE B. HAWKS ESTATE", dated May 6, 1991, showing parcel 3 acquired by the defendants by said deed, dated March 25, 1991, which plat was recorded in said Clerk's Office on July 18, 1991 in Cabinet 1, Slide 397, at page 7, shows the eastern boundary of said parcel 3 as "Macclesfield Farm" (Rea Parker, Jr.) and shows the southern boundary of said parcel as the center line of a dirt road running from said "Macclesfield Farm" to said Virginia Secondary Highway No. 665; that plat entitled "BOUNDARY SURVEY OF A PORTION OF THE PROPERTY KNOWN AS ANNIE B. HAWKS ESTATE", dated August 19, 1992, showing parcel 2 acquired by the defendants by said deed, dated March 21, 1995, which plat was recorded in said Clerk's Office on December 20, 1993 in Cabinet 2, Slide 11, at page 13, shows the eastern boundary of said parcel 2 as said "Macclesfield Farm" and the northern boundary of said parcel as the center line of a dirt road running from said "Macclesfield Farm" to said Virginia Secondary Highway No. 665; that on the Isle of Wight County tax map, said parcels 2 and 3 are referred to as parcels 23-010-71 and 23-01-972 respectively and on said tax map the boundary line between the parcels is shown as the center line of a dirt road running from said "Macclesfield Farm" to said Virginia Secondary Highway No. 665; that the lane or dirt road has been used for many purposes since the 1920's including agricultural, logging, recreational and residential uses; that the plaintiffs are entitled to a prescriptive easement for the purposes of agricultural, logging, recreational and residential uses inasmuch as these uses of the prescriptive easement are consistent with the uses during the prescriptive period; that the plaintiffs have not abandoned their prescriptive easement; that the doctrine of laches is inapplicable to this matter and accordingly the plaintiffs' easement by prescription is not barred by said doctrine; that the evidence does not establish that the plaintiffs are acquiring an easement by prescription over property affected with

a public interest or dedicated to public use; that the plaintiffs have shown that their use of their real property and of the easement across the real property of the defendants to Virginia Secondary Highway No. 665 will be of the same nature and character as has existed for over sixty (60) years and any change will only be in the degree of the use; that the evidence establishes that the distance from tree line to tree line on each side of the easement is one hundred twenty-five (125) feet and the distance from ditch line to ditch line on each side of the easement is sixty (60) feet; that the granting of a thirty (30) foot easement will not put additional burden on the real property of the defendants constituting the serviant estate; and that the complainants are entitled to a prescriptive easement across the property of defendants thirty (30) feet in width fifteen (15) feet on each side of the center line of the existing path or lane) for the purposes of agricultural, logging, recreational and residential uses.

The Court, being of the opinion that the plaintiffs are entitled to a prescriptive easement across the real property of the defendants thirty (30) feet in width fifteen (15) feet on each side of the center line of the existing lane or path extending from the right-of-way of said Virginia Secondary Highway No. 665, across said real property of the defendants to the boundary line between said real property of the defendants and said real property of the plaintiffs ("Macclesfield Farm") for the purposes of agricultural, logging, recreational and residential uses, doth ADJUDGE, ORDER AND DECREE that the plaintiffs be, and hereby are, granted a prescriptive easement across the real property of defendants as follows:

A. That said easement shall be thirty (30) feet in width fifteen (15) feet on each side of the center line of the existing lane or path) for the purposes of agricultural, logging, recreational and residential uses;



B. That said prescriptive easement shall provide ingress and egress to the real property of the plaintiffs, said "Macclesfield Farm", the dominant estate, acquired by plaintiff, Rea Parker, Jr., by deed, dated October 15, 1956, recorded in said Clerk's Office in Deed Book 149, at page 551 and conveyed, in part, to Robert L. Magette, Trustee, of the P. R. Land Trust by deed, dated October 17, 1995, recorded in said Clerk's Office in Deed Book 463, at page 475, across the real property of the defendants, the serviant estate, acquired by the defendants, by deed, dated March 25, 1991, recorded in said Clerk's Office in Deed Book 385, at page 97, to said Virginia Secondary Highway No. 665;

C. That the existing lane or path, the center line of which constitutes the center line of the prescriptive easement, is as referred to in the following recorded instruments:

1. Said "Buck Survey", made by John E. Buck on February 18 and May 23-25, 1928, recorded in said Clerk's Office Plat Book 1, at page 63;

2. Said deed, dated April 30, 1951, recorded in said Clerk's Office in Deed Book 136, at page 81, whereby Nannie Simmons conveyed said "Macclesfield Farm" to Algje J. Murphy and Beulah K. Murphy, subject to certain rights of the grantor, Nannie Simmons, to the use of the access path from said "Macclesfield Farm" to said Virginia Secondary Highway No. 665;

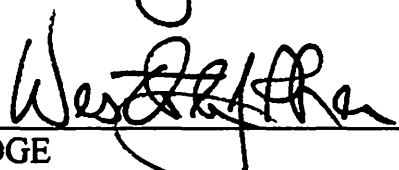
3. Said plat entitled "BOUNDARY SURVEY OF PROPERTY OF ANNIE B. HAWKS ESTATE", dated May 6, 1991, recorded in said Clerk's Office in Cabinet 1, Slide 397, page 7 showing parcel 3. Said plat shows the eastern boundary of said parcel 3 as said "Macclesfield Farm" and shows the southern boundary of said parcel as the center line of a dirt road (boundary between parcels 2 and 3) running from said "Macclesfield Farm" to said Virginia Secondary Highway No. 665; and

4. Said plat entitled "BOUNDARY SURVEY OF A PORTION OF THE PROPERTY

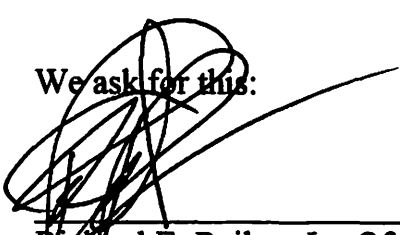
KNOWN AS ANNIE B. HAWKS ESTATE", dated August 19, 1992, recorded in said Clerk's Office in Cabinet 2, Slide 11, page 13 showing parcel 2. Said plat shows the eastern boundary of said parcel 2 as said "Macclesfield Farm" and the northern boundary of said parcel as the center line of a dirt road (boundary between parcels 2 and 3) running from said "Macclesfield Farm" to said Virginia Secondary Highway No. 665.

It is further ORDERED, ADJUDGED AND DECREED that the Motion to Set Aside Verdict or Grant a Re-Hearing filed on behalf of the defendants is hereby denied and the objection and exception of the defendants to such denial of said Motion is hereby noted.

It is further ORDERED that this case be stricken from the docket and placed in the ended chancery causes.


ENTER: August 6, 1996  
  
 JUDGE

We ask for this:

  
 Richard E. Railey, Jr., Of Counsel  
 for Plaintiffs

William C. Cowardin, Jr., Esquire  
 Overman, Cowardin and Martin, P.C.  
 739 Thimble Shoals Boulevard, Suite 507  
 Newport News, VA 23606

1  
Seen, objected to and excepted to:

A handwritten signature in black ink, appearing to read 'M. P. Jones', written over a horizontal line.

Michael P. Jones, Of Counsel  
for Defendants

### **ASSIGNMENT OF ERROR**

1. The trial court erred in ruling that the evidence was sufficient to establish that the dominant estate's use of a roadway traversing the servient estate, thirty feet in width, was continuous and uninterrupted for at least twenty years for agricultural, logging, recreational and residential purposes.
2. The trial court erred in expanding the dominant estate's prescriptive rights to include uses other than those maintained during the prescriptive period.
3. The trial court erred in considering the size of the servient estate and the use currently being devoted to the servient estate by its owners.