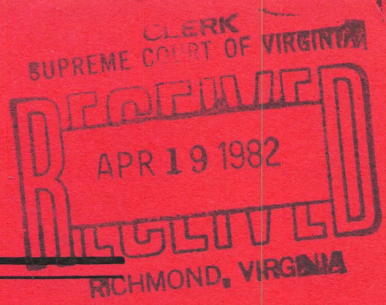


226VA498



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 810725

RUTH QUILLEN, Et. Al.

Appellants

v.

EDWARD LUNN TULL and ZED AYRES

Appellees

JOINT APPENDIX

Glen A. Tyler
W. Revell Lewis, III
TYLER AND LEWIS
P. O. Box 108
Parksley, VA 23421

Counsel for Appellants

C. Lester Drummond
R. Norris Bloxom
Attorneys at Law
Court Square
P. O. Box 96
Accomac, VA 23301

Counsel for Appellees

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BILL OF COMPLAINT

To the Honorable N. Wescott Jacob, Judge of the Circuit Court of Accomack County, Virginia:

Your complainants, Edward Lunn Tull and Zed Ayres, respectfully show unto the Court the following:

1. That Mary Ann Beebe, who died testate on the 31st day of May, 1940, which said will was probated in the Clerk's Office of the Circuit Court of Accomack County, Virginia, and of record therein in Will Book 24, at page 41, devised the balance of her property "one-fifth of the proceeds to be divided equally among the children of J. P. Bowden, one-fifth of the proceeds to be divided equally among the children of Crippen Bowden, one-fifth of the proceeds to be divided equally among the children of Silas Burton Beebe, one-fifth of the proceeds to be given to Emma Jester, daughter of Wm. Bowden and one-fifth of the proceeds to be given to my sister, Sarah M. Sharpley," which said property was to be sold by George L. Doughty, Attorney, Executor, said Executor now deceased, never having sold said property, the property passing under this paragraph is as follows:

(1) All that certain tract or parcel of land, containing 20.4 acres, more or less, shown on a certain plat or survey designated as Tract "A", and bounded on the Northwest, by the Maddox property, now under contract to Edward Lunn Tull; on the Southwest and Southeast, by the State of Virginia marsh; and on the Northeast, by the land of Edward Lunn Tull, formerly the Cliff Daisey land.

(2) All that certain tract or parcel of land, containing 4 acres, and designated as Tract "B" on the aforesaid plat, and bounded on the Northwest, by the land of Edward Lunn Tull, formerly the Cliff Daisey land; on the Southwest, by the land of

Edward Lunn Tull, formerly the Cliff Daisey land; on the South-east and Northeast, by the land of Edward Lunn Tull.

(3) All that certain tract or parcel of land, containing 14 acres, more or less, as shown on a certain plat or survey, and designated as "D" and "E", and bounded on the Northwest, by the land of Weldon Bowden, the land of the heirs of Ralph Beebe, the land of Ronald Snead and the land of Roland Jester; on the Northeast, by the land of Zed Ayres; on the Southeast, by the land of Zed Ayres; and on the Southwest, by the land of Zed Ayres and the land of the heirs of Ralph Beebe.

2. By deed dated February 5, 1963, and recorded in the aforesaid Clerk's Office in Deed Book 247, at page 392, Mabel L. Daisey, Weldon Bowden and Gladys Bowden, his wife, Archie Sharpley and Bertha Sharpley, his wife, John Neil Sharpley, unmarried, Asa Sharpley and Nellie Sharpley, his wife, Mary Emma Tarr and Charles Tarr, her husband, Viola Benson, widow, Douglas Jester and Anne Jester, his wife, Roland Jester and Rosella Jester, his wife, Floyd Jester and Susan Jester, his wife, Emma Carpenter and Walter Carpenter, her husband, and Ernest Jester, widower, conveyed all their right, title and interest to Zed Ayres.

3. By deed dated October 21, 1966, and recorded in the aforesaid Clerk's Office in Deed Book 267, at page 563, Allie Bowden and Winnie Bowden, his wife, Audrey Clark and Hillary Clark, her husband, Preston Bowden, unmarried, Amanda Bowden, widow, Fannie Beebe, widow, Emma Beebe, widow, Ida Quillen and Grayson Quillen, her husband, Mattie Potts, widow, and Carolyn Beebe Britton and Raymond Britton, Jr., her husband, conveyed all their right, title and interest to Edward Lunn Tull.

4. By deed dated May 8, 1973, and recorded in the aforesaid Clerk's Office in Deed Book 357, at page 254, Orris Shaw,

widower, David Shaw and Patricia Shaw, his wife, Betty Osowski and Joseph Osowski, her husband, Aline Titerance and Walter Titerance, her husband, Orris R. Shaw, Jr. and Nina Shaw, his wife, Carlton Shaw and Frances Shaw, his wife, Reginald Shaw and Jessie Shaw, his wife, James Bowden and Bessie Bowden, his wife, Laura Kline, widow, and Bertie Taylor, widow, conveyed all their right, title and interest to Zed Ayres.

5. By deed dated March 30, 1966, and recorded in the aforesaid Clerk's Office in Deed Book 264, at page 326, Zed Ayres and Sadie Ayres, his wife, conveyed all their right, title and interest in the 4-acre tract, the 16-acre tract and a portion of the 20.4-acre tract to Edward Lunn Tull. This did not include the interest that Zed Ayres received in the deed from Orris Shaw, widower, and others, recorded in Deed Book 357, at page 255.

6. That your complainants desire to procure a partition of the herein described real estate in one of the methods prescribed by law; that owing to the size of said property it is obvious that a partition in kind is wholly impossible; that your complainants allege that it will be to the advantage and interest of all parties concerned that said property be sold in three portions, in order to effect a partition, and the proceeds, after deducting the costs of said sale, be divided by the Court among the parties entitled thereto according to their respective interest in said parcels of land.

7. That your complainants do not know the whereabouts of some of the named respondents, if they are living.

8. That there may be other persons interested in the subject matter of this suit, and who maybe unknown as alleged in the caption as "Parties Unknown".


In consideration whereof, and forasmuch as your complainants are remediless in the premises, save in a court of equity, they pray that the persons named as respondents in the

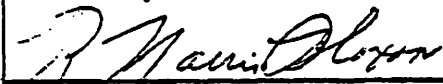
caption, including those persons described therein as "Parties Unknown", may be made parties respondent to this Bill; that they be required to answer same, but not under oath, the oath being hereby expressly waived; that an order of publication be ordered against said respondents whose addresses are unknown to your complainants; that this cause be referred to the Commissioner In Chancery to determine the owners of said real estate and their respective shares, and whether or not said real estate is capable of being divided in kind among the parties thereto entitled; to determine its fair market value and its annual rental value, if any; whether any co-owner is willing to take the property at its fair market value and to pay to the other owners the value of their respective share; that all proper orders and decrees may be ordered and inquiries directed; and that your complainants may have all such other, further and general relief in the premises as the nature of their case may require or to equity shall seem meet.

And your complainants will ever pray, etc.

EDWARD LUNN TULL and
ZED AYRES, Complainants

By Counsel


C. Lester Drummond, p.q.
Accomac, VA 23301


R. Norris Bloxom, p.q.
Accomac, VA 23301

Filed in the Clerk's Office the
7th day of November, 1979.

Writ Tax \$ 5.00

Fee \$ 25.00

Deposit \$ 1.00

Total Paid \$ 31.00

J. Fulton Ayres, Clerk.
Fris Underwood, D.C.

004

CROSS BILL

To the Honorable N. Wescott Jacob, Judge of the Court aforesaid.

Your Respondents respectfully show unto the Court the following:

1. That by deed dated April 4, 1868 and recorded in the Clerk's Office for the Circuit Court of Accomack County, Virginia in Deed Book 45, at Page 345, Crippen Bowden, et ux, conveyed to Thomas Beebe a certain parcel of land situate at Chincoteague, Accomack County, Virginia, containing 10 acres and bounded as follows: on the North and East, by the land of David Daisey; on the South and East, by the land of Henry Hopkins; on the West, by James Daisey and Richard Bloxom; and on the North, by Crippen Bowden.

2. That by deed dated June 14, 1873, and recorded in the aforesaid Clerk's Office in Deed Book 48, at Page 300, James Claville, et ux, conveyed to Thomas Beebe a certain parcel of land situate at Chincoteague, Accomack County, Virginia, containing 4 acres, more or less, and bounded as follows: on the North, by other land of Thomas Beebe; on the East, by the land of James Daisey; on the South, by the land of Richard Bloxom; and on the West, by the land of Crippen Bowden, Jr.

3. That by deed dated November 26, 1906, and recorded in the aforesaid Clerk's Office in Deed Book 87, at Page 446, S. J. Rayfield, et ux, conveyed to Thomas Beebe the following two tracts of land situate at Chincoteague, Accomack County, Virginia: Tract I containing 4 acres, more or less, and bounded as follows: on the Northeast, by the land of J. P. Lunn; on the Southeast, by the land of J. P. Lunn; on the Southwest, by the land of James and Phase Daisey; and on the Northwest, by the land

of J. P. Bowden and the heirs of John Hill and Tract II containing 16 acres, more or less, and bounded as follows: on the Northeast, by the land of James and Phase Daisey; on the Southeast, by the land of the State of Virginia; on the Southwest, by the land of the State of Virginia and Andrews Creek; and on the Northwest, by the land of the heirs of John Hill.

4. That the said Thomas Beebe died seized and possessed of the heretofore described land and by his will probated on October 5, 1922 and recorded in the aforesaid Clerk's Office in the 1920-28 Will Book, at Page 85, he devised this property to his wife, Mary Ann Beebe.

5. That the said Mary Ann Beebe died May 31, 1940, seized and possessed of the heretofore described property which had been devised to her as stated in paragraph 4 hereof.

6. That the will of the said Mary Ann Beebe was probated on June 3, 1940 and is recorded in the aforesaid Clerk's office in Will Book 24, at Page 41.

7. That item six of the said will of Mary Ann Beebe provided:

"SIXTH: The balance of my property is to be put up and sold and divided as follows: One-fifth of the proceeds to be divided equally among the children of J. P. Bowden; one-fifth of the proceeds to be divided equally among the children of Crippen Bowden; one-fifth of the proceeds to be divided equally among the children of Silas Burton Beebe; one-fifth of the proceeds to be given to Emma Jester, daughter of William Bowden; and one-fifth of the proceeds to be given to my sister, Sarah M. Sharpley."

8. That the heretofore described property was devised

under item 6 of the will of Mary Ann Beebe to her executor to be sold but the said property was never sold.

9. That by the will of Mary Ann Beebe, George L. Doughty, Attorney, Accomac, Virginia was named Executor of the estate of Mary Ann Beebe and qualified as such.

10. That pursuant to item 6 of the will of Mary Ann Beebe, George L. Doughty sold a certain parcel of land, not part of the heretofore described land.

11. That on June 20, 1912 an account was filed and is recorded in the aforesaid Clerk's Office in the 1942-43 Accounts of Fiduciaries Book, at Page 60.

12. That the account is attached hereto as Exhibit A and is made a part hereof.

13. That the people named in Exhibit A to whom the proceeds of said sale were distributed pursuant to item 6 of the said will of Mary Ann Beebe is an accurate list of the people who were the objects of the bounty devised and bequeathed in said item 6.

14. That the people named in Exhibit A, their heirs, successors or assigns, are the persons who presently have an interest in the heretofore described property.

15. That Exhibit B is an accurate list of the heirs, successors or assigns of those people named in Exhibit A.

16. That by deed dated December 15, 1972 and recorded in the aforesaid Clerk's Office in Deed Book 337, at Page 559, Wyle Maddox, et ux conveyed a certain 50 foot road to Edward Lunn Tull; that the deed provided that the road was for the joint use of the properties of Wyle Maddox and Edward Lunn Tull and is therefore an easement appurtenant; that the deed was executed by the said Edward Lunn Tull; that this road is on a portion of

Tract II as described in paragraph 3 hereof; that Wyle Maddox is deceased and his heirs, successors and assigns have an interest in this property.

17. That by his will recorded in Will Book 33, at Page 431, the said Wyle Maddox devised and bequeathed one-half of his estate to his wife, Louella Maddox, and one-half to his said wife for life with remainder to his children, Media M. Savage, Wayne W. Maddox and Mary Lou Birch; that the said ^{Louella Maddox} / is deceased and by will recorded in Will Book 34, Page 299, she devised and bequeathed her entire estate to her said children and therefore, these people have an interest in the said property.

18. That by deed dated November 25, 1974 and recorded in the aforesaid Clerk's Office in Deed Book 357, at Page 474, Edward Lunn Tull, et ux conveyed to C. Lester Drummond and R. Norris Bloxom, Trustees, certain property securing a bond executed by Edward Lunn Tull, et ux, payable to Zed H. Ayres and Sadie J. Ayres. Included in the conveyance was a certain outlet leading from Bunker Hill property through the property conveyed, the land of Zed H. Ayres and the land of Mary Ann Beebe's heirs on to Virginia State Route 2102, the said Mary Ann Beebe land being the property heretofore described in paragraphs 1 and 2; that, therefore, the said Trustees and beneficiaries have an interest in a portion of the property heretofore described in paragraph 1 and 2.

19. That by deed dated December 3, 1976 and recorded in the aforesaid Clerk's Office in Deed Book 379, at Page 300, Edward Lunn Tull, et ux, conveyed to R. Norris Bloxom and Frank W. Bell, Trustees, certain property securing a bond executed by the said Edward Lunn Tull, et ux, payable to Bank of Virginia, Eastern Shore, the property being the same property as heretofore described in paragraph 3; Tract I of said paragraph 3 having been

released from this lien by Deed of Release recorded in the aforesaid Clerk's Office in Deed Book 396, at Page 4, however, Tract II of said paragraph 3 still being security for the bond, the said Trustees and beneficiary have an interest in said property.

20. That by deed dated October 20, 1976 and recorded in Deed Book 383, at Page 379, Edward Lunn Tull, et ux, conveyed to Alan Karl Kukk, Karl Kukk and Maret Kukk, certain property and included in said conveyance was a certain outlet over the property heretofore described in paragraphs 1, 2 and 3. Therefore, Alan Karl Kukk, Karl Kukk and Maret Kukk have an interest in said property.

21. That by easement deed dated August 15, 1977 and recorded in the aforesaid Clerk's Office in Deed Book 388, at Page 468, Edward Lunn Tull conveyed to the Chesapeake and Potomac Telephone Company of Virginia a utility right of way upon the property heretofore described as Tract I of paragraph 3 and therefore, said telephone company has an interest in said property.

22. That by easement deed dated March 23, 1978 and recorded in the aforesaid Clerk's Office in Deed Book 397, at Page 130, Edward Lunn Tull conveyed to the Chesapeake and Potomac Telephone Company of Virginia a utility right of way upon the property heretofore described as Tract II in paragraph 3 hereof and therefore, said telephone company has an interest in the said property.

23. That by easement deed dated July 11, 1978 and recorded in the aforesaid Clerk's Office in Deed Book 400, at Page 301, Edward Lunn Tull conveyed to Delmarva Power and Light Company of Virginia, a utility right of way upon the property described as Tract I and Tract II in paragraph 3 hereof and

therefore, said company has an interest in said property.

24. That by deed dated August 23, 1978 and recorded in the aforesaid Clerk's Office in Deed Book 401, at Page 194, Edward Lunn Tull, et ux, conveyed to Milton T. Hickman and Jon C. Poulson, Trustees, certain property to secure a performance bond executed by the said Edward Lunn Tull, et ux, in favor of the County of Accomack, Virginia, a portion of said property being a portion of the property heretofore described in paragraphs 1 and 2 and therefore, the said Trustees and beneficiaries have an interest in said property.

25. That by deed dated August 6, 1979 and recorded in the aforesaid Clerk's Office in Deed Book 415, at Page 493, Edward Lunn Tull, et ux, conveyed to Charles C. Blanton, Sr., et ux, a certain parcel of land designated as Lot 24-B on a certain plat entitled "OCEAN BREEZE MOBILE HOME SITES, SECTION 'B', CHINCOTEAGUE, ACCOMACK COUNTY, VIRGINIA" dated May 9, 1978, made by R. L. Beebe, C.E., which said plat is recorded in the aforesaid Clerk's Office in Plat Book 22, at Page 33; a portion of said Lot 24-B is a portion of the property described as Tract I in paragraph 3 hereof and therefore, the said Charles C. Blanton, Sr., et ux, have an interest in said property.

26. That by deed dated January 4, 1980 and recorded in the aforesaid Clerk's Office in Deed Book 420, at Page 297, Edward Lunn Tull, et ux, conveyed to R. Norris Bloxom and Frank W. Bell, Trustees, certain property to secure a bond executed by the said Edward Lunn Tull, et ux, payable to Bank of Virginia, a portion of said property being a portion of the property heretofore described as Tract I in paragraph 3 and therefore, the said Trustees and beneficiary have an interest in said property.

27. That certain lots designated on the aforesaid plat

and being portions of the property heretofore described as Tract I in paragraph 3 hereof have been sold by Edward Lunn Tull, et ux, through unrecorded land sale contracts and therefore these unknown persons, if any, have an interest in said property.

28. That on April 8, 1980, after the commencement of this suit, Frances Beebe died testate but intestate as to the heretofore described property and her sole heirs-at-law are Ronald L. Beebe and Archie J. Beebe.

29. That a plat marked Exhibit C attached hereto accurately depicts the location and quantity of the property heretofore described in paragraphs 1, 2 and 3.

In consideration whereof your Respondents pray that the following persons be made Respondents to this suit and that partition be made by the Court and if such be impracticable, the property be sold and proceeds divided among those entitled thereto:

Howard F. Bowden, Chester Park, Chincoteague, Va.

Robert W. Bowden, Rt. 1, Box 286, Chincoteague, Va.

Paul W. Bowden, Box 189, Chincoteague, Va.

Elodie Bowden, Pension Street, Chincoteague, Va.

Lillie B. Mears, 111 Pension Street, Chincoteague, Va.

Elizabeth B. Meyers, 1214 Light Street, Baltimore, Md.

Louella M. Taylor, address unknown

Goldie Bowden, 103 Pine Street, Chincoteague, Va.

Norris B. Bowden, 103 Pine Street, Chincoteague, Va.

Lois B. Rhodes, Sharples Street, Chincoteague, Va.

Newman Bowden, Atlantic, Va.

Ray F. Bowden, Parksley, Va.

Kenneth J. Bowden, 5776 Normandy Ave., Va. Beach, Va.

Madeline Christman, Forest Grove, Shovoxod Road,
Parsonsbury, Md.

Eunice Fecteau, 107 Mumford St., Chincoteague, Va.
Clarence Bowden, Jr., 106 Anderton Ave., Chincoteague,
Va.
Carolyn S. Bowden, 128 Church St., Chincoteague, Va.
James Bowden, Willow St., Chincoteague, Va.
Bertie Lynn, 1383 Goffe St., St. Clair, Mich.
India Ellerbee, 441 Thomas Pike Rd., Brunswicke, Me.
Betty Jean Huffman, 2416 Alder St., Easton, Pa.
Carlton Bowden, Circle Dr., Chincoteague, Va.
Arlette Miller, 114 Anderton Ave., Chincoteague, Va.
Reida Butler, 603 Runnymede Ct., Va. Beach, Va.
Elizabeth N. Scott, Deep Hole Rd., Chincoteague, Va.
Lois W. Tarr, Chincoteague, Va.
Barbara W. Christian, Willow St., Chincoteague, Va.
Nellie Lewis, R.F.D., Parksley, Va.
Virginia Lee Wimbrow, 118 Sharpley St., Chincoteague, Va.
Nina Wray Fox, Temperanceville, Va.
Edna Bowden, 617 S. Main St., Chincoteague, Va.
Madeline Thornton Bowden, 106 Maple St., Chincoteague,
Va.
Virginia Jones Mason Coulbourne, Chincoteague, Va.
Gary Mason, 636 Ridge Rd., Chincoteague, Va.
Tyrone Mason, 636 Ridge Rd., Chincoteague, Va.
Ernestine M. Savage, S. Main St., Chincoteague, Va.
Royce Lee Melvin,
Ruth Quillen, Sunnywood Manor, Chincoteague, Va.
Elsie Beebe, 789 S. Main St., Chincoteague, Va.
Clara LeKites, 1818 Danberry Dr., Sun City Center, Fl.
Elizabeth Harris, 4021 Sherwood Lane, Va. Beach, Va.
Robert Bowden, 3660 Loma Way, San Diego, Ca.
Lillie Pointer, 106 Mumford St., Chincoteague, Va.

Ernestine Holston, Chincoteague, Va.

Robert J. Pointer, Richardson Landing, Chincoteague, Va.

James Lunn, Jr., Lunn Buick Pontiac, Tasley, Va.

Maggie J. Lunn, 106 Mumford St., Chincoteague, Va.

Ronald L. Beebe, 316 S. Church St., Snow Hill, Md.

Archie J. Beebe, Auburn University, Auburn, Al.

Jean Beebe Kay Daisey, S. Main St., Chincoteague, Va.

Oneita Beebe Daisey, Springfield, Va.

Media M. Savage, Piney Island, Chincoteague, Va.

Wayne W. Maddox, Piney Island, Chincoteague, Va.

Mary Lou Birch, Piney Island, Chincoteague, Va.

C. Lester Drummond, Esquire, Accomac, Va.

R. Norris Bloxom, Esquire, Accomac, Va.

Frank W. Bell, Bank of Virginia, Hallwood, Va.

Bank of Virginia, Hallwood, Va.

Alan Karl Kukk, Chincoteague, Va.

Karl Kukk, Chincoteague, Va.

Maret Kukk, Chincoteague, Va.

Chesapeake and Potomac Telephone Company of Virginia

Delmarva Power and Light Company of Virginia

Milton T. Hickman, Painter, Va.

Jon C. Poulson, Esquire, Accomac, Va.

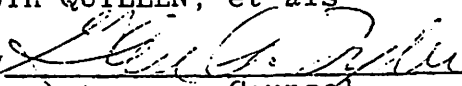
County of Accomack, c/o C. M. Williams, Accomac, Va.

Charles C. Blanton, Sr., 1509 Sycamore St., Baltimore, Md.


Helen L. Blanton, 1509 Sycamore St., Baltimore, Md.

RUTH QUILLEN, et als

By


Counsel

Glen A. Tyler, p.d.
Parksley, Virginia 23421

013
FILED 7/19/15 A.D. 15
Teste: J. Fulton Ayres, Clerk
By  , Dy.

PETITION AND OFFER

To the Honorable N. Wescott Jacob, Judge of the aforesaid Court.

Your petitioner, Edward Lunn Tull, respectfully represents unto your Honor the following:

1. That he is one of the Complainants in the above styled cause now pending in this Court.

2. That your petitioner does offer to purchase Tracts A, B, C and D as set out in the Bill of Complaint at and for the sum of Fifty-Three Thousand Nine Hundred Twenty Dollars (\$53,920.00) in cash.

3. That in the alternative, your petitioner does make the following offer:

A. Your petitioner does offer to purchase Tract A containing 18.5 Acres, more or less, at and for the sum of Seventeen Thousand Three Hundred Dollars (\$17,300.00) in cash.

B. Your petitioner does offer to purchase Tract B containing 4.0 Acres at and for the sum of Four Thousand Dollars (\$4,000.00) in cash.

C. Your petitioner does offer to purchase Tract C containing 4.10 Acres at and for the sum of Nine Thousand Two Hundred Dollars (\$9,200.00) in cash.

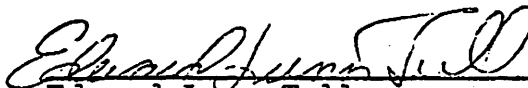
D. Your petitioner does offer to purchase Tract D containing 7.63 acres at and for the sum of Twenty-Three Thousand Four Hundred Twenty Dollars (\$23,420.00) in cash.

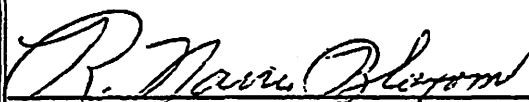
4. That your petitioner alleges that the above described prices are fair and equitable; that they represent the fair market value of the property without regard to any enhancement in value by virtue of improvements placed upon said property by your peti-

tioner and that the aforesaid offers are consistent with the finding of the Court as to the fair market value of said properties in this matter.

WHEREFORE, your petitioner prays that he be permitted to purchase the above described property at and for the price as above set out and that said property be allotted to him and that he be permitted to pay to the other parties to this cause such sums of money as their interest therein may entitle them to pursuant to Section 8.01-83, Code of Virginia, 1950, as amended.

Respectfully submitted,


Edward Lunn Tull


R. Norris Bloxom, p.q.
Accomac, Virginia 23301

CERTIFICATE

I hereby certify that a copy of this Petition and Offer was mailed to the following persons on July 31, 1980.

C. Lester Drummond, Esq.
Accomac, Virginia 23301

Glen A. Tyler, Esq.
Parksley, VA 23421

Mr. Frank W. Bell
Bank of Virginia
Hallwood, VA 23359

Carl S. Wolfson, Esq.
11 Market Street
Poughkeepsie, NY 12601

Henry P. Custis, Jr., Esq.
Ayres, Hartnett and Custis
Accomac, Virginia 23301

Jon C. Poulson, Esq.
Accomac, VA 23301


R. Norris Bloxom, p.q.

ANSWER

To the Honorable N. Wescott Jacob, Judge of the Court
aforesaid:

Your Respondents respectfully represent unto the Court
as follows:

1. In response to the petition of Edward Lunn Tull,
they, the Respondents, will also purchase the property for the
same amounts bid by the said petitioner and so offer.

2. Petitioner's offer is less than the fair market
value of the property without regard to enhancement for
improvements.

3. The Court has not "found" any amount to be the fair
market value in this case as to such property.

4. "While the Court has authority, in its discretion,
to accept private bids (citing cases), judicial sales are
usually made at public auction..." Meade, Lile's Equity Pleading
and Practice, 3rd. ed. (1952) § 281.

Partition of property by allotment to one of the
co-owners of the property is authorized. Va. Code Ann. § 8.01-83
(Rep. Vol. 1977)

But such partition is a partition
by sale and must be conducted in
compliance with all relevant
statutory provisions,
see ... § 8.01-67, et seq., and
in accordance with the long
established rules and standards
governing judicial sales.

Austin v. Dobbins, 219 Va. 930, 934 (1979). The Austin case quotes from Federal Land Bank v. Parks, 170 Va. 240, 242 (1938) as follows:


The sale of property in judicial proceedings must be made so as to bring the best price obtainable, and to attain that purpose the sale should be conducted so as to encourage fair, open and competitive bidding.

Where a sale of the common property and division of the proceeds will cause the least prejudice to the interest of all concerned and will promote justice most generally, it is error to make partition by other means. 14A M.J., Partition § 19 (1978) (citing many cases)

There are two fairly recent cases on the subject of sale by allotment, in both of which the court affirmed orders requiring public sale as opposed to allotment, and both cases support the contentions of the Respondents for refusing sale by allotment to the petitioner at the price offered.

Thrasher v. Thrasher, 202 Va. 594, 604 (1961) and
Shotwell v. Shotwell, 202 Va. 613 (1961)

WHEREFORE, Respondents pray that the petition of Edward Lunn Tull for allotment at the price offered be denied, and that sale be made at public auction of all parcels of the real estate.


By Counsel

Glen A. Tyler, p.d.
Parksley, Virginia 23421

OFFER

To the Honorable N. Wescott Jacob, Judge of the Court
aforesaid:

Ruth Quillen, one of the owners and Respondents, and
James Quillen, her husband, make the following cash offers for
fee simple title for property in this suit as follows:

1. For Tract A, the sum of Eighteen Thousand Dollars
(\$18,000.00).
2. For Tract C, the sum of Fifteen Thousand Dollars
(\$15,000.00).
3. For Tract D, the sum of Thirty-Five Thousand
Dollars (\$35,000.00).


RUTH QUILLEN


JAMES QUILLEN

CERTIFICATE

This is to certify that I mailed a true copy of the
foregoing Offer to the following persons on the 17th day of
Sept.
~~August~~, 1980:

R. Norris Bloxom, Esquire
Accomac, Virginia 23301

C. Lester Drummond, Esquire
Accomac, Virginia 23301

Henry P. Custis, Jr., Esquire
Accomac, Virginia 23301

DECREE OF SALE

This cause, which has been regularly matured, set for hearing and docketed, came on to be heard upon the bill of complaint and cross bill and exhibits therewith attached, taken for confessed as to Mary Lou Birch, Wayne W. Maddox, Madeline Thornton Bowden, Media Savage, Nina Ray Fox, Nellie Lewis, Ray F. Bowden and Virginia Lee Wimbrow, resident Respondents who have been regularly served with process, they failing to appear, plead, answer or demur; upon the personal appearances of R. Norris Bloxom and C. Lester Drummond, Trustees, in open Court; upon the answers of Ruth Quillen, Elsie Beebe, Elodie Bowden, Frances Beebe, Donald Beebe, Jeanette A. Beebe, Ruby Beebe Hanna, Robert W. Bowden of Chincoteague, Robert Bowden of New York, Paul W. Bowden, Howard F. Bowden, Tyrone Mason, Gary C. Mason, Charles C. Blanton, Sr., Jon C. Poulson, Trustee, Milton T. Hickman, Trustee, The County of Accomack, Delmarva Power and Light Company, The Chesapeake and Potomac Telephone Company of Virginia, Frank W. Bell, Trustee, and The Bank of Virginia; upon proper proof of the due execution of two orders of publication against the remaining Respondents named in the bill and cross bill, who are nonresidents or not found for service of process or sued by the general description of Parties Unknown, the requisite time having elapsed since the completion thereof, and such Respondents still having failed to appear; upon the notice of hearing ore tenus properly served on those entitled thereto; upon the evidence taken ore tenus and exhibits introduced, and was argued by counsel.

It appearing to the Court and the Court finding that

the parties have the right to compel partition of the tracts of real estate involved in this suit; that none of the tracts of real estate is susceptible of partition in kind; that the proper parties are before the Court; that certain of the tracts should be conveyed by allotment to one of the parties for payment to the others of such sum as their interests may entitle them to; that the interests of those entitled will be promoted by a sale of the remaining tracts and division of the proceeds; that the owners of the said real estate involved in this suit and their respective percentage shares are as set out on the exhibit introduced for that purpose and agreed upon by the parties; that the liens against the said real estate are accurately reflected in the cross bill and the exhibit introduced for that purpose and agreed upon by the parties; and that the annual *RENTAL* value for said tracts of real estate is insignificant;

It is, therefore, ADJUDGED, ORDERED and DECREED as follows:

1. That the real estate, which is shown on the composite plat in the record, designating Parcel A of 18.5 Acres, Parcel B of 4.0 Acres, Parcel C of 4.10 Acres and Parcel D of 7.63 Acres, is the real estate of which Mary Ann Beebe died seized and possessed and devised according to her will to be sold but which was not sold.

2. That the 50-foot roadway, as shown on the composite plat in the record, leading across the Maddox land to Parcel A is an easement appurtenant to Parcel A, inures to the benefit of all the owners of Parcel A and passes with Parcel A.

3. That the 30-foot roadway and the 15-foot roadway, as shown on the composite plat in the record,

leading from the public road to Parcels C and D are easements appurtenant to Parcels C and D, inure to the benefit of all the owners of Parcels C and D and pass with Parcels C and D.

4. That the street designated on the plat of "Ocean Breeze Mobile Home Sites, Section B," recorded in the Clerk's Office for this Court and referred to in the record as including Parcel B on the composite plat in the record, is a public street running to said Parcel B.

5. That the easements described in the cross bill granted to The Chesapeake and Potomac Telephone Company of Virginia and to Delmarva Power and Light Company over Parcels A and B shown on the composite plat in the record are valid, subsisting utility easements for telephone and electric service to said real estate, and such Parcels shall be conveyed subject thereto.

6. That Parcel A of 18.5 Acres is hereby allotted to Edward Lunn Tull, Jr., and he shall pay therefor the sum of Seventeen Thousand Three Hundred Dollars (\$17,300.00), exclusive of enhancement in value occasioned by said Edward Lunn Tull, Jr. having personally acquired the above described 50-foot roadway, to which the Respondents, by counsel, objected and excepted.

7. That Parcel B of 4.0 Acres is hereby allotted to Edward Lunn Tull, Jr., and he shall pay therefor the sum of Four Thousand Dollars (\$4,000.00), exclusive of enhancement in value occasioned by said Edward Lunn Tull, Jr. having personally acquired the

road therefor and developed the same as a mobile home park, to which the Respondents, by counsel, objected and excepted.

8. That the enhancement in value of Parcel C of 4.10 Acres and Parcel D of 7.63 Acres occasioned by Edward Lunn Tull, Jr. having personally acquired the said 30-foot roadway and 15-foot roadway for the same is equal to thirty percent (30%) of their value, to which the Respondents, by counsel, objected and excepted.

9. That Parcels C and D be sold by the Court in this cause and to that end, the Court appoints Glen A. Tyler and R. Norris Bloxom, Special Commissioners, to make such sale at public auction, after advertising the same in three consecutive issues of The Eastern Shore News and such further advertisement as the Special Commissioners may deem appropriate, the said Parcels to be sold together as one parcel with the above described rights of way as appurtenances, the purchaser to pay fifteen percent (15%) of the purchase price in cash on the day of sale with the remainder to be evidenced by a note therefor to be payable thirty days from the day of sale, the purchaser to pay interest on such note at the rate of twelve percent (12%) per annum on the unpaid balance, the property to be at the risk of the purchaser from the time bid off, with all taxes to be prorated as of thirty days after the day of sale. Upon confirmation of the sale by the Court and payment in full of the purchase money, the Special Commissioners shall convey said real estate to the purchaser with Special Warranty

of title upon a deed being prepared and tendered to the said Special Commissioners for execution.

It is further ORDERED that before the said Special Commissioners shall proceed to act according to this decree, they shall enter into and acknowledge a bond before the Clerk of this Court in the penalty of FIFTY THOUSAND Dollars (\$ 50,000⁰⁰) with surety to be approved by the Clerk, conditioned for the faithful performance of their duties under this and subsequent decrees which may be entered in this cause.

The Special Commissioners shall promptly act to carry out the terms of this decree, and they shall make full report of their actions hereunder.

And the Court reserves, etc.

SEEN:

R. Norris Bloxom
R. NORRIS BLOXOM, p.q.

REPORT OF SPECIAL COMMISSIONERS

To the Honorable N. Wescott Jacob, Judge of the Court aforesaid.

The undersigned Special Commissioners respectfully report unto your Honor that by virtue of a decree entered in this cause on the 9th day of February, 1981, they did, after first entering into bond and in all other respects complying with said decree and with the statute laws of the State of Virginia for such cases made and provided, after having advertised the time, terms and place of sale in three consecutive issues of The Eastern Shore News, a newspaper published in Accomack County, Virginia and by posting handbills at the front door of the Courthouse and in various other places in the vicinity of said real estate, and with the consent of counsel for all parties represented in this matter, offer and expose said real estate for sale at public auction at the front door of the Courthouse of this County on the 27th day of February, 1981. The sale was well attended; the bidding was spirited and at said sale Edward Lunn Tull became the purchaser, he being the highest bidder, for the sum of Sixty Thousand Dollars (\$60,000.00). The said Edward Lunn Tull paid to your Special Commissioners on the day of sale the sum of Nine Thousand Dollars (\$9,000.00) in cash and executed his bond in the amount of Fifty-One Thousand Dollars (\$51,000.00) payable to said Special Commissioners thirty (30) days from date of sale with interest thereon at twelve per cent (12%) per annum. Your Special Commissioners now report that the said Edward Lunn Tull has now paid the balance due on said note in the amount of Fifty-One Thousand Dollars (\$51,000.00) plus interest thereon in the amount of \$670.68, all of which said funds


together with the aforesaid Nine Thousand Dollars (\$9,000.00) down payment have been deposited in United Virginia Bank/Seaboard National at Accomac, Virginia to the credit of said Special Commissioners.

Your Special Commissioners represent to the Court that the property brought a fair price at said sale and respectfully recommend that said sale be confirmed.

Your Special Commissioners return as a part of this report two deposit slips issued by United Virginia Bank/Seaboard National at Accomac, Virginia in the aggregate amount of \$60,670.68 in the name of said Special Commissioners, together with the bond of Edward Lunn Tull in the amount of Fifty-One Thousand Dollars (\$51,000.00) which said bond has been marked "paid in full".

There is attached hereto as a part of this report a copy of the decree under which your Special Commissioners have acted.

Respectfully submitted.


Glen A. Tyler


R. Norris Bloxom

Special Commissioners

\$ 21,000.00 Accomac, Va., Feb 17 1981 No. _____
21,000.00 after date for money loaned I promise to to the order of Due
21,000.00 Dollars
 with interest at legal rate.

Negotiable and payable at the offices of C. LESTER DRUMMOND and R. NORRIS BLOXOM, Accomac, Va.
 Value received, without offset.

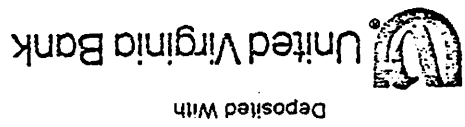
The maker or makers, endorser or endorsers, each hereby waive the benefit of his or her respective Exemption as to the debt evidenced by this bond, and in the event default be made in the payment hereof at maturity, each hereby agrees to pay all costs and expenses incurred in collecting the same, including 15 per cent, attorney's fee, collection and the said maker or makers, endorser or endorsers, each hereby authorizes and empowers R. Norris Bloxom or C. Lester Drummond, as attorney-in-fact for the purpose and solely authorizes him in event of such default, for and in the name of the maker or makers, endorser and endorsers, to confer judgment against the said maker or makers, endorser or endorsers, jointly or severally, in favor of the PAYEE, hereof or his assigns or the lawful holder of this bond, for the aforesaid sum, with interest thereon from the date of this bond until paid at the legal rate, and the above costs, expenses and attorney's fee, in the Circuit Court for the County of Accomack, or Northampton, Virginia, or in the respective Clerk's Offices thereof; and each hereby waives protest, presentation, demand and notice of dishonor and releases all manner of error in the entering of said judgment or any process or proceedings thereon.

Witness the following signatures and seals.
[Signature] (Seal)
[Signature] (Seal)
[Signature] (Seal)
 Witness:

FORM 03-27 REV 10 77

Always obtain an official receipt when making a deposit.

The deposit for which this receipt is issued is accepted subject to the rules and regulations of this bank.



*By Gen. A. Dyer and
 R. Norris Bloxom
 Acc. Comm. in and as atty.
 # 57-940*

Deposited With



The deposit for which this receipt is issued is accepted subject to the rules and regulations of this bank.

Always obtain an official receipt when making a deposit.

FORM 03-27 REV 10 77

026

*By Gen. A. Dyer and
 R. Norris Bloxom
 Acc. Comm. in and as atty.
 # 57-940
 Call by [Signature]*

ASSIGNMENTS OF ERROR

I. The Trial Court erred in finding enhancement in value for Parcels C and D due to improvements, consisting of the acquisition of a right of way to Parcel D, by one of the cotenants, and in finding the value of such enhancement to be thirty percent of the value of the two Parcels.

II. The Trial Court erred in allotting Parcel A to Tull for \$17,300 and abused its discretion in refusing to order that Parcel A be sold at public auction despite the fact that Ruth Quillen, one of the cotenants, and James Quillen, her husband, made an offer of \$18,000 for Parcel A, the Trial Court thus erroneously concluding that there was enhancement in value due to the acquisition of a right of way to Parcel A by Tull greater than \$700.

III. The Trial Court erred in allotting Parcel B to Tull for \$4,000 when the only competent evidence was that the value of Parcel B, assuming access to a public road, was \$14,700.

1 VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ACCOMACK.

2
3 EDWARD LUNN TULL and ZED AYRES, :

4 Complainants, :

5 v. :

6 RUTH QUILLEN, et als, :

7 Respondents. :

8
9
10
11 Before Hon. N. Wescott Jacob, Judge

12 Accomack County, Virginia

13 November 3, 1980

14
15 FILED March 25 A. D., 1981

16 Teste: J. Fulton Ayres, Clerk.

17 By David W. Drummond, Dy.

18 -----oOo-----

19
20
21 APPEARANCES: Mr. C. Lester Drummond and
22 Mr. R. Norris Bloxom,
attorneys for the complainants.

23 Mr. Glen A. Tyler and
24 Mr. R. Revell Lewis, III,
attorneys for the respondents.

I N D E X

WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

Winder, J. W., Jr.

2

7

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Leonard, D.

11

21

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Davis, J.

26

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EXHIBITS

None.

1 THE COURT: All right, sir. Do you want to
2 proceed and put on your witnesses?

3 MR. BLOXOM: All right. Mr. Winder and
4 Mr. Leonard be sworn, please.

5 (The witnesses were called up and sworn.)

6 MR. BLOXOM: Mr. Winder, please.

7
8 -----oOo-----
9

10 JOHN W. WINDER, JR., called as a witness on behalf of
11 the complainants, having been first duly sworn, was examined
12 and testified as follows:
13

14 DIRECT EXAMINATION
15

16 BY MR. BLOXOM:

17 Q Mr. Winder, state your name, sir, and your
18 residence.

19 A John W. Winder, Jr., Chincoteague.

20 Q And your age, sir?

21 A Sixty-four.

22 Q How long have you lived at Chincoteague?

23 A Sixty-two years.

24 Q Have you been in business on the island during
25 that period, Mr. Winder?

1 A Yes, sir.

2 Q Are you a member of the -- of any bank boards?

3 A Farmers and Merchants, Eastern Shore.

4 Q How long have you been a member of that board?

5 A Well, I have been on the Bank of Chincoteague
6 and F & M board for twenty-one years.

7 Q And as a director of the Bank of Chincoteague
8 and the F & M bank, have you had occasion to have appraised
9 properties over the years?

10 A Yes, sir.

11 Q Are you familiar with property values in and
12 around the area of Chincoteague Island?

13 A Yes, sir.

14 Q At this point, let me ask you, Mr. Winder, are
15 you related by blood or marriage to any of the parties to
16 this suit as far as you know?

17 A No. I would say no.

18 Q And do you have any interest in this matter
19 before the court?

20 A No, sir.

21 Q All right, sir. Now, are you familiar,
22 Mr. Winder, with the area --

23 MR. BLOXOM: If I might use this one,
24 Mr. Tyler. It's the same plat.
25

1 BY MR. BLOXOM:

2 Q Are you familiar, sir, with the area on the
3 south end of Chincoteague Island designated as C on the plat
4 which is before you, which is supposed to contain 4.10 acres
5 more or less?

6 A I know where it is; yes, sir.

7 Q Have you been on the property?

8 A Yes, sir.

9 Q How long have you known this property?

10 A Well, I have known where it is for quite a few
11 years because of where it is, but I have been on it once.

12 Q All right, sir. What's the nature of the
13 property? What's the description of it, briefly? What
14 kind of property is it?

15 A It's some highland and some lowland and after
16 last weekend, it's a lot of lowland.

17 Q Well, could you break it down on a percentage
18 basis roughly as best you can as to what would be high and
19 what would be low?

20 A Well, the sea piece, I would say, would be
21 maybe fifty-fifty and the other piece would be forty-sixty.

22 Q Forty-sixty which way?

23 A Sixty high and forty low.

24 Q All right, sir. And you say you have been
25 on both pieces recently?

1 A Yes, sir.

2 Q Were you on it last weekend?

3 A Yes, sir.

4 Q What did it look like last weekend?

5 A No, not last weekend. This weekend. It was
6 some water on it, sir.

7 Q Standing?

8 A Yes, sir.

9 Q Mr. Winder, are you familiar with the outlet
10 that is now being used to Tract C that runs from the main
11 street?

12 A Yes, sir.

13 Q I think that's been alleged in evidence or
14 testified to that it's a thirty-foot outlet. Have you been
15 down that outlet and seen it?

16 A Yes, sir, I have been down the outlet.

17 Q There's also been evidence that that was an
18 outlet acquired by Mr. Tull. Are you aware of that?

19 A I didn't know who put it there, but I have
20 been down the outlet.

21 Q Prior to the time this thirty-foot outlet was
22 put there, what in your opinion would be the fair market
23 value of Tract C?

24 A Well, unless it had an outlet, it would be of
25 less value. I would say \$12,000.

1 Q You mean \$12,000 --

2 A Without the outlet.

3 Q -- without the outlet that is there now?

4 A That is correct.

5 THE COURT: This is the value of Tract C
6 without an outlet?

7 THE WITNESS: That is correct.

8
9 BY MR. BLOXOM:

10 Q What in your opinion would be the value of
11 Tract C with the outlet as it now exists?

12 A Seventeen.

13 Q All right, sir. Now, let's talk about
14 Tract D for just a moment that is shown on the plat as
15 containing 7.6 acres. You're familiar with that plat?

16 A Yes, sir.

17 Q What is the description of that plat? Does
18 it differ from Tract C in any way?

19 A Well, it's larger.

20 Q I mean descriptionwise. Otherwise. As far
21 as being high and low.

22 A I have done told you --

23 Q I believe you said sixty high and forty low;
24 is that right?

25 A Yes, sir.

1 Q What, in your opinion, Mr. Winder, would be
2 the value -- the fair market value of Tract D before the
3 outlet was put in as it now exists, referring to this
4 thirty-foot outlet?

5 A Twenty-five thousand, sir.

6 Q And what, in your opinion, would be the fair
7 market value of Tract D at this point with the outlet?

8 A Thirty-five.

9 Q Mr. Winder, what do you base your appraisals
10 on?

11 A Well, on some land that was sold up in Wildcat
12 and some that was sold down below that at different sales.

13 Q Have you been interested or following the
14 sales that have been made in the last few years on
15 Chincoteague?

16 A I have not been interested, sir.

17 Q I didn't mean personally interested.

18 A I mean but I have known, you know, what it did
19 bring at different times.

20 MR. BLOXOM: Your witness.

21
22 CROSS-EXAMINATION

23
24 BY MR. TYLER:

25 Q Mr. Winder, with respect to the last part of

1 your testimony, the differences in the two prices with and
2 without, I wonder if you could tell us what your reason --
3 you say you think Tract C is worth \$12,000 without the
4 outlet and seventeen with it, and Tract D is worth twenty-
5 five thousand without the outlet and thirty-five with it.
6 I'm concerned whether you could give us a little better
7 understanding -- how do you come to that conclusion?

8 A You're asking my opinion?

9 Q Yes, sir.

10 A The property would not be of any value without
11 an outlet.

12 Q Well, you're saying it would be zero value
13 without an outlet?

14 A It would have to have an outlet.

15 Q If you absolutely could not get to it, it
16 certainly would be a very foreign thing to consider, wouldn't
17 it?

18 A Yes, sir.

19 Q Nevertheless, you have given it a value as
20 if it had no outlet. It's difficult to consider that, but
21 I'm wondering how you came to that conclusion. By what
22 process in your mind or by what experience you have had in
23 the past did you come to that conclusion? How do you base
24 that?

25 A I don't think any land unless it has an outlet

1 would be of any value.

2 Q Well, I assume that you don't have any
3 example on Chincoteague to go by in the past where this kind
4 of thing has come up.

5 A Well, it's been land on Chincoteague that has
6 had no outlet and it's had to be something done to allow
7 them to have an access and they have had to buy pieces of
8 land to get in or out from.

9 Q Were you personally involved in any of those?
10 Did you examine those transactions?

11 A No, but I have heard tell of them.

12 Q I take it you're not basing it on the actual
13 value of the land where those outlets go that Mr. Tull
14 provided. You're not basing it in that respect at all, I
15 take it. In other words, the value of the lot or land over
16 which those outlets go.

17 A I took how much had to be built to give an
18 outlet to each piece of this property.

19 Q You did consider what it would cost to build
20 an outlet?

21 A I did and I would say it could be quite
22 expensive because it had to have an outlet to come from the
23 road out to where this was.

24 Q Are you familiar with what Mr. Tull actually
25 paid for these outlets at the time they were purchased?

1 MR. BLOXOM: Your Honor, I would object to
2 that question. It's irrelevant.

3 MR. TYLER: It's in evidence previously, Judge.

4 THE COURT: I would allow it. I question the
5 relevance of it.
6

7 BY MR. TYLER:

8 Q My only question is, Do you know what it cost
9 him at the time he bought those outlets?

10 A No, sir, I don't. I'm sure it cost him a
11 considerable amount of money.

12 Q You're sure it would cost a considerable amount
13 of money to do that?

14 A Yes, I do, hauling dirt and fixing it up would
15 be expensive.

16 Q Then you have no personal experience nor have
17 you done any research to determine what it would actually
18 cost to by law, through a court of law, enforce an outlet
19 across someone's property?

20 A No, but I have helped build a road across
21 property where there has been an outlet and it has been
22 quite expensive.

23 MR. TYLER: That's all the questions I have,
24 Your Honor.

25 THE COURT: Mr. Winder, if these properties

1 were sold at public auction or sold any way they were
2 sold, publicly or privately, would you think they
3 could be sold separately or do you think --

4 THE WITNESS: They could be sold separately,
5 but I would think it advisable to either buyer or
6 seller to sell them as a whole.

7 THE COURT: Sell C and D together?

8 THE WITNESS: Yes.

9 THE COURT: Right, sir. Thank you,
10 Mr. Winder.

11
12
13 -----oOo-----
14
15

16 DONALD LEONARD, called as a witness on behalf of
17 the complainants, having been first duly sworn, was examined
18 and testified as follows:

19
20 DIRECT EXAMINATION

21
22 BY MR. BLOXOM:

23 Q State your name, sir, and your residence.

24 A Donald Leonard, Chincoteague.

25 Q Your age, Mr. Leonard?

1 A Fifty-four.

2 Q How long have you lived at Chincoteague?

3 A All my life with the exception of some service
4 and school time.

5 Q Are you in business on Chincoteague and have
6 you been over the years?

7 A Yes, sir.

8 Q Do you own property on Chincoteague?

9 A Yes, sir.

10 Q On what parts of the island, if I may ask?

11 A Well, I own some on Piney Island, some north
12 end of Chincoteague and some central Chincoteague.

13 Q At this point, Mr. Leonard, let me ask you
14 have you discussed your testimony with Mr. Winder or has he
15 discussed his testimony with you?

16 A No. I didn't realize Mr. Winder would be
17 down here until this morning.

18 Q Let me ask you the same question. Are you
19 related by blood or marriage to any of the parties to the
20 suit as far as you know?

21 A Not to my knowledge.

22 Q I know there are a lot of them, but do you have
23 any economic interest in the outcome of this matter before
24 the Court at all?

25 A None whatsoever.

1 Q Have you had occasion over the years to have
2 made appraisals in the area of Chincoteague?

3 A Yes.

4 Q Have you attended sales of property on
5 Chincoteague?

6 A Yes.

7 Q Have you taken any interest in the private
8 sales that have been made on Chincoteague of land that's
9 comparable or as near comparable to this as it could be?

10 A Well, I try to keep abreast of land sales and
11 current values.

12 Q Mr. Winder has testified that Tract C is
13 approximately fifty-fifty highland. Have you been on this
14 land, Mr. Leonard?

15 A I think that's a fair estimate, fifty-fifty.

16 Q Do you know this property specifically?

17 A Very well.

18 Q How long have you known it?

19 A Since I was a child.

20 Q Fifty years?

21 A Right. Forty-five anyway.

22 Q You think that's a fair estimate, the fifty-
23 fifty?

24 A I think so.

25 Q Now, he's testified that Tract D was in his

1 opinion sixty high and forty low.

2 A I think that's a fair appraisal.

3 Q And you have been on Tract D also?

4 A I have been on both of them on a number of
5 occasions.

6 Q And specifically recently have you been on
7 them?

8 A Yes.

9 Q How recently?

10 A A week ago.

11 Q What was their condition a week ago
12 incidentally?

13 A Very wet, but that was an abnormal condition
14 as opposed to an average condition. We had an extremely
15 high tide there. It wasn't a normal situation.

16 Q This, of course, is not waterfront property.

17 A It was that day.

18 Q All right, sir.

19 A Not waterfront in the sense that you're
20 probably thinking, no.

21 Q Prior to the time that Mr. Tull acquired this
22 property, you were familiar with it then, I assume?

23 A Yes.

24 Q Were you familiar with the outlet that existed
25 prior to that time?

1 A Well, I don't know if it was a legal outlet
2 or what. I know which route was used to gain access to this
3 property.

4 Q Will you look at Tract C on the plat and tell
5 whether or not the dotted line was the outlet that was used
6 for that tract prior to the time --

7 A Are you referring to --

8 Q I'm referring to both of them.

9 A This dotted line?

10 Q Yes, sir.

11 A No, that is with a lot.

12 Q Where was the outlet across that property?

13 A It was across what is now known as Tom's Cove
14 Campground.

15 Q Where is that on the plat?

16 A Well, that's this Burton Seafood, Incorporated
17 is what is now Tom's Cove Campground.

18 Q Is the dotted line shown here the outlet that
19 was in use?

20 A It would be roughly in this area. (Indicating)
21 I'm not familiar in an exact sense, but it was across this
22 property to what is now the road going through Burton's
23 or Tom's Cove Campground.

24 Q Essentially, was it as shown on the plat up
25 until the time it hit the Burton line, up to this point right

1 here?

2 A To some degree, yeah. I would say it's
3 relatively close. It's a winding horse cart road. It
4 went across what is now the Burton property.

5 Q What, in your opinion, Mr. Leonard, would be
6 the fair market value of Tract C prior to the time
7 Mr. Tull purchased and constructed the existing outlet?
8 You are familiar with the outlet as it now exists that
9 Mr. Tull uses?

10 A Yes, I would estimate that the property would
11 be worth approximately a third less.

12 Q You mean a third less than it is now?

13 A Yes.

14 Q Can you be more specific and give us what you
15 think it would be worth, the fair market value before and
16 after?

17 A Approximately fifteen thousand with an outlet.
18 Ten thousand without.

19 Q And Tract D, can you be specific -- as specific
20 as possible as to your --

21 A Approximately thirty-five and twenty-three.
22 Thirty-five being with an outlet, twenty-three being without.

23 Q Now --

24 THE COURT: Give me those figures again on D.

25 THE WITNESS: Thirty-five high. That is with

1 an outlet. Twenty-three without.

2
3 BY MR. BLOXOM:

4 Q Roughly a third?

5 A It's roughly a third.

6 Q Now, Mr. Leonard, anticipating Mr. Tyler's
7 question, I will ask you what do you base your values on?

8 A You mean as to why I would come up with a
9 figure of one-third less?

10 Q One-third or why would you come up with these
11 values at all? What do you base it on, in other words?

12 A Well, I based it on an estimate of what I feel
13 the property is worth and the possible use of such property
14 and the related sales in that area of late. I think that
15 D is worth a little more than C because of the elevations
16 of it and the potential use of it and my estimate on D, if
17 I were going to appraise it, I would say it's worth about
18 \$5,000 an acre with the road, of course.

19 Q All right. Now, can you be more specific as
20 to any comparables that you can recall over the last few
21 years?

22 A Well, I know of lands.

23 Q Reasonably comparable?

24 A Well, I know of lands south of there that have
25 been sold from two to three thousand dollars an acre and I

1 know of other properties abutting this that have been sold
2 of late that sold for figures of approximately \$15,000, which
3 could -- if you want to envision such a move -- that could
4 be possibly used as an outlet so there is two ways of
5 estimating what an outlet would cost; and, either way you
6 take it, it would cost somewhere in the neighborhood of
7 \$15,000 to put an outlet there based on recent sales and pro-
8 viding you could find a piece of property that was for sale.

9 Q Are these lands that you're speaking of --
10 these other sales -- are they reasonably comparable types
11 of property? You said they are in the same --

12 A They are in the same general area, but in the
13 case that I'm referring to, this D especially is probably
14 worth a little more than land that would be sold by the acre.
15 It's mostly wooded with the exception of the low spots and
16 the potential use of it is a little better than those lands
17 that have been sold in that area for a comparable situation.

18 Q The comparables that you have given to the
19 Court were less than \$5,000 per acre?

20 A Yes.

21 Q This is what you base your estimate on?

22 A Yes.

23 Q Do you know of any other lands on Chincoteague
24 that have been sold that are reasonably comparable?

25 A Not -- with the exception of what I have

1 mentioned, not in that particular area.

2 Q How about in other areas?

3 A Yes. There is land that has been sold of late
4 that are comparable.

5 Q Can you be more specific so --

6 A On the north end of the island I think there
7 is cases in point. The purchase of what was known as the
8 Jim Powell property on the north end of the island would
9 be to some degree comparable.

10 Q Do you know what those properties would bring
11 on an acre basis?

12 A Not off the top of my hat. I have a general
13 knowledge of what they were in size and what they brought as
14 a whole, but I haven't broken it down on an acreage basis.

15 Q Are you familiar with the Wildcat sale by
16 Mr. Derrickson and I believe by his sister just a year or
17 two ago?

18 A Yes, sir. We were interested in that at one
19 time and the fact of the matter is we made an offer on it.

20 Q Then you are familiar with that property?

21 A Yes.

22 Q All right. Do you know what it brought at
23 public auction? It was sold at public auction, was it not?

24 A Yes. They were bought in by the original
25 owners by a default in payment by the ones who owned it.

1 Q Do you know what they brought?

2 A If my memory serves me correctly, one brought
3 sixty and one forty.

4 Q How many acres was it?

5 A It was approximately fifty acres in both.

6 Q You say sixty and forty?

7 A Right. Our basis when we were interested in
8 it, it was based on approximately \$1,500 an acre. That was
9 ten years ago and, of course, that figure would have
10 increased in proportion to the inflationary trend.

11 Q Did the acquisition of an outlet with respect
12 to that property influence your bid at all?

13 A It certainly did.

14 Q What was the problem?

15 A We knew that there was an outlet or accepted
16 outlet to that property and the similarity to this was that
17 it was a horse cart road with no established width and right-
18 of-way, and, of course, at first when we first considered
19 our offer of \$1,500 an acre for these two properties, we
20 hadn't investigated the problems that we were going to
21 confront with acquiring an outlet wide enough to develop
22 property. Later after the sale was postponed and we
23 reconsidered and we considered what the problems were we
24 were going to have in acquiring a suitable right-of-way.
25 We merely became disinterested because it was more problems

1 involved than we wanted to --

2 Q So it affected your bid personally. In your
3 opinion, did it affect the value that the property brought
4 at public auction? You were not a bidder, right?

5 A I don't know if that particularly affected it,
6 but the fact remains when we were interested in it, we
7 offered \$1,500 an acre, which would have been roughly \$7,500
8 apiece for both tracts. Later when it was sold, the sale
9 price was sixty-forty. Now, whether or not the outlet was
10 a consideration of those people who bought the property --
11 I can't think that it was because they own other property
12 whereby an outlet would be required, but in our case we
13 would have had to follow the route of the old, accepted
14 right-of-way and it involved more problems in litigation than
15 we wanted to be confronted with so we merely backed off from
16 our offer.

17 MR. BLOXOM: Your witness.

18
19 CROSS-EXAMINATION

20
21 BY MR. TYLER:

22 Q Mr. Leonard, again I guess the basic thing
23 with respect to the difference in these two prices, down
24 in that area where this property is, are you familiar with
25 any comparables where outlets had to be acquired to property

1 that was not, to which there was no access? Are you
2 familiar with any actual cases down in that area?

3 A No, I'm not. Not where right-of-ways had to
4 be acquired, no. Now, the sale of property down there, it
5 just so happens that most of it has been in areas where
6 right-of-ways were available and would not have to be
7 acquired.

8 Q Your comparables down in that area are with
9 outlets?

10 A Yes.

11 Q Now, you have given a difference here for both
12 parcels together. Let me anticipate a question. Which
13 way would it be most likely to be sold -- best to be sold --
14 these two parcels, D and C, together or separately?

15 A I think it would be best since there is an
16 outlet to be sold together.

17 Q And if that were the case, you have given us
18 two appraisals here, fifteen and thirty-five with outlets
19 for a total of fifty and without of thirty-three, which is
20 a difference of seventeen thousand between your two if you
21 group them together and the thing that I'm having a hard
22 time hearing is how you come to the conclusion that
23 acquisition of outlets is \$17,000. What do you base that
24 on?

25 A Mine wasn't seventeen. Mine was fifteen.

1 Q Excuse me. I was just adding these two
2 together. Maybe I took them down wrong. Fifteen thousand
3 for C with and ten thousand without?

4 A Right.

5 Q Thirty-five thousand for D with and twenty-
6 three without?

7 A Right. Well, that figures out to about
8 seventeen.

9 Q What I did in order to let you know how I was
10 figuring it, I figured thirty-five plus fifteen is fifty
11 and twenty-three plus ten is thirty-three and I subtracted
12 that from the total which gives me seventeen.

13 A You're right.

14 Q Really, the inquiry that I'm trying to get at
15 is what did you go by in coming up with that conclusion?

16 A One of the methods that I used to determine
17 what -- how an outlet might be required and how much it
18 would cost, the most current sales of properties in that
19 area sold for approximately \$15,000 whereby an outlet could
20 be acquired for both pieces of property so I'm assuming
21 that if anyone had to acquire an outlet that they would have
22 to pay a comparable price for property in that area to gain
23 access.

24 Q So you're talking about buying a parcel of
25 land. Do you know approximately how large or what part of

1 an acre this particular outlet takes up that Mr. Tull
2 purchased in there? Was that a part of your consideration,
3 I guess is the best way to ask it?

4 A No. The fact that the outlet was there was
5 what I was thinking of, not how much a square foot.

6 Q You didn't take into consideration how large
7 the square foot was and how large an acre it took up?

8 A No.

9 Q You're not aware of any suits that have been
10 filed to establish outlets in that area, I take it?

11 A No, I'm not.

12 Q Now, sir, if the whole parcel C and D were
13 sold together would you think it logical to assume that the
14 appraisal that you have given for one of these would be --
15 well, I want to ask the question so that you understand what
16 I'm thinking about. You said C without an outlet fifteen --
17 C without an outlet ten and with an outlet fifteen, and
18 thirty-five and twenty-three for D for a total of seventeen.
19 Okay. You were considering those as separate parcels at
20 the time you concluded that as an appraisal, I take it?

21 A Well, that's the way the question was asked.

22 Q If we put them together and assume that they
23 would be sold together, would you assume that the difference
24 would be less than \$17,000 in light of the fact that --

25 A I think the proportion would be relatively the

1 same.

2 Q You still think it would be in the neighborhood
3 of seventeen?

4 A If you acquire an outlet to either one, it
5 would give you an access to the other so in that sense, I
6 think it would cost the same to gain access to either one or
7 both, really, but if they were single parcels, one outlet
8 would suffice for both.

9 Q If they were single parcels, it may be cheaper;
10 would that be a fair assessment?

11 A I would think if you had to acquire two outlets
12 it would be greater.

13 Q If you had to only acquire one would you think
14 it would be cheaper?

15 A Yes.

16 MR. TYLER: That's all the questions I have,
17 Your Honor.

18 THE COURT: Have you got any redirect?

19 MR. BLOXOM: No, sir.

20 THE COURT: Thank you, Mr. Leonard.

21 MR. BLOXOM: That's our evidence, Your Honor.

22 MR. TYLER: Mr. Davis.
23
24
25

-----oOo-----

1 JOHNA DAVIS, called as a witness on behalf of the
2 respondents, having been first duly sworn, was examined and
3 testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. TYLER:

8 Q Would you state your name, please, sir.

9 A Johna Davis.

10 MR. TYLER: Your Honor, Mr. Davis's
11 qualifications have been previously stated for the
12 record.

13 THE COURT: He's testified before. No need
14 to repeat them.

15
16 BY MR. TYLER:

17 Q Mr. Davis, I truly hate to do this to a
18 professional appraiser in a case like this. I hope you
19 will accept my apologies. Of course you have examined both
20 of these parcels of land that we're speaking about, C and D,
21 and that's been in the past that you have done that for
22 appraisal in this case; is that correct?

23 A Yes, sir.

24 Q All right. Now, Mr. Davis, at my request
25 have you considered the issues that you have heard before the

1 Court this morning, the issues of the enhancement in value
2 of C and D on this plat because of having an outlet or
3 without an outlet in the question of whether the two should
4 be sold together? Have you previously considered them in
5 your mind to some degree?

6 A I have tried.

7 Q I think it would be best if you would simply
8 tell the Court if you will what you have considered these
9 values to be. In other words, what is the enhancement in
10 value, if any, for C and D and, secondly, how did you arrive
11 at those conclusions if there is any way to arrive at those
12 conclusions? Would you please answer that question.

13 A Well, I did not arrive at a conclusion.

14 Q What did you conclude then?

15 A Because I don't know what the enhancement is.
16 I tried to find something in my own mind that would allow me
17 to arrive at a figure for that, but the unknown factor that
18 I couldn't come up with was were we creating a severance of
19 Mr. Tull's ownership or were we giving him something --
20 giving whoever bought C and D something less than a fee
21 simple. Now, an easement is less than a fee simple
22 ownership. That is my understanding so I didn't know which
23 we were dealing with.

24 Q All right, sir. Did you make calculations
25 both ways to come up with some conclusion as to amounts in

1 your own mind as to assuming fee simple and easement both?

2 A The only figure that I ever came up with was
3 that a good lot on Chincoteague, a hundred by one hundred
4 and fifty would probably bring up to \$12,000 and I'm talking
5 about nonwaterfront.

6 THE COURT: Talking about what?

7 THE WITNESS: Nonwaterfront.

8 A (Continuing) So that does work out to
9 eighty cents a square foot, but that's where I was stymied
10 in that I didn't know what was being taken away from
11 Mr. Tull if someone else bought C and D.

12
13 BY MR. TYLER:

14 Q All right, sir. Now, then, the only
15 calculation that you were able to make is what it would
16 cost to acquire land to get to this property?

17 A If he used lot sales as a comparable.

18 Q Are there any comparables on Chincoteague at
19 all, much less in that area for anyone to go by in
20 determining what the cost of acquiring outlets is?

21 A I don't know of any.

22 Q Assuming there is an outlet -- just assuming
23 an outlet where this one is supposed to be, this thirty-foot
24 outlet to D, assuming that exists, which way should the two
25 parcels be sold, separately or together?

1 A I think as a lump.

2 Q Together?

3 A Yes, sir.

4 Q So when you were considering this problem as
5 to the enhancement in value to C and D was you were
6 considering them together?

7 A Yes, sir.

8 Q Are you familiar or do you know of any case
9 or instance where landlocked property on Chincoteague Island
10 at all has been considered in any suit or in which right-of-
11 ways have been acquired by private purchase?

12 A No, sir.

13 Q In the fashion that we're concerned with here?

14 A No.

15 Q Nothing to go by?

16 A No.

17 Q So your conclusions were that you calculated
18 the value up or down on this property based on what it would
19 cost to buy a parcel of land to do that?

20 A Yes, sir.

21 Q Then, Mr. Davis, as a professional appraiser,
22 are you able to come up with figures like have been testified
23 to already this morning? In other words, so much for the
24 land with and so much without?

25 A I have not. I have been unable to do that to

1 my satisfaction.

2 Q And what is the reason for that?

3 A Because I don't know what we're taking and
4 giving, whether we have severance --

5 THE COURT: Mr. Davis, let me interrupt you
6 a minute. I don't see that it makes any difference
7 what we're taking or giving. We're selling a
8 block of land and, as I understand your previous
9 testimony, you appraised -- of course, you appraised
10 all four tracts together, but it worked out according
11 to my figures for C \$14,700 and for D \$27,900 based
12 on your figures and they were assuming that there
13 was an outlet -- those figures?

14 THE WITNESS: Yes, sir.

15 THE COURT: Now, what the question is this
16 morning, can you -- maybe you can't -- give us a
17 value of C and D if the outlets were not there; if
18 it were landlocked?

19 THE WITNESS: No, sir, I cannot.

20 MR. TYLER: That's all the questions I have.

21 Answer Mr. Bloxom.

22 MR. DRUMMOND: No questions.

23 MR. BLOXOM: We have no questions, Your Honor.

24 THE COURT: Thank you, Mr. Davis.

25 MR. TYLER: I have no further evidence, Your

1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE COUNTY OF ACCOMACK.

3 EDWARD LUNN TULL and ZED AYRES, :

4 Complainants, :

5 v. :

6 RUTH QUILLEN, et als, ✓ :

7 Respondents. :

8
9
10
11
12 Before Hon. N. Wescott Jacob, Judge

13 Accomack County, Virginia

14 July 14, 1980

15 FILED September 27 A. D., 1980

16 Teste: J. Fulton Ayres, Clerk.

17 By J. H. Underwood, Dy.

18 -----oOo-----

19
20 APPEARANCES: Mr. C. Lester Drummond and
21 Mr. R. Norris Bloxom,
attorneys for the complainants.

22 Mr. Glen A. Tyler and
23 Mr. R. Revell Lewis, III,
attorneys for the respondents.

I N D E X

WITNESSES

Complainants' Witnesses Direct Cross Redirect Recross

Tull, E. L.	3	28	72	79
Baker, T. S.	83			
Kambarn, C. E.	99	102	110	110
Beebe, R.	111	133	149	
Killmon, B.	154			
Ayres, Z.	158			
Ayres, J. F.	167			

Respondents' Witnesses

Davis, J. H.	172	181		
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EXHIBITS

Complainants' Exhibits

<u>No.</u>	<u>Description</u>	<u>Page</u>
1	Plat and family tree	
and		
2		2
3	Various documents	27
4	Photocopies of contracts pertaining to property in the Ocean Breeze section	54

Respondents' Exhibits

5	Plat	141
6	Plat	143
7	Plat	144
8	Deed	148
9	Appraisal	179

1 THE COURT: Swear the court reporter, please,
2 Mr. Clerk.

3 (The reporter was sworn.)

4 THE COURT: All right, gentlemen. Do you
5 wish the witnesses separated in this case?

6 MR. TYLER: No, we do not, Your Honor.

7 THE COURT: All right, gentlemen. Do you
8 wish to make opening statements?

9 MR. DRUMMOND: Go ahead. You go first.

10 (An opening statement was made by Mr. Tyler
11 on behalf of the respondents.)

12 (Plat and family tree marked in evidence by
13 the Court as Plaintiffs' Exhibits Numbers 1 and 2,
14 respectively.)

15 (An opening statement was made by Mr. Drummond
16 on behalf of the complainants.)

17 THE COURT: All right, sir. If you would call
18 your first witness, please.

19 MR. DRUMMOND: Mr. Tull.

20
21
22 -----oOo-----
23
24
25

1 EDWARD LUNN TULL, a complainant, called as a
2 witness on his own behalf, having been first duly sworn, was
3 examined and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. DRUMMOND:

8 Q State your name, age, occupation and place of
9 residence, please.

10 A Edward Tull, 42, Chincoteague, Virginia. I
11 have a campground and develop land.

12 Q Mr. Tull, are you one of the owners of the
13 parcels of land, which is the subject -- the parcel of land,
14 which is the subject of this partition suit?

15 A Yes, sir.

16 Q How long have you known these parcels of real
17 estate?

18 A I guess I have known them since I was five or
19 six years old.

20 Q Would you tell the Court how or on what basis
21 you would be so familiar. Were you owning the land or were
22 you familiar by going to other land near there?

23 A Well, I had other properties that joined them.
24 Is that what you're relating to? I had the Bunker Hill
25 property, the Cliff Daisey property, the Wyle Maddox

1 property that joined this tract, Number B, which was Ocean
2 Breeze Subdivision.

3 THE COURT: Mr. Tull, stand up here and just
4 show me roughly. Where is Bunker Hill?

5 THE WITNESS: Right here.

6 THE COURT: All of this in here is Bunker
7 Hill?

8 THE WITNESS: This area right in here. Just
9 beyond here.

10 THE COURT: It's not platted on here, but all
11 this is Bunker Hill?

12 THE WITNESS: Yes.

13 THE COURT: Where is the Wyle Maddox property?

14 THE WITNESS: The Wyle Maddox property I
15 purchased was over in here.

16 THE COURT: That is now part of Ocean Breeze?

17 THE WITNESS: Yes. This was the Cliff Daisey
18 property. This was the Mary Ann Beebe property at
19 one time. This here was part of the Bunker Hill
20 property, too. This right in here.

21 THE COURT: Okay.

22 THE WITNESS: The other properties related to
23 them was when I came into knowing the properties or
24 actually purchasing them began back in, I think it
25 was, the summer -- around May or June of '62.

1 BY MR. DRUMMOND:

2 Q Prior to that, did you visit any section of
3 that when you were a young man?

4 A Yes.

5 Q What section would you be visiting?

6 A Well, from one time to another, I was on all
7 the properties, each tract, A, B, C and D.

8 Q A, B, C and D?

9 A I probably spent more time on A and B since
10 that was where the right-of-way went from Old Dominion
11 Club Road to Bunker Hill at the time. This was back in the
12 early '40s.

13 Q Who owned Bunker Hill at that time?

14 A The Lunn heirs.

15 Q And did you go to -- have any reason to go to
16 Bunker Hill at that time?

17 A No, not other than for the fact that that was
18 a place a lot of times you might say that the kids hung out
19 or whatever.

20 Q But as a kid, you were in there and you have
21 known it ever since?

22 A Yes, sir.

23 Q Are you familiar with the value of real estate
24 in the area of Chincoteague where these properties are
25 located?

1 A I think so.

2 Q How many properties can you say that you
3 have purchased and sold in that area?

4 A In that area. I don't know. Somewhere over
5 200.

6 Q That you have what?

7 A That I have developed and sold. Bought,
8 developed and sold. In that area, 300, I guess.

9 Q That you have sold, but how many have you
10 purchased?

11 A How many tracts of land have I purchased?

12 Q Yeah.

13 A I guess ten.

14 Q And you say that you started buying land in
15 that area around 1962?

16 A I bought -- I started and bought the first
17 piece of land in that area in April of 1960.

18 Q Have you also been interested and kept up
19 with the values of property in and around Chincoteague of
20 land of this type?

21 A Yes, sir.

22 Q Tract E -- I mean Tract A, containing eighteen
23 and a fraction acres, located adjoining Wyle Maddox's land,
24 would you describe to the Court what type of land that is.

25 A On the eastern side -- southeastern side of

1 the road going toward Assateague Channel, I would say it's
2 approximately 90 percent marsh, and then the other 10
3 percent is probably a mixture of marsh and you might call
4 them bushes.

5 Q Under the present situation of land, what is
6 the value of that portion that you described?

7 A With the road or what type of access are you
8 pertaining to?

9 Q As it would be without the access of the
10 fifty-foot road. Did it have any other outlet at all to it?

11 A Not to my knowledge. I understand in talking
12 to Mr. Beebe a few days ago that it was his best information
13 this date that the road that came in from Old Dominion Road,
14 the eight-foot road as shown on the plat there, that went
15 through each tract, A, B, C and D. That's the only access
16 that I know, and I don't know of that. I never knew of any
17 access. I heard that through discussion.

18 Q What would be the fair value of that tract
19 south -- I believe it's southeast or southwest -- southeast
20 of that road that you put there? What would you say would
21 be the value of that?

22 THE COURT: You're still talking about just
23 Tract A?

24 THE WITNESS: Yes.

25 MR. DRUMMOND: I'm talking about Tract -- the

1 parcel of Tract A, Your Honor, that is southeast
2 of the road. It's marsh.

3 A With eight-foot road, fifty-foot road or no
4 road?

5
6 BY MR. DRUMMOND:

7 Q Just like that much of it if it were no road.

8 A Maybe worth four or \$5,000.

9 Q What, the marsh land or the whole tract?

10 A I would say the whole property if it has no
11 road to it at all.

12 THE COURT: All of Parcel A?

13 THE WITNESS: Yes.
14

15 BY MR. DRUMMOND:

16 Q Now, the only -- how much would be usable
17 high land on that portion -- usable land that's not in
18 marsh?

19 A It would appear to me about four acres.

20 THE COURT: About four acres of Parcel A is
21 high land?

22 THE WITNESS: Usable land. I don't know if
23 you call it high land or not.

24 THE COURT: Where would that be? Over in
25 here?

THE WITNESS: Most of it would be in here.

Some of this isn't usable. It's a possibility
some of this could be used in here.

BY MR. DRUMMOND:

Q It's on the northeast side of the road,
correct?

A Correct.

Q The present road that's down there?

A (No response.)

Q This marsh land that you were speaking about,
does the tide cover it?

A Yeah. The tide covers it often in the fall.
It's cut out the road several times. I guess you could say
the tide covered it. It cut it out on several different
occasions.

THE COURT: You're speaking of this fifty-
foot road?

THE WITNESS: Yes, sir.

BY MR. DRUMMOND:

Q Now, you purchased that road from this
property to -- through Mr. Wyle Maddox's land out to -- to
the road that you previously owned, did you not?

A Yes.

1 Q From Mr. Wyle Maddox?
2 A That's right.
3 Q And you used that road to go from your
4 property to, what, Bunker Hill?

5 A I used it to go from Inlet View Campground
6 to Bunker Hill Campground.

7 Q And you built it up on this particular road
8 -- land just because it happened to be more convenient or
9 for what other purpose?

10 A It was the most convenient way to get to
11 Bunker Hill. I was doing business for Mr. Maddox and he
12 had an agreement with me to release that much of the land
13 to build the road across it, so that's what took place.
14 He built the road. Purchased the property, I guess you
15 would say, or had a contract, as I understand, to purchase
16 the property and built the road.

17 Q Do you have other roads from Bunker Hill at
18 the present time?

19 A I don't have any other road that's usable.
20 I purchased the property from Zed Ayres. I got the
21 privilege from him to go through his property to John
22 Stayson's field, which adjoins Bunker Hill, so I guess
23 that's a road that could be used. I guess I could say I
24 have two ways of getting into it.

25 Q Could you go from Bunker Hill on your land

1 through Ocean Breeze?

2 A If I built a road.

3 Q How far?

4 A You can drive it right now, but I mean it's
5 no platted road or anything.

6 Q It's no platted road?

7 A No.

8 Q But you can go from Bunker Hill --

9 A I can drive from Bunker Hill to Ocean Breeze
10 today.

11 Q And through Ocean Breeze on out to --

12 A Upper Ridge Road; yes, sir.

13 Q Now, Tract B, that's the portion that's in
14 Ocean Breeze. Would you describe to the Court what type
15 of land that was prior to anything that you did.

16 A That was mostly low land or glades. That
17 was made up of two narrow ridges that could be considered
18 if they were put together, to the best of my figures,
19 would be about one acre of property that would have been
20 usable if you could have consolidated it all.

21 Q Now, at that time and prior to anything being
22 done to it, what would have been the value of that property?

23 A It would be hard for me to conceive that
24 anybody would have any interest in it at all. I guess you
25 might find somebody that would pay something for it. The

1 property, to my knowledge, was landlocked. They don't
2 have any right-of-way to it. That being the situation,
3 without a road and in its original condition, it might bring
4 a thousand dollars.

5 Q Now, you say it was landlocked. The only
6 road that ever touched that as far as you knew was what?

7 A I don't know of any road that ever touched
8 it.

9 Q So that never had any outlet as far as you
10 know?

11 A Not to my knowledge, other than what Mr. Beebe
12 said a few days ago when he said it was his thought that
13 this eight-foot road went through all four tracts. That's
14 the best he had been able to come up with.

15 Q And that was the road that finally went
16 through -- went out to the Burton land?

17 A Yes.

18 Q And that was closed in --

19 A That was closed in -- well, I don't know when
20 it was closed. It was -- I guess legally it was discussed
21 here in '74, but that was closed, I guess, as far as law
22 was concerned, in '74.

23 Q A decree was entered in this court closing
24 it?

25 A Yes, sir.

1 Q And a contested case between you and --

2 A Between the people of Chincoteague and
3 Burton's Seafood -- Tom's Cove.

4 Q And where was that closed from? What point?

5 A It was closed from Route 2112, I believe it
6 is, or from the Old Dominion Road to -- to the point where
7 it joins Zed Ayres' land was previously the Daisey land.
8 It was closed from this road here, the Old Dominion Road.
9 From there across this property here to Tom's Cove
10 Campground. I assume that's why it's not shown on the
11 plat here. I don't know.

12 Q In other words, the present road showing by
13 Mr. Beebe stops at the Burton Seafood, Inc., line?

14 A Yes, sir. That's what it shows here on the
15 plat.

16 Q And it was closed there so it can't be --

17 A This is the road that traveled to Bunker
18 Hill as far as my lifetime goes. It previously went on
19 out here.

20 Q So, other than the possibility that Mr. Beebe
21 telling you that one, that's the only outlet that there
22 was prior to when -- prior to you doing anything to it?

23 A Yes, to the best of my knowledge.

24 Q What would be, in your opinion, the fair
25 market value of that lot, the condition it was then if sold

1 or if put on sale at the present time?

2 THE COURT: Which lot are you speaking of
3 now?

4 MR. DRUMMOND: The four acres.

5 A You're talking about Tract B, Ocean Breeze?

6
7 BY MR. DRUMMOND:

8 Q The Ocean Breeze tract.

9 A The price of it the way it is today?

10 THE COURT: He said a thousand dollars.

11
12 BY MR. DRUMMOND:

13 Q You said a thousand dollars?

14 A Right.

15 Q Now, Mr. Tull, what have you done to improve
16 that land to the present time?

17 A Well, I had it laid out into a subdivision
18 by Mr. Beebe, and filled it. Put septic tanks in it. I
19 built a road, paved it, and put city water on it.

20 Q Do you know what the cost of those improvements
21 have been?

22 A Yes. I also ran water to the property after.
23 I also ran it to the property as the subdivision plat shows.
24 The property -- the money that's been spent on it, to the
25 best of my ability, is around \$85,000.

1 Q Would you care to give a breakdown or have
2 you got the breakdown?

3 A I think approximately -- I think it was --
4 spent around \$4,000, I think I paid Mr. Beebe, in his
5 engineering for sewerage, for subdividing and for the
6 laying out of the roads. I spent somewhere around \$50,000
7 in fill and spent \$10,000 to Boggs Water and Sewerage, and
8 I spent \$16,000 to Lance Eller for paving, not counting
9 the cost of getting the water and getting the roads to the
10 property. Would be plus those two items.

11 Q How much would that be, in your opinion?

12 A The road to the property and through the
13 property, the filling of the road and the paving of the
14 road was \$35,000.

15 Q That would be distributed over how many lots?

16 A Forty-one lots, counting the drain fields,
17 plus the water, which -- I don't remember what the water
18 was. I guess the water would be \$8 a foot, whatever the
19 amount of feet that was involved in it, which I don't
20 remember just how many feet we came up with. Seems to me
21 it was something like 1200 feet.

22 Q That will be testified to by the town --

23 A Right. It would be twelve -- approximately
24 1200 times eight.

25 Q You have another witness that will testify

1 to that?

2 A Yes, sir.

3 Q Mr. Beebe -- I mean, Mr. Lunn, as shown on
4 that plat, how many -- how many lots can you develop or
5 have been developed in that tract?

6 A Twenty, I believe it is. Twenty could be
7 developed.

8 Q Has all of that four acres been filled?

9 A No. Three and a half acres.

10 THE COURT: I'm a little confused here.
11 You're talking about twenty lots in this development?

12 THE WITNESS: Yes.

13 MR. DRUMMOND: No, in that one.

14 THE WITNESS: Talking about the possibility
15 of how many lots in the four-acre tract of land.

16 MR. DRUMMOND: How many lots could be in
17 this four acres.

18 THE COURT: All right, sir.

19
20 BY MR. DRUMMOND:

21 Q Has the subdivision been completed?

22 A No, sir.

23 Q What is lacking?

24 A Sewerage and electricity.

25 Q What would be the cost of completion of those

1 two items?

2 A I suppose one other thing to list with the
3 other two, with the sewerage and with the electric, I
4 suppose also that the roads -- I guess before the
5 subdivision is completed, I suppose the roads will be
6 dedicated to the state, so I guess you will need to include
7 that.

8 Q And do you know what the cost would be to
9 complete those for dedication? Do you know what it would
10 cost or you have no idea what the completion would cost?

11 A I have an idea on the electric. I don't
12 know on the roads as of yet. The sewerage would be
13 approximately \$10,000, and the electric -- electrician --
14 well, it would cost thirty-some hundred dollars, I think,
15 to get the electric down there, but the electric would be
16 reimbursed by Delmarva Power and Light as units were put
17 on the lots. X many units get on the lot and the money
18 is returned. I would say the electrician's fee would be --
19 I think he testified or gave in writing 200, \$250 per lot
20 for electric. Four or \$5,000 for electric other than what
21 you would give Delmarva Power on lights.

22 Q Would you tell the Judge, in your opinion,
23 what the fair market value of that four acres as it's
24 outlined on that plat in the condition in which it is at
25 the present time would be worth.

1 A Around \$40,000.

2 Q Tract C contains 4.10 acres, I believe.

3 What, in your opinion, is the fair -- was the fair market
4 value and is the fair market value because no improvements
5 have been made on that, of that lot today?

6 A I would say about \$6,000. Fifteen hundred
7 dollars an acre.

8 MR. TYLER: Excuse me, Judge. Which one
9 was he talking about?

10 THE COURT: Parcel C.

11
12 BY MR. DRUMMOND:

13 Q What is the condition of that particular lot
14 as to high land and gullys, et cetera?

15 A I think it's probably about one acre -- one
16 to one and a half acres. Probably one and a half acres
17 usable property as it is today and the other two thirds or
18 two and a half acres wouldn't be usable.

19 Q Why would that be more valuable than the
20 four acres?

21 A I'd say it has -- it's better property,
22 actually, than -- Tract C is actually a better piece of
23 property in elevation. It's got more usable property than
24 the other, plus it has other people that join it.

25 In the case of Tract B, nobody joins it.

1 In the case of Tract C, people join it.

2 Q How many people join it?

3 A I think it's five.

4 THE COURT: Think what?

5 THE WITNESS: I think it's five.

6
7 BY MR. DRUMMOND:

8 Q Four of those have access to the main state
9 road, do they not -- the Beebe property?

10 A Yes.

11 Q I believe the Nordstrom property?

12 A Right.

13 Q And there is two other properties. Tract
14 B, I believe it's seven point --

15 A -- six three acres.

16 Q -- six three acres. What type of land is it?

17 A I would say it's -- less than half of it is
18 good property and probably three and a half acres of
19 usable property, and the other four acres would be property
20 that you couldn't use as it is. It would be low property
21 where water stands most of the time.

22 Q Is it heavily wooded? Is the high land
23 heavily wooded or not?

24 A Some of it is. Some of it isn't.

25 Q What, in your opinion, is the fair market

1 value of that tract of land?

2 A Fifteen thousand dollars.

3 Q That also joins other lands, does it not?

4 A Yes, sir.

5 Q Whose land? Can you say whose land it joins
6 there?

7 A It joins Zed Ayres' property. Well, it
8 joins Tract C, which Tract C joins these other five
9 properties.

10 Q Does it join you, too?

11 A Just joins the interest that I have in the
12 properties.

13 Q This Tract D, you say you are familiar with
14 it? Under what name did it go by?

15 A To my knowledge, it went -- by what everybody
16 has ever told me, it went by Tom Beebe's Field.

17 Q Was that owned by Tom Beebe and prior to --

18 A Yes, it was owned by Tom Beebe.

19 Q Prior to his death?

20 A Yes.

21 Q And have you searched the records on it?

22 MR. TYLER: I'm going to object, Your Honor,
23 if he's going to testify to his examination of the
24 records in the Clerk's Office.

25 THE COURT: Why not?

1 MR. TYLER: He's asking him has he searched
2 the records. If he's going to ask him some
3 question about the records, I don't think he's
4 qualified to testify. It's some interpretation --
5 I don't know what he's going to ask. If that's
6 what --

7 THE COURT: I don't know why he can't testify
8 to it.

9 MR. TYLER: I will wait and see what he asks.

10 THE COURT: He's not a lawyer, but he's a
11 land developer.

12 MR. TYLER: I will withdraw my objection
13 until he asks the question.

14 A Yes. From my knowledge, what I have seen in
15 the Clerk's Office, it was Tom Beebe's Field, known as the
16 Crippen Bowden property from what information I have.

17 THE COURT: Known as the Crippen Bowden
18 property?

19 THE WITNESS: Crippen Bowden or Tom Beebe's
20 Field.

21
22 BY MR. DRUMMOND:

23 Q Was that the property that was conveyed to
24 Tom Beebe by Crippen Bowden and Nancy Bowden?

25 A Yes.

1 THE COURT: Well, that piece came to Mary
2 Ann Beebe through her husband, Tom Beebe?

3 THE WITNESS: Yes.

4
5 BY MR. DRUMMOND:

6 Q Have you talked to people in reference to
7 what property this was, who lived there, anything about
8 the buildings on it, et cetera?

9 A I have talked to a lot of people about it.

10 Q What information did you gather concerning
11 it?

12 MR. TYLER: Objection. Hearsay.

13 THE COURT: Well, I don't know what he's
14 going to testify.

15 Go ahead, sir. I will listen and see what
16 it is.

17 A I have been told that the property was the
18 property that Crippen Bowden, Mary Ann Beebe's father,
19 resided on, known as the Crippen Bowden property. Like I
20 said, that was known as the Tom Beebe Field. As it came
21 into possession of Crippen Bowden's son-in-law, Thomas
22 Beebe, it became known as the Tom Beebe Field.

23
24 BY MR. DRUMMOND:

25 Q Is there any evidence of a building on it?

1 A Yes, sir. It's foundation, bricks, what-
2 have-you. That's about the extent of it.

3 Q From your investigation, who lived there?

4 MR. TYLER: May I interject an objection
5 at this point, Your Honor, and the reason for my
6 objection will be that counsel is now attempting
7 to show that Parcel 3 in the will -- the third
8 item in the will -- has something to do with this
9 property.

10 Number 1, counsel did not plead that in
11 his Bill of Complaint.

12 Number 2, the evidence from this witness
13 is with respect to people who lived before the
14 time that he began to develop this property, and
15 I think it's objectionable for both of those
16 reasons.

17 It's hearsay and because he did not plead
18 it in his Bill of Complaint. He's attempting to
19 prove something he did not plead. I think in
20 both of those respects, it's improper evidence.

21 MR. DRUMMOND: He's not attempted to improve
22 this property.

23 THE COURT: This is what bothers me,
24 Mr. Drummond. Do you wish to amend your Bill of
25 Complaint?

1 MR. DRUMMOND: Yes, sir.

2 THE COURT: Well, why didn't you amend it
3 before? I mean under your Bill of Complaint, as
4 I see it, you state, do you not, that these four
5 parcels shown on this plat are owned by these five
6 different people, which took under Paragraph 6 of
7 Mary Ann Beebe's will, and now you're trying to
8 say that one of them was the property that passed
9 under Paragraph 3rd of Mary Ann Beebe's will, and
10 to me, I mean, you have got to amend your Bill of
11 Complaint, have you not?

12 MR. DRUMMOND: Your Honor, I just recently,
13 last day or two, just found out that this Mr. Ayres
14 had figured that he bought the three of them -- the
15 three out and I overlooked the fact that it hadn't
16 been specified in this Bill of Complaint that --
17 that's one piece --

18 THE COURT: Which piece is it that you
19 claim? You claim that D -- Parcel D shown on this
20 plat -- is that your claim now, that Parcel D was
21 the Crippen Bowden property which went to Mary Ann
22 Beebe from her father, Crippen Bowden, and passed
23 into Paragraph 3rd of her will?

24 MR. DRUMMOND: I have checked the assessment
25 books, et cetera, and the records and that's the

1 only thing I can find now that would pass under
2 that Paragraph 3 at the time she died.

3 THE COURT: Well, if it did pass under
4 Paragraph 3 and not Paragraph 6, the children of
5 Crippen Bowden and the children of Silas Burton
6 Beebe wouldn't have any interest; is that right?

7 MR. DRUMMOND: That's right.

8 MR. TYLER: I think that's correct. That
9 may appear to be correct, Your Honor.

10 THE COURT: And you represent, I take it,
11 some of the heirs of Crippen Bowden and some of
12 the heirs of Silas Burton Beebe?

13 MR. TYLER: Yes, sir.

14 THE COURT: And you claim that they have an
15 interest?

16 MR. TYLER: Yes. Passed under 6; yes, sir.

17 THE COURT: All right, sir. Go ahead.

18 MR. DRUMMOND: I would like to amend the
19 Bill to show that so we could get a title and
20 then it's up to the Court to decide.

21 THE COURT: All right.

22 MR. TYLER: Note our objection, Your Honor.

23 THE COURT: We will allow them to amend it.

24 MR. DRUMMOND: You can have the witness.

25 MR. TYLER: Your Honor, may we have a minute

1 to bring the subdivision plat out of the Clerk's
2 Office.

3 THE COURT: All right. Suppose we take a
4 short recess.

5 (The Court recessed at 11:50 a.m. The
6 Court reconvened at 12 o'clock Noon.)

7 MR. TYLER: Your Honor, I think it would
8 be helpful to the Court at this point if I
9 introduced for purposes of identification all of
10 the documents. We have them in some semblance of
11 order. Now, I realize the relevance of each
12 document remains for purposes of testimony, but
13 we have every document that is relative, we
14 believe, to this case, the documents, the deeds
15 and wills in the chain of title, and other
16 documents, easements, deeds of trust, that kind
17 of thing, and what I would like to do is to simply
18 introduce these. They are all attested copies
19 from the Clerk's Office. Everything I have here
20 is a --

21 THE COURT: Mr. Drummond, you have seen all
22 these?

23 MR. TYLER: I want to refer to each one of
24 them at some point, but just for purposes of
25 identifying them so that I can refer to them and

1 also for the aid of the Court, I have them in
2 order. If counsel does not wish to follow that
3 procedure, why, we will do it in some other
4 fashion.

5 THE COURT: Let them take a look at them.

6 MR. TYLER: Your Honor, I believe counsel
7 would agree that this -- all of these documents,
8 which are numerous, and they are fastened together
9 -- they have indexes on the front of each section,
10 which would indicate what they are, basically,
11 and for purposes of identification, and I
12 understand counsel may reserve objection to an
13 individual document later on as we refer to it.

14 THE COURT: All right, sir. I will make
15 them all as -- what would it be, Exhibit C?

16 MR. LEWIS: 3.

17 MR. TYLER: I think the Court went to
18 numbers.

19 THE COURT: The plat is 1, and the -- all
20 right. The family tree is 2, and then I will
21 mark this Exhibit 3.

22 MR. TYLER: I think there are twenty-seven
23 documents in that package, Your Honor.

24 THE COURT: All right, sir. You may proceed.
25

BY MR. TYLER:

Q Now, Mr. Tull, in order to avoid a lengthy -- more lengthy than possible testimony than maybe we would get into, I would like to ask you --

MR. TYLER: I suppose there is no contention with respect to the fact that Thomas Beebe bought these properties -- these four properties that we're concerned with here -- in three deeds; that he left them to Mary Ann and that she left them by her will. I take it that we have no problem with those initial five documents?

THE COURT: There must be a problem there, Mr. Tyler.

MR. TYLER: I don't know what problem we have.

THE COURT: I don't know either, but if that is right that these four were bought by Thomas Beebe, then left to Mary Ann Beebe, then they passed under Item 6 of her will. They are claiming that D didn't pass under Item 6 of the will. D was Crippen Bowden property and passed under Item 3 of the will. That's why he wanted to amend his Bill of Complaint.

1 BY MR. TYLER:

2 Q You purchased this interest in this property,
3 first of all, by a deed -- well, the first deed for this
4 property that you purchased came from Sharpley and others
5 to Mr. Zed Ayres in 1963; is that correct?

6 A Yes, sir.

7 Q That's the first deed. That's February 5,
8 1963.

9 MR. TYLER: Now, Your Honor, that would be
10 Number 6 in the first package of deeds that the
11 Court has just been handed. It would be the sixth
12 document that the Court has. It's a deed from
13 Sharpleys and Jesters and others to Zed Ayres.
14

15 BY MR. TYLER:

16 Q (Continuing) And, then, Mr. Tull, right
17 after that, you and Mr. Zed Ayres purchased an easement --
18 a thirty-foot easement on the north side of or the northwest
19 side of what would be Parcel C and D from Mr. Tarr; is
20 that correct?

21 A We purchased a piece of property -- thirty
22 feet -- from Charlie and Emma Tarr that went from -- whatever
23 the route number is -- to Ridge Road, anyway, leading back
24 to the Daisey property.

25 Q Now, then, Mr. Zed Ayres came --

1 MR. TYLER: Excuse me, Judge. For purposes
2 of clarity, the deed that I just referred to for
3 the thirty feet right-of-way is the third document
4 under the heading "Easements and Deeds of Trust,"
5 which is a 1963 document. I was taking these in
6 chronological order.

7
8 BY MR. TYLER:

9 Q (Continuing) Then, Mr. Tull, you purchased
10 from Zed Ayres in 1966 by Deed of Bargain and Sale --

11 MR. TYLER: That, Your Honor, would be
12 Number 7 in the package.

13
14 BY MR. TYLER:

15 Q (Continuing) -- you purchased in 1966 the
16 interest that he had previously purchased from Sharpley
17 and others; is that correct?

18 A That's correct.

19 MR. TYLER: And that would be, Your Honor,
20 Number 7 in the first part, deeds and wills in
21 the chain in the package that I just gave the
22 Court.

23 THE COURT: Well, why -- fifteen acres,
24 more or less, Mr. Ayres purchased, known as Tom
25 Beebe's Field, and when he sold it to Mr. Tull,

1 he only sold three acres.

2 MR. TYLER: He was selling a portion, Your
3 Honor. I don't think that he was selling all of
4 his interest.

5 THE COURT: He didn't sell all that he bought?

6 MR. TYLER: What I'm doing, I want to
7 identify first of all the deeds by which Mr. Tull
8 and Mr. Ayres got an interest in this property,
9 simply to identify the deeds.

10
11 BY MR. TYLER:

12 Q And, then, Mr. Tull, you purchased from
13 Bowden in 1966 -- October of 1966 to you a portion of this
14 property from Crippen Bowden; is that correct?

15 A From Crippen Bowden's heirs.

16 Q From Crippen Bowden's heirs?

17 A Yes, sir.

18 MR. TYLER: Your Honor, that would be Number
19 8 in the first set of deeds and wills in the chain.

20
21 BY MR. TYLER:

22 Q And, then, finally, there was a Deed of
23 Bargain and Sale from Sharpley of 1973 to Mr. Zed Ayres.
24 Do you recall that deed also?

25 A Yes.

1 Q Now, those four deeds that I just mentioned,
2 Sharpley's and Jester's to Zed Ayres, being the first one;
3 Zed Ayres to Tull; and then part of the Crippen heirs --
4 Crippen Bowden heirs to Tull; and the Sharpley to Zed Ayres,
5 would that be all four -- those deeds be all of the deeds
6 by which you and Mr. Ayres obtained an interest in these
7 four tracts?

8 A I can't speak for him.

9 Q I see, but they would include all of the
10 interest that you would have in these tracts?

11 A Yes, sir.

12 Q Now, let's take the first parcel that we have
13 been referring to, the eighteen-acre parcel, and talk about
14 that. Now, your interest in the eighteen-acre parcel was
15 purchased by way of these deeds and then you later purchased
16 an easement from Wyle Maddox and Louella; is that correct?

17 A Yes.

18 Q That was in September of 1972?

19 A Yes.

20 Q Now, I want to refer to that particular
21 document; and, I noticed in your testimony a while ago,
22 you said that that was to give you access to Bunker Hill,
23 but the deed referred to this property -- this eighteen-
24 acre parcel that we have been referring to as being a part
25 of that deed also, did it not? In other words, were you

1 not also interested in having an outlet for this
2 particular parcel as well as for your Bunker Hill property?

3 A As I testified before, I was interested in
4 building a road to the camp -- campground -- to Bunker Hill
5 -- for another campground and that's what I purchased the
6 property for and that's what I built the road for.

7 Q Was it your intention at that time to give
8 Wyle Maddox and Louella Maddox access to their property
9 across this eighteen-acre piece?

10 A No, it wasn't necessary.

11 Q I notice that you signed the deed by which
12 the fifty-foot easement, located on the eighteen-acre
13 piece, was granted.

14 A No, that wasn't the intent. The intent was
15 to form an access to their property, which it wasn't
16 necessary to go to the eighteen-and-a-half-acre piece to
17 go to their property.

18 Q In light of the fact that you signed that
19 deed, you would contend that that had no significance at
20 all? What were you granting to Wyle Maddox and Louella
21 Maddox?

22 MR. DRUMMOND: I object, Your Honor. The
23 deed speaks for itself. The right-of-way or the
24 road runs from the -- this particular piece of
25 property here --

1 THE COURT: He's on cross-examination,
2 Mr. Drummond. I think he's got the right to
3 examine him why he signed the deed.

4
5 BY MR. TYLER:

6 Q Was it your intention to grant anything to
7 the Maddoxes at the time you signed that deed?

8 A It was for the use of their property, yes.

9 Q Well, you were purchasing the use of their
10 property fifty feet wide across their property out to the
11 public road; is that correct?

12 A Yes.

13 Q What were they getting? What were they
14 purchasing by that?

15 A What were the Maddoxes purchasing?

16 Q Yes, sir, in light of the fact that you
17 signed the deed. What were you conveying to them?

18 A Well, I would suppose it would be -- I really
19 don't know that I was giving them anything other than the
20 fact that he was giving me consent to go across his
21 property. He could have looked at it from the standpoint
22 -- I don't know whether he did or not -- that it was giving
23 him access to his property.

24 Q Now, of course, Mr. Tull, the deed speaks for
25 itself. You recall, of course, that the deed says in it --

the deed from Maddox says in it, "for the use of this property." In other words, do you recall that specifically or have you since looked at the deed and reflected on that language that it says, "for the use of this property," as opposed to saying for the use of Edward Lunn Tull or some specific person? Do you recall that?

A I don't know what it means by the use of this property.

Q Well, didn't you intend at the time of that conveyance for that fifty-foot outlet to be for the use of the eighteen-acre parcel as well as for the use of the Bunker Hill property?

A The road wasn't built with that thought in mind at all. The road was built for access to get to Bunker Hill to use it as a wooded campground where it was no wooded area at Inlet View.

THE COURT: No wooded area at what?

THE WITNESS: There was no wooded area at Inlet View Campground. It was no trees, in other words. The wooded area at Bunker Hill was the closest area and campers have been known to want wooded areas. Inlet View would provide the water and Bunker Hill would provide the wooded area. That's the reason the road was constructed.

1 BY MR. TYLER:

2 Q All right, sir. Now, referring to that deed.
3 It states that -- of course, it's from Wyle Maddox and
4 Louella to Edward Lunn Tull, party of the second part, and
5 it says granting unto the said Edward Lunn Tull the right
6 to use a fifty-foot road leading from the land owned by
7 Edward Lunn Tull known as the Tom Beebe land. Now, of
8 course, we have referred to this eighteen-acre piece as
9 being Tom Beebe land, and we referred to the deeds conveying
10 property to Tom Beebe. It does not say Bunker Hill
11 property. Was Bunker Hill property Tom Beebe land?

12 A No.

13 Q Now, as shown on the plat of survey would be
14 the plat showing the fifty-foot road; is that correct? I
15 assume there was a plat of that fifty-foot road; is that
16 correct? At least the deed said that, so we will assume
17 that.

18 A I assume it was.

19 Q We will assume that's what that means. Now,
20 the deed goes on to say, "which said road is shown as
21 leading to Bunker Hill from South Main Street." And it
22 goes on to say, "It is understood and agreed between the
23 parties to this instrument that the fifty-foot road shall
24 be for the joint use of the properties of Wyle Maddox and
25 Edward Lunn Tull."

1 You owned what was called the Tom Beebe land,
2 referring to the language above from the land owned by
3 Edward Lunn Tull shown as the Tom Beebe land. Can you now
4 say that that outlet was not for the purpose of the land,
5 the eighteen acres that we're concerned with here today?

6 A Now I can say that.

7 Q You can?

8 A I can.

9 Q You contend that this deed doesn't mean what
10 it says then?

11 A If that's what it says, then that wasn't the
12 intent of it.

13 THE COURT: May I have that back?

14 MR. TYLER: Yes, sir.

15
16 BY MR. TYLER:

17 Q All right, sir. Now, I want to go through
18 the conveyances that you have made off of this property
19 and when I ask you about the thing, I'm going to be
20 referring to the property that we're --

21 THE COURT: Excuse me. Which number was this
22 outlet conveyed --

23 MR. TYLER: The one we just referred to,
24 Judge? Under the third section, which would be
25 easements and deeds of trust. It would be the

1 first deed in that section.

2 THE COURT: All right.

3
4 BY MR. TYLER:

5 Q All right, sir. Now, according to the
6 stipulation of your counsel, we have no problem with the
7 Ocean Breeze section outlet, so I want to move down to the
8 other two parcels which are referred to as C and D, the
9 four-acre and seven-acre parcel. We have already referred
10 to a deed by which Tarr conveyed to Zed Ayres and you a
11 thirty-foot roadway in 1963. Did you own any interest in
12 any property in that area at the time of that conveyance?
13 Do you recall in 1963 whether you owned any interest in
14 any property at that time?

15 A What was the date of it?

16 Q April 3rd, '63.

17 A I owned an interest in the Beebe property,
18 yes.

19 Q You owned an interest in the Beebe property
20 at that time?

21 A Yes.

22 MR. TYLER: Now, Your Honor, so that the
23 Court will know what I'm talking about, I'm
24 referring to what is labeled on the plat as
25 "Thirty-Foot Road, Deed Book 326, Page 188" on

1 the plat so the record will be clear what I'm
2 referring to.

3
4 BY MR. TYLER:

5 Q Now, at the time that deed of conveyance was
6 taken, Mr. Tull, you owned a parcel of property in this
7 area?

8 A Well, I owned the Bunker Hill property and
9 then I owned the interest in the Mary Ann Beebe property.

10 Q Okay.

11 A And I owned -- let's see. No, I think it was
12 later on I bought that. No, at that time, that was it.

13 Q Well, the record indicates, and I don't want
14 to confuse you, but the record indicates that the easement
15 deed that I'm referring to for the thirty-foot road is
16 dated April 3, '63, and the deed from Zed Ayres to you for
17 the property he had previously gotten from Sharpley and
18 others is dated later than that, March 30, '66. Wasn't
19 that the first deed by which you got an interest in the
20 Mary Ann Beebe property or was there some previous --

21 A It didn't go to record until '66, but I
22 bought some of the Ayres in '62. I'm referring to the
23 Bowden deed that you referred to a while ago. I think that
24 went to record in '66. I had the interest in that in '62.

25 Q The other deed I referred to was Bowden to

1 Tull, October 21, '66, is the date of that.

2 A Yes. Interest was actually recorded in '62.

3 Q You had begun to acquire interest before that;
4 is that correct?

5 A Before the deeds went to record.

6 THE COURT: This thirty-foot road is shown
7 where on this plat, now? Is this it?

8 MR. TYLER: Yes, sir, adjoins Archie Lunn.

9 For the record, Your Honor, the thirty-foot
10 road I'm referring to is the one adjacent, marked
11 Archie Lunn, marked on the plat that is in record.

12 THE COURT: All right, sir.

13
14 BY MR. TYLER:

15 Q Now, Mr. Tull, your purpose for obtaining
16 that outlet then was for the property that you were acquiring
17 or putting together to the east of that from this Mary Ann
18 Beebe estate; is that correct?

19 A Yeah, I would say so.

20 Q And then, in addition, we come along a little
21 later, March 20, '68 --

22 MR. TYLER: Your Honor, that would be
23 Number 2 under the third section, easements
24 and deeds of trust.
25

1 BY MR. TYLER:

2 Q (Continuing) -- there is a deed, Tull to
3 Lunn, and in that deed there is a fifteen-foot outlet.
4 Are you familiar -- do you remember that outlet?

5 A Yes.

6 Q Would you show it to His Honor on that plat.

7 A (Witness complied.)

8 Q All right, sir. That's to the east of what
9 is marked "Archie Lunn" on this property; is that correct?

10 A Yes.

11 Q And, again, were you acquiring that for the
12 purpose of an outlet to the property known as the Mary Ann
13 Beebe property?

14 A Yes, sir.

15 MR. TYLER: If the Court will bear with
16 me, it's a little bit tedious keeping up with
17 these deeds.

18 THE COURT: All right, sir.

19 MR. TYLER: May I refer to that deed that
20 I just spoke about, Your Honor, in the package?

21 THE COURT: Tull to Lunn?

22 MR. TYLER: Yes, sir. May I refer to that?

23
24 BY MR. TYLER:

25 Q Now, Mr. Tull, this deed states that it is a

1 conveyance from you to Mr. Lunn of a parcel of land; is
2 that correct?

3 A Yes, sir.

4 Q And then it has a reservation in it as to an
5 outlet; is that correct?

6 A Yes, sir.

7 Q Now, do you contend that this outlet was for
8 your use alone, exclusive use as opposed to the property
9 itself?

10 A Yeah. It was to my use of the property.

11 Q Beg your pardon?

12 A Yes, sir, it was to my use of the property.

13 Q It was for your use?

14 A Yes, sir.

15 Q And not for the use of the land itself, so
16 to speak; is that what your contention is?

17 A Yes, sir.

18 Q Now, you also in that deed gave Mr. Lunn the
19 right to the use of the thirty-foot outlet that we just
20 previously referred to; is that correct?

21 A Yes, sir.

22 Q And then you say the fifteen-foot outlet,
23 which is the eastern boundary, was a part of the said land
24 and is to the joint use of this land and other lands of the
25 said lands of Edward Lunn Tull. That is referring to the

1 Beebe land -- the Mary Ann Beebe land?

2 A Yes.

3 Q Now, this was your deed and you say in the
4 deed, "it being for the joint use of this land." Are you
5 now saying that that deed didn't mean what it said?

6 A That wasn't the intent of the deed.

7 THE COURT: You say that's not what was
8 intended?

9 THE WITNESS: That wasn't my intention for
10 it to be that way.

11
12 BY MR. TYLER:

13 Q All right, sir. Then there comes another
14 deed, November 25, 1974, where Zed Ayres conveys property
15 to you.

16 MR. TYLER: Your Honor, in Section 3,
17 easements and deeds of trust, it would be
18 Number 4. The fourth document in that list.

19
20 BY MR. TYLER:

21 Q (Continuing) What was the purpose of that
22 deed, Mr. Tull? What did you convey? What did Mr. Ayres
23 convey to you in that deed, November 25, '74?

24 A He sold me thirty-three acres of property;
25 twenty-one acres of up land, eight acres of marsh land, four

1 acres of oyster ground.

2 Q All right, sir. Where was that property
3 located? Can you show us on that plat?

4 A (Witness complied.)

5 Q So it joins Parcel C and D on the --

6 THE COURT: It is Bunker Hill?

7 THE WITNESS: No, it joins Bunker Hill.
8

9 BY MR. TYLER:

10 Q All right, sir. It also adjoins these Mary
11 Ann Beebe tracts; is that correct?

12 THE COURT: What did you call that? Josh
13 Daisey's Field is what you bought from Zed Ayres
14 for this --

15 THE WITNESS: Yes, sir, a portion of it.
16

17 BY MR. TYLER:

18 Q All right, sir. Now, in that deed there was
19 also an outlet; is that correct?

20 A Yes.

21 Q And it went across what properties?

22 A It followed the old outlet.

23 Q It followed the old outlet. Was that the
24 intention?

25 A It did to a point. From this point it was

1 to go on back.

2 Q That deed also said that the outlet may be
3 widened across these properties to the extent of thirty feet
4 wide; is that correct?

5 A Yes, sir.

6 Q And then that would run out here to the
7 previous thirty-foot road that we have been talking to; is
8 that correct?

9 A Yes.

10 Q Was that the intention?

11 A Yes.

12 Q And did that deed also say for the joint use
13 of the properties of both of you that that outlet would be
14 given? Was it intended for both of the properties of Zed
15 Ayres and Edward Lunn Tull to have the benefit of the
16 thirty-foot road?

17 A For both of us to have the benefit of it up
18 to the point where it went into the property that I
19 purchased from him.

20 Q Where was that? You mean up to the point
21 where it went to the property on the Mary Ann Beebe
22 property?

23 A The property that you're talking about that
24 I purchased from him, the thirty-three acres.

25 Q Now, you sold a parcel of land back in the

1 back of this -- let's say to the east of this same Mary
2 Ann Beebe land that we're referring to, C and D, to a
3 fellow named Kukkk, K-u-k-k?

4 A Kukkk. K-u-k-k.

5 Q And he pronounced it Kukkk. Did you also
6 reserve an easement across the Mary Ann Beebe property to
7 him when you conveyed that property?

8 A Well, to my knowledge -- I haven't checked it
9 out recently -- but at the time it was done, whatever, four
10 or five years ago, that he would have a right-of-way to his
11 property. I don't know if it specified any particular
12 right-of-way to it or not.

13 MR. TYLER: All right, Your Honor. That
14 would be Number 13 in the third section called
15 easements and deeds of trust in the package.
16 The last item in that package.

17 THE COURT: The last item is a Deed of
18 Trust.

19 MR. TYLER: The last item in the whole
20 package.

21 THE COURT: Oh, in the whole package?
22 Section 4, in other words.

23
24 BY MR. TYLER:

25 Q Now, that deed, Mr. Tull, says that that

1 property is conveyed to Mr. Kukk together with an easement
2 across the Mary Ann Beebe property; is that correct?

3 A I don't know.

4 Q You don't recall?

5 MR. DRUMMOND: He didn't say that.

6
7 BY MR. TYLER:

8 Q You don't recall.

9 How much did you pay for the thirty-foot
10 easement, the first one we referred to that gets you out
11 to the road that you bought from Tarr?

12 A I couldn't say exactly. I think I can come
13 close. What was that done in sixty --

14 Q Sixty-three.

15 A -- '63?

16 Q Yes, sir.

17 A It was two or \$300.

18 Q How much did you pay for the easement from
19 Wyle Maddox and Louella Maddox, the fifty-foot road leading
20 across the Tom Beebe property?

21 A I didn't pay anything.

22 Q No consideration at all?

23 A None.

24 Q Now, I'm interested to know. You own an
25 interest in both the eighteen-acre parcel and in the four-

1 and seven-acre parcels; is that correct? I mean you have
2 an interest yourself in each of these four parcels that
3 we're concerned with?

4 A Yes, sir.

5 Q Are you contending that these parcels have
6 no outlets against your interest? If they are sold, is it
7 your contention that regardless of whether it's for or
8 against your interest, you're contending that they have no
9 outlets?

10 A I don't know as I exactly understand the
11 question. In other words, if I develop the property. Is
12 that what you're saying?

13 Q I'm saying wouldn't it be to your interest
14 if you're an owner of this property to have outlets from
15 this property if it's sold? If it were sold at public
16 auction, wouldn't it be in your interest for these properties
17 to have outlets?

18 A Not necessarily.

19 Q Not necessarily?

20 A (Witness shaking head negatively.)

21 Q If you are a 50 percent owner in Parcels C and
22 D and they go to public auction because of a partition suit
23 and they have got no outlet, wouldn't you say that that
24 devaluates your 50 percent interest in those properties?

25 A Yes.

Q Then I don't know why you're contending that these properties have no outlets. Can you tell us why you're contending that these properties have no outlets?

A Well, are they going to public auction?

Q This partition suit is for the purpose of selling these properties either at public auction or private sale to someone and I don't know why you're contending that they have no outlets. Could you tell us why you contend that they have no outlets from a valuation standpoint?

A No, I can't tell you from a valuation standpoint, other than the fact that I'm just telling you that they don't have any outlets.

THE COURT: You're telling us --

THE WITNESS: That they don't have any outlets.

BY MR. TYLER:

Q You're just simply telling us that they have no outlets?

A That's correct.

Q Isn't your reason for contending that they have no outlets is so that you can buy them cheaper than what you would have to buy them otherwise?

A That could be part of the reason.

Q Isn't it a fact that you do intend to attempt

1 to purchase these properties yourself?

2 A No.

3 Q You do not intend to purchase these properties?

4 A I don't know whether I do or not. That's a
5 big question.

6 Q You don't know whether you do or not?

7 A No.

8 Q You may or may not?

9 A That's right.

10 Q So if you're the purchaser, the fact that they
11 would have no outlets would be to your advantage; is that
12 correct?

13 A I would say.

14 Q Well, what does that do in your mind to the
15 value of your testimony as an appraiser of these properties?
16 You have testified just a while ago as an appraiser for
17 these properties, and if it's your position that these
18 properties have no outlets and that you, as a purchaser,
19 could possibly get them cheaper at a sale, does not that
20 taint your evidence as an appraiser of these properties?

21 A No, I wouldn't say so.

22 Q You do not think so?

23 A (No response.)

24 THE COURT: Let me just clarify one
25 question you asked.

1 If this is a partition suit -- you asked
2 Mr. Tull about purchasing the property. If it's
3 put up at public auction, I don't think it's
4 anybody's business whether he bids on them or
5 anybody else bids on them. Do I understand from
6 your answer that as a cotenant you are not making
7 an offer to purchase in this suit; is that --

8 THE WITNESS: No, I didn't say that. I
9 said that I didn't know whether I would be
10 purchasing the property or not. He wanted to
11 know if I intended to purchase the property. I
12 guess that remains to be seen. I'm uninterested
13 in the property. I don't know whether I will be
14 buying the property or not.

15
16 BY MR. TYLER:

17 Q Now, there have been a number of contracts
18 executed by you with respect to the property in the Ocean
19 Breeze section, have there not?

20 A Yes, sir.

21 Q Now, when you executed those contracts, how
22 many signed copies were there each time? How many copies
23 got signed of each contract?

24 A I think it was two.

25 Q All right. One of them would go to the buyer?

1 A Yes.

2 Q And the other one would go to the seller,
3 who would be you; is that correct?

4 A Yes.

5 Q Now, your counsel has provided us with copies
6 of his -- carbon copies from his file. Where are the
7 originals that you would have in these contract sales?

8 A Well, I have some of the originals and I
9 guess the owners -- I guess the people that purchased the
10 property would have the originals.

11 Q Okay. Now, the copies that we have been
12 provided by your counsel, for your information, we have
13 these copies here, but none of them has any signatures or
14 anything like that on them. As far as you know, are all
15 of these contracts accurate as shown in these copies here?

16 A As far as I know. I guess that's a duplicate
17 of them, isn't it?

18 Q Sometimes when you get ready to close a deal,
19 you make a change in the original and maybe the carbon
20 doesn't get changed?

21 A No changes.

22 Q You think you have got your copies of the
23 originals somewhere?

24 A I don't have the originals. I think the
25 people would have them.

1 Q Would you have any signed copies?

2 A I don't know.

3 Q I was wondering why you didn't bring us those
4 signed copies to court today. Is there any reason?

5 A I didn't know you wanted them.

6 Q Now, each of these contracts -- and I have
7 twelve of them here -- do you know how many there were sold,
8 actually, how many lots were sold that would affect the
9 Ocean Breeze parcel that we're concerned with here today?

10 A How many lots were sold? That's your question?

11 Q Yes.

12 A Fourteen. That's to the best of my ability.

13 Q Twelve contracts; fourteen lots. And there
14 was one conveyed by deed, was there not?

15 A Yes.

16 Q That would be a total of thirteen parcels
17 conveyed off this property?

18 A Yes.

19 Q Any other parcels conveyed off that you're
20 aware of?

21 A Not to my knowledge.

22 MR. TYLER: Your Honor, counsel has
23 provided me with the photocopies of his carbon
24 copies, and I suppose they should be introduced
25 in evidence. I had subpoenaed the originals to

1 put in evidence today, but we don't have them so
2 these are the next best thing.

3 THE COURT: He testified there was no
4 change made. We will mark these as Plaintiffs'
5 Exhibit 4.

6 (Marked in evidence by the Court as
7 Plaintiffs' Exhibit Number 4.)

8 MR. TYLER: Your Honor, that is twelve
9 documents that I just handed the Court. The
10 thirteenth document is Item Number 7 in the
11 third section of the package of documents that
12 I gave you called Easements and Deeds of Trust.
13 The witness just testified that there were
14 contracts and that there was one deed.

15
16 BY MR. TYLER:

17 Q Now, Mr. Tull, the deed was from you and your
18 wife, of course, to Charles C. Blanton, Sr.; is that
19 correct?

20 A That's correct.

21 Q And that was in 1979 -- August of 1979; is
22 that correct?

23 A That's correct.

24 Q Now, that deed contains restrictive covenants,
25 seven in number, and those parcels were conveyed from the

1 subdivision. It was a platted and recorded subdivision;
2 is that correct?

3 A That's correct.

4 Q All right, sir. Now --

5 MR. TYLER: Your Honor, I believe counsel
6 stipulated that we didn't have to go through the
7 Clerk to prove the document I have here, which is
8 this plat book.

9 THE COURT: All right.

10
11 BY MR. TYLER:

12 Q I'm showing you Plat Book Number 22 from the
13 Accomack County Clerk's Office, Page 93. That is a plat
14 of the portion of Ocean Breeze we're concerned with here
15 today?

16 A Yes, sir.

17 Q Okay. Now, on that plat there are dotted
18 lines showing Edward L. Tull and Tom Beebe heirs. Does that
19 correspond with Parcel B that we're concerned with here on
20 the plat that's introduced in evidence?

21 A Yes.

22 Q Now, the lots that are affected -- the numbers
23 on this plat that I'm showing you from the Clerk's Office
24 that are affected by this partition are 44B through 52B; is
25 that correct?

1 A Yes.

2 Q And the street that runs right down through
3 the middle of the development; is that correct?

4 A Yes.

5 Q And 43 -- well, I better start at the bottom
6 -- 34B through 43B; is that correct?

7 A That's correct.

8 Q And then 23B through 33B; is that correct?

9 A Yes.

10 Q Those would encompass the lots that are
11 affected by this subdivision?

12 A Yes.

13 Q Now, the contracts and the one deed that we
14 just referred to are for lots within those numbers that I
15 just read off; is that correct?

16 A No.

17 Q Are there among those contracts and that deed --

18 A You missed these here. (Indicating)

19 Q I missed one. Okay. In other words --

20 A Fifty-eight B to --

21 Q Fifty-eight, 59 and 60B are also within those
22 contracts and those deeds?

23 A Yes.

24 Q Would that encompass all the ones that we're
25 concerned with here?

1 A Yes.

2 Q In each of those contracts and that deed,
3 didn't you provide for septic and drain field for those
4 lots that were sold?

5 A Yes.

6 Q And how was that provided?

7 A How was it provided?

8 Q How was septic and drain field provided for
9 those lots that you sold?

10 A What do you mean? How does the system work?

11 Q Yes. I guess the question is not really
12 properly put. Where is the system supposed to be and where
13 is it?

14 A Where does the drain field belong?

15 Q Yes, sir.

16 A They are on the Daisey property.

17 Q The drain fields are not on the four acres of
18 the Ocean Breeze property that we're concerned with here
19 today?

20 A No, they are on the Clifton Daisey property.

21 Q And, as a matter of fact, as many lots as that
22 is on that four-acre parcel, you wouldn't be permitted to
23 put them on there, would you?

24 A No. You would have to have ten or 15,000
25 square feet normally to put in a septic tank and drain field.

1 Q So the drain field had to be off of this
2 property that you developed in order to accommodate it; is
3 that correct?

4 A That is what the information said we got from
5 the Health Department.

6 Q Now, these parcels that you sold, you got paid
7 for, right?

8 A Yes, sir.

9 Q You have been paid full price for all of them?

10 A Yes, sir.

11 Q And the price ranged anywhere from \$69,000
12 per fifty-foot lot; is that correct? I mean isn't that a
13 rough guess?

14 A Fifty-five -- from fifty-five to nine.

15 Q If these persons were not permitted to use the
16 drain fields designed for them off the property and over on
17 adjoining property of yours, they would not have a drain
18 field, would they?

19 A That's correct.

20 Q And the drain fields are designed for property
21 that you own adjoining what is known as Ocean Breeze,
22 property that we are concerned with?

23 A That's correct.

24 Q And that was -- was that the scheme of
25 development that you followed with respect to all of Ocean

1 Breeze development?

2 A Well, it was similar. It was similar, but it
3 wasn't -- it was that the drain fields wouldn't be on the
4 lots, if that's what you mean.

5 Q I guess a better way to ask the question is,
6 Ocean Breeze is much larger than the four-acre Parcel B
7 that we're concerned with here?

8 A That's right.

9 Q And the question is, the scheme of development,
10 though, was similar for other parts of Ocean Breeze; is that
11 correct?

12 A Yes.

13 Q These lots were intended only for mobile
14 homes?

15 A Yes.

16 Q All right. Now, I'm going to refer specifically
17 to Restriction Number 7 in the restrictive covenants in the
18 deed to Blanton and it says --

19 THE COURT: You say the deed to Blanton.

20 Aren't all the restrictive covenants in all
21 the contracts and in the deed to Blanton the same?

22 MR. TYLER: I guess I had better ask that
23 question.

24 BY MR. TYLER:

25 Q Are all the restrictive covenants in all the

1 contracts and in the deed to Blanton the same?

2 A Yes.

3 Q Number 7 said, basically, that the lot owner
4 is responsible if the absorption drain field should fail,
5 and that in the event the committee -- property owners'
6 committee, above-referred to, does not repair any malfunction,
7 all mobile homes shall be closed, and it goes on to say
8 other things, so it is the intention of these restrictive
9 covenants that the property owners would repair anything
10 that should go wrong with that drain field; is that correct?

11 A That's correct.

12 Q And if that even meant digging the thing up
13 and doing it over again, that is what that meant?

14 A Anything.

15 Q Whatever goes wrong with it?

16 A Yes.

17 Q So, consequently, they certainly would have to
18 go upon your land to attend to it? Go upon your land, not
19 their land, to attend to it?

20 A Yes, sir.

21 Q So these drain fields then were sold to them.
22 Maybe not the land that they were in, but the drain field
23 as a drain field was sold to them along with the deeds and
24 contracts.

25 A Yes.

1 Q Of course, you were aware all during this
2 time that you didn't own the 100 percent interest in this,
3 and you conveyed that to some of the people that you sold
4 these lots to? In other words, some of them understood
5 that you didn't own complete interest in the thing?

6 A (Witness nodding head affirmatively.) Well,
7 the contract indicates that.

8 Q Well, do they all indicate that?

9 A Yes, as far as I know.

10 Q As far as you know?

11 A (Witness nodding head affirmatively.)

12 Q Of course, they speak for themselves in that
13 respect.

14 Now, as to valuation. First of all, you
15 testified with respect to the eighteen-acre, Parcel A.
16 How much did you pay for your interest in that parcel or
17 do you recall?

18 A No. It was never broken down in individual
19 parcels, so I wouldn't be able to tell that.

20 Q Now, you say that the entirety of Parcel A
21 would be worth four or 5,000, only four acres of high land,
22 that kind of thing. What do you base that on?

23 A I was asked the question was that value with
24 no roads to it.

25 Q I see. If it had a road to it, would you be

1 able to put a valuation on it?

2 A Yeah. I can put a valuation on it.

3 Q How much would you think it was worth if it
4 had a road to it?

5 A What kind of road?

6 Q The one it's got.

7 A The one it's got. I would say the high land
8 would be worth approximately \$3,000 an acre and the marsh
9 land would probably be worth a hundred dollars an acre. I
10 bought land for \$100 an acre.

11 Q What permits do you have, if any, with respect
12 to this eighteen-acre parcel permitting authority? Do you
13 have any dredging or filling permits for this eighteen-acre
14 parcel?

15 A No, I have been told that the marsh part of it
16 cannot be filled.

17 Q I was asking you what permits you have?

18 A I have no permits of any kind.

19 Q Did you have to get a permit for that road
20 across there?

21 A Not at the time I did it in '73. It was after
22 the road went through I was taken to court for putting the
23 road through.

24 THE COURT: Taken to court by whom?

25 THE WITNESS: By Corps of Army Engineers.

1 BY MR. TYLER:

2 Q But you prevailed?

3 A Eventually.

4 Q What do you base your valuations on?

5 A Oh, base it on properties throughout
6 Chincoteague. Base it some on what I paid Zed Ayres for
7 his property. It's land -- I would say that's better
8 property than this type land, but that was less than \$3,000
9 an acre, I believe.

10 Q When you say "base it on," what are you
11 referring to?

12 A Charles Chase's Field.

13 Q The one you referred to a while ago?

14 A Yeah.

15 Q In back of the C and D parcel? Based on that
16 sale is what you're using?

17 A Yes.

18 Q When was that?

19 A November of '74.

20 Q Seventy-four.

21 THE COURT: What was your appraisal of Parcel

22 A if the road that goes through it belongs to it?

23 THE WITNESS: One hundred dollars an acre
24 for the marsh. I assume it's approximately four
25 acres of usable land, which would be probably

1 thirteen, \$15,000, is my feeling on it.

2
3 BY MR. TYLER:

4 Q Now, do you have any other basis for your
5 decision on this besides what you paid Zed Ayres for that
6 other property back there?

7 A Well, what I have seen other property go for
8 on Chincoteague. Like I said, I bought Zed's property in
9 the area, and I based it on that and I based it on the
10 marsh that I bought for \$100 an acre.

11 Q When was that?

12 A Seventy-three, I think it was.

13 Q Where was the marsh?

14 A The marsh was on Chincoteague Channel and on
15 Assateague Channel and on Black Point. Black Point Creek.
16 I also based it, I guess, on other marsh that I bought that
17 I have been unable to use such as marsh that I bought from
18 Frank Williams and that I bought from -- and that I bought
19 from Bill Thom. Bill Thom is on Eastside. Piney Island.

20 Q These areas are not in the same area as these
21 properties we're talking about today?

22 A It's probably a mile and a half from it.

23 Q Now, Parcel B is not very far from the eighteen-
24 acre parcel. How far is that? We can see it on the plat.
25 I know we can measure it on the plat. Just roughly guessing.

1 how far is Parcel B from the eighteen-acre piece, A, the
2 Ocean Breeze piece? Just a guess.

3 A You mean at its nearest point, right?

4 Q Right.

5 A Six, 800 -- you're talking about from which?

6 Q Parcel B in Ocean Breeze, how far is that
7 from Parcel A?

8 A About six, seven or 800 feet.

9 Q Was it the same kind of land -- Parcel B the
10 same kind of land as Parcel A when they started the filling
11 operation?

12 A Well, in one sense it may have been
13 considered where you might say one fourth was good land and
14 one fourth wasn't. From that sense, you might say that it
15 was.

16 Q Well, your general Ocean Breeze development
17 outside of Parcel B, according to the plat, goes right up
18 to Parcel A -- touches it; is that correct?

19 A Without looking at it, I don't know if it
20 touches or not.

21 Q It goes up very close to it. We won't say
22 that it touches it. Within a matter of feet from it --
23 the entire development; is that correct?

24 A Right.

25 Q At the time you did Parcel B, you filled it;

1 is that correct?

2 A I filled it.

3 Q And that's what made it usable as property to
4 put mobile homes on?

5 A That was part of what made it usable.

6 Q Well, that was one of the factors then. Now,
7 you said you spent \$50,000 in fill. Is that for the entirety
8 of the Ocean Breeze development?

9 A No, that's for the four acres.

10 Q Just for the four acres you spent \$50,000?

11 A I don't know for sure if that included the
12 road going into the four acres or not, but pertaining to --
13 the fill pertaining to the four acres, it was approximately
14 \$50,000.

15 Q Your testimony would be that it cost you
16 \$12,500 per acre, roughly, to fill that property?

17 A Yes, including the road that went in.

18 Q Including that main road coming from the public
19 road; is that correct?

20 A Yes, and whatever work has to be done to
21 complete the drain field.

22 Q Including what work needs to be done to
23 complete the drain field?

24 A Yes.

25 Q That's a future thing then. That's a future

1 thing?

2 A It's not been done.

3 Q Then the \$50,000 hasn't been spent yet?

4 A Well, you might say for the exception of one
5 of the drain fields which needs very little done to it.

6 Q Now, in answer to a question your counsel
7 asked a while ago -- he asked you what the value of this
8 four-acre parcel was now.

9 A That's right.

10 Q Do you remember your answer?

11 A Yes.

12 Q What was it?

13 A Forty thousand dollars.

14 Q Your answer is that it is now worth 40,000
15 and your testimony is that you spent \$50,000 in fill for
16 that parcel?

17 A That's right, for the drain field and for the
18 four acres and the road to get to it.

19 Q Do you think that's compatible -- the
20 testimony is compatible one with the other?

21 A Yeah. I think it's very compatible.

22 Q Well, you're going broke then, aren't you?

23 A I guess so.

24 Q The thing for you to do would be to get out
25 of that thing, wouldn't it?

1 A Yeah.

2 Q You're dumping dirt on property to the extent
3 of \$50,000 or twelve five for four acres and you're getting
4 back ten, according to your valuation. Now, you spent
5 \$4,000 for the tract, 10,000 for septic, and I roughed out
6 about 10,000 for water, and 16,000, plus 35,000 for roads.
7 Is that just in the four-acre piece or is that in the entire
8 Ocean Breeze development?

9 A That's in -- as I testified before, this is
10 in the four acres.

11 Q How many roads in the four-acre development?
12 I see one going through there. Is that a dirt road or a
13 paved road?

14 A Paved.

15 Q Paved road. Fifty-one thousand dollars for
16 that road?

17 A No, I never said that.

18 Q Excuse me. I wrote down 16,000 and 35,000.
19 Beg your pardon. I don't want -- I may have put it down
20 wrong. How much did you spend on the roads there in that
21 four-acre parcel?

22 A I think it's -- I figure thirty-three for the
23 road.

24 Q Now, as to the value of this property, you
25 say that there is work to be done. Has the septic field not

1 been completed? You said sewerage is lacking. Has that
2 not been completed?

3 A No, it hasn't been completed.

4 Q Now, you said you need about \$10,000 to do
5 that. Is that the same ten you referred to as having
6 spent up here above or did you already spend ten?

7 A I spent ten.

8 Q And you have got ten to go?

9 A Yes.

10 Q All right, sir. Now, you put -- on Parcel C,
11 you put \$1500 per acre. I never did hear or maybe I just
12 didn't write it down what the whole of Parcel C would be
13 worth. Did you testify to that, what the whole of Parcel C
14 would be worth?

15 A Four acres, \$6,000.

16 Q You would value the whole thing at \$15,000.
17 Parcel D, you put \$15,000 on that. Twenty-one
18 thousand for about twelve acres of land. How many acres of
19 high land in that total twelve?

20 A About five acres.

21 Q Five. You're in the campground business,
22 right?

23 A Yes, sir.

24 Q How many campsites can you get on five acres
25 of land?

1 A Well, that's not the easiest question to
2 answer. Are you talking about considering bathhouses,
3 roads, things of that nature?

4 Q No, just give us -- if you had a five-acre
5 parcel of land to develop with a campsite, how many?

6 A Let's do it State of Virginia standpoint.
7 Sixteen hundred square feet per lot, whatever that figures
8 out to.

9 Q That adjoins Buddy Burton's? Excuse me.
10 He's deceased. The Burton campground?

11 A If it does, I'm not aware of it.

12 Q Is it in the same vicinity as the other
13 campground, the Burton campground?

14 A They are on the southern end of the island.

15 Q How far is this Parcel C and D from the
16 Burton campground?

17 A I don't really know. Zed Ayres separates it.

18 Q Two or three hundred feet, six, 800 feet?

19 A Several hundred feet, the best I can come.

20 MR. TYLER: That's all the questions we
21 have, Your Honor.

22 THE COURT: Mr. Tull, I think I'm a little
23 confused with all these figures. How much money
24 have you spent -- I'm not talking about, now, what

1 take in the future. How much money have you
2 spent in improvements on Parcel B, that four-
3 acre parcel?

4 THE WITNESS: You're talking about getting
5 access to it, water and utilities, et cetera?

6 THE COURT: Right, on that particular
7 parcel, just on that parcel.

8 THE WITNESS: You're not talking about what
9 it took to get anything to it?

10 THE COURT: No.

11 THE WITNESS: I think I gave the figure
12 around \$80,000.

13 THE COURT: You have spent around \$80,000
14 on that four acres?

15 THE WITNESS: Yes.

16 THE COURT: Let me ask you this: Why did
17 you think it was going to be worth an awful lot
18 more than the forty it's worth now?

19 THE WITNESS: I was asked what I was --
20 I don't think it will bring over \$40,000 today.
21 I can't imagine anybody that wants to buy it for
22 over \$40,000.

23 THE COURT: But, in conjunction with the
24 rest of Ocean Breeze, it's worth a lot more; is
25 that what you're saying?

1 THE WITNESS: I have been in Ocean Breeze
2 five years. I could testify to the fact if you
3 can finish it, complete it and if you have got
4 several years to sell it out, it will bring more
5 than \$40,000, no question.

6 THE COURT: Do you have any redirect?

7 MR. DRUMMOND: Yes, sir.

8
9 REDIRECT EXAMINATION

10
11 BY MR. DRUMMOND:

12 Q Mr. Tull, I ask you with reference to Wyle
13 Maddox and Louella, they charged you for the right-of-way
14 over their parcel of land. They had a right to use the
15 road that you built, right?

16 A Yes.

17 Q Who built the road across their land that they
18 had a right to use?

19 A I built the road.

20 Q Did that road lead into other roads you had
21 out to the state road?

22 A Yes.

23 Q And they had a right to go -- to use that
24 from their land out to the main state road?

25 A Yes, sir.

1 Q So that was the -- you had consideration for
2 -- that was the consideration for them giving you the
3 right-of-way over it; is that correct?

4 A It could have been looked at like that. I
5 don't know that Mr. Maddox looked at it like that or if --
6 I might put it this way: Mr. Maddox and I had done some
7 business together. I gave him a piece of property on Piney
8 Island back in '70, '71, I think it was, and it could have
9 been that he was giving me the property going in there. I
10 don't know what entirely his intent was. It could have
11 been some of both.

12 Q But he didn't spend any money on the road?

13 A Spent no money on the road.

14 Q Now, this road that is on the north -- the
15 outlet -- thirty feet -- how long was that?

16 A The one from Ridge Road?

17 Q The thirty-foot outlet from Ridge Road in by
18 the Tarr property?

19 A I suppose it's -- I don't know for a fact.
20 It should be somewhere around 300 feet. The plat in there
21 speaks for itself.

22 Q Only about 300 feet?

23 A Well, it's only 300 feet to where it goes to
24 the Daisey property. Then it goes into the old right-of-way
25 which could possibly be another 300 feet, I guess. It

1 could have been a --

2 Q Did you get thirty feet on that, too?

3 A Did I get thirty feet on it?

4 Q Yeah. On both.

5 A I got -- yes.

6 Q That Archie Lunn property, who owned it?

7 A Charlie and Emily Tarr and Mame Sharpley's
8 heirs.

9 THE COURT: Own it now or did own it?

10

11 BY MR. DRUMMOND:

12 Q The Archie Lunn lot.

13 A Who did I buy Archie Lunn property from?

14 Q Yeah, but you bought that from whom?

15 A I bought -- what interest I had in it, I
16 bought it from Charlie -- Charles Tarr and his wife, Emily.

17 Q And did you retain an interest when you sold
18 it to Archie?

19 A Yes, sir.

20 Q What was your interest?

21 A Fifteen feet, I think it is.

22 Q I mean, did you sell him a fee simple interest
23 in it or life estate or remainder or what?

24 A I sold Archie Lunn the property, whatever I
25 owned.

1 Q Fee simple interest?

2 A Yes.

3 Q Now, in the deed from -- from Mr. Ayres to
4 you, he gave you a right, did he not, to widen the outlet
5 and -- the narrow outlet anywhere it went over his land
6 for a distance up to thirty feet; is that true?

7 A Yes.

8 Q And that -- that went with the property that
9 you purchased from him?

10 A Thirty-three acres.

11 Q You stated to the Court, I believe, that when
12 you built the road across the eighteen-point-something
13 acres that you were cited to the Federal Court by the Corps
14 of Engineers; is that true?

15 A That's true.

16 Q What were you charged with?

17 A I was charged with filling on marsh land,
18 covering creeks, canals, guts. That was part of it. There
19 was many, many charges.

20 Q How many? Just one trial?

21 A Three. I don't know how many pertain to this
22 particular thing. It was a total of three trials that took
23 place.

24 Q And where you put this road, was that higher
25 or lower than the marsh land that you're speaking about?

1 A Where I put the road?

2 Q Where the road is now. Was that on marsh
3 land, low land or was it higher or --

4 A It was built on what would be considered as
5 marsh.

6 Q Same type that is there now?

7 A Yes. It speaks for itself.

8 Q Now, this happened in what? You said in '73
9 or '74?

10 A The road was built right after I acquired
11 this right-of-way from Mr. Maddox. As Mr. Tyler mentioned
12 here, that was done in September of '73. My knowledge
13 right after that is when the road began and it was done in
14 '73, I guess. Completed in '74.

15 Q With your knowledge of the situation about
16 marsh land, et cetera, could that road have been built on
17 that marsh land and fill have been put in today? Any way
18 possible that you know of?

19 MR. TYLER: I'm going to object to that,
20 Judge. I don't think he's qualified to testify
21 to that, Judge. I don't think he's competent to
22 testify to that. It's a moot question anyway.

23 THE COURT: I sustain the objection.

24 MR. DRUMMOND: What did you say, Judge?

25 THE COURT: I will sustain the objection.

1 BY MR. DRUMMOND:

2 Q I would ask you this: Have you had occasion
3 to have any dealings with filling land of like quality?

4 A Yes, sir.

5 Q Were you able to do it?

6 A That type of land -- I was told that that
7 type couldn't be filled after the road was put in.

8 MR. TYLER: Your Honor, I don't think he's
9 competent to testify to that. He's going at the
10 thing from another angle. It's the same question.

11 THE COURT: What are you getting at,
12 Mr. Drummond, that you can't fill marsh land?

13 MR. DRUMMOND: It's wet land and they will
14 not permit it to be filled any longer.

15 THE COURT: What's the relevance of it?

16 MR. DRUMMOND: I think it's a question of
17 stating how much land was uable and what he can
18 do with it is all. That's all right. I will
19 withdraw it.

20

21 BY MR. DRUMMOND:

22 Q Mr. Tull, did you build a -- who built the
23 roads in -- in the subdivision -- Ocean Breeze?

24 A I built the roads.

25 Q Who built them for you?

1 A Ronnie Beebe laid out the roads. As far as
2 -- are you talking about the hard surfacing of the roads?

3 Q Yes.

4 A Lance Eller.

5 Q Have you paid any money for the roads being
6 built?

7 A To date, I have paid him a hundred thousand
8 dollars.

9 Q Have you got a check for that amount?

10 A Yes, sir.

11 THE COURT: Does he have what?

12 THE WITNESS: Do I have -- he wanted to know
13 if I had a check for that amount of money.

14 THE COURT: You mean does he have the
15 cancelled check?

16 MR. DRUMMOND: Yes.

17

18 BY MR. DRUMMOND:

19 Q Would you produce it, please.

20 MR. TYLER: You know that's for roads. I
21 don't believe that's appropriate.

22 MR. DRUMMOND: We want it in evidence to
23 show the cost.

24 THE COURT: All right, sir.

25 (Mr. Tull passed the check to the Court.)

1 THE COURT: All right.

2 MR. DRUMMOND: That's all.

3 MR. TYLER: Your Honor, just another minute.

4 I didn't get Mr. Tull to testify as to the Deeds
5 of Trust and easements for utilities and I think
6 they should be in the record.

7 THE COURT: All right, sir. Go ahead.

8
9 RECROSS-EXAMINATION

10
11 BY MR. TYLER:

12 Q Now, Mr. Tull, you have given a Deed of Trust
13 on Ocean Breeze, the eighteen-acre parcel, in 1976, to Bank
14 of Virginia; is that correct? That is of record?

15 A Yes, sir. Some of it has been released.

16 Q Right. Some of that has been released. I,
17 just for the record, want the record to disclose the liens,
18 et cetera.

19 Next, you gave a Deed of Trust on three acres
20 within the seven acres and four acres within C and D. You
21 gave a Deed of Trust on three acres as a performance bond
22 to the county; is that correct?

23 MR. DRUMMOND: You mean his interest in it?

24 BY MR. TYLER:

25 Q Your interest in it; yes, sir.

1 A Yes.

2 Q Well, the Deed of Trust simply says three
3 acres, which is within the seven acres and four acres given
4 to the county to secure a performance bond for the building
5 of roads; is that correct?

6 A Yes, sir.

7 MR. TYLER: Your Honor, for purposes of
8 the record, the first one I referred to to Bank
9 of Virginia is in the third section of the
10 package of documents, Number 12.

11 The second one I referred to is in the
12 same section of the package of documents, Number
13 8.

14

15 BY MR. TYLER:

16 Q Mr. Tull, you gave a Deed of Trust on Ocean
17 Breeze lots -- another Deed of Trust to Bank of Virginia
18 on Ocean Breeze lots, January of 1980; is that correct?

19 A Yes, sir.

20 MR. TYLER: And that's, Your Honor, the
21 sixth document in the third section of the
22 package.

23 Now, there have been utility easements,
24 Your Honor. The documents are the ninth, tenth
25 and the eleventh in the package.

1 BY MR. TYLER:

2 Q Mr. Tull, you gave right-of-way to DP & L
3 and two rights-of-way to C & P; is that correct? The DP & L
4 would be across the eighteen-acre tract and C & P across
5 the eighteen-acre tract underground, and C & P within Ocean
6 Breeze buried cable. Do you recall those easements that
7 were given by you on those parcels?

8 A No.

9 Q You don't recall them?

10 A I don't recall the one -- I recall the one
11 with Delmarva Power & Light across the eighteen acres, but
12 I don't recall signing anything with -- however that's done.

13 Q I don't want to prolong it.

14 MR. TYLER: They are of record, Judge, and
15 I don't know whether counsel would want to go
16 into that. I think it should be in the record.

17 MR. DRUMMOND: He just stated he doesn't
18 recall.

19 THE COURT: It's in the record.

20 THE WITNESS: I just don't recall that.

21 MR. TYLER: That's all of the deeds, Your
22 Honor.

23 THE COURT: All right, sir. Suppose we
24 take a recess for lunch. I have 1:25. Maybe we
25 can be back at 2:15.

1 (The Court recessed at 1:30 p.m. The
2 Court reconvened at 2:30 p.m.)

3 THE COURT: All right. Call your next
4 witness, please.

5 MR. BLOXOM: Mr. Baker, please.

6 THE COURT: You haven't been sworn, have
7 you?

8 THE WITNESS: No.

9 (The witness was called up and sworn.)

10 MR. BLOXOM: Your Honor please, it is
11 stipulated again -- one further stipulation by
12 counsel, that in the entire Ocean Breeze
13 development there are 197 lots platted, of which
14 there are 191 for sale, which includes, of
15 course, the twenty lots in Section B that we have
16 been referring to.

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1 TERRY STEWART BAKER, called as a witness on behalf
2 of the complainants, having been first duly sworn, was
3 examined and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. BLOXOM:

8 Q Mr. Baker, state your full name, please, sir.

9 A Terry Stewart Baker.

10 Q And your occupation?

11 A Executive Secretary to the Town of
12 Chincoteague.

13 Q And how long have you held that position?

14 A Since March of '79.

15 Q And, in your official capacity, is it part of
16 your duties to lay out water lines or sell water lines or
17 deal with the Water Department?

18 A I receive requests from developers requesting
19 water lines be extended into their development. That
20 request is then turned over to the town's water committee
21 who then decides the locating of the other water lines and
22 either issues an approval or disapproval.

23 Q Then in your official capacity, are you
24 familiar with the particular subdivision known as Ocean
25 Breeze?

1 A Yes, I am.

2 Q And how long have you known this subdivision?

3 A Ever since I took the job with the town.

4 Since March of '79.

5 Q Now, it's stipulated, Mr. Baker, that there
6 are 191 lots for sale in the subdivision. Do you know
7 whether or not that is correct?

8 A The exact number of lots, I don't know. It's
9 quite a few in there.

10 Q Has the town had an occasion to have an
11 application filed by Mr. Tull for an extension of water
12 lines for this subdivision?

13 A Yes. On several occasions.

14 Q Can you tell me, Mr. Baker, how many feet of
15 water lines the town installed to service this area?

16 A This one particular area?

17 Q Well, to service -- let me withdraw that
18 question.

19 Are you familiar with Tract B on the plat,
20 Mr. Baker?

21 A Tract B? Yes, sir.

22 Q Let me refer you to the plat that we're using
23 in evidence over here, if you don't mind. Let me refer you
24 to Tract B. Are you familiar with this particular area?

25 A Yes, I am.

1 Q All right, sir. Now, it's been testified
2 to that there are twenty lots in this particular Tract B.
3 Do you know that to be correct?

4 A Yes, sir.

5 Q All right, sir. There are also lots that
6 are not on this plat that are across the street. Are you
7 aware of that?

8 A Yes.

9 Q Can you tell me how many feet of water lines
10 the town laid down at Mr. -- or conducted at Mr. Tull's
11 request in order to serve this area?

12 A Is this to include that running from the
13 entrance into these lots?

14 Q Yes. Include the total length of line that
15 he purchased from the town from the last extension up until
16 the --

17 A All right. That would be -- total for the
18 lots mentioned would be 3647 feet.

19 Q Of water line. Has that water line been
20 installed?

21 A All of that is in the ground, yes.

22 Q Operational?

23 A Yes.

24 Q Has the town been paid?

25 A Yes. We were paid prior to any installation.

1 Q All right, Mr. Baker. Can you tell me
2 whether or not any additional lengths of water line were
3 required in order to get to this particular area? In
4 other words, where did you start counting that 3647 feet
5 from?

6 A That started back over here at the entrance.

7 Q At your last connection?

8 A Our last connection for this area was up
9 along the edge of the drainage ditch. The water line was
10 in this point prior to any development of this area. We
11 then picked up at this point, connected onto the existing
12 line and fed in through this area here.

13 Q The 3647 feet, how many lots does that serve?

14 A That serves a total of 100 lots.

15 Q And what was the cost per foot for installation?

16 A An average cost per foot, which I'm speaking
17 from March of '79 to the current time, is between seven
18 fifty and \$9 a foot.

19 Q So, at \$8 a foot, that would be how much?

20 A That would be \$29,750, I suppose. I didn't
21 calculate it out.

22 Q All right, Mr. Baker. You can have a seat, if
23 you wish.

24 Now, at this particular time, sir, is the
25 town hooking up mobile homes to water?

1 A At this particular time, due to our present
2 water situation, customers -- our potential customers that
3 request water service outside the corporate limits of the
4 town are not being connected due to our water ordinance.

5 Q Do you have any idea how long this condition
6 will continue? Are you able to project this at all?

7 A I suppose at least through Labor Day.

8 Q Through August then?

9 A Right.

10 Q You say there are no new water connections
11 and no new extension of lines?

12 A No. Yes.

13 Q And Mr. Tull did pay to the town an average
14 between seven fifty and \$9 for a running foot?

15 A Yes.

16 MR. BLOXOM: Thank you, Mr. Baker.

17 Your witness.

18 MR. TYLER: I have no questions, Your Honor.

19 THE COURT: That's all, Mr. Baker. Thank
20 you. You're excused.

21 MR. BLOXOM: Mr. Baker, just let me ask
22 one more question.

23 THE COURT: All right. Suppose you retake
24 the stand.

1 BY MR. BLOXOM:

2 Q Mr. Baker, of the property on Chincoteague
3 Island, are all properties served by town water?

4 A Yes, sir.

5 Q Can you have a deep well on Chincoteague?

6 A There, to my knowledge, are no approved wells
7 for a public system as far as a private system. If you
8 want to drill a well, it's up to you whether or not you want
9 to consume it. To my knowledge, I think there are two such
10 instances on the Island.

11 Q And that's all?

12 A That's all, to my knowledge.

13 MR. BLOXOM: All right. Thank you.

14 MR. TYLER: No questions.

15 THE COURT: Thank you, Mr. Baker. That's
16 all.

17 MR. DRUMMOND: Mr. Kambarn.

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1 CHARLES E. KAMBARN, called as a witness on behalf of
2 the complainants, having been first duly sworn, was examined
3 and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. DRUMMOND:

8 Q State your name, occupation and place of
9 residence.

10 A Charles E. Kambarn, 66 years old. I'm a
11 boat salesman, and I handle a little bit of real estate.
12 Buy and sell. Speculate, I guess you would say.

13 Q Mr. Kambarn, how long have you been buying
14 and selling and speculating in real estate?

15 A Since about 1960.

16 Q Since 1960. Do you also finance real estate
17 on Chincoteague?

18 A That's correct.

19 Q Do you appraise it? Do you appraise property
20 on Chincoteague?

21 A I have quite a few times, yeah, for different
22 ones. I'm no expert, but I try to do my best, you know.

23 Q What do you mean you're no expert?

24 A Well --

25 Q You haven't been to school?

1 A I haven't been to school, and I hold no real
2 estate licence or anything.

3 Q Are you familiar with the values on
4 Chincoteague?

5 A Yeah. Pretty well. Yeah. I attend quite a
6 few auctions and finance some property and, yeah, pretty
7 well, I would say.

8 Q Are you familiar with the four tracts or
9 parcels of land in controversy here?

10 A Yes, I am. I have walked it a lot of times,
11 and I took some different mortgages on conditional sales
12 contracts on lots at Ocean Breeze and lots in that vicinity,
13 and I have right now, I believe, four or five pieces of
14 property nearby. I say on Ridge Road.

15 Q We will start with 18.5 acres of Parcel A,
16 which is the low end of the Island. Are you familiar with
17 that tract or parcel of land?

18 A Yes, I do or I am, rather.

19 Q Have you -- you have traveled on the road
20 there that goes across it, have you not?

21 A That's right.

22 Q What type of marsh land is it?

23 A Well, it's wet land. They don't call it marsh
24 land anymore. They call it wet land. That seems to be a
25 big problem around there. Everything is wet land when it

1 borders the water. Some that don't border the water, they
2 call it wet land.

3 Q Is it ever covered with water?

4 A You're speaking about A; is that correct?

5 Q I'm speaking about Tract A.

6 A I would say the right-hand side of the road,
7 at least two thirds of it is. Northeast side, yeah, it
8 has some --

9 THE COURT: What do you mean by right-hand
10 side?

11 THE WITNESS: I'm going north towards
12 Bunker Hill.

13 THE COURT: What's your right facing --

14 THE WITNESS: On the right facing -- I'm
15 looking on my right facing Tom's Cove. You know,
16 headed east. It's marsh. There is some guts
17 and it's wet lands.

18
19 BY MR. DRUMMOND:

20 Q And have you seen it covered in recent times?

21 A Sure. It was covered two weeks ago. We had
22 that full tide.

23 Q What, in your opinion, is the value of that
24 parcel of land? I'm speaking about on the right-hand side.
25 How much high land is it?

1 A I would say four acres.

2 Q Four acres?

3 A Yeah, I would say, rough guess.

4 Q How much would marsh land be worth, which

5 would be the other 14.5?

6 A I'm going to try to answer this fair. Can

7 I tell you the experience I have had --

8 Q No, just tell what the fair market value is.

9 What's the fair market value?

10 A To the other man?

11 Q To -- fair market value.

12 A A thousand dollars.

13 Q That's marsh land?

14 A Yes, sir.

15 Q And how about the high land?

16 A Well, the four acres over on the left-hand

17 side, that's not all high now. There is an oyster gut goes

18 through there. Whether they will let me fill that oyster

19 gut, I don't know. Whether I bought it or the other man.

20 We will put the other man there. I'd say \$8,000.

21 Q So you put a total value, \$9,000?

22 A I would say I would be pretty correct

23 there.

24 Q And without a road, utilities and --

25 A Now, you've got a different story now. You're

1 talking about A now?

2 Q We're talking still about A.

3 A Just about half if I got to fight to get a
4 road and get water to run there.

5 Q Now, what is the fair market value, not to
6 you, but somebody else?

7 A Under the hammer. Wouldn't bring no more
8 than that, Mr. Lester.

9 THE COURT: No more than what?

10 THE WITNESS: Eight thousand dollars.

11

12 BY MR. DRUMMOND:

13 Q You said without water, half?

14 A Yes, sir. I said \$8,000. I'm figuring I'm
15 going to get that right-of-way or the other man is going
16 to figure it the same way. I can't speak for him, but I'm
17 sure he's going to want a right-of-way. Can't buy that,
18 but, anyway, it's worth half.

19 Q Fair market value is half?

20 A Yes, sir.

21 Q All right. Now, are you familiar with the
22 four acres in Ocean Breeze?

23 A Very familiar with it.

24 Q Were you familiar with it prior to the
25 improvements?

1 A This particular part?

2 Q Yes.

3 A Yeah. I bought the first lot that was sold
4 in Ocean Breeze. Was nothing there but bushes. This is
5 over in the old section now. First lot, I bought it from
6 Eddie.

7 Q And were you familiar with this area at that
8 time?

9 A Yes, sir, I was.

10 Q What type of land was it?

11 A My first lot I bought?

12 Q No, the four acres that's in controversy.

13 THE COURT: You say the old section. You
14 mean on the west side of Ridge Road?

15 THE WITNESS: Could I show you?

16 THE COURT: Sure.

17 THE WITNESS: Here's the old section now.

18 THE COURT: Is the old section on this
19 plat?

20 MR. TULL: Part of it. The part he's
21 referring to is on there.

22 THE WITNESS: The first part was developed.
23 I bought the lot. It's been extended since then.

24 THE COURT: Over here on the west side?

25 THE WITNESS: Yes.

1 BY MR. DRUMMOND:

2 Q What type of land is this four acres that's
3 in controversy here?

4 A That was pasture. A lot of low land in
5 there was pasture. It's everything it ever was, and needed
6 a lot of filling. Even the lots I bought needed a lot of
7 filling. After I bought them, I had to fill the lots.

8 Q What, in your opinion, would be the fair
9 market value of that four acres before any improvements
10 were made?

11 A I'm talking B; is that correct?

12 Q That's B.

13 A Before? The way land goes on Chincoteague,
14 undeveloped, I'd say \$2500.

15 Q All right. Now --

16 THE COURT: Twenty-five hundred dollars
17 for the four acres?

18 THE WITNESS: Yes, sir. I'm speaking the
19 way it was first, pasture, and it had a lot of
20 holes. I mean, it was --

21
22 BY MR. DRUMMOND:

23 Q Before it was any development?

24 A I would say \$2500.

25 THE COURT: What we're interested in is

1 what it's worth now.

2 THE WITNESS: Oh, now, is different.

3 MR. DRUMMOND: Well, you mean if it were
4 sold now, Your Honor? That's what I asked him.

5 THE COURT: Isn't that what we're
6 interested in?

7
8 BY MR. DRUMMOND:

9 Q Mr. Kambarn, what we're interested in is that
10 four acres of land if it was just like it was before the
11 improvements, sold at the present time at fair market value.

12 A Mr. Lester, I don't think it would bring
13 over \$2500, really. I may be way off, but I don't think --
14 before it was filled or anything?

15 Q That's right.

16 A I'm saying \$2500.

17 Q Just -- have you looked at it since a road is
18 in there?

19 A Sure. I own twenty-some lots in there now.

20 Q What is the fair market value if it was sold
21 just as it's on that plat right now, that four acres
22 subdivided with the lots, et cetera, in there?

23 A Could I ask this question? If it was sold
24 right now, it's got to be a lot of development done there
25 yet. It's still got to be some fill, drain fields, lots

1 have got to have water on them. That's no cheap thing
2 either anymore.

3 Q The water lines are in?

4 A Not on the lots; no, sir. I just paid \$500.

5 THE COURT: The question -- this is a
6 partition suit brought to divide this piece of
7 property, so isn't the question what is its value
8 as it sits there now, not what it was twenty years
9 ago before it was filled? It's not what it's
10 going to be worth fifty years from now. Somebody
11 might build an Empire State Building on it.
12

13 BY MR. DRUMMOND:

14 Q What is the fair market value of that four
15 acres right now?

16 A Thirty-five thousand dollars. I'll tell you
17 why I'm deriving (sic) at that. Could I?

18 THE COURT: Yes, sir.

19 A (Continuing) I got expectations. I got to
20 get that ready to sell. I got to put drain fields. I
21 got to put water on the lot, I'm talking \$275 for water
22 field and \$200 for water line. You may have water crossed
23 in front of you, but I got to get the water there, too, so
24 I can sell that lot. That's the only way he will buy. He
25 wants a drain field for his sewerage. It's not worth as

1 much now as after it would be completed. Every lot I sell,
2 I have to complete them. I have sold about twenty lots in
3 that section. I think I had about thirty-nine or forty
4 lots. Of course, I financed every one of them. That helped
5 me sell them.

6
7 BY MR. DRUMMOND:

8 Q Mr. Kambarn, are you familiar with the four
9 acres known as C on that plat?

10 A Yeah. I own some land that I bought four or
11 five year ago pretty close by that. I know where you're
12 talking about. C, yes, sir, I do.

13 Q What, in your opinion, is the fair market
14 value of that?

15 A Am I allowed to ask you this? I hear you
16 people talking about right-of-way. Am I going to get a
17 right-of-way to that or have I got to fight to get it? I
18 have been hooked up on that. That's why I have -- I have
19 been in a hornets' nest so many times that I got --

20 THE COURT: What you had better do then is
21 to give us -- what do you think the fair market
22 value is without a right-of-way and with-a
23 right-of-way.

24 A (Continuing) Well, \$6,000.

25 THE COURT: Which way?

1 THE WITNESS: I would say if I'm going
2 to get a right-of-way. If I ain't going to get
3 a right-of-way, three. It's got to have some
4 fill.

5 THE COURT: You're saying fair market
6 value of C at four acres is \$3,000 without a
7 right-of-way, and \$6,000 with one?

8 THE WITNESS: If my land bordered it,
9 6,000, okay, because I got a right of way if my
10 land borders it.

11 THE COURT: We're not talking about you
12 buying it.

13 THE WITNESS: I'm talking about anybody
14 else.

15 THE COURT: That's right. Fair market
16 value is not what it's worth to you. It's what
17 it's worth to any willing buyer.

18 THE WITNESS: He's going to take that
19 into consideration, Judge.

20
21 BY MR. DRUMMOND:

22 Q Of that four acres, how much of that is gully
23 and how much of that is high land?

24 A Of course, it's dry now. We have had a dry
25 season. I would say not over a third of it. Now, it's a

1 lot of grass, but -- and it's glade, but it's right much
2 of it dry now, but when a big rain -- if we have a wet
3 season, not over a third of it; no, sir. Not over a third
4 of it. I'm talking about using it without putting any fill
5 in, and fill runs high.

6 THE COURT: Are you likewise familiar
7 with Section B?

8 THE WITNESS: That's up there with Zed
9 Ayres; is that correct?

10 THE COURT: Yes.

11 THE WITNESS: Yeah. That's about -- look,
12 now, that's about the best piece there. That's
13 about the best piece. What -- what did I think
14 it would bring?

15 THE COURT: What is the fair market value?

16 THE WITNESS: I can't speak for them.
17 It's worth 15,000. It's got some timber on it.
18 Not the best, but he's got some timber on it.

19 THE COURT: Is that without the right-of-way
20 or with it?

21 THE WITNESS: What I would give or the
22 other man?

23 THE COURT: What the fair market value is.

24 THE WITNESS: Fifteen thousand. He would
25 want a piece of the rock, I guess, so he would

1 give 15,000. I'm thinking when you ring the
2 bell, yach.

3
4 BY MR. DRUMMOND:

5 Q So you wouldn't make any differential between
6 the right-of-way or not the right-of-way?

7 A That's pretty close to a piece I own. Judge,
8 I'm having trouble with this --

9 THE COURT: I understand, Mr. Kambarn.
10 The reason you were put on the stand was not to
11 testify what this is worth to you, what you
12 consider the fair market value.

13 THE WITNESS: I gave a fair market value.

14 THE COURT: What a willing buyer would pay
15 to a willing seller.

16 THE WITNESS: It's hard for me to speak
17 for the other man.

18 THE COURT: Suppose I bought it. You
19 might not give me a right-of-way through your
20 property.

21 THE WITNESS: You would have a tough time.
22 I think I gave you the fair market value. Some
23 of these people do foolish things when they go
24 to a sale, but if they anticipate -- I'm a
25 speculator.

1 MR. DRUMMOND: That's all the questions
2 I have, Your Honor.
3

4 CROSS-EXAMINATION
5

6 BY MR. TYLER:

7 Q Mr. Kambarn, you started with the premise,
8 didn't you testify, that you were no expert?

9 A I don't call myself an expert at anything.
10 I'm a boat salesman because -- I'm not an expert because I
11 lose sales. When you say an expert, you're going tops.

12 Q Yes, sir. How much have you participated in
13 the financing of Mr. Eddie Tull? Are you financing him to
14 some degree in his --

15 A No, sir.

16 Q You don't loan him money?

17 A I have loaned Eddie money; yes, sir.

18 Q Does he owe you money now?

19 A I have a small note on him.

20 Q What would that amount be?

21 A It's not even a record. I think maybe it
22 would be 8,000.

23 Q He only owes you 8,000?

24 A I believe that's what it is.

25 Q But you have loaned him money from time to

1 time?

2 A Yes, sir.

3 Q He pays you back from time to time?

4 A Always.

5 Q Always. So you're somewhat financing his
6 real estate development from time to time; is that correct?

7 A No. I loan him like I would you or anybody
8 that's got good credit on an open note.

9 Q But you know it's for the development of this
10 real estate?

11 A I don't ask him.

12 Q If I said did you ask him, that would be the
13 proper answer. My question is don't you know what you
14 loaned him money for was for the development of this real
15 estate?

16 A I don't know, because he doesn't tell me.

17 Q Do you finance individual lot owners?

18 A Yes, sir.

19 Q Who brings them to you? How do they find you?

20 A How do they find me? One tells another.

21 Q Mr. Tull tells them, too, doesn't he?

22 A I don't think he would send me too many
23 because he's got some to sell. I don't think Eddie sent
24 me -- he may have, but I doubt it.

25 Q How many of those lots do you own in Ocean

1 Breeze right now? I believe you said twenty a minute ago.

2 A Nineteen or twenty; yes, sir.

3 Q Isn't that a form of financing for Mr. Tull?
4 Wasn't that part of the way you financed him is to buy
5 these lots from him so you would have a cash flow? Know
6 what I'm talking about?

7 A No, sir. I think I bought those lots when
8 he first started. I paid \$4,000 for some, \$4500, \$5,000.

9 Q All right, sir. Let's talk about that price
10 you have been paying.

11 A All right.

12 Q Now, you have testified that the four acres
13 of Ocean Breeze right now that we're concerned with, B
14 parcel, is worth \$35,000.

15 A Uh-huh.

16 Q Yet you purchased it on August 16, 1979,
17 which is almost a year ago, and I take it it was not as well
18 developed then as it is now. You purchased three lots from
19 Mr. Tull and you paid \$16,500 for three lots?

20 A Okay. Now, that's completed. I ain't got to
21 do nothing. They are completed. I do have to put a water
22 meter on them and run the water. I don't think I have sold
23 those three. I think I got those three rented, the lots
24 you're talking about.

25 Q You're saying they were better developed than

1 the ones we're concerned with today?

2 A Mister, you could put a trailer on them. I
3 rented them now. When I got through putting a water meter
4 on them and a water line, I rented them. I'm hooked up.
5 Turn-key job. They are ready to go. There are two trailers
6 in this very portion we're dealing with today.

7 Q And aren't those lots that are in this
8 portion that we're dealing with right here selling for
9 \$6500 to a high of \$12,500? Haven't they been selling for
10 those prices over the past year?

11 A I don't know what -- I haven't sold any in
12 that particular -- you're over in B section?

13 Q I'm right in the deal we're talking about
14 today, that four acres.

15 A Let me tell you my understanding. The most
16 of the lots I have gotten are in the A section. I don't
17 think B is completed. Some parts of it is completed. I
18 ain't got nothing in that section.

19 Q Wasn't my question aren't you familiar with
20 the sales prices in that area?

21 A I know what I'm getting.

22 Q You're appraising land here today?

23 A That's correct.

24 Q Are you familiar with what Eddie Tull is
25 getting for those lots in that four-acre parcel?

1 A I have heard what he's getting.

2 Q You haven't verified it?

3 THE COURT: He can say what he heard.

4 MR. TYLER: Well, I will take that.

5 A (Continuing) Eddie and myself are not that
6 close, I mean. You hear this. You hear this. I know
7 what I have sold some lots for. I sold them for \$5500.
8 I financed them, five or 600 down for seven or eight years.

9
10 BY MR. TYLER:

11 Q You have heard they are from 6500 to at least
12 nine then, haven't you?

13 A I think that's correct. That's complete lot.
14 I'm talking about turn-key job; yes, sir. I don't mean to
15 talk loud.

16 Q That's all right. Most people don't talk
17 loud enough.

18 These lots we're just talking about were
19 within the four acres where you said it was not a completed
20 development?

21 A No, sir.

22 Q Isn't that correct?

23 A No, sir, it's not completed; no, sir.

24 Q They are getting that price for lots you say
25 are not completed yet?

1 A Now, wait a minute. Now, let's straighten
2 out something. I took -- I took paper on one of those
3 lots. I'm holding paper on one of those lots right now.

4 Q Who with?

5 A I'm holding the paper.

6 Q For who?

7 A I got it, I mean.

8 Q You don't know the name?

9 A It's in my file. I don't know the name. I
10 got thirty, forty, fifty lots and deeds and stuff, so I
11 couldn't -- you call the name. I could tell you, but,
12 anyway, I got it in my file. I didn't know I was going to
13 be asked that. I'm holding the paper thisaway. If that
14 lot's not completed -- now, I put my money out, but if
15 that lot is not completed, I get my money back. Whether
16 Eddie Tull is going to complete it or who is going to
17 complete it, I don't know. I didn't get in that. I wasn't
18 interested in that. I was interested in my interest and
19 was I going to get it back. My principal.

20 Q All right, sir.

21 A Hopefully, everything was all right.

22 Q Why did you say the piece that's called
23 Parcel D out next to Zed Ayres is the best of all of it?
24 How come it's the best?

25 A I like it cause, well, it's got trees on it

1 and it's fairly high.

2 Q High land?

3 A I ain't got to buy no fill, and it's got
4 trees on it. It's shady. It's not a bad piece of land.

5 Q What would you put per acre on high land in
6 that area?

7 A It depends how far I got to run my water
8 meter and what I got to clear.

9 Q Forget the water meter. Forget anything.
10 Just like it's sitting, trees and stumps and all, per acre.

11 A I or somebody else?

12 Q What somebody else would pay for it.

13 A I said \$15,000.

14 Q Per acre?

15 A No. No. No. No, I'm talking about the
16 tract as a whole.

17 Q Do you know of any per-acre comparable prices
18 in that area? Are you familiar with the sale of any land
19 that's high land right in that area and what it brought per
20 acre?

21 A Yeah. I sold three acres. Of course, I sold
22 it too cheap. I sold three acres, \$7500, and I financed it.
23 That's just across the road on Ridge Road.

24 Q Ridge Road.

25 A I was asleep then, but I sold it.

1 Q What should you have gotten for it?

2 A I should have gotten a thousand dollars for
3 it.

4 Q How many years ago?

5 A Four.

6 Q Four years ago?

7 A But I was a little --

8 Q And why did you know you were asleep? What
9 told you that?

10 A Well, after the man was offered 12,000 for
11 it.

12 Q How long after you sold it to him?

13 A About a year and a half, two year, but now
14 he done a little cleaning up.

15 Q He was right across the road from this
16 property we're talking about?

17 A Well, he's on the western side of Ridge Road.

18 Q And you sold it to him and a year and a half
19 later somebody offered him \$12,000 for the same property?

20 A Of course, he had spent some money on it.

21 Q That's been about two or three years?

22 A Been about three year ago.

23 MR. TYLER: No further questions.

24

25

REDIRECT EXAMINATION

BY MR. DRUMMOND:

Q The parcel you sold across the road, does that join a hard surface road?

A Yeah. I have got water in front of it.

Q And joins a hard surface road?

A Sure, it does.

MR. DRUMMOND: That's all.

RECROSS-EXAMINATION

BY MR. TYLER:

Q Is that comparable to this?

A Oh, no. No, no. No, sir. The man was ready to build his house. He had to put some fill in. The man was ready to put his house on it. Mobile on it. He didn't have to do anything. He's right there with a hard surface road in front of it.

THE COURT: Thank you, Mr. Kambarn.

You're excused or you can stay in the courtroom.

We would be glad to have you.

-----oOo-----

1 RONALD BEEBE, called as a witness on behalf of the
2 complainants, having been first duly sworn, was examined
3 and testified as follows:

4
5 DIRECT EXAMINATION
6

7 BY MR. BLOXOM:

8 Q Mr. Beebe, state your name, please, and your
9 occupation.

10 A Ronald Beebe, Civil Engineer.

11 Q And how long have you been so employed?

12 A Since 1956.

13 MR. BLOXOM: Do you want to stipulate his
14 qualifications?

15 MR. TYLER: I will stipulate, Your Honor,
16 that he is a qualified engineer.

17 THE COURT: All right. Let the record
18 show that Mr. Beebe is a qualified engineer.
19

20 BY MR. BLOXOM:

21 Q Mr. Beebe, how old are you, for the record?

22 A Forty-six years old.

23 Q How long have you been engaged as an engineer?

24 A Past twenty-four years.

25 Q And what kind of engineering do you do,

1 specifically?

2 A Well, I'm a Civil Engineer, which is a
3 general engineer, but, specifically, I do surveys, design
4 subdivisions and design of roads and buildings.

5 Q And have you been doing this kind of work
6 for the entire -- during your career?

7 A That's correct.

8 Q Are you related in any way to Mr. Tull or to
9 anybody else involved in this case? Well, you're obviously
10 related to some of the people, some of the heirs.

11 A I'm a direct heir on the Beebe side under the
12 Silas Burton Beebe side.

13 Q What specifically is your interest, if you
14 know?

15 A My interest and my brother's is about one
16 and a quarter percent.

17 Q Of the total?

18 A Of the total.

19 Q I assume that's not enough to make any
20 difference in your testimony.

21 A No, sir, and I would like this part on record.
22 I agreed to testify to the engineering I did and the
23 affidavit that I prepared for the IRS. That's as far as I
24 care to get into it.

25 Q Well, we will not go into things that you

1 don't feel as though you should discuss because of your
2 interest.

3 All right, sir. You do know Mr. Tull, I
4 assume?

5 A That's correct.

6 Q Known him for a long time?

7 A Do about 99 percent of his work.

8 Q Are you familiar with the four tracts of land
9 involved in this suit, A, B, C and D on this plat?

10 A Yes.

11 Q Of course, you have seen the plat, have you
12 not?

13 A I prepared it.

14 Q Mr. Beebe, can you -- let's describe these
15 tracts beginning with Tract A. What is the topography and
16 the general description of Tract A?

17 A Tract A is on about 75 percent marsh land
18 and about 25 percent high land.

19 Q And you, I assume, have been on this land?

20 A That's correct.

21 Q You did the engineering on these projects?

22 A That's correct.

23 Q Are you familiar with the road on Tract A?

24 A Yes.

25 Q Did you do the engineering for the installation

1 or construction of the road?

2 A I just staked the road out is all.

3 Q And you said 75 percent marsh?

4 A That's correct.

5 Q And what would the elevation be of that marsh?

6 A I haven't shot elevations on it, but by the
7 way the water comes over it and all, I would say it's about
8 1.25 feet above mean sea level.

9 Q And you say the water comes over it. Can
10 you be more specific?

11 A On our high tides, water will come over the
12 top of the marsh.

13 Q Over the marsh?

14 A Right over the marsh portion, and our
15 elevations to prevent water from coming over it -- our
16 elevations run about 1.5.

17 Q About 1.5.

18 A About 1.5. About three inches difference
19 there, and the only way to actually determine whether it's
20 wet land or not is to take a topographic survey and shoot
21 elevations on it, which I have not done.

22 Q You talked about the tides coming over it.
23 Can you be more specific as to how often these tides come
24 over it and is it an average tide that will come over it?

25 A No. Average tide won't come over it. It

1 takes what I call a marsh hen tide or northeaster'.

2 Q Being from Chincoteague, how frequently
3 would you say this would occur on an average per year?

4 A Easy between six to twelve times, depending
5 on what type of year we have.

6 Q What kind of -- you characterized it as
7 marsh land. What sort of soil does it have? Mud?

8 A No, it's not mud. It's between a silt and
9 a sand. It's mucky.

10 Q Mucky?

11 A Right.

12 Q Is it the kind of thing you could go out and
13 build a house on today?

14 A Only pole-type buildings.

15 Q Only what?

16 A Pole-type buildings.

17 Q All right, sir. Seventy-five percent marsh.
18 What about the other 25 percent, Mr. Beebe?

19 A The other 25 percent is originally sand dune
20 type of buildup and it's -- it's okay to build on.

21 Q Is there a gut through that other 25 percent
22 or drainage ditch of some kind?

23 A I have heard it mentioned in testimony today
24 several times about the oyster drainage ditch. That's on
25 the Maddox portion.

1 Q You don't think that that's on --

2 A Just a very small portion touches the
3 property line. The property line goes on the southeast
4 side of this drainage.

5 Q So how much of this land on the -- this, I
6 assume, would be -- on generally the west side of the road
7 would be high?

8 A They all can be used on that side of the
9 road.

10 Q But on the other side, am I correct in
11 saying that it could not be used for building?

12 A Well, you would have some hassle with the
13 Corps of Engineers until you could get your permits.

14 Q From your vast experience, Mr. Beebe, in
15 this sort of thing, and I know you have testified many
16 times before this Court and others, can you guarantee as
17 an engineer that Mr. Tull or anybody could build on this
18 land on the east side of that road? Could develop it?

19 A I can't say. It would be touch and go.

20 Q How many agencies would have to consent to
21 this?

22 A Last count was about eight.

23 Q Do you know of any -- any development or
24 building that has been completed in the last year or two
25 or three on land that's similar to this?

1 A Only where the high land dropped off and
2 the marsh started, there have been two types of pole
3 constructions of that nature on Chincoteague; and, like
4 I say, if it hadn't been marginal, they would have never
5 got --

6 Q Pole construction?

7 A This is where you build the houses on pilings
8 so you will not obstruct or block off any of the marsh
9 grass.

10 Q And you, I assume, could not guarantee
11 yourself as an engineer that this could be developed?

12 A No, sir, not with the regulations as they
13 are today.

14 Q All right, Mr. Beebe. Now, that's Tract A.
15 Let me ask you about Tract B, which is the four acres in
16 the Ocean Breeze development. Are you familiar with this
17 four acres?

18 A Yes, sir. I did all the development work in
19 there.

20 Q How long have you been familiar with these
21 four tracts of land?

22 A Ever since I was a child. That's why we still
23 have an interest into it. We always ran cattle and horses
24 on this particular piece of property.

25 Q Do you know of any other use that's ever been

1 made of Tract A other than run cattle?

2 A It was all used as pasture land until it
3 was acquired and turned into a development.

4 Q Let's turn our attention for a minute to
5 Tract D. Can you describe that four-acre area prior to
6 its development, prior to the time any development occurred?

7 A It was made up of ridges and glades like all
8 the other parts of the land down there.

9 Q Can you be a little more specific? You have
10 only got four acres.

11 A This is true. We had about two or two and a
12 half ridges running through it. The rest were deep glades.
13 Our elevations ran between about one foot above mean sea
14 level to five foot above, which gave us an average of about
15 two foot of fill across the whole area.

16 Q That's Tract B?

17 A This is grouping them all together. All the
18 land was the same in that area.

19 Q Above mean sea level?

20 A Tract A -- I'm talking about Subdivision A
21 and B. They were all generally the same.

22 Q Now, Subdivision A. You're not referring to
23 the eighteen-acre piece?

24 A That's right. I'm talking about Subdivision
25 -- all right. Fine.

1 Q In other words, is that the entire 193-lot
2 area?

3 A This is what I'm talking about. That whole
4 entire area was made up of ridges and glades.

5 Q I see. Well, how much of an area did the
6 entire area embrace, if you can -- if you know, roughly?

7 A Well, we started out with twenty acres and --

8 Q Subdivision A?

9 A Right. It's twenty acres, and I think we
10 came up with about 105 lots to start with.

11 Q All right. It's been stipulated -- excuse me.
12 Go ahead.

13 A Then we moved over in B section, and I think
14 I got ninety-some lots over there and then I dropped back
15 in A section and picked up another five or so.

16 Q It's been stipulated there are 197 lots in --
17 193 for sale.

18 MR. TULL: One hundred ninety-one.

19 A This is approximately.

20
21 BY MR. BLOXOM:

22 Q Is it possible for you to testify as to what
23 the elevation was of B prior to any work at all?

24 A I just did that.

25 Q You said glades.

1 A Yeah. It was glades. Between elevation,
2 one foot above mean sea level to five foot above mean sea
3 level, which gave us an average of two foot of fill over
4 the whole area.

5 Q Okay. Was that the area that was filled?

6 A We filled all the area.

7 Q The whole area?

8 A The whole area, A and B.

9 Q Now, I assume that you did all of the
10 engineering on this entire project?

11 A This is correct.

12 Q Now, when we speak of the engineering,
13 Mr. Beebe, tell us actually what you did with reference to
14 this development. From the beginning, what were your
15 duties and what did you do?

16 A Well, when you go into a raw piece of land,
17 the first thing you do is run a topographic survey to
18 determine how much fill has to be brought in, or if you
19 have got some areas high, how you can cut them down to
20 get the area relatively level so it will drain to get rid
21 of the surface water. After we do that, we determine how
22 many lots we can get, where we want our roads, et cetera,
23 and so forth to come up with a subdivision plat. Once the
24 lots are marked off, we take roads after we exceed twenty-
25 nine lots in a development, design the roads, send them to

1 Richmond or Suffolk to have them checked by the Highway
2 Department, approved for design and drainage. Once they
3 are approved, we put those out on bids to be constructed.

4 We go to the Town of Chincoteague, in this
5 particular instance, get prices on water lines so they can
6 be installed before the roads are installed. Same as
7 underground electric; how much the cost is for the electric
8 to each lot and we do the same thing for the water. We
9 try to take and get this down on a per-lot basis of what
10 it's going to cost per lot for the whole thing so that the
11 developer knows what he's got in it per lot so he knows
12 what he's got to charge over and above his land price added
13 to the lot in order to come out.

14 Q All right. And is this description of what
15 you did your duties as an engineer on this?

16 A This is correct. Also, I had a sewer design
17 in this particular case since there is no sewerage on
18 Chincoteague.

19 Q You testified it was two feet of fill
20 throughout this entire area?

21 A An average of two feet.

22 Q With roads put in?

23 A Yes, sir.

24 Q Were sewer lines put in?

25 A Yes, sir.

1 Q Were septic tanks put in?
2 A Yes, sir.
3 Q Was the electricity run into the area?
4 A Right.
5 Q Were roads constructed into the area?
6 A That's correct.
7 Q Any other improvements made?
8 A Well, you had your filter beds. Filter beds
9 has all been installed on Section A. We still have them
10 to install on Section B, and we still have a few more roads
11 in Section B to install as well as in Section A.
12 Q You're saying the roads have not been
13 completed?
14 A That's correct. We still have more roads to
15 build.
16 Q Now, who made all these improvements?
17 A All these improvements were made by the
18 developer.
19 Q Mr. Tull?
20 A That's correct.
21 Q And paid for by him?
22 A That's correct.
23 Q To your knowledge, did anybody else ever
24 participate with you in your engineering or participate
25 as far as putting up the monies concerned for the engineering

1 or the construction of anything at all?

2 A All my payments have been from Mr. Tull.

3 Q You have no knowledge of anyone else -- any
4 other cotenant participating with him, I guess?

5 A I have all --

6 THE COURT: Mr. Tyler, you will concede;
7 will you not, no other people made any payment
8 towards the improvements other than Mr. Tull?

9 MR. TYLER: Yes, sir. Certainly will.

10
11 BY MR. BLOXOM:

12 Q Now, B, you say, has not been completed.
13 What is lacking at this point? I don't know whether
14 Subdivision B is the same as B on the plat.

15 A B on the plat is in Subdivision B. Four
16 acres in Subdivision B.

17 Q Will you tell the Court what is needed to
18 complete this Subdivision B as it appears on the plat.

19 A We have three more roads to put in this
20 Subdivision B, and we have --

21 Q Let me interrupt you. Do you know what the
22 cost of that is going to be? Can you estimate?

23 A Our past cost on road work has been
24 approximately \$30 a linear foot.

25 Q All right, sir. Go ahead. Now, continue

1 what needs to be done.

2 A Like I say, we have got approximately three
3 more roads to put in in B, and we have four drain fields
4 to put in in B. It's going to be approximately \$40,000.

5 Q Anything else in B?

6 A Everything else in B, as I recall, has been
7 complete.

8 Q Are all the cul-de-sacs in?

9 A No. Cul-de-sacs are not in Section B. Section
10 B is the roads that are left to put in. We have two
11 cul-de-sacs on the ones that are left to be put in.

12 Q Other than the sewerage then and the roads,
13 is there anything else remaining to be done before lots
14 can be sold in Section B?

15 A Not to my knowledge. I think everything else
16 has been complete except those items.

17 Q Let's talk about Tract C, 4.2 acres. You
18 are familiar with all these tracts, are you not?

19 A Yes. I have cut lines on it and waded the
20 glades and know every foot of it.

21 Q What is the topography -- general description
22 of Tract C?

23 A Tract C is just a little better than Tract
24 B that we have talked about. The ridges are a little better
25 wooded as far as timber. The glades are as deep and B the

1 same. I would say we have got about 50/50 on Tract C.

2 Fifty percent good land. Fifty percent bad land.

3 Q By good land, do you mean land that could be
4 built on at this point without fill?

5 A That's correct. We have got a couple nice
6 ridges or three nice ridges on C.

7 Q Roughly two acres of high land and two acres
8 of glade?

9 A Two acres of glade would have to be filled.
10 These glades are fillable. We're not in the wet-land
11 jurisdiction with these glades.

12 Q What would it cost to fill the two acres,
13 for example?

14 A It's hard to say right off the top of my head,
15 but I would say half of them is two acres to be filled.
16 Around \$25,000.

17 Q All right. Would anything else be necessary
18 before these lots could be sold? What else would be
19 necessary?

20 A Now, we're talking about four raw acres?

21 Q We're talking -- yes, sir.

22 A No lots are laid out or nothing there now.

23 Q In order to sell it -- to sell it as lot
24 property at this point just like it is.

25 A All right. Based on the cost analysis that I

1 ran back last year for IRS, and that was taken in
2 consideration, two foot of average fill, the electrical,
3 streets, water lines, everything. Per lot, it will cost
4 approximately \$4500 to get a lot ready to sell.

5 Q That would be in Tract C?

6 A That's correct. That's over and above the
7 price that you pay for the land.

8 Q Forty-five hundred per lot?

9 A Forty-five hundred per lot. You can get
10 seven lots per acre, including the roads.

11 Q Does this include -- does this include the
12 drain field?

13 A Yes.

14 Q Includes the sewerage system?

15 A Now, if we have sewerage system and don't
16 have any other land to put it on -- now, we're -- I said
17 seven lots. You're going to have to back up at least one
18 lot per acre to get property for the drain fields if you
19 don't have other property to pump to. We're only getting
20 six lots then per acre.

21 Q I see. What about water to this Tract C,
22 Mr. Beebe? How far would you have to run a water line?

23 A You're going to have to come from Main Street.

24 Q How far is that, roughly?

25 A Good half mile. If you can use the

1 right-of-ways -- the old prescription right-of-ways that
2 come across the Tom Beebe land.

3 Q Would that be the nearest way water could
4 be obtained?

5 A The closest way would be come from Section B.

6 MR. TYLER: I think this is all very
7 interesting. I object to its relevance as to
8 these two parcels.

9 THE COURT: What is the relevance? I
10 have been wondering.

11 MR. BLOXOM: I assume they are going to
12 show the highest and best use of this land that
13 could be developed. I think it goes to the
14 valuation of this lot. It's a factor when you
15 determine the value of the lot, what you have to
16 do to it in order to sell it.

17 THE COURT: Its value as of right now,
18 not what it's going to cost to improve it.

19 MR. BLOXOM: That's true. This witness
20 doesn't feel he should testify as to values.

21 THE WITNESS: This is true.

22 MR. BLOXOM: All right. I will abandon
23 that line of questioning.

24 BY MR. BLOXOM:

25 Q Are you familiar with Tract D?

1 A Yes, sir.

2 Q And what is the topography of Tract D?

3 A Well, northwest half of Tract D is identical
4 to Tract C since they are side by side. It's made of
5 ridges and glades. When you hit the old prescription
6 right-of-way that goes to Bunker Hill, from there on to
7 the east until you hit Zed Ayres' property, it's very nice
8 land. It's high land. Got nice timber on it and very
9 little has to be done to it.

10 Q What is the acreage? Are you familiar with
11 the acreages?

12 A Seven-point-some-odd acres the total came
13 out to be.

14 Q How much of that is high?

15 A Better than half.

16 Q Better than half high?

17 A Better than half high.

18 Q You mean not have to be filled?

19 A That's right.

20 Q Okay. Mr. Beebe, in conjunction with your
21 engineering on this project, have you determined the cost
22 on a per-lot basis for Ocean Breeze; the cost, for example,
23 for fill, electrical hookup, water sewerage, roads,
24 engineering costs?

25 A Yes, sir. I made a breakdown, like I stated,

1 last year for the IRS.

2 Q On a per-lot basis?

3 A Yes, sir.

4 Q Do you know of any other way to arrive at a
5 cost of this other than a per-lot basis?

6 A Well, we always break it down for a per-lot
7 basis, even though we take the whole area into consideration,
8 because this is what you're selling. The product you're
9 selling is the lot so you want to know what you have got
10 tied up for each lot so you know what you're going to have
11 to make on it over and above the cost of the land to come
12 out with a profit.

13 Q You testified that all of the land in the
14 Ocean Breeze subdivision was similar prior to any
15 development?

16 A This is correct.

17 Q All right, sir. Can you tell the Court what
18 it would cost per lot for fill, including the lots and the
19 roads?

20 A Filling the lot and the road, because the
21 road has got to come out of the same area, it would cost
22 approximately \$1600, including the lot with the portion of
23 the road in front of it.

24 Q This is a fifty by one hundred lot?

25 A Fifty by one hundred lot.

1 Q Do you know what the cost of the electrical
2 hookups would be on a per-lot basis?

3 A We were given a contract price for installing
4 the pole and the hookup and all from the electrical
5 contractor. Now, this is not counting any monies that has
6 to be deposited with DP & L prior -- which you can recover.
7 It ran us \$250 a lot for pole hookup.

8 Q Do you know what the cost of running the
9 water mains on a per-lot basis is?

10 A Ran us \$200 a lot. Water lines has gone up
11 since we installed these; but, at that time, it was \$200 a
12 lot.

13 Q Have you made an analysis of the cost on a
14 per-lot basis of the sewerage tanks and drain field?

15 A One thousand dollars per lot.

16 Q Have you made an analysis of what it would
17 cost for roads on a per-lot basis?

18 A Eight hundred eighty-three dollars forty-four
19 cents, based on our last contract.

20 Q Do these figures that you're giving us include
21 cost of access of the land?

22 A No, sir, this is the cost of development.

23 Q Other than those costs, do you know what
24 the survey engineering and design per lot would be?

25 A Well, the survey of the lot was \$100. The

1 design of the sewerage was sixty and the design of the
2 roads was \$38.34.

3 Q Now, have these figures that you have compiled,
4 were they cost per lot on this Ocean Breeze subdivision?

5 A This is correct, taking both A and B into
6 consideration.

7 Q What was it you stated? You compiled this
8 for someone else, I believe?

9 A I compiled it for a tax lawyer in Baltimore
10 to be used in an IRS --

11 Q So then the total of your -- do you have a
12 total of the cost per lot, Mr. Beebe?

13 A Total of cost per lot for the development of
14 the lot, \$4,446.44.

15 Q And this was made -- I lost you. Was made
16 when?

17 A I made this last year, as I recall. Let me
18 see what I got on here. Made it September 17, 1979.

19 Q Mr. Beebe, are you familiar with the outlet
20 to Tracts A, B, C and D?

21 A The old meandering right-of-way that went
22 down to Bunker Hill and through that area, I'm familiar
23 with that.

24 Q Did that serve Tracts A, B, C and D?

25 A Yes, sir. If I can go back on to the large

1 master plan that I made of the area and since the trial
2 where we had the Town of Chincoteague, I believe, first
3 of Buddy Burton Seafood or Burton's Seafood, Incorporated,
4 I found a map of the lower end of Chincoteague which shows
5 the lower end which was broke up in three tracts, and an
6 eight-foot right-of-way came across the Island from west
7 to east that served each of the three tracts, and each
8 tract had a representative road that ran down it. The
9 road now that goes to Inlet View was the one that went down
10 the tract on the west side of the Island. The center road
11 is Beebe -- what we call Beebe Road. Goes on down into
12 Ocean Breeze now and the other road was the old road
13 prescription right-of-way that went across to Burton's
14 Seafood and on down to Bunker Hill area.

15 Q This old road that you're talking about shown
16 as a meandering road on your plat, is that the only outlet
17 of which you are aware for Tracts A, B, C and D?

18 A This is correct.

19 Q Have you researched the records in this
20 county with reference to that particular question?

21 A Yes, sir, to find out how to get into each
22 tract.

23 Q Is there any way to find out how to get into
24 these tracts, to your knowledge, other than from the old
25 outlet?

1 A That's correct, other than what has been
2 created lately by deed --

3 Q That is the outlet that came out by the
4 Burton Campground that was abandoned a few years ago?

5 A The road was abandoned, but the right-of-way
6 is still there.

7 MR. BLOXOM: Your witness.

8
9 CROSS-EXAMINATION

10
11 BY MR. TYLER:

12 Q Mr. Beebe, if you will, I want to refer to
13 this plat we have in evidence. I wonder if you would step
14 up here so the Court can see it at the same time.

15 First of all, dealing with Parcel A, the
16 eighteen-acre parcel, did you lay off this fifty-foot road
17 here?

18 A Yes, sir. I laid this road off here --
19 Beebe land -- and then it was built on into Bunker Hill.

20 Q When you say the Beebe land, you mean the
21 Mary Ann Beebe land that we have been referring to?

22 A I surveyed it up to this point and platted
23 it.

24 Q That would be from the public road leading
25 in a northeast direction until you get to this property,

1 so you handled that particular road?

2 A Right.

3 Q Now, a while ago, you were testifying about
4 the land, the quality or the condition of the land on this
5 parcel here. What is the condition of the land on the
6 northwest side of this road?

7 A This is good land. It can be used.

8 Q What do you mean it can be used?

9 A You can go ahead and build on it.

10 Q Build on it today?

11 A Right.

12 Q Now, coming on down the plat, I notice some
13 rectangles that are described by dotted lines, and right
14 across the face of them the name "Edward L. Tull". What
15 are those rectangles there?

16 A These are superimposed after talking to
17 Mr. Bloxom the other day. They came off the sewer plat
18 that I submitted to the state, which I have a copy of over
19 there, and I superimposed these drain fields on to show
20 that they were not in any way on the four-acre parcel, but
21 these are the locations we gave where we would be building
22 these drain fields.

23 Q Where are the pipes that go to those drain
24 fields?

25 A Well, at the end of these tracts, like in

1 here, I have got a catch basin that catches all the
2 affluent that comes from the septic tanks. This affluent
3 is pumped over to the drain fields. I have one here and
4 one here and one here and one here. The lines come under
5 the road and run on to the respective drain fields.

6 Q So you have a catch basin on Parcel B?

7 A Yes, sir, I have one mounted right here.

8 Q And that's out by the -- on the southeast
9 side of the property or southwest side of the property?

10 A Yes.

11 Q And then the lines would run from individual
12 lots on Parcel B to that catch basin; is that correct?

13 A That's correct.

14 Q And then they would run to the drain fields
15 across other properties?

16 A It's pumped to the drain fields, gravity fed
17 to the catch basin and then pumped to the drain field.

18 Q How many, if any, vehicles hooked up to that
19 that you know of?

20 A I don't know of any hooked up in this area.

21 Q In B?

22 A I haven't inspected it to know whether they
23 are hooked up or not.

24 Q Are there mobile homes on Area B?

25 A I have seen a couple on Area B. I don't know

1 if they are hooked up or not.

2 Q When I say Area B, I'm referring to the four-
3 acre parcel that we're concerned with here.

4 A Right.

5 Q Coming on down this plat, there are other
6 dotted lines on this plat and you referred a minute ago to,
7 indirect examination, the meandering right-of-way. Is
8 that the thing that starts over here and says "Edward L.
9 Tull" and comes across all of these properties in a
10 northeasterly direction?

11 A I have it labeled "The Old Road to Bunker
12 Hill".

13 Q All right, sir. That's the one you referred
14 to just a minute ago as being over to the road that was
15 abandoned; is that correct?

16 A That's correct.

17 Q Now, there are other dotted lines on this
18 plat, and I want you to tell us what they represent.

19 A Well, we have the thirty-foot road as
20 testified before that was purchased -- Ridge Road -- across
21 the Charles Tarr property into Mr. Zed Ayres' property,
22 and then we have a fifteen-foot right-of-way that goes
23 across the Archie Lunn property that was reserved for
24 Edward Lunn Tull; and, when we get on the Zed Ayres'
25 property, we have the old meandering right-of-way that

1 goes on back to Zed's homeplace and, of course, it
2 intersects the old meandering right-of-way to Bunker Hill
3 about five, six -- about 600 feet off Ridge Road.

4 Q All right, sir. I want you to tell us --
5 first of all, let me ask you some questions about your
6 research on Chincoteague in general. You stated a few
7 minutes ago that you're an engineer and a surveyor. What
8 percentage of your surveying work concerns Chincoteague
9 property?

10 A About 95 percent.

11 Q And does anybody else do surveying work to
12 any appreciable degree on Chincoteague other than you?

13 A We may have one lot done by someone else
14 during the course of a year.

15 Q You pretty well do all the surveying work
16 on Chincoteague?

17 A That's correct.

18 Q Have you surveyed all of the land, not only
19 within the parcels of this partition suit, but have you
20 examined and surveyed all of the land surrounding all of it?

21 A Yes, sir, on the lower end.

22 Q All right, sir. How did this land -- well,
23 let me go back just a minute. In your surveying work, have
24 you made examinations of the records in the Clerk's Office
25 here in Accomac?

1 A That's correct.

2 Q And how would you characterize that
3 examination? Was it cursory or extensive?

4 A Very extensive. Of course, twenty-five years
5 ago, I didn't know which end was up up there because the
6 records were so difficult to research from this Clerk's
7 Office, but over a period of years, I was able to, between
8 the Hall of Records in Richmond and the Clerk's Office here
9 in Northampton County, research from the time it was
10 granted to the King of -- by the King of England in 1674
11 to Thomas Clayton to be able to run it and tie all the
12 titles on the Island except for about three.

13 Q Were those that you haven't been able to tie,
14 do they have anything to do with this property?

15 A No.

16 Q Are they on other parts?

17 A Yes.

18 Q In your examination of this record, did you
19 find out how this property came to Thomas Beebe?

20 MR. BLOXOM: Your Honor please, this is
21 not in any way responsive to direct examination.
22 He's making this man his own witness. If he
23 wants to do that, that is fine.

24 MR. TYLER: I will do that or call him
25 later on.

1 MR. BLOXOM: I just want to know.

2 MR. TYLER: I don't intend to lead the
3 witness.

4 THE COURT: What are you leading up to?

5 MR. TYLER: I want him to tell us what
6 the deeds are that led into this property and
7 what the ownership was. It's my understanding
8 that they are going to come up with some other
9 parcel, this third parcel in the will, and that
10 is concerned here --

11 THE COURT: You're trying to show it's all
12 Thomas Beebe and Mary Ann Beebe got it all from
13 Thomas Beebe and not Crippen Bowden?

14 MR. TYLER: Yes, sir.

15 THE COURT: Go ahead.

16
17 BY MR. TYLER:

18 Q Now, Mr. Beebe, in your examination of those
19 records, what deeds made up the property that came to
20 Thomas Beebe? Now, do you need to refer to the deeds in
21 the record?

22 A I know it was three deeds. One was from
23 Rayfield -- one was from S. J. Rayfield and Mollie to --

24 Q Just a minute. Let me do it in a little more
25 orderly fashion. Now, I'm going to show you, Mr. Beebe,

1 the first three documents in this package of documents
2 that I have given to the Court and that have been marked
3 into evidence. I want you to take a look at those deeds
4 and tell us whether those are the three deeds in which
5 this property was conveyed to Thomas Beebe.

6 A The first deed of April 4, 1868, was from
7 Crippen Bowden and Nancy, his wife, to Thomas Beebe, and
8 that was for ten acres, plus or minus, which turned out
9 to be seven-point-some-odd acres -- Tract D -- onto the
10 plat I made.

11 Q All right, sir.

12 A The next parcel, dated June 14, 1873, was
13 from James Claville and Elizabeth. It was for the next
14 four acres, which is Plat C on the plat I have made, and
15 this particular piece of property was originally Richard
16 Bloxom property that he sold to Clayburn and he, in turn,
17 sold it to Thomas Beebe. The piece I was referring to
18 earlier, which comprises A and B onto the plat that I made,
19 was sold to Thomas Beebe by S. J. Rayfield and Mollie
20 Rayfield, his wife, and this was listed as four acres and
21 sixteen acres, plus or minus, joining the great marsh or
22 the Commonwealth.

23 Q And did those three deeds encompass all of
24 the property that we have in contention here today?

25 A Lots A through D.

1 Q You mentioned a while ago that you found
2 some old plats.

3 A That's correct.

4 Q That assisted you in preparing this master
5 plat that we have here today?

6 A That's correct.

7 Q I want you to take a look at these documents
8 that I'm handing you and tell us what they are.

9 A One plat is for half of Chincoteague Island,
10 which is the lower half.

11 Q Let's mark it so we can talk about it.

12 A All right.

13 MR. BLOXOM: Do you have a copy of that?

14 MR. TYLER: No.

15 Judge, would you want to mark this for
16 identity so we can talk about it? I would want
17 to introduce this in evidence and I would ask
18 Mr. Beebe to explain it to us.

19 THE COURT: Will be marked Defendants'
20 Exhibit 5.

21 (Marked in evidence by the Court as
22 Defendants' Exhibit Number 5.)

23 BY MR. TYLER:

24 Q Mr. Beebe, would you take a look at what has
25 been marked Defendants' Exhibit 5 and tell us what that is.

1 A That is a plat made in 1760, and is located
2 in the Common Law Order Book of the lower half of
3 Chincoteague Island of the John Robbins' heirs and this
4 shows how they broke the property up into plantations,
5 which included five plantations. Shows the eight-foot
6 right-of-way that I referred to going from the west channel
7 to the east side channel or Assateague Channel, and this
8 right-of-way mentioned into the chancery records was for
9 an outlet to each of the three strips going south of which
10 we are on the southeast strip with these four parcels of
11 property in this area.

12 Q All right, sir. So does this plat that
13 you're showing us encompass all the property that we're --

14 A It encompasses everything from Cleveland
15 Street on Chincoteague south through the inlet and also
16 Little Beach.

17 Q Now, did that plat assist you in making the
18 plat that we have introduced here as the first exhibit?

19 A Quite a bit.

20 Q Did you have other plats that assisted you?

21 A Along with the plat that Richard Bloxom
22 property -- of where he bought twelve acres from James
23 Daisey.

24 Q Let me show that to counsel before we refer
25 to it. Let me get this marked first, Mr. Beebe, before we

1 refer to it.

2 THE COURT: Defendants' Exhibit 6.

3 (Marked in evidence by the Court as
4 Defendants' Exhibit Number 6.)

5
6 BY MR. TYLER:

7 Q Tell us, Mr. Beebe, what Defendants' Exhibit
8 6 is.

9 A This plat was done for Richard Bloxom after
10 he had bought twelve acres off of James Daisey, which was
11 referred to earlier as the Josh Daisey Field. He also
12 bought additional four acres on the middle tract as shown
13 on Exhibit 5; four acres from Crippen Bowden, who was the
14 father of Mary Ann Beebe, and, at the time that this plat
15 was made, this twelve acres and the four acres, with the
16 exception of the northern four acres of Tract 12, it went
17 from Richard Bloxom to Thomas Beebe. The balance of that
18 is shown as Mrs. Ralph Beebe on the large plat.

19 Q The large plat that we have introduced as
20 Exhibit 1?

21 A That's correct, and this property states
22 that the Crippen Bowden house, the starting point on this
23 plat, was south of the Crippen Bowden house, and based on
24 all of my research and everything in this plat telling me
25 exactly where the Crippen Bowden house stands and still

1 stands today. Welton Bowden owns it. It was the old
2 William P. Bowden house when I was a child.

3 Q Is that part of the property that we're
4 concerned with?

5 A No, sir. It's the Crippen Bowden part on
6 the other side of the tract line.

7 Q Now, what is the third?

8 MR. TYLER: Let me show that third plat
9 to counsel.

10 (Document shown to plaintiffs' counsel
11 for examination.)
12

13 BY MR. TYLER:

14 Q Then this one that we just referred to as
15 Exhibit 6 assisted you in preparation of the large plat?

16 A That's correct.

17 MR. TYLER: Your Honor, we would like this
18 plat marked for reference.

19 THE COURT: Defendants' 7.

20 (Marked in evidence by the Court as
21 Defendants' Exhibit Number 7.)
22

23 BY MR. TYLER:

24 Q Mr. Beebe, will you tell us what Defendants'
25 Number 7 is.

1 A Defendants' Number 7 is a plat that was
2 prepared from William J. Matthews in 1901 by Mr. Fred
3 Rudiger and it shows all of the western strip of property
4 on the lower end of the Island from the old eight-foot
5 right-of-way to the inlet that was conveyed by the state
6 to William J. Matthews for taxes. It also shows on the
7 lower end next to the inlet portions of Tract 2 and 3 on
8 Exhibit 5. This now is owned by Wyle Maddox and this is
9 where Tract A on the large plat that I prepared is cut
10 off on the southeastern end by the Maddox property as
11 shown on the large plat of this line here.

12 Q How did you identify that line? For the
13 record, what does it say on that line?

14 A This line is a line south, twenty-five degrees
15 east from the tract line of Tract 1 on Exhibit 5 across to
16 the great marsh as identified into the deeds and the old
17 plat on Exhibit 5.

18 Q And this plat then, Exhibit 7, assisted you
19 in the preparation of the large plat?

20 A Of how far the Tom Beebe land went south.

21 Q All right, sir. Now, did you examine the
22 conveyances to and from Thomas Beebe and Mary Ann Beebe
23 to determine whether or not there had been any conveyances
24 that would affect this property in any way other than what
25 you have testified to?

1 A I could not find any that affected this
2 property other than what I have told you.

3 Q You have heard the reference earlier in the
4 testimony -- were you in the courtroom when there was
5 reference to the Crippen Bowden property?

6 A That's correct.

7 Q You have explained, I guess, to some degree
8 with respect to that plat you introduced a while ago
9 where that Crippen Bowden property is that they were
10 talking about.

11 A Yes.

12 Q Show the Judge where that is on the big
13 plat, Number 1.

14 A This parcel and this parcel came from S. J.
15 Rayfield.

16 Q When you say this and this, you mean A and
17 B?

18 A Correct. Lot C was part of the twelve-acre
19 tract onto Exhibit 6, I believe. This here was all one
20 piece.

21 Q When you say "this here", you mean C and the
22 portion westerly?

23 A Right, Mr. Ralph M. Beebe. This portion
24 comes up and goes across the street and her home sits in
25 here. C is four acres bought by Richard Bloxom to James

1 Claville. D was conveyed as ten acres by Crippen Bowden
2 into Thomas Beebe. I cannot find any deeds of gift of
3 any of this that would make a relationship-type thing or
4 inheritance-type thing of these four tracts.

5 Q All right, sir. Would you tell us what
6 property is referred to in Item 3 of the will of Mary Ann
7 Beebe.

8 A Item 3 of the will stated that she gave to,
9 I think it was her brother and maybe two sisters, what
10 she inherited from her father, and the only thing on
11 record that I can find that she could have inherited,
12 since all of the Crippen Bowden land was deeded out on
13 the south end of the Island, was a piece of land that
14 Crippen Bowden bought jointly with Thomas Beebe, which
15 was fifteen acres and it came off the Carpenter tract,
16 which is up in Birchtown, back of Pony Pines and runs
17 along down the side of Pony Pines that they bought jointly.
18 After Crippen's death, there was a deed to Mary Ann Beebe,
19 wife of Thomas Beebe, for half of that property, which
20 they said was seven and a half acres, since a total was
21 fifteen, that deeded from her brothers and sisters to her.
22 Now, that's the only thing that I can find that would be
23 of an inheritance nature.

24 Q Let me show you this document and ask you
25 then what is this? Is that the deed you just now referred

1 to?

2 A This is correct. This was signed by her
3 brothers and sisters over to her, which indicated an
4 inheritance.

5 Q Anything in this deed that you handed me?
6 Has it got anything to do with any of these four tracts
7 that we have been referring to?

8 A No, sir. It's located on a different portion
9 of the Island.

10 THE COURT: Defendants' Exhibit 8.

11 (Marked in evidence by the Court as
12 Defendants' Exhibit Number 8.)

13 THE COURT: All right, sir.

14 MR. TYLER: That's all the questions we
15 have, Your Honor.

16 MR. BLOXOM: May we just have a minute to
17 look at this deed?

18 THE COURT: Do you want a short recess?

19 MR. BLOXOM: If we might have a couple
20 minutes, it might be helpful; yes, sir.

21 (The Court recessed at 4 o'clock p.m.
22 The Court reconvened at 4:10 p.m.)

23 THE COURT: All right, Mr. Bloxom. Do
24 you have any cross?

25 MR. BLOXOM: Yes, sir.

1
2
3 BY MR. BLOXOM:

4 Q Mr. Beebe, I believe you have testified that
5 the deed dated April 4, 1963, from Crippen Bowden and
6 Nancy to Thomas Beebe conveying ten acres more or less is
7 Tract D on the plat; is that correct?

8 A That's correct.

9 Q All right, sir. And the deed dated June 4th
10 in 1873 between James Claville and others to Thomas Beebe,
11 that's Tract C?

12 A That's correct.

13 Q And the deed dated -- I don't have a date on
14 the deed from Rayfield to Thomas Beebe. Don't have a date
15 on it. That was Tract A and B?

16 A That's correct.

17 Q The sixteen acres. All right, sir. What
18 became of Tract D here from your evidence?

19 A I don't quite understand your question.

20 Q It went from Tom Beebe and where did it go
21 from there?

22 A It was deeded from Crippen Bowden and Nancy,
23 the mother and father of Mary Ann Beebe, to Thomas Beebe.
24 Then when Thomas Beebe died, he left the will leaving
25 everything to Mary Ann Beebe.

1 Q Mary Ann Beebe?

2 A That's correct.

3 Q So it was a death inheritance from Tom Beebe
4 to Mary Ann Beebe. All right, sir. Now, the will states
5 -- Item 3rd of the will states that she gave to her sister,
6 Sarah Sharpley, J. P. Bowden and Emma Jester "one tract of
7 land, which I inherited from my father, known as the
8 Crippen Bowden property ..." Now, Mary Ann Beebe's father
9 was Crippen Bowden?

10 A That's correct.

11 Q There were how many Crippen Bowdens? Three
12 or four?

13 A Yes, sir.

14 Q Now, -- well, Crippen Bowden did not leave a
15 will, did he? He died intestate?

16 A That's correct.

17 Q Well, how did she inherit from her father?

18 A It's a roundabout way that she inherited
19 all the properties from -- he deeded it out to his children
20 and to Thomas Beebe. Everything in this area was deeded
21 out. He had bought in conjunction with Thomas Beebe a
22 tract of land called the Carpenter tract on Chincoteague,
23 which is up next to Sunnywood Manor. It was fifteen acres
24 in that tract. When Crippen died, seven and a half acres
25 or half of an undivided interest, since Mary Ann had never

1 been deeded anything from her father, was deeded to her
2 by her brothers and sisters, the other seven and a half
3 acres or the other one half of an undivided interest.
4 That's as close as I can find of any inheritance that she
5 would have gotten from her father.

6 Q What is the Arah Jones tract?

7 THE COURT: The what?

8 MR. BLOXOM: The Arah Jones tract, which
9 she left in Item 5 of her will to Archie Andrews.

10 A The Arah Jones tract was a piece of land
11 next to this parcel over here and that is in Sunnywood
12 Manor.

13
14 BY MR. BLOXOM:

15 Q Sunnywood Manor?

16 A Right.

17 Q Now, the Arah Jones tract, according to the
18 will, joined the lands of Miles Thornton, D. J. Whealton,
19 K. J. Bunting and the East Side Channel?

20 A That's correct, and this piece here joins
21 the East Side Channel, too.

22 Q That's my question. Aren't these boundaries
23 the same in Defendants' Exhibit 8 from Crippen Bowden, Sr.,
24 and the other heirs to Mary Ann, and this particular deed
25 you have just introduced in evidence, seven and a half

1 acres bounded on the "northeast by the land of the said
2 Thomas Beebe, southeast by Assateague Sound, southwest
3 by County Road and lands of John W. Bunting ..." That
4 was K. J. Bunting's father?

5 A Right.

6 Q -- "and others, and northwest by the land of
7 Miles B. Thornton ..."

8 A Yes.

9 Q Don't these boundaries fit the Arah Jones
10 tract?

11 A These boundaries fit the same, so it was
12 willed out twice under the same will.

13 Q In other words, are you saying that the Arah
14 Jones tract is the same as the Crippen Bowden tract?

15 A Yes. The Crippen Bowden land that he and
16 Tom Beebe bought up there, the Arah Jones property was the
17 old Carpenter land.

18 Q Well, now, the boundaries on this deed to
19 Mary Ann Beebe from her brothers and sisters fit exactly
20 the same description as the Arah Jones tract in the fifth
21 item of the will. How can you be sure that the Crippen
22 Bowden tract is not Tract D?

23 A Because it was deeded to Tom Beebe by a
24 deed. I don't see no gift. I see a deed saying that it
25 was deeded to Tom Beebe.

1 Q The deed to Tom Beebe was in 1868, in
2 April, and, of course, the will was drawn in 1925.

3 A You mean the Mary Ann Beebe will?

4 Q Yes, sir.

5 A (Witness nodding head affirmatively.) See,
6 Tom Beebe willed everything that he inherited to his wife,
7 Mary Ann, and he came into that Bowden property by deed.

8 Q Was that the only piece of property that
9 came through the father?

10 A Excuse me?

11 Q Was this the only piece of property that
12 came through the father of Mary Ann Beebe?

13 A To Thomas Beebe?

14 Q No. Was this the only piece that came from
15 Crippen Bowden to Mary Ann Beebe?

16 A The piece you just finished reading. That's
17 all I have ever been able to find on record.

18 Q And the boundaries --

19 A The boundaries match the same one as 9 and 5
20 of the will. It was willed two ways.

21 MR. BLOXOM: Okay. Your witness.

22 MR. TYLER: I have no further questions.

23 THE COURT: All right, Mr. Beebe. That's
24 all. You may stand down.

25 Call your next witness.

1 MR. BLOXOM: Mr. Killmon.

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3
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5
6
7 BURLEY KILLMON, called as a witness on behalf of
8 the complainants, having been first duly sworn, was
9 examined and testified as follows:

10
11 DIRECT EXAMINATION

12
13 BY MR. BLOXOM:

14 Q Mr. Killmon, state your name, sir, and your
15 residence and your occupation.

16 A I'm Burley Killmon from Exmore, Virginia.
17 I'm the President of Boggs Water and Sewerage in Melfa,
18 Virginia.

19 Q And how long have you been so engaged in
20 this business, Mr. Killmon?

21 A Twenty-five years.

22 Q Do you know Edward Tull?

23 A Yes, sir.

24 Q How long have you known him?

25 A Oh, fifteen or twenty years.

1 Q Are you familiar with the area known as
2 Ocean Breeze on Chincoteague Island?

3 A I am.

4 Q Have you been on this particular area
5 personally?

6 A Yes, I have.

7 Q On how many occasions?

8 A Numerous.

9 Q You know Mr. Beebe, of course.

10 A Oh, yes.

11 Q Who just testified?

12 A Right.

13 Q Have you worked with Mr. Beebe in conjunction
14 with the layout and construction and construction of the
15 sewerage and septic system on this subdivision known as
16 Ocean Breeze?

17 A Right. I have worked with Mr. Beebe in the
18 construction of the sewerage system.

19 Q Was your work done in accordance with his
20 engineering and his instructions?

21 A Right, sir.

22 Q Now, Mr. Killmon, it's been stipulated that
23 there are 191 lots in Ocean Breeze. Are you familiar with
24 the entire area?

25 A Right.

1 Q Did you do the sewerage on the entire area?

2 A Right.

3 Q Your company?

4 A Right. A and B.

5 Q When did you do it?

6 A Beginning approximately 1976, I'd say, until
7 up through '79.

8 Q Did you hear Mr. Beebe -- did you hear
9 Mr. Beebe testify as to the cost? Did you hear Mr. Beebe,
10 the first part of his testimony in the cost per lot for
11 the sewerage? Did you hear that testimony?

12 A Right. I did.

13 Q I didn't know whether you were here or not.
14 He testified that according to his engineering studies,
15 et cetera, that he computed the cost to be \$1,000 per lot
16 for the sewerage for the lots in the subdivision.

17 A In the entire subdivision. That would be a
18 good average.

19 Q Did you install the sewerage and septic
20 system?

21 A I did.

22 Q When was it completed?

23 A As yet, it's not completed.

24 Q What portion has been completed?

25 A All of Section A and all of the septic tanks

and sewer lines, lift stations and pressure mains on
Section B.

Q For the entire subdivision, Mr. Killmon,
what was your contract price to do this for the entire
subdivision that would serve the entire 191 lots?

A One hundred ninety-one thousand six hundred
ninety dollars.

Q So, in other words, would you agree with
Mr. Beebe's computation of a thousand dollars per lot
would be almost exactly, would it not be?

A Yes, sir.

Q What remains to be done?

A We have just a short section of pressure main
to run and all of the drain fields to install for the
entire Section B.

Q Do you know the cost of finishing this so
that these lots can be sold insofar as the --

A Right. The cost is going to be -- I can
refer to that. Forty-two thousand six hundred seventy-
five dollars to complete it.

Q This work has not been done?

A No, sir, it has not.

Q How long would it take to do it, just
roughly?

A Oh, I would say you would be looking at a

1 period of approximately a month to complete this.

2 Q All right.

3 MR. TYLER: No questions, Your Honor.

4 THE COURT: That's all, Mr. Killmon.

5 You're excused. Thank you.

6 MR. DRUMMOND: Mr. Ayres.

7
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10
11
12 ZED AYRES, a complainant, called as a witness on
13 his own behalf, having been first duly sworn, was examined
14 and testified as follows:

15
16 DIRECT EXAMINATION

17
18 BY MR. DRUMMOND:

19 Q Mr. Ayres, state your name, age and
20 occupation and place of residence, please.

21 A Zed Ayres. What was --

22 Q Name, age, occupation.

23 A Sixty-eight years old, and retired.

24 Q And you live in Chincoteague?

25 A Yes.

1 JOHNA H. DAVIS, called as a witness on behalf of
2 the respondents, having been first duly sworn, was examined
3 and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. TYLER:

8 Q Will you state your name, please.

9 A Johna Davis.

10 Q Mr. Davis, where do you live?

11 A Locustville.

12 Q In Accomack County?

13 A Yes, sir.

14 Q And what is your occupation?

15 A I'm a real estate broker.

16 Q And how long have you been a real estate
17 broker?

18 A About nineteen years.

19 Q And, as such, are you familiar with the values
20 and with land on Chincoteague Island?

21 A Yes, sir.

22 Q And have you testified in this court on many
23 occasions with respect to the value of land?

24 A I have.

25 Q As well as other courts, including the Federal

1 Courts?

2 A Yes.

3 Q What percentage of your practice of your
4 brokerage as a real estate broker involves appraisal of
5 real estate?

6 A I probably do, oh, hundred a year.

7 Q All right, sir. Have you had an opportunity
8 to examine all of the four parcels that are involved in
9 this partition suit today?

10 A Yes, sir.

11 Q Are you familiar with what they look like on
12 the plat and on the ground?

13 A Yes, sir.

14 Q Have you been on the land on each of those
15 parcels?

16 A Yes, I have.

17 Q And have you done work in the Clerk's Office
18 with respect to comparables as to those parcels?

19 A Yes, I have.

20 Q Now, Mr. Davis, if you will, please -- let me
21 ask you -- let me hand you this document and ask what this
22 is?

23 A This is an appraisal which was prepared by
24 me and submitted to you.

25 Q For this property?

1 A Yes, sir.

2 Q A written appraisal as to these four parcels?

3 A Yes.

4 Q Before I introduce that in evidence, let me
5 ask you some questions. Mr. Davis, first of all, with
6 respect to Parcel A, which is the eighteen-acre parcel of
7 the large parcel at the south end of the Island, can you
8 tell us what the value of that property is -- fair market
9 value of that property is at this time?

10 THE COURT: Which piece are you talking
11 about now?

12 MR. TYLER: The eighteen-acre parcel at
13 the south end of the Island, designated A on the
14 plat.

15 A I estimate the value of the acreage of Parcel
16 A to be \$3,675 per acre.

17

18 BY MR. TYLER:

19 Q Per acre?

20 A Yes.

21 Q And are you familiar with -- have you heard
22 Mr. Beebe testify as to its various elevations and the
23 quality of the land?

24 A No, I did not.

25 Q How would you characterize that land?

1 A There is wet marsh; there is high marsh;
2 there is area with some bushes.

3 THE COURT: Is that straight through the
4 whole eighteen acres?

5 THE WITNESS: Yes, sir. I averaged the
6 entire four parcels. I did not -- I used an
7 average price per acre for the entire four
8 parcels.

9
10 BY MR. TYLER:

11 Q All right, sir. Then that would be the price
12 per acre that you would put on raw land on all four of
13 these parcels?

14 A Yes, sir.

15 Q And can you give us what you based that
16 appraisal upon?

17 A I based that upon two purchases which Mr. Tull
18 or two deeds that went to record, one in June of '77, and
19 one went to record in August of '77, and this was Maddox to
20 Mr. Tull.

21 Q That's Mr. Eddie Tull, who is here in the
22 courtroom today?

23 A That's right. They are in and around Ocean
24 Breeze property. One parcel was 6.44 acres. The other
25 parcel was 6.42 acres, and the indicated purchase price from

1 the deed and/or the deed receipt book was \$19,320.01;
2 \$19,500 on the other, and the average price per acre made
3 by Mr. Tull in 1977 for these two parcels of land was
4 \$3,000 per acre. I felt, and it's my opinion, that there
5 is an approximate seven and a half percent inflation factor
6 over these -- annually over these past three years and that
7 is how I arrived, in my opinion, at the approximate fair
8 market value of this application of land as \$3,675 per
9 acre.

10 Q Now, what is the difference, if any, between
11 the property that we're concerned with here today and the
12 property in the comparables that you looked at?

13 A Basically the same properties.

14 Q Can you tell us how far the comparables are --
15 well, any of these four parcels?

16 A They abutted Parcel D.

17 Q They abutted Parcel D?

18 A I'm almost certain they abutted it. They were
19 at the end of where the cul-de-sac is at the end of that
20 street.

21 Q All right. On this large plat here, can you
22 show us where that roughly is?

23 A I felt as if this was the Beebe -- I mean the
24 Maddox property.

25 Q And the other parcel that you referred to?

1 You said there were two comparables.

2 A They adjoined, as far as I know.

3 Q They are right there together?

4 A I felt as if they probably ran out to South
5 Main. I'm not positive.

6 Q All right, sir. If you had, for instance,
7 the -- the Parcel A, the eighteen-acre parcel -- well,
8 first of all, now, there is a road running across that
9 parcel?

10 A Yes, sir.

11 Q Is your appraisal based on the fact that
12 there is a road there? That there is access to the
13 property?

14 A It's based on the assumption that you can get
15 to the property.

16 Q You're assuming access?

17 A Yes.

18 Q In your appraisal?

19 A (No response.)

20 Q And if you had that eighteen-acre parcel to
21 advise someone about what the fair market value of it was
22 for sale, then your advice would be -- how much did you
23 say?

24 A Thirty-six hundred seventy-five dollars.

25 Q Now, you're aware, of course, that the parcel

1 in Ocean Breeze has been substantially developed?

2 A Yes, sir.

3 Q And does that make a difference now as far
4 as the sale price of lots in that development are
5 concerned? In other words, are they more valuable because
6 of the development and do they bring more on the market
7 because of the development?

8 A I would certainly say so. I guess I'm
9 reading your question correctly.

10 Q What are the comparables that you have found
11 in the record? Did you include them in your appraisal?

12 A I did not include them in the raw acreage
13 appraisal. I attempted to ascertain the value of Parcel B
14 -- and I have some twelve comparables of recorded deeds
15 and/or contracts of sale -- and I ascertained that the
16 fair market value, averaging these contracts and deeds,
17 that they averaged \$7,055 per lot.

18 Q Average per lot. Of course, that makes a
19 per-acre price substantially higher than the 3700 figure
20 that you testified to.

21 A Yes, but that's the retail price.

22 Q What's the market like for real estate of
23 this kind on Chincoteague at this time? What is it?
24 Active? Is it dead or how would you characterize it?

25 A Chincoteague has been good for fifteen or

1 sixteen years.

2 Q And at this time is it still good?

3 A Certainly seems to be, yes.

4 MR. TYLER: Your Honor, I think it would
5 be helpful if we introduced in evidence the
6 original of this appraisal that Mr. Johna Davis
7 has made.

8 THE COURT: All right. Defendants' 9.

9 (Marked in evidence by the Court as
10 Defendants' Exhibit Number 9.)

11
12 BY MR. TYLER:

13 Q Did you come up with a total -- any total
14 value figures, Mr. Davis, as to these properties?

15 A Raw acreage?

16 Q Yes, sir.

17 A Approximately \$125,000, rounded.

18 Q Did you come up with total values for the
19 property, considering its sale value as developed property,
20 the entire amount of land?

21 A I came up with a developed price of
22 approximately \$183,000 on B, to which would be added
23 \$111,000 for A, B and C.

24 Q A, C and D.

25 A A, C and D.

1 Q In other words, you would put 183 total on
2 B?

3 A Approximately 183.

4 Q And 111 total on A, C and D?

5 A Yes.

6 Q As Chincoteague land goes, how would you
7 characterize the quality of the land in C and D? How
8 would you characterize that? What quality of land is
9 that?

10 A I would say D is the best of the lot. It's
11 the most highest and the least grade.

12 Q When you made your appraisal, you took into
13 consideration that there were areas that needed filling
14 if you wanted to utilize the whole tract?

15 A Yes, sir.

16 Q You're aware of the quality of land on
17 Chincoteague that's low and what you can do with it?

18 A Yes.

19 Q Did you also take into consideration the --
20 all of the factors that are concerned with developable
21 land like septic and permits and all of those things that
22 you run into when you're trying to do something with a
23 piece of land? Did you have those things in mind when you
24 made your appraisal?

25 A Yes.

1 MR. TYLER: Answer Mr. Bloxom.

2
3 CROSS -EXAMINATION

4
5 BY MR. BLOXOM:

6 Q Mr. Davis, what percentage of your appraisals
7 or sales are represented by Chincoteague properties?

8 A I do several a year because of my banking
9 business.

10 Q Have you had occasion in the last year or two
11 to sell anything at all that's comparable to this particular
12 land?

13 A No, I haven't sold --

14 Q When is the last time you sold raw acreage on
15 Chincoteague?

16 A Piece that I owned on North Main Street.

17 Q How big a piece was it?

18 A We had sixteen or seventeen acres.

19 Q Not comparable to this in any way?

20 A Same thing. Sand and grade.

21 Q You didn't testify as to the value of what
22 you sold.

23 A I can.

24 Q How many acres was it?

25 A Sixteen or seventeen acres.

1 Q You say it was grade. Did it have to be
2 filled?

3 A Yes, sir.

4 Q Was it filled? Has it been developed?

5 A No, sir.

6 Q How long have you had it?

7 A Jack and Dickie Young and myself held it for
8 a couple of years.

9 Q You say it has not been sold or it has been
10 sold?

11 A We sold it.

12 Q But not developed?

13 A Not developed.

14 Q Do you know of any other raw land that's been
15 sold in the last two or three years in any way comparable
16 to this?

17 A I didn't look up any more up the Island. I
18 just looked up a couple down at the south end that were
19 close to this.

20 Q The only two comparables that you have
21 testified to are two that Mr. Tull bought?

22 A That's right.

23 Q And, of course, both of these pieces that he
24 bought joined Ocean Breeze?

25 A Yes, sir.

1 Q So -- well, are you telling the Court then
2 that represents a fair market value when he bought a
3 piece of land that joins him?

4 A I think it's fair market value.

5 Q Don't you think it's certainly worth a whole
6 lot more to Mr. Tull on a per-acre basis if it already
7 joined a subdivision that was in existence?

8 A Sometimes, but I think you will find that he
9 bought these properties quite a long time ago and he
10 exercised the contract in 1977.

11 Q Do you know when he bought them?

12 A I don't know the years; no, sir.

13 Q Did he already own Ocean Breeze at the time
14 he bought them?

15 A He had not started Ocean Breeze when he
16 bought those. I think you will find he probably contracted
17 with Wyle Maddox, but I did not see the contract.

18 Q You base your values on -- just on those
19 two comparable sales to Mr. Tull?

20 A Yes, sir.

21 Q And you don't know of any other like land
22 that's been sold -- raw land -- other than the sale that
23 you had personally?

24 A Yes, sir.

25 Q Now, your testimony is that Tract A, the

1 eighteen-acre tract, is worth 3600 and --

2 A My testimony is that the entire four tracts
3 are worth that price across the board.

4 Q Let's take them as we come to them. Let's
5 take Tract A. How much of that is high land?

6 A I'd say twenty-five or 30 percent of it.

7 THE COURT: What, sir?

8 THE WITNESS: Tract A.

9
10 BY MR. BLOXOM:

11 Q I believe it's been testified it was four
12 acres of high land, which would be in accordance with your
13 testimony; is that right?

14 A That's within the ballpark.

15 Q What kind of land is the rest of it?

16 A There is some low marsh. There is some high
17 marsh.

18 Q The land on the right-hand side of the road
19 going north has been testified to as covered with water
20 approximately on any large tide; are you aware of that?

21 A I would say that it's not covered under any
22 high tide. It takes a storm tide. I believe the watermen
23 call it purgee moon. Wind has got to be right.

24 Q You wouldn't question the fact that this
25 particular piece of marsh land on the east side of the road

1 is under water half a dozen times a year, would you?

2 A Probably half a dozen times a year.

3 Q Now, are you saying that an acre of that
4 land, in your opinion, is worth \$3675 as a fair market
5 value?

6 A Not a specific acre of that.

7 Q Let's talk about specific acres. That's
8 what we're dealing with. How much is that -- how many
9 acres are on the right-hand side of the road? East Side.
10 Let me call it east and west.

11 A Might be close to two thirds.

12 Q Sir?

13 A Might be close to two thirds.

14 Q Close to two thirds. All right. So that
15 would be approximately twelve acres. What, in your opinion,
16 then is your testimony as to the fair market value of that
17 twelve acres?

18 A I have not done any research to establish
19 the fair market value of that twelve acres, specifically
20 by itself.

21 Q Well, have you done any that would establish
22 the fair market value of that eighteen-acre piece by itself?

23 A Yes, sir, I have. I have testified --

24 Q How do you break it down? In other words,
25 don't you have any idea as to what that twelve acres would

1 be worth?

2 A I have done no research.

3 Q Well, you're testifying as an expert witness.

4 A I'm testifying that four tracts of land,
5 which are basically like the land that Mr. Tull bought,
6 which is ridge, sand, low marsh, high marsh, is worth
7 approximately \$3675 an acre.

8 Q But you don't have any idea what that twelve
9 acres is worth on the right-hand side of the road?

10 A I have done no research on that.

11 Q Let me ask you this, Mr. Davis: Had you
12 ever been on it before this -- you made the appraisal?

13 A Been on it many times.

14 Q Many times?

15 A Uh-huh.

16 Q Have you seen it before?

17 A Uh-huh.

18 Q Can you build on it?

19 A Probably can.

20 Q Probably?

21 A Probably. Probably can fill it. Maybe you
22 can't.

23 Q Do you know how much of it would have to be
24 filled?

25 A Considerably.

1 Q Do you know anything about the cost that
2 would be expended in the fill?

3 A No.

4 Q Did you hear Mr. Beebe testify?

5 A No.

6 Q I believe he testified the only thing you
7 could put on there would be pole houses. Houses on
8 pilings.

9 A He probably knows.

10 Q Would you agree with that?

11 A I would agree with Ronnie, yes.

12 Q If that's the only kind of building you could
13 put on it, surely you're not telling the Court that an
14 acre on that side of the road is worth --

15 A I'm saying it's worth \$3675 combined. With
16 the four parcels combined.

17 THE COURT: Mr. Beebe didn't say you could
18 put pole houses on that, did he?

19 MR. BEEBE: I said possibly the only thing
20 you could put there would be a pole house under
21 the certain regulations.

22 THE COURT: I didn't think -- could you
23 get a permit to put a pole house in that marsh?

24 MR. BEEBE: That particular type is
25 possible because I have seen it done on

Chincoteague.

THE COURT: That's where I'm mixed up then. I thought Mr. Beebe's testimony was -- but on the three or four acres of high land, you're saying you can build anything you want?

MR. BEEBE: Anything I want, but it's touch and go on the other side.

THE COURT: Are you saying there is no trouble to get a permit to build a house on poles in a marsh?

MR. BEEBE: I said it's a touch-and-go situation. You would have to shoot elevations out there to determine it, but I have seen marsh on Chincoteague of that nature with pole houses go up on it.

THE COURT: Recently?

MR. BEEBE: Yes, sir. It's called Blake's Point.

BY MR. BLOXOM:

Q You're not able to say then actually, Mr. Davis, with any degree of certainty, whether or not you can build anything on this low part of Tract A, the part on the east side of the road?

A No.

1 Q If you could not build anything on it, I'm
2 still trying to arrive at your evaluation of this specific
3 acreage. We're talking about four different tracts, all
4 of which are different.

5 A But which are akin to the two purchases that
6 I base my appraisal upon. They have some of the same
7 features that the two properties did.

8 Q And those two purchases that were made,
9 going back just a minute, didn't they both have roads in
10 them at the time they were made?

11 A There might be a lane. These have roads
12 across them, according to the plat.

13 Q There is a cul-de-sac at the end of the
14 street. Did you take into consideration the cost of
15 development at all?

16 A Not in raw acreage; no, sir.

17 Q Well --

18 A That comes afterwards.

19 Q All right, sir. In your testimony that
20 Tract B is now worth, I believe you said, \$183,000 -- am
21 I correct? I think that's what you testified, that Tract
22 B was now worth fair market value.

23 A That's based on retail sales.

24 Q Is that the fair market value?

25 A If the man is retailing a lot for

1 approximately \$7,000, that's the retail --

2 Q We're not talking about ifs. We want to
3 know what your opinion is of the fair market value of
4 Tract B just like it is now.

5 A Just like it is now?

6 Q Yes. Didn't you testify it was worth
7 \$183,000?

8 A Approximately \$183,000.

9 Q What was it worth as raw land?

10 A Fourteen thousand seven hundred dollars.

11 Q Fourteen thousand dollars?

12 A Uh-huh.

13 Q So then, I assume, the difference between the
14 \$14,000 and the \$183,000 is the increase in value by virtue
15 of the improvements?

16 A Mr. Tull's expertise and capital.

17 Q Then it is your evidence that the enhancement
18 in value of this \$183,000 -- of Tract B -- is a difference
19 between \$183,000 and \$14,000?

20 A Yes, sir.

21 Q Now, let's go to Tract -- incidentally, had
22 you seen Tract B before Ocean Breeze was developed?

23 A I can't remember seeing it.

24 Q You don't remember seeing it?

25 A But I remember some of Wyle Maddox's land

1 down there, so I guess maybe I saw it. I doubt if I was
2 on Tract B.

3 Q So you're not really sure you saw Tract B
4 before the development?

5 A I don't. I could have been gazing out across
6 the marsh.

7 Q But you never looked at it with anything in
8 mind such as appraisal?

9 A I did not try to own it.

10 Q So then you really would not know what the
11 condition was prior to the development, would you?

12 A I have a pretty good idea. I lived with
13 these islands and costs for a long time.

14 Q Now, again, the two comparables that you made,
15 didn't they -- did they not go out to South Main Street?

16 A I think they did. They were like a canal
17 there.

18 Q They were on Main Street, a public highway?

19 A Uh-huh.

20 Q How do you consider it a comparable if you're
21 talking about the sale of property that has a frontage on
22 South Main Street and another that doesn't front on any
23 particular public road such as Tract A?

24 A Well, the ones that went out on South Main
25 were lower quality land, but they did have the access to

1 South Main.

2 Q That's a substantial portion of the fair
3 market value, the access and access to a paved road.

4 A He doesn't seem to be utilizing South Main
5 very much on these properties. He has come rather close
6 with his development to them, to that canal back there.

7 Q Let's talk about -- let's talk about Tract
8 C for a minute. That is, what, 4.2 acres. I presume you
9 have been on this tract?

10 A Yes.

11 Q And you know the lines?

12 A Basically. Mr. Tull showed them to me.

13 Q I believe the evidence has been that -- that
14 that's about two acres high and about two acres low.

15 A That's correct.

16 Q And Mr. Beebe's testimony -- did you hear
17 Mr. Beebe's testimony?

18 A No.

19 Q Would you agree with the fact that it's two
20 acres high and two acres low?

21 A In my estimate, it's 50/50 glade and ridge.

22 Q Then in order to fill -- in order to sell
23 these four homesites or campsites or trailersites, you
24 would have to fill the two acres?

25 A Sometimes if the ridge is high enough, you

1 can knock it off.

2 Q Is this high enough?

3 A Some of it might be, but some of that would
4 have to be filled.

5 Q Any idea what it would cost to fill the two
6 acres?

7 A No.

8 Q Don't know what elevation -- is your
9 assessment on Tract D the same?

10 A Yes.

11 Q Is Tract D roughly the same type of land?

12 A Tract D is the best piece.

13 Q What portion of Tract D is usable?

14 A I would say sixty-five to 70 percent.

15 Q And so your evidence is that you put across-
16 the-board valuation of \$3675 an acre on all four pieces?

17 A Yes, sir.

18 Q Are you familiar with the Wildcat -- area
19 known as Wildcat?

20 A No. I think that's up the Island, isn't it?

21 Q Aren't you aware, Mr. Davis, that there have
22 been two sales up at Wildcat within the last two years?

23 A Wildcat is the north end, up the Island.
24 Yeah.

25 Q Are you familiar with those sales?

1 A I believe they were foreclosure sales. One
2 of them.

3 Q That's true. They were public auctions,
4 were they not? Do you know they brought approximately a
5 thousand dollars an acre as raw land?

6 A No, it wouldn't surprise me.

7 Q Are you aware that the -- have you been on
8 Wildcat?

9 A Yeah.

10 Q You have?

11 A Yeah.

12 Q What's the difference between the acreage on
13 Wildcat and the acreage we're talking about?

14 A Well, there is -- if it's the north piece --
15 if it's the very far north piece, there is a lot of marsh.

16 Q The Derrickson piece. How about the piece
17 on the south end of Wildcat?

18 A Well, there is Derrickson, Hollaway, and I
19 could not separate them.

20 Q Do you know there have been two sales up
21 there?

22 A I have heard there were two sales. I didn't
23 attend them. You reminded me.

24 Q Would you say that land would be comparable
25 to this?

1 A I doubt it.

2 Q You doubt it?

3 A I doubt if it's as good.

4 Q You don't think that's as good?

5 A No.

6 Q Doesn't Wildcat front on Chincoteague Bay?

7 A Unh-unh.

8 Q You still don't think it's as good?

9 A No.

10 Q Why do you say it's not as good?

11 A It's a long ways from the time you go in on
12 Mr. Derrickson in the beginning -- I believe it's
13 Mr. Derrickson -- and get across Gene Hollaway's and, I
14 believe, Gene's sister -- no, I believe Derrickson's sister
15 is in there somewhere -- and get up to what I call Wildcat,
16 which is the far north piece.

17 Q Do you know of any similar development on
18 Chincoteague similar to this within the last, say, five
19 years?

20 A There is some smaller ones. He does the
21 best job with it on Chincoteague.

22 Q You mean Mr. Tull?

23 A Yes.

24 Q You have stated right now that the market is
25 good. Do you know of any property that's been sold similarly

1 within the last couple of years?

2 A Well, I did not look for any up the Island
3 at all.

4 Q How about anywhere comparable?

5 A Well, I found these two down at the south
6 end and I thought they were comparable.

7 Q They were 1977?

8 A Yes, sir.

9 Q You haven't found anything since 1977. It's
10 been exactly three years. You haven't found anything in
11 the last three years that was comparable?

12 A I probably could, but it would be at a higher
13 price.

14 Q But you don't know of any?

15 A I think probably up -- '77 was probably the
16 year I sold my property around about and that brought
17 forty-some hundred.

18 Q Other than that property, do you know of any
19 others?

20 A No.

21 Q Now, when you put your \$3675 an acre on this
22 straight through -- you say this is a fair market value?

23 A Yes.

24 Q What would be the highest and best use, say,
25 of Tract D?

1 A I think what Mr. Tull is doing would gross
2 the most dollars and, of course, that to me is the highest
3 and best use.

4 Q He has several businesses. You mean mobile
5 home sites, campsites?

6 A I think it's a good addition to his Bunker
7 Hill camps.

8 Q Campsites?

9 A Yes.

10 Q Would he not have to have water?

11 A Yes.

12 Q Do you know how far he is from the nearest
13 water main?

14 A I don't think it would be too far.

15 Q How about the eastern end of Tract D? Isn't
16 that some 1200 feet or more from the entrance from Beebe
17 Road?

18 A I haven't measured it.

19 Q Would you agree?

20 A If you say so, I will agree with you.

21 Q Well, you can look at the plat and measure
22 it. To run a water line to the end of Tract D, would be
23 roughly 1200 feet, would it not? Are you aware of the
24 cost of running a water line?

25 A I heard Mr. Tull state \$8 a foot.

1 Q Twelve hundred feet. Do you take that
2 into consideration when you put a --

3 MR. TYLER: Excuse me, Judge. We're
4 going into that again. I'm going to object to
5 him cross-examining Mr. Davis as to what it would
6 cost to develop Tract D. I think --

7 THE COURT: He's asking the highest and
8 best use.

9
10 BY MR. BLOXOM:

11 Q Same thing apply to Tract C and Tract B?
12 The highest and best use would be for campsites?

13 A Yes.

14 Q There is a market on Chincoteague for more
15 campsites?

16 A I think so.

17 Q You think so. Do you have any for sale in
18 your firm?

19 A No, I don't sell campsites.

20 Q Do you know of anybody who has any for sale,
21 land suitable for developing those campsites on Chincoteague?

22 A The individual camps?

23 Q Yes, sir.

24 A An individual campsite, forty by forty or
25 forty by fifty, whatever they might be, not on Chincoteague

1 Island.

2 Q Do you have any idea how many campsites there
3 are on the Island already?

4 A Considerable number. Eddie told me how many
5 he had, but I have forgotten, plus Maddox.

6 Q You're aware that you need a special use
7 permit even for a campsite?

8 A Yes, sir.

9 Q And they are not automatic. They are given
10 by the Zoning Commission?

11 A Yes.

12 MR. BLOXOM: Thank you, sir.

13 THE COURT: Mr. Davis, I just have a
14 couple questions. Go back to Parcel A, roughly
15 fourteen acres of it. Well, all together, you
16 have got a value, roughly, of \$70,000. Thirty-
17 six seventy-five times eighteen and a half comes
18 out pretty close. It's around \$70,000. Now,
19 fourteen acres of it all on the right side of
20 the road is marsh land. You have got four acres
21 of high land. If it turns out that you can't do
22 anything with that marsh land but look at it,
23 then you'd have really \$70,000 in your four
24 acres of high land?

25 THE WITNESS: That's right.

1 THE COURT: That would make that \$17,500
2 an acre?

3 THE WITNESS: Uh-huh.

4 THE COURT: Is it possible to get \$17,500
5 an acre?

6 THE WITNESS: No, sir, I don't think so.
7 Not in raw acreage.

8 THE COURT: Just for the high land, you
9 couldn't get that much?

10 THE WITNESS: Not in raw acreage in that
11 location.

12 THE COURT: How are you going to come out
13 if you can't do anything with the marsh land?

14 THE WITNESS: I didn't separate the four
15 parcels.

16 THE COURT: What's that?

17 THE WITNESS: I did not separate the four
18 parcels.

19 THE COURT: I understand, but I'm trying
20 to do it now. I'm thinking that if it's sold
21 and a person buys Parcel A for \$70,000, I'm
22 just wondering how he's going to come out if he
23 finds he can't use the marsh land.

24 THE WITNESS: He wouldn't come out.

25 THE COURT: He wouldn't come out?

1 THE WITNESS: No.

2 THE COURT: Now, Parcel B. You have got
3 \$183,000 on Parcel B, but, as I understand your
4 figures, you're figuring eight lots per acre
5 and three point -- in other words, you're
6 figuring about twenty-five lots?

7 THE WITNESS: Approximately.

8 THE COURT: But there is not nearly
9 twenty-five lots in here?

10 THE WITNESS: Well, you will come close to
11 twenty-five.

12 THE COURT: Not the way it is now. This
13 really leads to my question. Suppose this is
14 sold and I buy this -- this B and, of course,
15 the way it is now, I mean, it's really all screwed
16 up. You have got a little piece of lot along
17 here and here. Could I rearrange that?

18 THE WITNESS: Not if anything is sold, you
19 couldn't rearrange it.

20 THE COURT: I understand that, but I'm
21 talking about could I get a subdivision plat for
22 just those four acres?

23 THE WITNESS: New lots?

24 THE COURT: New lots.

25 THE WITNESS: Well, you would have to make

J. H. DAVIS 202
1 application, I would assume, for the zoning.

2 THE COURT: I understand the application,
3 but could I do it? You're in this thing.

4 THE WITNESS: You could make application
5 to amend the plat.

6 THE COURT: I could make application,
7 but I could not pass judgment on what the zoning
8 people would say; but, I mean, you wouldn't want
9 to take any chances?

10 THE WITNESS: No.

11 THE COURT: All right. Now, to do it, I
12 would also have to put in some sort of sewerage
13 system, wouldn't I, in those four acres?

14 THE WITNESS: Well, there is a recorded
15 deed, I believe, in there that gives somebody the
16 rights to the drain field somewhere else. I
17 believe Mr. Blanton. A man by the name of
18 Blanton.

19 THE COURT: Lots that have already been
20 sold?

21 THE WITNESS: I don't know. I'm not a
22 lawyer, but I would assume the drain field is
23 clouded to the people in this area. I don't
24 know.

25 THE COURT: All right, sir. That's all

1 I have.

2 Do you have anything further?

3 MR. TYLER: We have no further evidence
4 from this witness, Your Honor.

5 THE COURT: You mean you have nothing
6 further of this witness?

7 You're excused, Mr. Davis. Thank you.

8 MR. DAVIS: Thank you.

9 THE COURT: How many more witnesses?

10 MR. TYLER: Your Honor, we don't have any
11 more witnesses. I think that's all the evidence
12 that we have. We had, of course, intended to
13 call some of the same witnesses they have called.
14 They have stated that they stipulated the family
15 tree. We have three witnesses that we were going
16 to call to prove the family tree, but that's been
17 stipulated. I was going to call Mr. Lewis about
18 the family tree, and that's been stipulated.
19 Mr. Ronnie Beebe was one of our witnesses and
20 they called him, so we have no further evidence.

21 THE COURT: Well, all right. It's 5:30
22 now. I was just wondering how do you want to
23 proceed? Do you want to meet back here in the
24 morning and argue it? This is to me a very
25 complex situation. There are a lot of questions.

1 MR. TYLER: We think it would be better
2 organized to argue it in the morning.

3 THE COURT: All right. Ten o'clock in
4 the morning.

5 You, of course, have no rebuttal?

6 MR. BLOXOM: No, sir.

7 Will you tell us how much time you would
8 allot us?

9 THE COURT: All day, if you want. I don't
10 care how long you take, Mr. Bloxom. I'm not
11 trying to tell you all to put on more evidence,
12 but there are a lot of questions on this
13 valuation that I have in my mind. I mean, this
14 is a partition suit. If all the parties are
15 before the Court, there may be no offer here from
16 any cotenant. Suppose the Court just decrees
17 this be sold at public auction.

18 MR. BLOXOM: Excuse me. Wouldn't that be
19 perhaps a proper time to make that offer when
20 the Court had determined what the fair market
21 value was? We would like the opportunity after
22 the Court makes its determination.

23 THE COURT: I have questions what John
24 Jones, who became the purchaser of Parcel B,
25 could do with it. I mean, I don't know that he

1 can reblock it off into plats. Can he? I don't
2 know.

3 MR. BLOXOM: He would have to destroy the
4 existing subdivision.

5 THE COURT: And Parcel A, I think it's
6 important, Mr. Davis, who is certainly a competent
7 real estate appraiser, has put \$3600 an acre on
8 Parcel A, but I'm surprised at what Mr. Beebe
9 said. I didn't know you could go put a pole
10 house -- a house on poles. I didn't think you
11 could touch a marsh anymore.

12 MR. LEWIS: Judge, I think you can put
13 anything on stilts as long as you don't affect
14 the ebb flow of the tide -- block it off.

15 THE COURT: You can?

16 MR. LEWIS: Yes, sir.

17 THE COURT: We will hear some more about
18 it in the morning.

19 (The Court adjourned at 5:30 p.m.)
20
21

22 -----oOo-----
23
24
25

SUPREME COURT OF VIRGINIA

RICHMOND

RUTH QUILLEN, ET ALS,

Appellants

v.

RECORD NO. 810725

EDWARD LUNN TULL AND ZED AYRES,

Appellees

JOINT APPENDIX

Plaintiffs' Exhibit No. 1

(Cross Bill Exhibit C)

LARGE COMPOSITE PLAT

PLAT SHOWING PROPERTY.
MARY A. BEEBE HEIRS
CHICOTEAU ACQUICK CO. VA.
SCALE: 1" = 100'
MAY 1920

