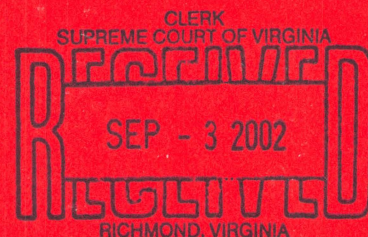


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# In The Supreme Court of Virginia

RECORD NO. 021086



**RICHARD A. FORSTER,**

*Appellant,*

v.

**JAMES S. HALL, JOYCE S. HALL,  
DAVID WAYNE McKINNEY, EVA SUE McKINNEY,  
STEPHANIE BOWLING and MARGARET BROWN,**

*Appellees.*

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## APPENDIX

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VIRGINIA: IN THE CIRCUIT COURT OF TAZEWELL COUNTY

RICHARD A. FORSTER, CHARLES C.  
MCCOY and LISA C. MCCOY,

Plaintiffs,

v.

No. CH 99000051

JAMES S. HALL, JOYCE S. HALL,  
DAVID WAYNE MCKINNEY, EVA SUE  
MCKINNEY, STEPHANIE BOWLING,  
and MARGARET BROWN,

Defendants.

BILL OF COMPLAINT

This Bill of Complaint is brought by the Plaintiffs against the Defendants to enforce certain express restrictive covenants and to enforce certain implied reciprocal negative easements with respect to property owned by the Defendants in Goose Creek Estates, located in Tazewell County, Virginia; and in support thereof, the Plaintiffs state as follows:

1. The Plaintiffs, Richard A. Forster, Charles C. McCoy and Lisa C. McCoy, are the owners of lots situate in Section 1 of Goose Creek Estates.

2. The Defendants James S. Hall and Joyce S. Hall are the owners of Lots 2 and 3, Section 4 of Goose Creek Estates.

3. Defendants David  
Wayne McKinney and Eva Sue  
McKinney are the owners of Lot  
1, Section 4 of Goose Creek  
Estates.

For Clerk's Office Use Only	
Filed in the Clerk's Office the <u>16<sup>th</sup></u> day of <u>January</u> , 19 <u>99</u>	
Time <u>12:00</u> <u>P.M.</u>	
Writ Tax	\$ <u>5.00</u> Test:
Fee	<u>4.00</u>
Deposit	<u>50.00</u>
Total Paid	\$ <u>59.00</u>
<u>James E. Blewett</u> Clerk	
<u>Richard A. Forster</u> D. C.	

4. Defendant Margaret Brown is the owner of Lot 1-B Section 4 Goose Creek Estates.
5. Defendant Stephanie Bowling is the owner of Lot 1-C Section 4 Goose Creek Estates.
6. By deed dated August 25, 1978, of record in the Office of the Clerk of the Circuit Court of Tazewell County in Deed Book 448 at page 342, Louella B. Turner and others conveyed a tract of land to certain partners trading and doing business as Goose Creek Partnership. The partners of Goose Creek Partnership included John York Lindsey, managing partner, and Carl Cartwright, Jr.
7. The partners of the Goose Creek Partnership caused the land to be surveyed and platted into individual lots by Draper-Aden Associates of Tazewell, Virginia, Draper-Aden job number 546. The survey and the plats divided Goose Creek Estates into five contiguous sections. Section 1 and Section 4 adjoin along a common boundary. The plats of each section were recorded in the Office of the Clerk of the Circuit Court of Tazewell County in the Plat Books and Plat Cards, as follows:

Exhibit No.	Plat Book	Page No.	Description	Plat Card
1	14	36	Section 1, Goose Creek Estates	4066
2	14	37	Section 2, Goose Creek Estates	4067
3	14	38	Section 3, Goose Creek Estates	4068
4	14	55	Section 4, Goose Creek Estates	4085
5	14	56	Section 5, Goose Creek Estates	4086

Copies *teste* of the original plats of subdivision<sup>1</sup> are attached to the original of this Bill of Complaint as Plaintiffs' Exhibit 1, Plaintiffs' Exhibit 2, Plaintiffs' Exhibit 3, Plaintiffs' Exhibit 4 and Plaintiffs' Exhibit 5; in each case, the exhibit number corresponding to the section number of the plat.

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<sup>1</sup> Amended plats were filed for Sections 1 and 5, making changes that are not material to this suit.



8. When the plats of the subdivision were made and recorded, Section 1, Section 2 and Section 3 of Goose Creek Estates were not platted in compliance with the Tazewell County Subdivision Ordinance, all of the lots in Sections 1, 2 and 3 of Goose Creek Estates being of the size of 5.00 acres or larger. Section 4 and Section 5 of Goose Creek Estates, which fronted on a public road, Virginia Secondary Highway Number 644, were platted to contain lots smaller than 5 acres as well as lots larger than 5 acres. The plats for Section 4 and Section 5 of Goose Creek Estates were submitted for approvals in accordance with the then-existing Tazewell County Subdivision Ordinance.

9. Attached as exhibits to the original of this Bill of Complaint are true copies of the deeds to original purchasers of property in Goose Creek Estates, beginning with Deed Book 457 at page 483, recorded on May 4, 1979 (Plaintiffs' Exhibit 6), and continuing through Deed Book 721 at page 764, recorded on October 31, 1996 (Plaintiffs' Exhibit 89), and also including two deeds of gift to subsequent grantees of subdivisions of lot 1, Section 4 (Exhibits 90 and 91), as follows:

Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
6	457	483	5/4/78	Stephen Robert Barrett <i>et ux.</i>	4	6
7	457	869	5/15/79	William R. Barrett <i>et ux.</i>	4	5
8	462	692	9/11/79	Aaron Donald Buchanan, Jr. <i>et ux.</i>	1	17
9	462	789	9/13/79	James D. Altizer <i>et ux.</i>	2	6
10	463	45	9/18/79	Wayne D. Brewster <i>et ux.</i>	1 4	Pt 36 7-8
11	465	472	11/29/79	David Lee Hickman, Jr.	4	4
12	465	723	12/10/79	Gary G. Ratliff <i>et ux.</i>	5	2
13	469	1	4/4/80	Carlos A. Mosley <i>et ux.</i>	1	39
14	469	787	5/5/80	White & Cole Coal Co., Inc.	1	13-14

Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
15	470	615	6/6/80	Wayne Douglas Short <i>et ux.</i>	5	1
16	470	760	6/13/80	Wayne L. Thomas	1	32-33
17	470	842	6/17/80	Joseph E. Peery, Sr. <i>et ux.</i>	1	15
18	470	851	6/17/80	Basil Asbury, Jr. <i>et ux.</i>	1	44
19	474	357	9/17/80	James D. Ribble, Jr. <i>et ux.</i>	1	12
20	479	663	2/9/81	Wayne D. Brewster <i>et ux.</i>	1	1
21	481	512	4/8/81	Leland L. Vaughn <i>et ux.</i>	2	12-13
22	483	792	6/22/81	Roger Wayne Hager <i>et al.</i>	2	20
23	486	809	8/27/81	Patsy Carol Buckles	1	29
24	488	160	10/2/81	Tony S. Frederick <i>et ux.</i>	4	9-12
25	492	355	2/15/82	James E. Boothe <i>et ux.</i>	2	18
26	492	608	2/18/82	Dudley C. Sargent <i>et ux.</i>	2	19
27	493	693	3/23/82	Carl Thompson <i>et ux.</i>	1	40-41
28	494	512	4/6/82	Steven Lee Meade <i>et ux.</i>	1	18
29	495	416	5/3/82	C.G. Tullock	5	3-4
30	500	104	10/6/82	Ralph E. Monk <i>et ux.</i>	1	19
31	500	194	10/11/82	Patty E. Kinder	1	21
32	510	382	8/4/83	David J. Elswick <i>et ux.</i>	2	8
33	530	166	2/22/85	Leland L. Vaughn <i>et ux.</i>	2	11
34	531	53	3/25/85	Hubert Douglas Addair <i>et ux.</i>	2	7
35	538	702	10/8/85	Alderson F. Lambert <i>et ux.</i>	1	43
36	545	365	4/23/86	Arvin O. Estep <i>et ux.</i>	1	20
37	548	339	6/27/86	Carl Cartwright, Jr.	1	30
38	565	328	7/2/87	V. Reina Hale	1	38A-B
39	566	147	7/16/87	Andrew G. Kulchar	1	6

Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
40	573	271	12/31/87	3-D Construction Co.	2	27
41	579	290	6/9/88	William R. Stevenson <i>et ux.</i>	2	26
42	579	388	6/13/88	Basil Asbury, Jr. <i>et ux.</i>	1	44
43	590	321	3/3/89	Reina Hale	1	37
44	590	517	3/10/89	Sherman A. Cain	2	30
45	591	782	4/20/89	Ted R. Steele <i>et ux.</i>	1	11
46	604	784	3/27/90	Lennie White <i>et al.</i>	1	31
47	608	867	6/29/90	Leland L. Vaughn <i>et ux.</i>	2	14
48	609	330	7/13/90	Earmal Stacy <i>et ux.</i>	2	3,4,9
49	609	793	7/21/90	James David Altizer <i>et ux.</i>	2	1,2,5
50	610	187	8/2/90	Raymond Begil <i>et ux.</i>	1	10
51	611	81	8/22/90	W. Wade Lowe <i>et ux.</i>	1	7-8
52	614	854	12/5/90	Thomas E. Kelly <i>et ux.</i>	2 1	23-25 5
53	614	862	12/5/90	Clinton W. McDaniel <i>et ux.</i>	1 3	3,4 1
54	615	442	12/19/90	Hobert Douglas Addair <i>et ux.</i>	2	28
55	618	311	3/25/91	Robert J. Buffalow	2	17
56	619	817	4/26/91	Robey Lee Lail <i>et ux.</i>	1	9
57	620	922	5/24/91	Timothy R. Rutherford <i>et ux.</i>	1	16
58	621	124	5/30/91	Leland L. Vaughn <i>et ux.</i>	2	10
59	624	36	8/12/91	Martin Luther Peery <i>et ux.</i>	1	22
60	628	658	12/3/91	Michael David Deskins <i>et ux.</i>	2	21
61	629	236	12/16/91	Virgil Noakes	2	22
62	629	923	1/6/92	James R. Lindsey, Trustee	2	29
63	632	856	3/9/92	Ermal Stacy <i>et ux.</i>	1	25



Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
64	645	956	11/12/92	Charles C. McCoy <i>et ux.</i>	1	34
65	647	247	12/4/92	Ronald W. Householder	1	42
66	650	309	2/5/93	Clinton Wayde McDaniel <i>et ux.</i>	1 3	2 2
67	651	97	2/25/93	Ecko, Inc.	1	27
68	652	494	4/2/93	Ecko, Inc.	1	28
69	658	81	7/14/93	Leland L. Vaughn <i>et ux.</i>	2	15-16
70	658	324	7/20/93	Charlotte Harman Puckett	5	11
71	662	552	10/4/93	Jesse H. Durham	3	10
72	669	885	3/10/94	James S. Hall <i>et ux.</i>	4	3
73	671	230	4/4/94	Peter R. Hickey <i>et ux.</i>	3	11-13
74	674	204	5/18/94	Clinton Wade McDaniel <i>et ux.</i>	3	3
75	675	686	6/13/94	Michael Hamm <i>et ux.</i>	1	23
76	677	402	7/12/94	Ermal Stacy <i>et ux.</i>	1	24
77	693	810	6/7/95	Herbert Wilson Roberts <i>et ux.</i>	1	36
78	710	367	5/2/96	Roger Robinette <i>et ux.</i>	1	26
80	712	892	6/14/96	James S. Hall <i>et ux.</i>	4	2
82	713	777	6/27/96	Richard A. Forster <i>et ux.</i>	1	35
83	714	215	7/3/96	Charlotte Harman Puckett	5	5-10
84	714	219	7/3/96	Charlotte Harman Puckett <i>et al.</i>	3	4-9
86	715	705	7/29/96	Charlotte Harman Puckett	5	5-10
87	715	709	7/29/96	Charlotte Harman Puckett <i>et al.</i>	3	4-9
88	716	90	8/5/96	Richard A. Forster <i>et ux.</i>	1	35
89	721	764	10/31/96	David Wayne McKinney <i>et ux.</i>	4	1
90	736	816	8/20/97	Margaret Brown	4	1-B

Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
91	736	820	8/20/97	Stephanie Bowling	4	1-C

10. Beginning on May 4, 1979, with the deed attached hereto as Plaintiffs' Exhibit 6, Goose Creek Partnership began conveying lots to purchasers by deeds which contained an express covenant "that no mobile homes, either single or double wide may be parked and/or erected on the property." With immaterial variations in wording, this restriction was contained in each of the fourteen deeds recorded from May 14, 1979 (Exhibit No. 6) through September 17, 1980 (Exhibit No. 19).

11. The deed attached as Plaintiffs' Exhibit 20, recorded February 9, 1981, to Wayne D. Brewster and Stella M. Brewster, grantees, did not expressly contain the same restriction. Nonetheless, Wayne D. Brewster and Stella M. Brewster previously had purchased other lots located in Goose Creek Estates by a deed which did contain the restriction (Plaintiffs' Exhibit 10) and the deed recorded on February 9, 1981, contained a provision that it was "subject to the restrictions of record."

12. The next deed recorded for a lot Goose Creek Estates, on April 8, 1981 to Leland L. Vaughn and Nancye H. Vaughn (Plaintiffs' Exhibit 21), did not expressly set forth the restriction but was made "subject to the restrictions of record." In addition, Leland and Nancye Vaughn thereafter purchased additional lots in the subdivision and received deeds that expressly contained the restriction (Plaintiffs' Exhibits 33 and 47).

13. The restriction set forth in the deeds, copies which are attached to the original Bill of Complaint as Plaintiffs' Exhibits 6 through 19, are covenants which run with the land and are binding on, and enforceable against, the grantees of those lots, their heirs, successors and assigns.

14. In addition, the sales of the lots pursuant to the deeds, copies of which are attached to the original Bill of Complaint as Plaintiffs' Exhibits 6 through 19, were sufficient to impose an implied reciprocal negative easement on the remaining lands of the Goose Creek Partnership.

15. When Goose Creek Partnership developed land for sale as Goose Creek Estates in lots and inaugurated a general plan of improvement for the benefit of purchasers, the grantees of the lots in Goose Creek Estates acquired by implication the equitable right to enforce similar restrictions against parts of the tract subsequently sold without the restrictions to a purchaser with actual or constructive notice of the restrictions or covenants.

16. Beginning with the deed recorded on June 22, 1981 (Plaintiffs' Exhibit 22), and continuing through the deed recorded on April 6, 1982 (Plaintiffs' Exhibit 28), Goose Creek Partnership sold lots subject to the following restriction: "It is distinctly understood and agreed that this conveyance is subject to the express restrictive covenant, running with the land that no mobile home, either single or double-wide shall be placed on said land at any time." Substantially identical versions of this restriction were included in the deeds, copies of which are attached to the original Bill of Complaint as Plaintiffs' Exhibits 22, 23, 24, 26, 27 and 28. The deed recorded on February 15, 1982, a copy of which is attached to the original Bill of Complaint as Plaintiffs' Exhibit 25, contained the provision that the property was "conveyed subject to the following restrictions and covenants, that no mobile homes, either single or double-wide shall be parked and/or erected on the property."



17. The deed recorded on May 3, 1982, a copy of which is attached to the original Bill of Complaint as Plaintiffs' Exhibit 29, did not contain an express restriction; however, this conveyance was made "subject to the restrictions of record and herein set forth."

18. Beginning with the deed recorded on October 6, 1982 (Plaintiffs' Exhibit 30), and continuing through the deed recorded on February 22, 1985 (Plaintiffs' Exhibit 33), each of the deeds issued to grantees by the Goose Creek Partnership for lots in Goose Creek Estates contained substantially the following restriction: "It is distinctly understood and agreed that the conveyance is subject to the express restrictive covenant, running with the land that no mobile home, either single or doublewide, shall be placed on said land at any time."

19. The deed from Goose Creek Partnership recorded on March 25, 1985, did not contain an express restriction (Plaintiffs' Exhibit 34), but did contain a provision that the conveyance was "subject to such reservations and restrictions as found of record in the Clerk's Office of Tazewell County, Virginia."

20. Beginning with the deed recorded on October 8, 1985 (Plaintiffs' Exhibit 35), and continuing through the deed recorded December 31, 1987 (Plaintiffs' Exhibit 40), and including also a corrected deed recorded on June 13, 1988 (Plaintiffs' Exhibit 42), each of the deeds issued by the Goose Creek Partnership to purchasers of lots in the Goose Creek Estates contained substantially the following restriction: "It is distinctly understood and agreed that the property herein conveyed is subject to the express restrictive covenant, running with the land, that no mobile homes, either single or doublewide, shall be placed on said tract of land at any time."

21. Beginning with the deed recorded on June 9, 1988 (Plaintiffs' Exhibit 41) and continuing through the deed recorded on August 31, 1997 (Plaintiffs' Exhibit 78), the deeds issued by the Goose

Creek Partnership to purchasers of lots in Goose Creek Estates contained substantially the following provision:

"It is distinctly understood and agreed that this conveyance is subject to the expressed restrictive covenants, running with the land, that no mobile home, either single or doublewide, shall be placed on said land at any time and this covenant may be enforced by the parties of the first part, their successors and assigns, and by any owner of any of the lots or tracts shown on any portion of Goose Creek Estates."

Variations in this series of deeds were the deed of correction already noted, attached to the original Bill of Complaint as Plaintiffs' Exhibit 42, and the deed attached to the original Bill of Complaint as Plaintiffs' Exhibit 78, which added to the provision a prohibition of "business or commercial buildings."

22. By deed recorded on March 10, 1994 of record in Deed Book 669 at page 885 (Plaintiffs' Exhibit 72), Defendants James S. Hall and Joyce S. Hall acquired title to Section 4, Lot 3, subject to the express restrictive covenant "that no mobile home, either single or doublewide, shall be placed on said land at any time, and this covenant may be enforced by the parties of the first part, their successors and assigns, and/or any owners of property shown on the plats of Goose Creek Estates."

23. The restrictions set forth in the sixty-nine deeds, copies which are attached to the original Bill of Complaint as Plaintiffs' Exhibits 6 through 19, 22 through 28, 30 through 33 and 35 through 78, are covenants which run with the land and are binding on, and enforceable against, the grantees of the lots thereby conveyed, their heirs, successors and assigns.

24. In addition, the sales of the lots pursuant to the sixty-nine deeds, copies of which are attached to the original Bill of Complaint as Plaintiffs' Exhibits 6 through 19, 22 through 28, 30

through 33 and 35 through 78, were sufficient to impose an implied reciprocal negative easement on the remaining lands of the Goose Creek Partnership.

25. Plaintiffs Charles C. McCoy and Lisa C. McCoy acquired title to Section 1, Lot 34, by virtue of a deed recorded on November 12, 1992, in Deed Book 645 at page 956 (Plaintiffs' Exhibit 64). By virtue of this purchase, they became entitled to enforce against the remaining lands of Goose Creek Partnership an implied reciprocal negative easement that no mobile home, either single or doublewide, shall be placed on said land at any time.

26. In the spring of 1996, Goose Creek Partnership advertised a "partnership liquidation auction" of the remaining lots in Goose Creek Estates. The lots so advertised included Lots 1 and 2 of Section 4 of Goose Creek Estates. True copies of certain advertising materials for the partnership liquidation auction are attached hereto collectively as Plaintiffs's Exhibit 79.

27. After the advertising of the auction, James S. Hall and Joyce S. Hall entered into an agreement with the partners of Goose Creek Partnership to purchase Lot 2 of Section 4 of Goose Creek Estates. A deed dated May 30, 1996, but executed on June 4, 1996, was recorded on June 14, 1996, in the Office of the Clerk in the Circuit Court of Tazewell County (Plaintiffs' Exhibit 80).

28. The deed attached to the original Bill of Complaint as Plaintiffs' Exhibit 80 did not contain any restriction against mobile homes, single or double-wide, as had the large number of prior deeds, or any reference to restrictions of record, as had the few exceptions noted above. Upon information and belief, that omission was not inadvertent; it was deliberate, having been agreed to by Carl Cartwright, Jr., as partner and agent for the Goose Creek Partnership, and James S. Hall and Joyce S. Hall, the purchasers.

29. Despite the omission of the restriction from the deed, a copy of which is attached to the original Bill of Complaint as Plaintiffs' Exhibit 80, James S. Hall and Joyce S. Hall had both actual and constructive knowledge of the restrictions that were applicable to the property of Goose Creek Partnership, as well as to the property they had previously purchased.

30. Based on a statement made to one of the Plaintiffs by Carl Cartwright, Jr., it is here alleged that James S. Hall and Joyce S. Hall asked that the restriction against mobile homes including double-wides be dropped from the deed to Section 4, Lot 2 for the purpose of enabling them to place double-wide mobile homes on said property for the benefit of certain of their children.

31. At the auction for the Goose Creek Partnership liquidation held on June 1, 1996, certain written terms were published and distributed to the persons attending the auction. A copy of those written terms is attached to the original Bill of Complaint as Plaintiffs' Exhibit 81. Paragraph 9 of the document attached to the original Bill of Complaint as Plaintiffs' Exhibit 81 provides that the property is being sold for residential and/or agricultural purposes only; that no commercial or industrial operations are permitted; and that no single-wide or double-wide manufactured mobile home will be permitted on any lot or tract.

32. The auction on June 1, 1996, was attended by Richard A. Forster, James S. Hall and others. Following the auction, three deeds to property were executed and recorded in June and July of 1996. Each of these deeds omitted the restrictions that had been included in previous deeds and those that had been announced at the auction. Plaintiffs' Exhibits 82, 83, and 84.

33. On July 15, 1996, the attorney who prepared those deeds (who was not the same attorney who had prepared prior deeds in the subdivision) notified the various purchasers by letter that the restrictions announced at the auction had been omitted and that corrective deeds needed to be

executed and filed for record. (A copy of one such letter is attached to the original Bill of Complaint as Plaintiffs' Exhibit 85.) All of the purchasers executed the corrective deeds, which also were executed by John York Lindsey, agent and attorney and managing partner of Goose Creek Partnership. Copies of those corrective deeds are attached to the original Bill of Complaint as Plaintiffs' Exhibits 86, 87, and 88. Each of them contains the restrictions that the property "may be used for only residential and or agricultural purposes and no commercial or industrial operations are permitted on the property. In addition, no single-wide or double-wide mobile homes are permitted on property. These restrictions are deemed to be covenants running with the land and are binding on the party hereto their heirs, assigns and successors and interest."

34. By a deed recorded on October 31, 1996, the Goose Creek Partnership conveyed Section 4, Lot 1 of Goose Creek Estates to David Wayne McKinney and Eva Sue McKinney. That deed also omitted the restriction against mobile homes. Plaintiffs' Exhibit 89.

35. Upon information and belief, and based upon a statement made to one of the plaintiffs herein by Carl Cartwright, Jr., the omission of the restriction against mobile homes from the deed to David Wayne McKinney and Eva Sue McKinney was not inadvertent, but was deliberate for the purpose of permitting the McKinnies to provide mobile home lots for certain of their children.

36. By deed of gift recorded on August 20, 1997, David Wayne McKinney and Eva Sue McKinney conveyed a subdivided lot 1-B of Section 4 of Goose Creek Estates to Margaret Brown, their daughter. Plaintiffs' Exhibit 90.

37. A double-wide mobile home has been subsequently been erected on lot 1-B of Section 4 of Goose Creek Estates by or for the benefit of Margaret Brown.



38. By deed of gift recorded on August 20, 1997, David Wayne McKinney and Eva Sue McKinney conveyed a subdivided lot 1-C of Section 4 to Stephanie Bowling, their daughter. Plaintiffs' Exhibit 91.

39. A double-wide mobile home has been subsequently been erected on lot 1-C of Section 4 of Goose Creek Estates by or for the benefit of Stephanie Bowling.

40. In addition, at least one and probably two double-wide mobile homes have been erected on Section 4, Lot 2 of Goose Creek Estates, one of the lots belonging to James S. Hall and Joyce S. Hall. One of the mobile homes is accessed directly from the public roadway and appears to be located on Section 4, Lot 2. The other is accessed by a driveway which crosses the other lot owned by James S. and Joyce S. Hall (Section 4, Lot 3) and may be located on Lot 2, or Lot 3, or partly on both. Regardless of its exact location, this mobile home had to be moved across Lot 3 in order to be placed in its present position and gains driveway access and access to utilities through Lot 3.

41. With respect to Section 4, Lot 3, owned by James S. Hall and Joyce S. Hall, the placement of a mobile home constitutes a violation of the express covenant against mobile homes, single-wide or double-wide, contained in the deed to that lot.

42. With respect to all of the defendants and to the respect to all of Lots 1, 2, and 3 of Section 4, Goose Creek Estates, including subsequent subdivisions thereof, the placements of the four said double-wide mobile homes thereon is, in each case, a violation of the implied reciprocal negative easement applicable to Lots 1, 2, and 3 of Section 4 Goose Creek Estates, which forbids the placing on those lots single or double-wide mobile homes.

43. The Plaintiffs are entitled to enforce the covenants and easements set forth above.

44. Because of the placement of double-wide mobile homes on lots in the Goose Creek Estates subdivision, the Plaintiffs each have suffered and continue to suffer irreparable injury.

45. The placement of the double-wide mobile homes on those lots is a continuing violation of the covenants and easements set forth above, which should be enjoined by this Court.

46. By letter dated September 25, 1998, counsel for the Plaintiffs notified each of the defendants herein of the violation of the covenants and restrictions and requested that the deeds be reformed in order to contain the restrictions that are required by law and that any non-conforming structures be removed and, in the future, no non-conforming structures be placed on those tracts. To the date of the filing of the original Bill of Complaint, none of the Defendants had chosen to respond to that letter.


WHEREFORE, the Plaintiffs pray that this Court determine and declare that Lot 3 of Section 4, of Goose Creek Estates subdivision is subject to an express restrictive covenant that provides that no mobile home, either single or double-wide, shall be placed on said land at any time, which covenant may be enforced by the owner of any of the lots and tracts shown in any of the plats of Goose Creek Estates; that Lots 1, 2, and 3 of Section 4, Goose Creek Estates subdivisio, each are subject to the implied negative reciprocal easement that no mobile home, either single or double-wide, shall be placed on said land at any time, and that this easement may be enforced by the owner of any of the lots or tracts shown on any of the plats of Goose Creek Estates; that the Defendants have placed, or have permitted to be placed, four double-wide mobile homes on said lots, in violation of said covenant and restriction; and that the Court permanently enjoin the Defendants from violating the covenants and easements; issue a mandatory injunction requiring the removal of all double-wide or single-wide mobile homes from the lots; and provide that its orders be recorded and

indexed in the deed books in the Office of the Clerk of the Circuit Court of Tazewell County under the names of each and every one of the Defendants, and such other and further relief as equity may deem meet in the nature of the case required. Further, because of the conduct of the Defendants was in willful and knowing disregard of the rights of others, including the Plaintiffs, and in deliberate violation of the covenant and easements applicable to the property owned by the Defendants, Plaintiffs respectfully request an award of costs including reasonable attorney's fees incurred in prosecuting this suit in chancery.

Respectfully submitted,

RICHARD A. FORSTER, CHARLES C.  
MCCOY and LISA C. MCCOY

By:   
Of counsel

James R. Henderson IV   
HENDERSON AND DE COURCY, P.C.  
227 West Main Street  
P. O. Box 843  
Tazewell, VA 24651-0843  
VSB#: 14525  
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Facsimile: (540) 988-3129



sentence of that paragraph to the effect that Goose Creek Estates was divided into five contiguous sections.

6. The Defendants admit the allegations contained in Paragraphs 8 and 9 of the Bill of Complaint.

7. The Defendants deny the allegations contained in Paragraph 10 of the Bill of Complaint. The deed to Basil Asbury, Jr., et als dated June 17, 1980 (Exhibit 18) does not contain a restriction as to the placement of single or double wide mobile homes on that lot but rather contains a restriction as to single and double wide mobile homes.

8. The Defendants admit the allegations contained in Paragraphs 11 and 12 of the Bill of Complaint concerning the content of deed to Brewster (Exhibit 30) and Vaughn (Exhibit 21) but deny the conclusion concerning restrictions of record in deeds purchased before or after the deed in which there were no restrictions relating to the placement of mobile homes, effect in any way the lots conveyed to Wayne D. Brewster, et als by deed dated February 9, 1981 (Exhibit 20) or to Leland L. Vaughn, et als by deed dated April 8, 1981 (Exhibit 21).

9. The Defendant admits the allegations contained in Paragraph 13 of the Bill of Complaint as to those specific lots (Exhibit 6 through 19) set forth in that paragraph.

10. The Defendants deny the allegations contained in Paragraphs 14 and 15 of the Bill of Complaint.

11. The Defendants admit the allegations contained in Paragraph 16 of the Bill of Complaint.

12. The Defendants admit the allegations contained in Paragraphs 17, 18, 19 and 20 of the Bill of Complaint.

13. The Defendants deny the allegations contained in Paragraph 21 of the Bill of Complaint. The restrictive covenant contained in the deed to Sherman A. Cain dated April 18, 1988 (Exhibit 44) differs significantly from the language of the restrictive covenants contained in that paragraph.

14. The Defendants admit the allegations contained in Paragraphs 22 and 23 of the Bill of Complaint and would note that the restrictive covenant set forth in each of the said deeds is enforceable against that specific lot.

15. The Defendants deny the allegations contained in Paragraph 24 of the Bill of Complaint.

16. The Defendants admit that the Plaintiffs, Charles C. McCoy and Lisa C. McCoy acquired title to Section 1, Lot 34 by deed dated November 12, 1992 (Exhibit 64) but deny that they thereby became entitled to enforce against the remaining lands of Goose Creek Partnership an implied reciprocal negative easement against placement of mobile homes.

17. The Defendants admit the allegations contained in Paragraph 26 of the Bill of Complaint to the effect that signs were placed on the property for the auction of certain lots in Goose Creek Estates, to include Lots 1 and 2 of Section 4 of Goose Creek Estates. The Defendants can neither admit nor deny that the advertising materials attached to the Bill of Complaint (Exhibit 29) are true copies of advertising materials for a partnership liquidation auction.

18. The Defendants admit the allegations contained in Paragraphs 27 and 28 of the Bill of Complaint.

19. The Defendants deny the allegations contained in Paragraph 29 of the Bill of Complaint. The Defendants were aware of a restriction against the placement of mobile homes on Lot 3, Section 4 of Goose Creek Estates but understood that those restrictions applied to the individual lots of Goose Creek Estates and deny that the restrictive covenant against mobile homes applied to all of the property of Goose Creek Partnership.

20. The Defendants deny the allegations contained in Paragraph 30 of the Bill of Complaint as they are not aware of the nature of any statement made to the Plaintiffs by Carl Cartwright, Jr. The Defendants admit that the purchase of Lot 2, Section 4 of Goose Creek Estates was conditioned upon

deletion of the restriction against mobile homes. The Defendants deny that they intended to place double wide mobile homes on said lot, specifically alleging that their intent was to place manufactured homes on said lots for the benefit of their children.

21. The Defendants neither admit nor deny the allegations contained in Paragraph 31 of the Bill of Complaint. They were not present at the auction and did not know what written terms were published or distributed to persons attending the auction.

22. The Defendant, James S. Hall, denies the allegations contained in Paragraph 32 of the Bill of Complaint. He did not attend the auction on June 1, 1996. The Defendants neither admit nor deny the allegations of that paragraph to the effect that Richard A. Forster and others attended that auction, and further that certain deeds omitting certain restrictive covenants announced at the auction were executed and recorded.

23. The Defendants neither admit nor deny the allegations contained in Paragraph 33 of the Bill of Complaint as they did not receive a notification letter and did not execute a corrective deed. The Defendants deny any statement or conclusions contained in the letter dated January 15, 1996 (Exhibit 85) which may imply that the restrictive covenants concerning mobile homes applies to Lot 2, Section 4 of Goose Creek Estates which they had purchased prior to the auction. The Defendants admit that the language contained in the corrective deeds (Exhibits 86, 87 & 88) contain the restrictive covenant as set out in Paragraph 33.

24. The Defendants admit the allegations contained in Paragraph 34 of the Bill of Complaint.

25. The Defendants neither admit nor deny the allegations contained in Paragraph 35 of the Bill of Complaint as they have no knowledge of statements made to the Plaintiffs by Carl Cartwright, Jr., have no knowledge of the intent of David Wayne McKinney and Eva Sue McKinney in purchasing Lot 1 of Section 4 of Goose Creek Estates and have no knowledge of the agreement made concerning



the purchase of said lot.

26. The Defendants admit the allegations contained in Paragraph 36 of the Bill of Complaint.

27. The Defendants neither admit nor deny the allegations contained in Paragraph 37 of the Bill of Complaint as they are unaware of the nature of the home erected on Lot 1-B, Section 4 of Goose Creek Estates.

28. The Defendants admit the allegations contained in Paragraph 38 of the Bill of Complaint.

29. The Defendants neither admit nor deny the allegations contained in Paragraph 39 of the Bill of Complaint as they are unaware of the nature of the home erected on Lot 1-C, Section 4 of Goose Creek Estates.

30. The Defendants deny the allegations contained in Paragraph 40 of the Bill of Complaint. Mobile homes have not been placed on Lot 2, Section 4 of Goose Creek Estates. The homes erected on that lot are manufactured homes. No mobile home or manufactured home has been erected on Lot 3, Section 4 of Goose Creek Estates. There is no restriction that would prevent the moving of a mobile home across Lot 3, Section 4 of Goose Creek Estates, nor are there any restrictions concerning driveway or utility access to Lots 2 or 3, Section 4 of Goose Creek Estates.

31. The Defendants admit the allegations contained in Paragraph 41 of the Bill of Complaint as they apply specifically to Lot 3, Section 4 of Goose Creek Estates only.

32. The Defendants deny the allegations contained in Paragraph 42 of the Bill of Complaint and specifically deny that there is any implied reciprocal negative easement prohibiting the placement of mobile homes, which applies to any lots of Goose Creek Estates specifically Lots 1, 2 and 3, Section 4 of Goose Creek Estates.

33. The Defendants deny the allegations contained in Paragraphs 43, 44 and 45 of the Bill of Complaint.

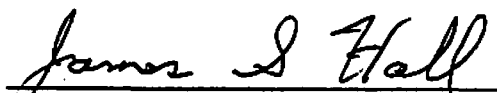
34. The Defendants admit those portions of the allegations contained in Paragraph 46 of the Bill of Complaint concerning receipt of a letter dated September 25, 1998 from counsel for the Plaintiffs. The Defendants deny that there was no response to that letter, specifically alleging that by letter dated October 1, 1998 David Altizer, for Carl Cartwright, Jr. specifically responded to the attorney for the Plaintiffs.


35. By way of an affirmative defense the Defendants allege that the two manufactured homes erected on Lot 2, Section 4 of Goose Creek Estates were constructed on or about \_\_\_\_\_ and \_\_\_\_\_. This was prior to any notification from the Plaintiff objecting to the construction of said manufactured homes on that lot and making claim to any implied reciprocal negative easement. The Defendants acquired Lot 2, Section 4 of Goose Creek Estates with the expressed understanding that there was no restriction thereon relating to the placement of mobile homes. In reliance upon their agreement with Goose Creek Partnership Defendants expended significant amounts of money in improving said lots by erecting manufactured homes thereon. The removal of the manufactured homes would result in irreparable damage to your Defendants. The Plaintiffs have not been damaged or otherwise harmed by the erection of mobile homes on Lot 2, Section 4 of Goose Creek Estates. The Plaintiffs are barred by the doctrine of laches from enforcing any restrictive covenants relating to the placement of mobile homes on Lot 2, Section 4 of Goose Creek Estates.


36. Your Defendants allege, as set out hereinabove, that the homes erected on Lot 2, Section 4 of Goose Creek Estates are manufactured homes and are not mobile homes. Consequently a restrictive covenant concerning placement of mobile homes upon that lot is not applicable.

WHEREFORE, the Defendants pray that this proceeding be dismissed against them; that the Court determine that there are no restrictive covenants relating to the placement of mobile homes on Lots

1 and 2, Section 4 of Goose Creek Estates and on any other lot in that development, the deed to which does not contain an express restrictive covenant concerning the placement of mobile homes thereon; that the Court deny the Complainant's motion for entry of any form of injunction requiring the removal of the Defendant's manufactured homes from Lot 2, Section 4 of Goose Creek Estates; and that your Defendants be awarded attorney's fees and court costs incurred in this suit due to the Plaintiffs' prosecution of a frivolous action.

  
James S. Hall

  
Joyce S. Hall

  
Stephen E. Arey, P.C.  
204 Main Street  
P.O. Box 895  
Tazewell, VA 24651  
Telephone: (540) 988-6548  
VSB No.

Certificate of Mailing

I certify that a true copy of the foregoing Answer was mailed to James R. Henderson, Henderson & deCourcy, PC, P.O. Box 843, Tazewell, Virginia 24651, Attorney for Richard Forster and Charles and Lisa McCoy this the 17<sup>th</sup> day of March, 1999.

  
Stephen E. Arey

CIRCUIT COURT OF TAZEWELL COUNTY, VIRGINIA

RICHARD A. FORSTER, CHARLES C. MCCOY and  
LISA C. MCCOY,

Plaintiffs,

v.

JAMES S. HALL, JOYCE S. HALL,  
DAVID WAYNE MCKINNEY, EVA SUE MCKINNEY,  
STEPHANIE BOWLING, and MARGARET BROWN,

Defendants.

Case No. CH99000051

ANSWER

The defendants, David Wayne McKinney and Eva Sue McKinney (together, the McKinneys), their daughter Stephanie Bowling (Bowling), and their daughter Margaret Brown (Brown), states their grounds of defense to the Bill of Complaint filed by the plaintiffs, Richard A. Forster (Forster), Charles C. McCoy and Lisa C. McCoy (together, the McCos), as follows:

1. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 1.

2. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 2.

3. The McKinneys, Bowling and Brown admit the averments of Paragraph 3.

4. The McKinneys, Bowling and Brown admit the averments of Paragraph 4.

5. The McKinneys, Bowling and Brown admit the averments of

Received and filed in Tazewell County,  
Virginia Circuit Court Clerk's Office.  
This the 12<sup>th</sup> day of March, 1999.

Paragraph 5.

6. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6.

7. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 7.

8. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 8.

9. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 9.

10. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 10.

11. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 11.

12. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 12.

13. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the

averments of Paragraph 13.

14. The McKinneys, Bowling, and Brown deny the averments of Paragraph 14.

15. The McKinneys, Bowling, and Brown deny the averments of Paragraph 15.

16. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 16.

17. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 17.

18. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 18.

19. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 19.

20. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 20.

21. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 21.

22. The McKinneys, Bowling and Brown are without knowledge

or information sufficient to form a belief as to the truth of the averments of Paragraph 22.

23. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 23.

24. The McKinneys, Bowling and Brown deny the averments of Paragraph 24.

25. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 25.

26. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the averments of Paragraph 26.

27. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the averments of Paragraph 27.

28. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the averments of Paragraph 28.

29. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the averments of Paragraph 29.

30. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the



averments of Paragraph 30.

31. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the averments of Paragraph 31.

32. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the averments of Paragraph 32.

33. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the averments of Paragraph 33.

34. The McKinneys, Bowling and Brown admit the averments of Paragraph 34.

35. The McKinneys, Bowling and Brown deny the averments of Paragraph 35.

36. The McKinneys, Bowling and Brown admit the averments of Paragraph 36.

37. The McKinneys, Bowling and Brown admit the averments of Paragraph 37.

38. The McKinneys, Bowling and Brown admit the averments of Paragraph 38.

39. The McKinneys, Bowling and Brown admit the averments of Paragraph 39.

40. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the

averments of Paragraph 40.

41. The McKinneys, Bowling and Brown are without knowledge or information sufficient to form a belief as to the truth the averments of Paragraph 41.

42. The McKinneys, Bowling and Brown deny the averments of Paragraph 42.

43. The McKinneys, Bowling and Brown deny the averments of Paragraph 43.

44. The McKinneys, Bowling and Brown deny the averments of Paragraph 44. In particular, the McKinneys, Bowling and Brown deny that they caused any injury or other damages to Forster or the McCoys, deny they are liable to Forster or the McCoys for any amount, and deny that Forster or the McCoys are entitled to the relief sought against them.

45. The McKinneys, Bowling and Brown deny the averments of Paragraph 45.

46. The McKinneys, Bowling and Brown deny the averments of Paragraph 46.

#### AFFIRMATIVE DEFENSES

1. Petitioner's claim is barred by the statute of limitations.

2. Petitioner's request for relief is barred by laches.


3. Petitioner's claim is barred by the doctrine "Uncleaned Hands" in that Petitioner allowed respondents to develop the

real estate and now seeks to take advantage of that situation.

4. The "mobile homes", described in the original deeds prohibiting such, are not the same structures on the lot owned by McKenney, Bowling and Brown.

5. The McKinneys, Bowling and Brown will rely on all available defenses shown by the evidence from pretrial discovery or trial.

WHEREFORE, respondents pray this Honorable Court dismiss this action and allow them their costs and pray they be awarded other relief as equity requires.



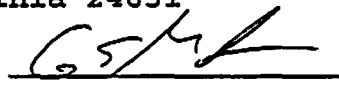
Counsel

Gregory S. Matney  
KATZ, KANTOR, PERKINS & CAMPBELL  
Attorneys At Law  
996 Ben Bolt Avenue  
Tazewell, Virginia 24651  
Virginia State Bar 28001  
(540) 988-6554

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 1999, I mailed a copy of the attached Answer to:

Mr. James Henderson, Esq.  
Post Office Box 843  
Tazewell, Virginia 24651

  
Gregory S. Matney

021086

ORIGINAL

VIRGINIA

IN THE CIRCUIT COURT FOR TAZEWELL COUNTY

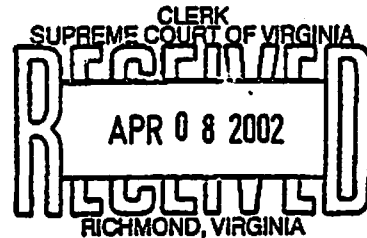
RICHARD A. FORSTER,  
CHARLES C. MCCOY  
and  
LISA C. MCCOY

Plaintiffs

v.

JAMES S. HALL, JOYCE S. HALL  
DAVID WAYNE MCKINNEY,  
EVA SUE MCKINNEY,  
STEPHANIE BOWLING  
and MARGARET BROWN

Defendants



CHANCERY NUMBER 99-51

Received from Notary Public and Recd  
in the Clerk's Office.

*November 29 2000*  
Time *9:53 A.M.*  
*Betty D. McNeely* Deputy Clerk

Thursday November 16, 2000  
Tazewell, Virginia

TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL

The above-entitled matter came to be heard before The Honorable  
Keary R. Williams, Judge of the Twenty-Ninth Judicial Circuit at the  
Courthouse, Tazewell, Virginia convening at the hour of 10:13 a. m. when  
there were present on behalf of the respective parties:

APPEARANCES:

For the Plaintiffs:  
JAMES R. HENDERSON, IV, ESQUIRE

For the Defendants,  
STEPHEN E. AREY, ESQUIRE  
GREGORY S. MATNEY, ESQUIRE

LEGAL WRITERS COURT REPORTING

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PLAINTIFFS' WITNESS LIST

CARL CARTWRIGHT, JR.:

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CHARLES CLIFFORD MCCOY, JR.:

DIRECT BY MR. HENDERSON - PAGE 77

CROSS BY MR. AREY - PAGE 91

CROSS BY MR. MATNEY - PAGE 106

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RE-CROSS BY AREY - PAGE 114

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RICHARD A. FORSTER:

DIRECT BY MR. HENDERSON - PAGE 120

CROSS BY MR. AREY - PAGE 131

CROSS BY MR. MATNEY - PAGE 141

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RE-CROSS BY MR. AREY - PAGE 154

GEORGE STEVEN YOST:

DIRECT BY MR. HENDERSON - PAGE 158

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CHARLES BALDWIN:

DIRECT BY MR. HENDERSON - PAGE 197

NO CROSS - PAGE

RAY STURGILL:

DIRECT BY MR. HENDERSON - PAGE 203

CROSS BY MR. AREY - PAGE 206

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RE-CROSS BY MR. AREY - PAGE 214

1 JAMES A. HALL:  
2 DIRECT BY MR. HENDERSON - PAGE 216  
3 CROSS BY MR. AREY - PAGE 218  
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5 RE-CROSS BY MR. AREY - PAGE 222  
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8 LARRY DEAN JOHNSON:  
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12  
13 LISA COLLINS MCCOY:  
14 DIRECT BY MR. HENDERSON - PAGE 232  
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**DEFENSE WITNESS LIST**

DALE WHITE:

DIRECT BY MR. AREY - PAGE 255

CROSS BY MR. HENDERSON - PAGE 261

THOMAS WALK:

DIRECT BY MR. AREY - PAGE 265

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DAVID MCKINNEY:

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STEPHANIE BOWLING:

DIRECT BY MR. MATNEY - PAGE 294

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MARGARET BROWN:

DIRECT BY MR. MATNEY - PAGE 307

CROSS BY MR. HENDERSON - PAGE 313

COURT VOIR DIRE - PAGE 314

JOYCE HALL:

DIRECT BY MR. AREY - PAGE 320

CROSS BY MR. HENDERSON - PAGE 339



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**EXHIBIT LIST**

**MARKED**

**ADMITTED**

**PLAINTIFFS**

**20**

**110  
(88 previously  
marked)**

**DEFENSE**

**22**

**7**

\* \* \*

1 going to be damaged by these manufactured homes as  
2 opposed to how these families are going to be  
3 damaged if this Court requires them to remove the  
4 homes from their property. Thank you.

5 THE COURT: Thank you. Plaintiff  
6 call its first witness?

7 MR. HENDERSON: Carl Cartwright, Jr.

8 THE COURT: Mr. Cartwright, would you  
9 face the Clerk here on my left, raise your right  
10 hand, and be sworn.

11 WITNESS SWORN

12  
13 DIRECT EXAMINATION BY MR. HENDERSON

14  
15 CARL CARTWRIGHT, JR., a witness, who, after  
16 having been duly sworn was examined and testified  
17 as follows:

18 Q. Your name is Carl Cartwright, Jr.?

19 A. Yes.

20 Q. And you were a member of the Goose Creek  
21 Partnership?

22 A. One of the partners. Yes.

23 Q. Okay. Would you tell the Court who was  
24 the Goose Creek Partnership and why it was formed?

25 A. The, the other partners?

1 Q. Right.

2 A. James R. Lindsey, Lindsey, John York  
3 Lindsey, H. B. Lindsey, Ira C. Ratliffe and of  
4 course, myself.

5 Q. And what was your position with the  
6 Partnership?

7 A. Well I was a, had power of attorney to  
8 sell the tracts. Me and John York Lindsey.

9 Q. Okay.

10 A. Either one of us.

11 Q. Now did you actually get out and sell  
12 tracts of land in Goose Creek Estates?

13 A. Yes.

14 Q. You and John York Lindsey, were you the  
15 only two?

16 A. Of the partners that sold any?

17 Q. Yes.

18 A. Of the partners. Yes.

19 Q. Okay. Were you authorized to act on  
20 behalf of the partnership in selling these  
21 properties?

22 A. Yes.

23 Q. And to deal with people who were looking  
24 at them?

25 A. Yes.

1 Q. How did the partnership go about surveying  
2 and dividing up the property?

3 A. We hired, got the engineering firm out of  
4 Blacksburg. I'll think of it in a minute.

5 Q. Was it Draper Aden?

6 A. Draper Aden. Yes. Draper Aden to, to, to  
7 survey the thing.

8 Q. And what did they do for the partnership?

9 A. Well they divided into, into tracts and  
10 lots.

11 Q. Now, I understand that you had five  
12 sections, all of which were sections of Goose  
13 Creek Estates?

14 A. That's right.

15 Q. And three of those sections, Sections 1,  
16 2, and 3 all consisted of lots of five acres or  
17 greater?

18 A. I believe that's right. I believe.

19 Q. And two of them, Sections 4 and 5, had  
20 some lots that were of less than five acres?

21 A. Yeah. That's the ones along the Whitley  
22 Branch Road.

23 Q. Okay. And Section 3 also had some public  
24 road frontage, did it not?

25 A. Section 3, let's see. I don't, I'm not,

1 can't remember where three was.

2 Q. Let me refresh your recollection by  
3 showing you a copy of that plat. If I can direct  
4 your attention----

5 A. Tell me where it is.

6 Q. This Section 3. And, did it not have a  
7 little bit of frontage along Highway 645?

8 A. Section 3. I don't remember which one  
9 that is.

10 Q. Okay. That's everything on this plat.

11 A. I'm not, where is, this 645 goes across?

12 Q. Uh-huh. [Yes]

13 A. Okay. This is across the hill, isn't it?

14 Q. Right.

15 A. Okay. Now ask me your question again?

16 Q. The, Section 3, which is what is shown----

17 A. Yeah.

18 Q. ----on this plat also, had some frontage  
19 on a public road?

20 A. Yes, yes. Okay. Yeah.

21 Q. But it wasn't enough frontage to divide up  
22 into smaller lots, was it?

23 A. Well, now I can't answer that. We turned  
24 it over to Draper-Aden and they, they divided the  
25 thing.

1 Q. Okay.

2 A. We didn't...

3 Q. And you subsequently had some of these,  
4 two of these plats four and five approved by the  
5 planning commission?

6 A. Yeah. And the, yeah. Best of my, I  
7 remember. I think that's right.

8 Q. And that was because of the smaller lots,  
9 was it not? Had to be approved.

10 A. Well, I think at the time we recorded the  
11 last one, the latter part of the year, of the time  
12 we owned the thing. I think that's right. Mr.  
13 Lindsey, Mr. Lindsey handed, handled most of that  
14 part of the thing and I'm really not plum [as  
15 spoken] familiar with it.

16 Q. Okay. Now, once these plats were  
17 recorded, you went about selling properties there?

18 A. Yes.

19 Q. And you sold properties in all five of  
20 these sections simultaneously, did you not?

21 A. We offered them all for sale at any time.

22 Q. So, when somebody came to you looking for  
23 property in Goose Creek Estates, there was no  
24 distinction drawn between Section 1, or Section 2,  
25 or Section 3, or Section 4, or Section 5, was

1       there?

2           A.   I don't think so. I think a part of, one  
3 of those sections we, that they hadn't set the  
4 corners and actually been divided. I think  
5 there's a, the, I don't remember the name,  
6 remember the section. Maybe five.

7           Q.   Uh-huh. [Yes] Well, of course, you're  
8 familiar with the properties that we're here about  
9 today being in Section 4?

10          A.   Yes.

11          Q.   You recall those?

12          A.   Yes.

13          Q.   And I'd like to draw your attention to  
14 Plaintiffs' Exhibit "6" and show you a copy of  
15 that. This is a parcel. It was sold on May 4th,  
16 1979 to Steven Robert Barrett and wife?

17          A.   Uh-huh. [Yes]

18          Q.   And this was Section 4, Lot 6, was it not?  
19 If you read the description down there?

20          A.   Well, I'm sure if it's in the description,  
21 it's right to the deed. I assume that's right.

22          Q.   Okay. And if you look on Page 3, that  
23 contains the restriction against mobile homes?

24          A.   On this lot. Yes.

25          Q.   Yes. Okay. This was the first lot sold

1 in Section 4?

2 A. Well, I can't remember. It could be. I  
3 don't remember. There was four or five of them  
4 there. I.....

5 Q. And it contained a statement that said  
6 "properties conveyed subject to the following  
7 restrictions and covenants that no mobile homes,  
8 either single or double-wide, may be parked and/or  
9 erected on the property". Is that correct?

10 A. On that, on that lot. Yes.

11 Q. Okay. And, let me then draw your  
12 attention to Plaintiffs' Exhibit "7" which is an  
13 attested copy of a deed dated May 15, 1979 to  
14 William R. Barrett and wife.

15 A. Uh-huh. [Yes]

16 Q. And that's for Section 4, Lot 5 which is  
17 next lot sold in Section 4?

18 A. I think that's right.

19 Q. Is that correct?

20 A. I think that's right. Uh-huh. [Yes]

21 Q. And on Page 3 that also contains a  
22 restriction against mobile homes, does it not?

23 A. Well, I'd have to search it out.

24 Q. Well, let me help you. It's usually on  
25 the same spot there on Page 3.



1 A. Yes, sir. On that, on that lot. Yes.

2 Q. Okay.

3 A. That's the way we handled it.

4 Q. And if I may draw your attention to  
5 Plaintiffs' Exhibit "11" which is a deed dated,  
6 recorded September 18, 1979, and that's to Wayne  
7 D. Brewster and wife.

8 A. Uh-huh. [Yes]

9 Q. Excuse me. To David Lee Hickman, Jr.,  
10 Exhibit "11".

11 A. Okay, yeah.

12 Q. And that is for Section 4, Lot 4.

13 A. I think that's right.

14 Q. And at the bottom of Page 2 it also  
15 contains the covenant against----

16 A. Mobile---

17 Q. ----mobile homes.

18 A. That's right.

19 Q. So----

20 A. Exactly right.

21 Q. ----when you sold Lots 4, 5, and 6, they  
22 all contained the covenant. Is that correct?

23 A. In those, those five lots there. Yes.

24 Q. Okay. And let me direct your attention  
25 next to, that covers Lots 4, 5, and 6. This is

1 Exhibit "10". This is a deed, this is the deed  
2 dated September 18, 1979 to Wayne D. Brewster and  
3 wife.

4 A. Uh-huh. [Yes]

5 Q. And that includes a sale of Section 4,  
6 Lots 7 and 8. And then part of Section 1, Lot 36.

7 A. Yeah. I think that's right

8 Q. And----

9 A. That's right.

10 Q. ----starting at the bottom of Page 2 and  
11 going over to Page 3 that contains the covenant  
12 against mobile homes?

13 A. Right. That's right.

14 Q. So that covenant applied then to Lots 4,  
15 5, 6, 7, and 8?

16 A. Yeah. There was five lots there.

17 Q. And when you sold that, those two lots to  
18 Mr. Brewster and his wife, you also sold him a  
19 piece of a lot in Section 1?

20 A. That's right.

21 Q. They, they're contiguous. They come  
22 together, correct?

23 A. Right.

24 Q. So you, you allowed him to buy that piece  
25 of Lot 36?

1           A. Right. I've forgotten what, there's  
2 something about the survey. I can't remember what  
3 it was, but.

4           Q. Uh-huh. [Yes]

5           A. But I don't remember what the problem was.

6           Q. So not only is there no distinction  
7 between 4 and 1, he was able to buy a piece of 1  
8 to go with his lots in Number 4, wasn't he?

9           A. Yes. Yes, that's right.

10          Q. Now, there were a total of eight lots in  
11 Section 5. Is that correct?

12          A. Well I, I, I honestly can't remember.

13          THE COURT:                   In Section 5, did you  
14 say?

15          MR. HENDERSON:               Excuse me, Your Honor.  
16 Section 4.

17          THE COURT:                   Okay.

18          THE WITNESS:                See there was five lots  
19 there and what? Two tracts? Is that right.

20          Q. (Mr. Henderson continues)   Let's, let  
21 me show you a copy of Plaintiffs' Exhibit "4".  
22 It shows the larger tracts being 1, 2, and 3.  
23 Then the smaller tracts being 4, 5, 6, 7, and 8.

24          A. Yeah. This is the, okay. Okay. I think  
25 that's right.

1 Q. So, at that point----

2 A. These are the tracts that we're, the  
3 Brewster and Hall tracts?

4 Q. Right.

5 A. Okay. All right. Right.

6 Q. So, at that point in time, you had sold,  
7 and this is very early, you had sold 4, 5, 6, 7  
8 and 8?

9 A. Right. Those lots.

10 Q. And the three larger tracts were what was  
11 left at that point?

12 A. That's right.

13 Q. And 4, 5, 6, 7, and 8 all had a  
14 restriction against mobile homes in there?

15 A. These five?

16 Q. Yes.

17 A. Yes.

18 Q. Okay. Now----

19 A. The other three hadn't been recorded at  
20 that time.

21 Q. According to the, the deeds that are in  
22 evidence the lot sold to Mr. Hall, he bought  
23 Section 4, Lot 3 in 1994 and that is Exhibit "72".  
24 It will take me a second to pull that out. Let me  
25 direct your attention to Exhibit "72". And that's

1 the sale of----

2 A. Mr. Hall's lot, tract.

3 Q. Right.

4 A. First tract.

5 Q. That's to Mr. and Mrs. Hall?

6 A. Right. First tract they bought.

7 Q. First tract they bought? That contains a  
8 restriction against mobile homes, also.

9 A. Yes. It does.

10 Q. Okay.

11 A. Yes. It, yes. It does.

12 Q. So from 1979 through 1994 then all of  
13 tracts in that Section 4 had been sold with that  
14 same restriction against mobile homes?

15 A. Right. Right.

16 Q. Now, that left two tracts in Section 4.  
17 Is that correct?

18 A. That's correct.

19 Q. Number 1 and Number 2. And do you recall  
20 if Number 2 is the one that was sold to Mr. and  
21 Mrs. Hall?

22 A. Well I, I'm not sure about the number, but  
23 we sold them one of those tracts.

24 Q. Okay. And do you recall when you were  
25 approached by them about that tract, near the time

1 of the auction?

2 A. Now, this the first tract they bought or  
3 thee second?

4 Q. The second tract.

5 A. Do I recall what, now?

6 Q. That they talked to you about buying-----

7 A. Oh, yeah.

8 Q. ----that certain tract?

9 A. Yeah.

10 Q. And what did they ask you?

11 A. I can't remember that conversation in  
12 particular. They've all----

13 Q. Do you recall----

14 A. Excuse me. Go ahead.

15 Q. I'm sorry. I didn't mean to step on your  
16 answer. Do you recall whether or not they asked  
17 anything about restrictions against mobile homes?

18 A. Yes. I think, yeah. I think they did.  
19 Yes.

20 Q. And what did they ask about?

21 A. Well I can't remember the exact words or  
22 they wanted to, they wanted to buy a tract of land  
23 without the restrictions.

24 Q. Did you, did you agree to sell it----

25 A. Yes, sir. We did.

1 Q. Without restrictions?

2 A. That was our privilege and we certainly  
3 did.

4 Q. And that was in 1996, was it not?

5 A. I think that's right.

6 Q. That's the first time a tract was soled in  
7 Section 4 without that restriction?

8 A. That's right.

9 Q. And then the second time was in 1996 later  
10 on, when the last tract was sold to the McKinneys?

11 A. That's right.

12 Q. And did they come and discuss that with  
13 you?

14 A. Yes.

15 Q. And do you recall them discussing anything  
16 about mobile homes?

17 A. Well, I'm sure it, we, I'm sure that we  
18 did.

19 Q. Okay.

20 A. They wanted, they wanted a tract without  
21 restrictions and we sold it to them.

22 Q. Now did you advise them at that time that  
23 there were restrictions on other tracts in the  
24 subdivision?

25 A. Well I feel like I did. I'm sure I did or

1 I think I did. I can't remember for sure, though.

2 Q. But you agreed to drop that restriction in  
3 the property they were buying?

4 A. Oh, yes, sir. We didn't have to drop it.  
5 We didn't put it on it.

6 Q. Okay. And with regard to the other tracts  
7 where the restriction against mobile homes is not  
8 included. It is in evidence, and the deeds will  
9 show those are Plaintiffs' Exhibit "20", which was  
10 a sale of Lot 1 in Section 1 to Wayne Brewster.  
11 Do you recall that sale?

12 A. Well, yes. I, I guess.

13 Q. Do you know of any reason why that  
14 provision against mobile homes was not included in  
15 that sale?

16 A. In which, which one, now?

17 Q. That's Wayne Brewster. That's February  
18 9th, 1981 Lot 1 of Section 1.

19 A. And, and do, did I recall what, now?

20 Q. Why that provision was not included in the  
21 deed?

22 A. No. I don't.

23 Q. There was no discussion that you recall  
24 with Mr. and Mrs. Brewster about intentionally  
25 leaving it out, was there?



1           A. No. Not that I remember.

2           Q. The next one would be Plaintiffs' Exhibit  
3 "21", and that was a sell to Leelan Vaughn and his  
4 wife, Section 2 Lots 12 and 13 and that was April  
5 8, 1981 and the provision was omitted from those.  
6 Do you recall why that was omitted from those  
7 lots?

8           A. No. I don't.

9           Q. Now Mr. Vaughn bought a number of lots  
10 over the years?

11          A. Yes. He did.

12          Q. And, and most of those lots included the  
13 provision?

14          A. I, yes. I thought they all did.

15          Q. Okay. The next one where there are no,  
16 where the mobile home covenant has been omitted is  
17 Plaintiffs' Exhibit "29", which is in Section 5.  
18 That was a sale to C. G. Tullock in 1982. Do you  
19 recall that sell?

20          A. Well I, well my father made that sell, but  
21 I----

22          Q. Okay. So you don't personally know about  
23 the sell. Just that your father made it?

24          A. Well I, I know, what do you mean "know  
25 about it"?

1 Q. You didn't, you didn't handle it yourself?

2 A. No. I didn't actually handle it. I  
3 probably signed the deed. Me or Mr. Lindsey, one.

4 Q. Okay. You didn't have any discussions  
5 directly with Mr. Tullock about purchasing that  
6 lot?

7 A. No.

8 Q. The next one would be Plaintiffs' Exhibit  
9 "34", a sell----

10 A. There was two, excuse me, there was two  
11 lots that Mr. Tullock bought.

12 Q. See it says "Section 5, Lots 3 and 4".  
13 Okay. You're memory is correct there.  
14 Plaintiffs' Exhibit "34"----

15 A. And we didn't restrict those.

16 Q. ----was a sell to Hubert Douglas Adair.

17 A. Uh-huh. [Yes]

18 Q. Section 2, Lot 7, and that was in March of  
19 1985. Do you recall anything about that?

20 A. Yes.

21 Q. And what do you recall about that one?

22 A. What do you mean what do I recall, now?

23 Q. Anything to do with the mobile homes.

24 A. I think, I don't think we put restrictions  
25 on it I don't think.

1 Q. Any particular reason why you didn't?

2 A. Well it was our privilege.

3 Q. Well, wasn't that something that you all  
4 discussed with Mr. Adair or?

5 A. Yes. Yes.

6 Q. Did you have, did you take part in that  
7 discussion yourself?

8 A. Yes. I was one of them, yes. Me and my  
9 father.

10 Q. Okay. And so you omitted the restrictions  
11 on lots in Section 1, Section 2, Section 5, and  
12 again in Section 2 over a period of years from  
13 1979 to 1985. Is that correct?

14 A. I, I guess that's right.

15 Q. Beginning with Plaintiffs' Exhibit "35",  
16 which is a deed to Alderson Lambert and wife,  
17 October 8, 1985, the deeds in evidence do not show  
18 any without that restriction until the sale to Mr.  
19 Hall in 1996.

20 A. That may be right.

21 Q. So they were included in all those sales  
22 from October of 1985 through the one proceeding  
23 Mr. Hall to be Roger Robinette in May of 1996?

24 A. You're going to have to ask me that again.  
25 I didn't quite follow what you----

1 Q. For that period of eleven years, there  
2 were no deeds given which omitted that  
3 restriction?

4 A. It could have been. I can't remember, but  
5 you very will be right.

6 Q. During that period of time, you sold lots  
7 in Section 1, Section 2, Section 3----

8 A. I'm sure all over the subdivision----

9 Q. ----Section 4----

10 A. ----I'm sure.

11 Q. ----and Section 5?

12 A. I assume that's right.

13 Q. Now, you've got a sale, for example, to  
14 Charlotte Harman Puckett, that's Exhibit "70",  
15 Section 5, Lot 11 which contained the restriction.

16 A. That's right. We restricted them on the  
17 sale.

18 Q. Now when those restrictions were typed  
19 into the deeds they changed a little bit over the  
20 years. There was a, a later restriction that was  
21 more lengthy. Do you have any idea why that was  
22 done?

23 A. Which deed you talking about? I....

24 Q. Well Exhibit "41" which is the deed to  
25 William R. Stevenson in 1988, the wording was a

1 little bit different. It, it included some  
2 language about enforceability of the other people  
3 in the subdivision?

4 A. We, we would call our attorney, Mr.  
5 Harman, whoever was preparing the deed and tell  
6 him whether to restrict them, or put the mobile  
7 home restriction in or not and he did all the  
8 language and I, I'm not familiar with----

9 Q. That's the language that he chose?

10 A. Yes. He chose it all. I couldn't do it.

11 Q. Now when, when he was writing these deeds,  
12 he would use the same language in a deed when they  
13 were restricting mobile homes regardless of  
14 whether it was Section 1, Section 2, Section 3,  
15 Section 4, or Section 5?

16 A. Well, I guess that's right. I guess  
17 that's right.

18 Q. Other than the change that occurred over  
19 time, do you know of any differences in the  
20 wording among those sections?

21 A. Gosh, that's been so long. I, I couldn't  
22 answer that. I don't----

23 Q. Well----

24 A. Could be.

25 Q. ----we've looked at the----

1           A. I can't remember those deeds.

2           Q. We've looked at the wording in Section 4  
3 in Exhibits "6" and "7". Let's look at Exhibit  
4 "8" which is a deed in Section 1 and let me draw  
5 your attention----

6           A. You go ahead and just read it to me.

7           Q. ----to Page 3. Where it is, "said  
8 property is conveyed subject to the following  
9 restrictions and covenants to no mobile homes,  
10 either single or double-wide shall be parked  
11 and/or erected on the property". That's  
12 essentially the same as what you said in Section  
13 4, isn't it?

14          A. As I told you, Mr. Henderson, we left it  
15 all up to Mr. Harman to put that language in there  
16 and I, that's what we did.

17          Q. Now do you recall the, the total number of  
18 parcels that you sold in the subdivision over the  
19 years?

20          A. All of them. Ever how many was there.  
21 I don't remember how many was there. We sold them  
22 all.

23          Q. Okay. And would you accept my count of a  
24 hundred and thirteen. Does that sound----

25          A. If you say so I, I'll accept that.

1 Q. And when you count all the deeds where  
2 there were no restrictions there were a total of  
3 eight parcels. Is that right?

4 A. I'll take your word for it.

5 Q. So a hundred and five were restricted?

6 A. I assume that's right.

7 Q. Okay.

8 A. If you're, if we don't have to recount..

9 Q. Well, let's not recount. They're doing  
10 that in Florida as we speak.

11 THE COURT: Not doing it very well,  
12 either.

13 MR. HENDERSON: That's all I have on  
14 direct of Mr. Cartwright, Judge.

15 THE COURT: Cross-examine, Mr. Arey?

16  
17 CROSS-EXAMINATION BY MR. AREY

18  
19 Q. Mr. Cartwright, in examining the records  
20 and, and maybe you remember, maybe you don't. Do  
21 you need to take a break?

22 A. No. I'm all right. Thank you.

23 Q. Okay. It appears that Sections 1, 2, 3---  
24 - 1 through 3 which is the five acre lots. That's  
25 the area you live in, isn't it?

1 A. Yes.

2 Q. That was platted in early January 1989, or  
3 excuse me, '79?

4 A. I assume that's right.

5 Q. Okay. And then there were two other plats  
6 for Section 4 and 5 that were platted in February.  
7 Those are the ones on Whitley Branch Road?

8 A. I, I assume that's right.

9 Q. Okay. And with regard to the ones on  
10 Whitley Branch Road, did you have to get  
11 subdivision approval for those?

12 A. Just, just on the ones that which,  
13 McKinneys the last, those five-acre tracts down  
14 there in that Section 4 or whatever it is.

15 Q. Okay. And----

16 A. The rest of them, we didn't.

17 Q. ----but Section, that's, so Sections 1, 2,  
18 and 3, you didn't have to because they were five-  
19 acre lots?

20 A. That's right.

21 Q. And they were on a private road?

22 A. That's right.

23 Q. Whereas four and five were on the public  
24 road and were smaller than five acres?

25 A. Yes.



1 Q. Okay. And, and they were, they were  
2 actually approved and filed at different times.  
3 Is that right?

4 A. I think that's right.

5 Q. Okay. Now, you sold lots in the  
6 subdivision and there are a number of deeds that  
7 had various restrictions, descriptions of  
8 restrictions against single-wide or double-wide  
9 homes?

10 A. Yeah.

11 Q. Did you all, when you went into this, have  
12 any plan about that?

13 A. Our plan was to sell the land.

14 Q. Whatever it took to sell the land?

15 A. That's right.

16 Q. Now----

17 A. We wanted to sell it.

18 Q. ----you were able to put a lot of  
19 restrictions on the land?

20 A. That's right.

21 Q. Initially it looks like, and Mr. Henderson  
22 went through a number of deeds, early deeds, early  
23 deeds with you. You did not have those  
24 restrictions in there?

25 A. Now, what was the question?

1           Q. Initially, some of the early deeds, you  
2 talked about the one to your father's for Leelan,  
3 that your father sold to Mr. Tullock and Leelan  
4 Vaughn, you didn't have this restriction?

5           A. No. There, no. We didn't have  
6 restrictions, you know. No.

7           Q. Okay. And why didn't you have it in  
8 there?

9           A. That was our privilege.

10          Q. Okay. And there at the end you sold a  
11 couple without the restrictions?

12          A. That's right.

13          Q. And actually the McKinneys' was the last  
14 one you sold, wasn't it?

15          A. That's right.

16          Q. You'd had that at auction and you couldn't  
17 sell it at the auction?

18          A. That's right.

19          Q. Okay. And with regard to the Hall and  
20 McKinneys', did you feel like you could sell them  
21 without the restrictions?

22          A. Certainly.

23          Q. Did you give any instruction to Mr. Harman  
24 as to what specific language should go in the  
25 restrictions?

1           A. No. We told, we told him to put the  
2 mobile home restriction in or not to put it in.  
3 That's all we ever told him.

4           Q. And----

5           A. He drew, he, he put the language to the  
6 rest of it.

7           Q. Are you surprised to learn that the  
8 language varied from deed to deed?

9           A. Well, I wasn't aware that it did.

10          Q. Okay.

11          A. Except for that, the restrictions.

12          Q. Okay. Now, the property you sold to Mr.  
13 and Mrs. Hall, that was property sold before your  
14 auction. I think that was June of the 1st, 1996?

15          A. Yeah. Before the auction. Yeah.

16          Q. You made your deal with them before the  
17 auction?

18          A. Yes.

19          Q. Did, and you say they came and asked you  
20 that there be no restriction on it? On that  
21 parcel?

22          A. I don't know that they, that they asked me  
23 not to put it on there. I can't remember the  
24 exact conversation.

25          Q. Okay.

1 A. But we did not restrict it.

2 Q. You did not restrict it?

3 A. We did not restrict it.

4 Q. But you don't remember what they said?

5 A. I don't remember exact words. No. I do  
6 not.

7 Q. And you felt you could do that because  
8 that was your privilege?

9 A. That's right. We, that's right.

10 Q. With regard to when you were asking that  
11 there be no mobile homes or, or single-wide or  
12 double-wide trailer on the property. What were  
13 you thinking of? What type of, of homes would  
14 those be on the property?

15 A. That we, that we didn't restrict?

16 Q. That you didn't want on the property.

17 A. We didn't want the, the ones with the, the  
18 tongues sticking out and the wheels hanging,  
19 hanging down. We didn't want that.

20 Q. Flat roofs, things like that, the old  
21 style?

22 A. No. We didn't want that. No.

23 Q. Okay. But you did al, you did remove the  
24 restrictions in some cases?

25 A. Oh, yes. Yes.

1 Q. And, in fact, wasn't a mobile home put on  
2 your property, on one of those properties?

3 A. Yes.

4 Q. Did Mr. Tullock put one on it?

5 A. Been there for years.

6 Q. Do you recall if you ever told Mr. and  
7 Mrs. Hall that the lots over in Section 4 or 5 did  
8 not have to be restricted?

9 A. That they did not have be?

10 Q. Yes, sir.

11 A. Well, I don't know if we told them that it  
12 didn't have to be, but we had the privilege of  
13 restricting them or not.

14 Q. Okay.

15 A. I, I can't remember that.

16 Q. You have seen these, the homes that the  
17 Halls and McKinneys have, that their children have  
18 on the property, haven't they?

19 A. Yes.

20 Q. And the original concept of not having a  
21 single-wide or double-wide, which you explained,  
22 are these homes different than that?

23 A. Well they, yes.

24 Q. How are they----

25 A. No, there's no tongues sticking out and

1 they're all underpinned and, and....

2 Q. Do those homes look like the homes that  
3 are in that area in Section 4 of the subdivision?

4 A. The homes in Section----

5 Q. The, the, the McKinnneys' ----

6 A. Yes. Yes.

7 Q. ----children home and the Halls' children  
8 home, are they akin to, do they look like homes  
9 in, over in Section 4?

10 A. Now, which is Section 4? I don't-----

11 Q. That's the one, Whitley Branch Road. I'm  
12 sorry. Do they look like the other homes over  
13 there?

14 A. Similar, yes.

15 Q. Uh-huh. Are they, do they look like the  
16 homes, some of the homes in the rest of the  
17 Section 1 through 3 where you live?

18 A. Well, some of them.

19 Q. Okay.

20 A. Some of them. Not all of them, but some.

21 Q. But they were, but those type homes that  
22 they've put in now, the manufactured homes they've  
23 put in now. Are not what you were thinking about  
24 when you had Mr. Harman put restrictions on other  
25 lots?

1           A. That's right.

2           Q. I think I mentioned the McKinneys was the  
3 very, is the very last lot you all sold?

4           A. That's right.

5           Q. You don't own any more property over  
6 there?

7           A. No. Goose Creek doesn't. I do. I...

8           Q. I'm sorry. Goose Creek does not.

9           A. Yeah. I live there.

10          Q. You do? That's right. I'm sorry.

11          A. I bought a tract.

12          Q. It was ya'll's practice in, in selling  
13 lots over there, and I think you said you were  
14 just there to sell property?

15          A. That's right.

16          Q. That you would take little parcels or  
17 pieces from one lot or tract and put it with  
18 another one if that's what the person wanted?

19          A. Well if it didn't interfere with the five  
20 acre thing. I think that's the reason we did that  
21 once. I'm sure it was, but as I said before, Mr.  
22 Lindsey had, handled most of that part of the  
23 thing and I'm not familiar. But I'm sure that's,  
24 I, I, yes. I'll say, yes.

25          Q. And ya'll have had some survey problems

1 over there, too that you've had to correct?

2 A. Oh, God, yes. Yes.

3 Q. When Mr. Henderson was asking you about  
4 some of the specific lots you've sold that did not  
5 have, or you or your father, or whoever sold that  
6 didn't have the restriction in, especially the  
7 early ones. The one to Mr., to Leelan Vaughn and  
8 some of those early ones, are you saying that you  
9 just don't really remember those sales?

10 A. Well, what do you mean, remember them?

11 Q. You don't recall any discussions that were  
12 made at the time these sales occurred some twenty  
13 years ago?

14 A. No. I don't.

15 Q. Would it be fair to say that you sold  
16 seventy or eighty parcels over there?

17 A. I'd say between my father and myself, yes.

18 Q. And I suspect that you can't remember the  
19 specifics of each discussion?

20 A. No----

21 Q. On the sale of the parcels?

22 A. ----definitely not. Some of them I just  
23 signed the deed and didn't look at it.

24 MR. AREY: That's all I have for Mr.  
25 Cartwright.



1 MR. MATNEY: Very briefly, Your Honor.

2  
3 CROSS-EXAMINATION BY MR. MATNEY  
4

5 Q. Mr. Cartwright, you've gone by the homes  
6 we're discussing? The manufactured homes?

7 A. Yes.

8 Q. You gone by there lately?

9 A. Well, no. I haven't. Well, what do, I  
10 don't know what you mean lately.

11 Q. When's the last time you went by there?

12 A. Maybe in the last month or sometime.

13 Q. Okay.

14 A. I can't remember.

15 Q. Where are those manufactured homes in  
16 relation to the subdivision? Are they in the  
17 middle? On the edge?

18 A. Well, they're on the outer edge.

19 Q. And----

20 A. On the state maintained road there.

21 Q. Is there----

22 A. Whitley Branch.

23 Q. And this property's not level?

24 A. No, no. It's not. Hardly any of Goose  
25 Creek's level.

1 Q. Okay. Hardly any of Tazewell County's  
2 level, is it?

3 A. That's right. There's five sides of  
4 mountains in the six hundred acres.

5 Q. Now as far as those manufactured homes,  
6 the, is there a, is there a hillside behind them?

7 A. I call it a mountain.

8 Q. Okay. Is, is that mountain, does that  
9 mountain behind them separate the property from  
10 the adjacent property?

11 A. I, ask me that, I didn't quite understand  
12 that question.

13 Q. Let me rephrase that. The property on the  
14 other side of the mountain, behind those  
15 manufactured homes. Can you see those  
16 manufactured homes from that property?

17 A. No. No.

18 Q. Can you see those manufactured homes from  
19 anywhere else in the subdivision except----

20 A. Nowhere except right in front of them.

21 Q. You know where Mr. Forster's tract is?

22 A. Yes. I do.

23 Q. And you know where Mr. and Mrs. McCoy's  
24 tract is?

25 A. Yes. I do.

1 Q. And can you see those manufactured homes  
2 from their tracts?

3 A. No.

4 Q. Mr. Arey asked you about a scheme of  
5 development. I think Mr. Henderson may have  
6 touched on it, also. Some of your deeds had  
7 restrictions in them against single and double-  
8 wide mobile homes. Is that right?

9 A. That's true.

10 Q. And some of those later deeds had  
11 restrictions against commercial property. You  
12 recall that?

13 A. No. I don't recall it. I, I certainly  
14 don't.

15 Q. Do you recall any deeds restricting  
16 commercial property from the subdivision?

17 A. No. I don't remember any.

18 Q. As a developer, would you believe that if  
19 a buyer bought a lot and put in a business that  
20 there would be any reason that buyer couldn't put  
21 a business in in that subdivision?

22 A. Well, no.

23 Q. So the lots are unrestricted as to that?

24 A. That's right.

25 Q. As far as the requirements for the types

1 of houses, was there a requirement of setback on  
2 the houses?

3 A. None whatsoever.

4 Q. Was there a requirement of types of fences  
5 that could be erected around the house?

6 A. None whatsoever.

7 Q. Was there a requirement of the style of  
8 the house that had to be----

9 A. None.

10 Q. ----put up?

11 A. Nothing.

12 Q. Was there a requirement on the value of  
13 the house?

14 A. Nothing.

15 Q. So potentially a person could buy a lot in  
16 the middle of the subdivision and put up a, for  
17 lack of a better word, a shack?

18 A. Whatever, yes.

19 Q. Did you seek any legal advice as to  
20 whether or not you could sell lots in that  
21 subdivision unrestricted as to manufactured  
22 housing?

23 MR. HENDERSON: Judge, I'm going to  
24 object on the grounds of hearsay.

25 MR. MATNEY: Judge, it goes to the

1 intent----

2 THE COURT: I'm going let him tell us  
3 whether he sought legal advice or not, but not  
4 what the advice was.

5 Q. (Mr. Matney continues) Mr. Cartwright, did  
6 you seek legal advice as to whether or not you  
7 could sell any of the lots without restriction as  
8 to manufactured housing?

9 A. Any of them?

10 Q. Yes, sir.

11 A. The last ones we did because our  
12 understanding that, that the had to go, be  
13 approved by the planning commission and health  
14 department. Those we did.

15 Q. And based upon----

16 A. None of the front, first ones.

17 Q. ----based upon the legal advice that you  
18 obtained, did you go ahead and sell those  
19 properties?

20 A. Yes.

21 Q. Without restrictions?

22 A. Yes.

23 Q. Now do you recall talking to Mr. McKinney  
24 before he bought that last tract?

25 A. Well, yeah. Yes. I'm sure I do.

1 Q. Okay. Do you recall him asking you  
2 whether or not that tract that he intended to buy  
3 was restricted as to manufactured housing?

4 A. He probably did. We sold him the tract  
5 unrestricted.

6 Q. Okay. When you sold him the tract  
7 unrestricted, did you, as a developer, have any  
8 reason to believe that he could not put up a  
9 manufactured housing on that lot?

10 A. No. As far as we knew, he could, but....

11 Q. You don't recall if you told him he was,  
12 could or could not?

13 A. No. I didn't tell him, we didn't tell  
14 anybody what they could do.

15 Q. How long have you lived in that  
16 subdivision?

17 A. How long have I actually lived there?

18 Q. Yes, sir.

19 A. Since 1986.

20 Q. And these manufactured homes have been up  
21 in this subdivision since about 1996, '97?

22 A. No. There's been some there since 1982.

23 Q. The ones we're concerned with today, the  
24 ones in Lots 1 and 2 of Section 4, the ones on the  
25 Whitley Branch Road.

1 A. Okay.

2 Q. They've been there for, what? Four years?

3 A. Well, I guess that's, I guess that's  
4 right.

5 Q. Do you believe, as a property owner in the  
6 Goose Creek Subdivision that those manufactured  
7 homes have hurt the value of your property?

8 A. None whatsoever.

9 MR. BUSH: Thank you, Mr.  
10 Cartwright.

11 THE COURT: Redirect?

12 MR. HENDERSON: Yes, Your Honor.

13

14 REDIRECT EXAMINATION BY MR. HENDERSON

15

16 Q. Mr. Cartwright, on cross-examination, Mr.  
17 Arey asked you about what you were talking about  
18 when you restricted mobile homes and you mentioned  
19 tongues, wheels, flat roofs and underpinning?

20 A. Yes.

21 Q. None of the restrictions in any of these  
22 deeds that are restricted say anything about  
23 tongues, or wheels, or flat roofs, or  
24 underpinning, do they?

25 A. I don't think so.

1 Q. You never told Jim Harman that he was  
2 writing these restrictions incorrectly or  
3 improperly, did you?

4 A. No. No, we didn't tell him.

5 Q. So what the partnership told him to put in  
6 there is what he put in? That didn't include any  
7 discussion of tongues, wheels, flat roofs, or  
8 anything else?

9 A. No. We told him to restrict, restrict,  
10 either put the mobile homes or not.

11 Q. Now you've, said you went by and looked at  
12 the homes that are at issue here. And these,  
13 these are the same things that people used to call  
14 double-wide mobile homes, are they not?

15 A. Well, looking at them, no.

16 Q. No?

17 MR. MATNEY: Objection, Your Honor, as  
18 to if he's trying to establish Mr. Cartwright as  
19 an expert in the manufacture of what we call  
20 mobile homes, we'd object to that.

21 THE COURT: I'm going to overrule  
22 counsel's objection. The witness may respond.

23 Q. (Mr. Henderson continues) Now the only  
24 other mobile home up there was Mr. Tullock's. Is  
25 that right?



1 A. Only one. Yes.

2 Q. That was in 1982?

3 A. That's right.

4 Q. There hadn't been any other mobile homes  
5 or manufactured homes, whatever you want to call  
6 them, until these here. Is that correct?

7 A. Well, that's correct.

8 Q. Okay.

9 A. There've been homes hauled in there on  
10 wheels and put on foundations and bricked up and  
11 pinned up. All of them weren't completely stick  
12 built.

13 Q. Now when you put these restrictions on.  
14 Why did you do that?

15 A. Why did we do it?

16 Q. Sure.

17 A. We wanted to protect our property and the  
18 buyer.

19 Q. Protect your property and the buyer?

20 A. That's right.

21 Q. Protect them from what?

22 A. From, from the mobile homes.

23 Q. So this was an incentive for the people to  
24 buy property in the subdivision?

25 A. I can, an incentive, we could have sold it

1 years ago without the restrictions.

2 Q. You sold it with the restrictions and you  
3 got a higher price for the land when you sold it  
4 with the restrictions, didn't you?

5 A. I, no. I don't think so.

6 Q. Well you were promoting this, weren't you,  
7 as a quality subdivision?

8 A. We ad, we ad, the only advertising we did  
9 was during the sale. We didn't advertise at all.  
10 All we had was tracts and lots. Now you can call  
11 them quality, lesser quality, or whatever.

12 Q. But it was to protect the buyers by having  
13 these restrictions?

14 A. Buyer and seller.

15 Q. And seller?

16 A. That's right.

17 Q. So it benefited you and the person that  
18 was buying it?

19 A. That's right. And we fell like that's  
20 what we did.

21 Q. Now what is your understanding of the  
22 doctrine of implied reciprocal negative easements?

23 A. I----

24 MR. AREY: Judge, I object to that.

25 THE WITNESS ----have no idea what

1 you're talking about.

2 MR. HENDERSON: None at all?

3 MR. AREY: Well, never mind.

4 THE COURT: I'll sustain counsel's  
5 objection. I think the answer warrants that.

6 MR. AREY: Yes.

7 MR. HENDERSON: Judge, that's all the  
8 additional questions I have. I will move to  
9 strike the testimony as to legal advice. A proper  
10 foundation was never laid during his testimony.

11 THE COURT: I'm going to overrule  
12 counsel's motion in that regard.

13 MR. AREY: Judge, could I just ask  
14 a couple questions?

15 THE COURT: Mr. Cartwright might have  
16 gotten bad legal advice. I might have to weigh  
17 that.

18  
19 RE-CROSS EXAMINATION BY MR. AREY  
20

21 Q. Mr. Cartwright, the Tullock lot that ya'll  
22 sold early on, where that mobile home is. Now  
23 that's an old single-wide mobile home, isn't it?

24 A. Well, I guess it, yes. Yes.

25 Q. Tongue sticking out? Axles, on axles.

\* \* \*

\* \* \*

WITNESS SWORN

DIRECT EXAMINATION BY MR. HENDERSON

CHARLES CLIFFORD MCCOY, JR., a witness, who,  
after having been duly sworn was examined and  
testified as follows:

Q. State your name for the Judge, please.

A. Charles Clifford McCoy, Jr.

Q. And you go by Charlie?

A. Yes.

Q. How old are you?

A. Forty-six.

Q. What is your occupation? So you're over  
the age of eighteen?

A. Yes.

Q. Good. And what is your occupation?

A. I'm a salesperson.

Q. And how long have you done that?

A. Twenty-one years.

Q. Where do you live now?

A. Goose Creek Estates.

Q. And how long have you lived there?

A. Since October of '93.

Q. How did you come to purchase property in

1 Goose Creek Estates?

2 A. We were looking for land. My wife saw a  
3 sign that said to call Mr. Cartwright. We did.  
4 We purchased the land directly from him.

5 Q. Okay. And did you go up there and look at  
6 the property to decide what to purchase?

7 A. Yes.

8 Q. And did you have the occasion to look at  
9 the plats of the subdivisions?

10 A. Yes.

11 Q. How many plats did you see?

12 A. All five plats. Mr. Cartwright carried  
13 them with him in his truck.

14 Q. So he had all five of them at the same  
15 time?

16 A. Yes. He did.

17 Q. Did you, did, was there a reference map on  
18 some of those plats?

19 A. By a reference map, you mean the small map  
20 in the lower corner?

21 Q. Yes.

22 A. Yes.

23 Q. And did that map show the complete  
24 subdivision?

25 A. Yes. It did.

1 Q. That included all five of those?

2 A. Yes. It did.

3 Q. Did Mr. Cartwright make any statement to  
4 you about restrictions on the property?

5 A. Mr. Cartwright told.

6 MR. AREY: Judge, I'm going to  
7 object to this. This is hearsay. Mr.  
8 Cartwright's not a party to this.

9 MR. HENDERSON: Judge, Mr. Cartwright is  
10 a party in privity. The essence of this implied  
11 easement is a contract. A contract between the  
12 developer or seller and a buyer. Mr. Cartwright,  
13 you know, was asked without objection about his  
14 position with the partnership. He established  
15 that he was authorized to speak on the behalf. I  
16 think that we're entitled to establish what the  
17 representations were in order to establish a  
18 contract.

19 THE COURT: I think under these  
20 circumstances, being a party in privity, the nexus  
21 of this litigation certainly may go to exactly  
22 what was said by Mr. Cartwright at the time of the  
23 purchase. He represented the seller. Did the  
24 lion's share or main share of the selling of these  
25 lots as spoken about that certainly this witness

1 should be entitled to respond to that question.  
2 I'd overrule counsel's objection.

3 Q. (Mr. Henderson continues) Were there any  
4 restrictions as to mobile homes?

5 A. Yes.

6 Q. And what did he tell you?

7 A. Mr. Cartwright told us that all of Goose  
8 Creek would be restricted as to mobile homes and  
9 that the lots in the section we were buying would  
10 all be five acres with a home.

11 Q. Now did he ask you to tell him what kind  
12 of home that you planned to build there?

13 A. Yes. He did.

14 Q. To your knowledge, did he make any  
15 investigation of, of you and your background?

16 A. Yes. He did.

17 Q. What did he do?

18 A. He called friends of mine that he knew  
19 were my friends, mutual acquaintances of his to  
20 find out what type of person I was and what,  
21 apparently my financial standing was. Whether I  
22 would be able to build the type of house that he  
23 thought was appropriate for the lot.

24 Q. And you did eventually purchase a house  
25 there.

1           A.   Built a, built a house.   Yes.

2           Q.   Built a house.   Let me direct your  
3 attention to Plaintiffs' Exhibit "64", a copy of  
4 Plaintiffs' Exhibit "64".

5           A.   Excuse me just one second.

6           Q.   Sure.   And ask if you can, if you  
7 recognize that document?

8           A.   Yes.

9           Q.   And what is that?

10          A.   That is the deed to, to our land.

11          Q.   Now on Page 2 of that document, does that  
12 contain a restriction concerning mobile homes?

13          A.   Yes.   It does.

14          Q.   What does it say?

15          A.   "It is distinctly understood and agreed  
16 that this conveyance is subject to the express  
17 restrictive covenants running with the land that  
18 no mobile home, either single or double-wide,  
19 shall be placed on said land at any time and this  
20 covenant may be enforced by the parties of the  
21 first part, their successors and assigns and/or by  
22 any owners of property shown on the plats of Goose  
23 Creek Estates."

24          Q.   And was this consistent with what Mr.  
25 Cartwright had told you verbally?



1           A.   Yes, sir.  It is.

2           Q.   And what was your understanding based upon  
3 the restriction that was in the deed as to what  
4 sort of structures would be allowed in the  
5 subdivision?

6           A.   Strictly homes that were built on site.

7           Q.   And no mobile homes were to be allowed?

8           A.   Absolutely not.

9           Q.   Single or double-wide?

10          A.   Absolutely not.

11          Q.   Now, you've seen the mobile homes that are  
12 at issue in this case?

13          A.   Yes, sir.  I have.

14          Q.   What kind of structures are those?

15          A.   Those are what is to be considered double-  
16 wide homes.

17          Q.   Let me show you a document that I've  
18 marked as Plaintiffs' Exhibit Number "93", and ask  
19 if you can, if, if you recognize what is shown in  
20 those pictures?

21          A.   Yes.  I do.

22          Q.   And what are those?

23          A.   These are three of the four mobile homes  
24 in question.

25          Q.   Okay.  And do these photographs----

1 MR. AREY: Judge, I have a objection  
2 to put here. He's referring these, to these as  
3 mobile homes and says they're a mobile home. I'm  
4 not sure any foundation has been laid for his  
5 expertise. We have people here. I know they have  
6 people here who have a business of buying and  
7 selling those items, manufactured homes. I think  
8 he could testify now about the residences that are  
9 there. But I don't think he has the expertise to  
10 say whether it's a manufactured home or mobile  
11 home or whatever.

12 THE COURT: Yeah. I----

13 MR. HENDERSON: Judge----

14 THE COURT: I don't know how other to  
15 have the witness to testify than to use his own  
16 characterization. The Court's going to weigh that  
17 circumstance.

18 MR. AREY: Okay. That, that answers  
19 my question.

20 Q. (Mr. Henderson continues) Now these  
21 pictures accurately represent those structures?  
22 Is this how they actually look?

23 A. Yes. Yes.

24 Q. And when you refer to these as "mobile  
25 homes." What is the basis of your understanding

1       that these are mobile homes?

2           A.   They have wheels and axles and were  
3 brought in by trailer.

4           Q.   And is that your understanding of the kind  
5 of structures that were covered by the deed  
6 restriction?

7           A.   Absolutely, sir.

8           Q.   Of your deed?   And, Judge, I would ask  
9 that Plaintiffs' Exhibit "93" be admitted?

10          THE COURT:               All right.   Subject to  
11 your previous objection?   Any objection to  
12 proposed Exhibit "93"?

13          MR. AREY:                No, sir.   For, for what  
14 it depicts.   Not for saying it's a, a mobile home,  
15 or manufactured home, or whatever.   But, for what  
16 what it shows.

17          THE COURT:               For what it shows.

18          MR. AREY:                For what it shows.

19          THE COURT:               All right.   Plaintiffs'  
20 "93".

21                               (The document referred to  
22 having been previously  
23 marked for identification as  
24 Plaintiffs' Exhibit Number  
25 "93" was received in

evidence.)

MR. HENDERSON: And this is slightly out of order, Judge, but I'll get the order straight in a little bit. I've handed the witness a copy and also counsel and the Court, of the document marked as Plaintiffs' Exhibit Number "95".

Q. (Mr. Henderson continues) Mr. McCoy, do you recognize those photographs?

A. Yes.

Q. And what is shown in those photographs?

A. It's a mobile home lot.

Q. And on the top photograph, what is the name of the mobile home lot there or what does it say?

A. Harry----

Q. ----on the sign?

A. Harry Bluefield Home Sales.

Q. And are those, is that a pre-owned home center?

A. That's a pre-owned home center.

Q. And what is sitting on the lot there? Is-  
---

A. A double-wide mobile home.

Q. And is this one that is similar in appearance to the ones in Plaintiffs' Exhibit

1 Number "93"?

2 A. It, it appears. Yes, sir.

3 MR. MATNEY: Judge, we would object as  
4 to the specific question as to whether or not this  
5 structure in this photograph marked Exhibit Number  
6 "95" is anywhere near the structures in question  
7 today.

8 THE COURT: And I'll permit the  
9 witness to tell the Court that it appears similar  
10 in appearance. You have an opportunity to cross-  
11 examine on that point.

12 MR. MATNEY: Okay.

13 MR. HENDERSON: And just for the record,  
14 I note that they opened the door to that question  
15 by asking the same question of Mr. Cartwright in  
16 a different context concerning these, these three  
17 homes.

18 Q. (Mr. Henderson continues) And do these  
19 photographs accurately represent what is depicted  
20 there?

21 A. Yeah. Double-wide specials.

22 Q. I would ask that this be admitted as an  
23 exhibit

24 THE COURT: All right. Exhibit "95",  
25 any objection?

1 MR. AREY: For what it depicts, no.

2 THE COURT: For what it depicts,  
3 Exhibit "95".

4 (The document referred to  
5 having been previously  
6 marked for identification as  
7 Plaintiff's Exhibit "95" was  
8 received in evidence.)

9 Q. (Mr. Henderson continues) I'm handing the  
10 witness, counsel, and the Court copies of another  
11 exhibit pre-marked as Exhibit Number "96". And  
12 ask the witness if he recognizes what is depicted  
13 in those photographs, as well.

14 A. Yes.

15 Q. Is that the same pre-owned mobile home  
16 center?

17 A. I can't confirm that it's exactly the same  
18 one. It could be the one right across the road.

19 Q. Okay. And do those photographs accurately  
20 depict what is shown there?

21 A. Yes.

22 Q. Are those also double-wide, manufactured,  
23 or mobile homes?

24 A. Yes.

25 Q. Being offered for sale there?

1 A. Yes.

2 MR. HENDERSON: Ask that that be exhibit  
3 be admitted as Plaintiffs' Exhibit "96".

4 THE COURT: Objection?

5 MR. AREY: Again, for what it  
6 depicts.

7 THE COURT: For what it depicts.  
8 Plaintiffs' "96."

9 MR. HENDERSON: That's what we're  
10 offering it for, Judge. I knew I was going to do  
11 this.

12 (The document referred to  
13 having been previously  
14 marked for identification as  
15 Plaintiffs' Exhibit Number  
16 "96" was received into  
17 evidence.)

18 Q. (Mr. Henderson continues) I'm going to  
19 hand the witness a, an exhibit that's been pre-  
20 marked as Plaintiffs' Exhibit Number "97", and ask  
21 if you recognize what is depicted in that exhibit.

22 A. Yes.

23 Q. And what is that?

24 A. That's our home in Goose Creek.

25 Q. Now, the top picture, what is shown in the

1 top photograph?

2 A. That's the, the rear of the house with the  
3 deck and some landscaping features.

4 Q. Landscaping features. What is that to the  
5 right?

6 A. That's a pond.

7 Q. And, and the house is, what is the house  
8 built of? What kind of construction is it? Is it  
9 stick built?

10 A. Stick, stick built home. Correct. Cedar.

11 Q. It appears to include a rock wall?

12 A. Yes.

13 Q. Stone wall on the outside. And what does  
14 the lower picture show?

15 A. The lower picture shows the front of the  
16 house.

17 Q. Does that include, there, is a garage  
18 there?

19 A. There is a garage. Yes.

20 Q. Is there landscaping?

21 A. Yes.

22 Q. That's all been built on site since you  
23 bought the property?

24 A. Yes, sir. That's correct.

25 Q. These pictures accurately depict the, the



1 residence?

2 A. Yes, sir.

3 MR. HENDERSON: Ask that that be admitted  
4 as Plaintiffs' Exhibit Number "97", Judge.

5 THE COURT: Objection?

6 MR. AREY: For what it depicts.

7 THE COURT: All right. Ninety-seven,  
8 Plaintiffs' "97".

9 (The document referred to  
10 having been previously  
11 marked for identification as  
12 as Plaintiffs' Exhibit "97"  
13 was received in evidence.)

14 Q. (Mr. Henderson continues) Now to call  
15 your attention, once more, to Exhibit Number "93".  
16 When you first saw these structures, were any of  
17 them still in separate pieces?

18 A. I can't honestly tell you that I saw those  
19 structures in separate pieces. No, sir.

20 Q. And do you have----

21 A. I did see them without underpinning and,  
22 and whatnot, but.

23 Q. Without underpinning?

24 A. Yes.

25 Q. Did they have wheels attached?

1 A. I could not verify that from the road.

2 Q. Okay. Based on the, I think I've already  
3 asked that. As an owner of property in Goose  
4 Creek Estates, do you have an opinion as to  
5 whether or not the presence of these structures in  
6 the subdivision affects the value of your  
7 property?

8 A. Most definitely.

9 Q. And what is that opinion?

10 A. I think that they would diminish the value  
11 of every property owner's property in Goose Creek.

12 Q. Including yours?

13 A. Including mine. Yes, sir.

14 Q. Now you're asking the Court to order that  
15 these structures be removed from Goose Creek  
16 Estates?

17 A. Yes.

18 MR. HENDERSON: Cross-examine.

19  
20 CROSS-EXAMINATION BY MR. AREY

21  
22 Q. You heard Mr. Cartwright, and if I  
23 understand correctly. Your definition of a  
24 double-wide or single-wide mobile home is  
25 something that comes in on wheels? \* \* \*

\* \* \*

1 of these?

2 Q. If you would.

3 A. Well, I mean apparently you know whether  
4 that's on here or not.

5 Q. Well I, I know it's not on there.

6 A. Okay. Then this-----

7 Q. You don't disagree with me-----

8 THE COURT: Would you accept  
9 counsel's representation that it's not there?

10 THE WITNESS: If he says it's not  
11 there. I'm sure he's looked at, Judge.

12 MR. AREY: Okay.

13 Q. (Mr. Arey continues) Now, your attorney  
14 introduced a picture of your home, and it really  
15 is a nice looking home. There are all sorts of  
16 homes in the property, the various sections of  
17 Goose Creek Estates. All sorts of different  
18 configurations and different looking homes, are  
19 there not?

20 A. Yes.

21 Q. And in Section 1, 2, and 3, you're in  
22 Section 1 with five acre lots. Is that a true  
23 statement as to those homes in Section 1, 2, and  
24 3? All sorts of different things-----

25 A. I, I don't know what, which is Section 1,

1 and which is Section 2, and I can't differentiate  
2 that for you.

3 Q. All right. Let, let me-----

4 A. Okay.

5 Q. -----make, make it a little different,  
6 easier for you. Cause we had to do this for Mr.  
7 Cartwright. These properties are, are the portion  
8 of the subdivision that's developed along Whitney  
9 Branch Road. Is that right?

10 A. Yes.

11 Q. Where these manufactured homes are?

12 A. And I think you said that was Section 4.  
13 Is that correct?

14 Q. Section 4.

15 A. Okay.

16 Q. That's correct. And I think Section 5 is  
17 on up Whitley Branch Road.

18 A. Okay.

19 Q. Section 1, 2, and 3, and you're in 1, are  
20 accessed by the built, or the non-state maintained  
21 roads that run into the, up to those properties.  
22 Is that correct?

23 A. That's correct.

24 Q. And you're in the ones that are accessed  
25 by the, I guess the best way to say it, the

1 inside?

2 A. Yes.

3 Q. From where your home is located, can you  
4 see these properties?

5 A. No.

6 Q. Okay. You cannot see these, the homes of  
7 the, the Hall's children or the McKinney's  
8 children-----

9 A. They're-----

10 Q. -----from your property?

11 A. They're not visual, no. Not from my  
12 house.

13 Q. And do you normally access your property  
14 through-----

15 A. Whit, Whitley Branch-----

16 Q. -----the main road through?

17 A. Whitley Branch Road?

18 Q. Yes, sir.

19 A. Yes.

20 Q. Do you go all the way around or do you go  
21 up?

22 A. We use either.

23 Q. Okay.

24 A. There's, there's probably fifty-fifty. I  
25 do drive past those homes not everyday, but

\* \* \*

\* \* \*

1 acre lots, isn't it? Unless they've been divided?

2 A. Yes. They were all sold originally-----

3 Q. Right.

4 A. -----as five acre lots.

5 Q. And so far as you know, any divisions have  
6 been done with the approval of the Tazewell County  
7 Planning Commission, or do you know?

8 A. I don't have any knowledge of whether that  
9 is any, any of that has been brought to the  
10 Tazewell County Planning Commission or not.

11 Q. When did you become aware that these, that  
12 the residences built by the Hall and McKinney's  
13 children were in place?

14 A. One of my neighbors told me.

15 Q. When was that, do you recall?

16 A. I don't recall.

17 Q. Approximately or just have no remembrance?

18 A. I, I can't put a date on there. I don't  
19 know.

20 Q. After that happened though you, you began  
21 to speak to other people in the community about  
22 this?

23 A. Yes.

24 MR. AREY: Judge, that's all the  
25 questions I have for now. \* \* \*

\* \* \*

AFTERNOON PROCEEDINGS

THE COURT: Let's see, Mr. Henderson, are you ready to call your next witness?

MR. HENDERSON: Yes, Your Honor. Plaintiffs will call Richard Forster.

THE COURT: Mr. Forster. I might say for the benefit of the parties and those in the courtroom. During that break with counsel the Court road all through the subdivision, and had an opportunity to view all the different sections as well as the homes in question. As well as the, well homes in question both the Plaintiffs and the Defendants. All right.

THE CLERK: Please, raise your right hand, sir.

WITNESS SWORN

THE CLERK: Please, be seated.

DIRECT EXAMINATION BY MR. HENDERSON

RICHARD A. FORSTER, a witness, who, after having been duly sworn was examined and testified as follows:

Q. Would you state your name for the Court,

1 please?

2 A. My name is Richard A. Forster.

3 Q. And where do you live?

4 A. I live on Lot 5 in Section 1 of Goose  
5 Creek Estates.

6 Q. And how long have you lived there?

7 A. Since March of 1996.

8 Q. Now, how did you come to purchase property  
9 at Goose Creek Estates?

10 A. The property that I live on is, was  
11 purchased from a Tommy and Angela Kelly.

12 Q. And was there a house already built on the  
13 property when you bought it?

14 A. There was.

15 Q. And the, first let me show you this  
16 document that's been marked as Plaintiffs' Exhibit  
17 "94" and ask if you recognize what is in that  
18 exhibit?

19 A. I do.

20 Q. And what is it?

21 A. That's, that's my residence.

22 Q. That's the residence that you bought?

23 A. Yes.

24 Q. Is that, those photographs accurately  
25 represent what is depicted there?



1           A.    Yes.  Yes, they do.

2           MR. HENDERSON:           Judge, I'd move to admit  
3 that into evidence, Judge.

4           THE COURT:               Any objection?

5           MR. AREY:                No, objection for what  
6 they depict.

7           THE COURT:               All right.       Without  
8 objection, "94".

9                                       (The document referred to  
10 having been previously  
11 marked for identification as  
12 as Plaintiffs' Exhibit  
13 Number "94" was received in  
14 evidence.)

15           Q.   (Mr. Henderson continues) Now, when you  
16 purchased your property were you aware that there  
17 were, whether there were any restrictions on the  
18 property?

19           A.    Yes.  I was aware.

20           Q.    And what were you aware of?

21           A.    I was aware that there were certain  
22 restricted covenants in the Kelly property, and in  
23 all of Goose Creek Estates with respect to the  
24 erection or maintenance of single or double-wide  
25 mobile homes.

1 Q. And what was your expectation as to single  
2 or double-wide mobile homes at the time that you  
3 bought this property?

4 A. That there would never be one in Goose  
5 Creek Estates.

6 Q. Now, let me direct your attention to a  
7 copy of Plaintiffs' Exhibit "79" and ask if you  
8 can identify that?

9 A. I do recognize Exhibit "79".

10 Q. And what is that?

11 A. It's what I would typically call a sale  
12 flyer from an auction that was to be held on  
13 Saturday June 1st of 1996 and it consists of one,  
14 two, four pages. Actually it was a, sort of like  
15 a fold out flyer with this on the front. And  
16 there were some plat maps in the, in the middle,  
17 and some depictions and photographs of property  
18 that would be sold at this auction also in the  
19 flyer.

20 Q. And does the flyer and the maps depict  
21 what is to be sold at auction?

22 A. It's, with the exception of one lot, it's  
23 what was sold at the auction.

24 Q. Okay. And that includes lots in Sections  
25 5, 4, 3, and 1?

1           A.   That's correct.

2           Q.   All in Goose Creek Estates?

3           A.   That's correct.

4           Q.   Let me show you also a copy of Plaintiffs'  
5 Exhibit "81" and ask if you can identify that?

6           MR. AREY:                   Jay, do you have an extra  
7 copy of that? I could not find that this morning  
8 in the Court's files.

9           THE COURT:                 Actually in the court  
10 file the numbering sequence goes from eighty to  
11 eighty-two. I expect that exhibit may be here and  
12 out of order.

13          MR. AREY:                   Judge, I went through  
14 them all this morning and couldn't find it.

15          THE COURT:                 Okay.       Well, we're  
16 missing eighty-two, eighty-one.

17          MR. HENDERSON:            Okay. We can, I have a  
18 copy of that, Judge. We can supply that after  
19 counsel's looked at it.

20          Q.   (Mr. Henderson continues) And what is  
21 Exhibit "81", if you would?

22          A.   Eighty-one is the, a one page legal size  
23 that was given to the participants at the auction  
24 on June 1st of 1996 as people arrived at the  
25 auction site. The auctioneers handed these, these

1 announcements out.

2 Q. And did you attend that auction?

3 A. I did.

4 Q. Now, was Mr. Cartwright at the auction?

5 A. He was.

6 Q. And who conducted the auction?

7 A. It, there were two sets of auctioneers,  
8 Gaines Dickenson and the Horney Brothers is the  
9 actual, as I recall here right now, here is the,  
10 actually the Horney Brothers did the actual  
11 selling of property itself.

12 Q. And in the announcements as Plaintiffs'  
13 Exhibit "81". Was there any restriction announced  
14 as to mobile homes?

15 A. Yes. Both in the sale flyer and also  
16 orally over the loud speaker as the entire sale  
17 announcement was read to the assembled public.  
18 And there is a restriction contained in paragraph  
19 nine of the sale announcement.

20 Q. And does that recitation say no single-  
21 wide or double-wide manufactured mobile homes will  
22 be permitted on any lot or tract?

23 A. It does.

24 MR. HENDERSON; Judge, I would ask that  
25 Plaintiffs' Exhibit "79" and "81" be admitted into

1 evidence.

2 THE COURT: Any objection?

3 MR. AREY: I don't object.

4 MR. MATNEY: No, sir.

5 THE COURT: Without objection.  
6 Plaintiffs' "79" and "81".

7 (The documents referred  
8 having been previously  
9 marked for identification as  
10 Plaintiffs' Exhibits "79"  
11 and "81" were received in  
12 evidence.)

13 Q. (Mr. Henderson continues) Did you  
14 purchase any property at that auction?

15 A. I did.

16 Q. And what did you purchase?

17 A. I purchased Lot 35 of Section 1 at that  
18 auction.

19 Q. And where is Lot 35 located with respect  
20 to your house?

21 A. As you come down the front of my house  
22 there the, there's the gravel road and right  
23 across that gravel road is Lot 35 and it's  
24 adjacent to the McCoy residence.

25 Q. And is there any improvements on that lot

1 at this time?

2 A. No. There are not. It's vacant.

3 Q. Now, let met show you a copy of  
4 Plaintiffs' Exhibit "85" and ask you to identify  
5 what that is.

6 A. Plaintiffs' Exhibit "85" is a copy of a  
7 letter that I received from Attorney Randy Bolling  
8 with respect to the deed that was issued by Goose  
9 Creek Partnership to me for Lot 35.

10 Q. And does that letter advise that you would  
11 have to have a corrected deed?

12 A. Yes. It does. I had talked with Attorney  
13 Bolling about this and that resulted in this  
14 letter of July 15th. He went back and looked at  
15 his work and found that he had inadvertently  
16 omitted the, the restrictions that were announced  
17 at the sale, and that the deed was incorrect, and  
18 he was proposing to me to issue a deed of  
19 correction.

20 Q. Let me show you also Plaintiffs' Exhibit  
21 "88" and ask if you can identify that?

22 A. I recognize Plaintiffs' Exhibit "88" as  
23 being a deed of correction. It was issued by the  
24 Goose Creek Partnership to myself and my wife as  
25 tenants by the entireties for Lot 35, Section 1 of

1 Goose Creek Estates.

2 Q. Does that contain a restriction  
3 concerning single-wide or double-wide mobile  
4 homes?

5 A. It would be identified for the Court as  
6 Book 716, Page 91 and the first full paragraph is  
7 the, and I quote, "The above described property as  
8 conveyed to the parties of the second part is  
9 restricted and is being sold and may be used only  
10 for residential or agricultural purposes and no  
11 commercial or industrial operations are permitted  
12 on the property. In addition, no single-wide or  
13 double-wide mobile homes are permitted on the  
14 property. These restrictions are deemed to be  
15 covenants running with the land and are binding on  
16 the parties hereto, their heirs, assigns, and  
17 successors in interest."

18 Q. Now, were these, was this provision  
19 consistent with what was announced at the sale?

20 A. Yes. It is.

21 MR. HENDERSON: Judge, I would ask that  
22 Plaintiffs' Exhibit "85" and "88" be admitted into  
23 evidence.

24 THE COURT: Any objection to "85" and  
25 "88"?

1 MR. AREY: I already thought they  
2 were in evidence. Well, eighty-eight was in  
3 evidence, I think.

4 MR. HENDERSON: Oh, excuse me. You're  
5 right. Eighty-five was not.

6 THE COURT: All right. Eighty-five  
7 only. Eighty-eight is already an exhibit.

8 (The document referred to  
9 having been previously  
10 marked for identification  
11 as Plaintiffs' Exhibit "85"  
12 was received in evidence.)

13 Q. (Mr. Henderson continues) Now, have you,  
14 Mr. Forster, had the opportunity to see the mobile  
15 homes or manufactured homes that are at issue  
16 here?

17 A. Yes. I have.

18 Q. Now, can you state whether or not you  
19 recognize those to be double-wide mobile homes?

20 A. I do.

21 Q. Were these structures the kind of  
22 structures that you expected to be prohibited by  
23 the restrictive covenant?

24 A. I was stunned when I first saw them.

25 Q. When you first saw them what, what



1 condition were they in?

2 A. They were erected on the property.

3 Q. They were already there?

4 A. Yes.

5 Q. So you didn't have an opportunity to talk  
6 to the owners before they were erected on the  
7 property about the propriety of them being put  
8 there? You just saw them?

9 A. No. I, no. I had no opportunity.

10 Q. And do you have an opinion on whether the  
11 presence of mobile homes in the Goose Creek  
12 Estates has an effect on the value of your  
13 property?

14 A. I do.

15 Q. And what is your opinion?

16 A. Is, is my opinion that the presence of  
17 double-wide mobile homes in Goose Creek will  
18 result in a diminution and value of all the  
19 adjacent properties in Goose Creek in all  
20 sections.

21 Q. Now, would you have paid as much for your  
22 property if you knew or thought that double-wides  
23 were going to be allowed?

24 A. I probably wouldn't even have bought in  
25 the subdivision.

1 Q. Are you asking the Court to order that  
2 these structures be removed from the subdivision?

3 A. That's the relief that we're asking for.  
4 Yes.

5 MR. HENDERSON: Cross-examine?  
6

7 CROSS-EXAMINATION BY MR. AREY  
8

9 Q. I think you read your second deed that you  
10 got for the property from the auction? I believe  
11 you read the description of the restrictive  
12 covenants?

13 A. Yes.

14 Q. And you heard Mr. McCoy, I believe, read  
15 one from his deed that Mr. Henderson presented to  
16 him and then two from two other deeds that I had  
17 presented, didn't you?

18 A. That's correct. Yes.

19 Q. And the language in now four different  
20 deeds is different?

21 A. Yes.

22 Q. And, in fact, when this last deed you have  
23 in addition to no single-wide and double-wide, it  
24 says no residential or commercial...or only  
25 residential or agriculture? \* \* \*

\* \* \*

1 I think it was Lot 1 in Section 1?

2 A. Yes. A vacant lot.

3 Q. Which is right across from you?

4 A. That's right.

5 Q. And you knew about that when you bought  
6 your property?

7 A. That's right.

8 Q. And you knew that that was not restricted  
9 for single-wide, double-wide?

10 A. I was aware there was no restriction in  
11 the deed. That's right.

12 Q. That did not stop you from purchasing your  
13 property?

14 A. No. Because I knew I could enforce the  
15 covenant against that property if a mobile home  
16 showed up.

17 Q. So you purchased your property with the  
18 idea that if something happened, you would enforce  
19 it against the individual?

20 A. Counselor, I'm aware of this. I was aware  
21 of the number of, the prevalence, as a matter of  
22 fact, the vast majority of the properties having  
23 restrictive covenants against single and double-  
24 wide mobile homes. And I was aware as a landowner  
25 in that property or in this property under the

1 laws of the Commonwealth that I can enforce a  
2 reciprocal negative easement against anybody that  
3 sought to break covenants in the, in, in the  
4 subdivision.

5 Q. And you knew that before you went to see  
6 your attorney?

7 A. I'm familiar with that concept. Yes.

8 Q. So you're an attorney?

9 A. That's correct.

10 Q. But none of the other parties are  
11 attorneys, are they? So far as you know?

12 A. I, so far as I know.

13 Q. Are the McCoys attorneys?

14 A. Not that I know of.

15 Q. You had mentioned that you became aware of  
16 these manufactured homes on the defendant's  
17 property in Section 4. When did you become aware  
18 of that?

19 A. I can't exactly recall, counselor. It, it  
20 was, I was driving up the road and I usually come  
21 in what's properly known today as VanHoozer Road.

22 Q. That's the main...

23 A. The main, the main, yeah, the main, yeah.

24 Q. ...the main, when you up, you come up  
25 straight in the subdivision... \* \* \*

\* \* \*

1 Q. How much did you pay for Lot 5, Section 1?

2 A. With the house and improvements,  
3 \$210,000.00.

4 Q. Now, there are less expensive homes in  
5 Goose Creek than two hundred thousand dollars. Is  
6 that right?

7 A. Yes.

8 Q. Much less than two hundred thousand?

9 A. I don't think I'd use that adjective.

10 Q. Okay.

11 A. Is, yes. There are houses that had cost  
12 less in Goose Creek Estates.

13 Q. Would you, would it be fair to say that  
14 there are houses up there in Goose Creek Estates  
15 of less than one hundred thousand dollars value?

16 A. I don't know that.

17 Q. You, you testified you believe the  
18 presence of those manufactured homes diminished  
19 the value of your property?

20 A. Absolutely.

21 Q. Do you know how much those mobile homes  
22 diminish the value of your property?

23 A. Not to the exact dollar amount. But to  
24 the extent, the basis of, if you're asking for the  
25 basis of my opinion, is the fact that the mobile

1 homes in question continuously depreciate every  
2 year according to a fixed table put out by the  
3 National Automobile Dealer's Association. And  
4 plus my knowledge of appraisals and the appraising  
5 industry, you know, in real estate here is that it  
6 is commonly known and understood in the industry  
7 that the presence of mobile homes in a subdivision  
8 because they depreciate themselves will cause a  
9 diminution in value on all the remaining adjoining  
10 properties.

11 Q. And you're asking the Court to order  
12 removal of those manufactured homes?

13 A. Yes.

14 Q. And if the Court does order removal of  
15 those manufactured homes you still have a single-  
16 wide trailer to deal with in your subdivision. Is  
17 that correct?

18 A. That's correct.

19 Q. Do you believe that single-wide trailer  
20 diminishes from the value of your property?

21 A. Yes. It does.

22 Q. And you've lived in Goose Creek for how  
23 long?

24 A. Four years.

25 Q. Well-----

1           A.   Just a little over.

2           Q.   When did you learn the presence of that  
3 single-wide trailer?

4           A.   Just this year here.    I believe my  
5 attorney told me.

6           Q.   So you weren't aware that your property  
7 was being diminished until then?

8           A.   Wasn't aware of it.   No.

9           Q.   Uh-----

10          A.   No.  That's, that's, that's, that's not a  
11 fair answer, Counselor.  I wasn't aware that this  
12 particular mobile home that you're talking about  
13 that is not related to the defendants here was  
14 diminishing the value of my property.  I was aware  
15 that the value of my property was being  
16 diminished.

17          Q.   By the manufactured homes?

18          A.   By the presence of the defendants'  
19 residences.

20          Q.   But you weren't aware that it was being  
21 diminished by the trailer?

22          A.   I didn't.  No.  I wasn't aware of the, of  
23 the existence of the trailer.

24          Q.   Mr. Forster, what in your opinion is a  
25 mobile home?

1           A. All I know is what's commonly understood  
2 is a mobile home. I believe there was some  
3 pictures introduced of some, of some stuff that  
4 sold at place like Harry's Mobile Homes here in  
5 Bluefield or down this way here. Rather than  
6 trying to describe that, I would refer you to the  
7 pictures and also to the defendants' residences as  
8 prime examples of mobile homes.

9           Q. Would that be a, a dwelling, or a  
10 structure, or for lack of better word, suitable  
11 for dwelling on wheels. Would you consider that  
12 a mobile home?

13          A. Yes. The concept of being mobile implies  
14 to me at least in my common understanding and  
15 those around me is that at one time or another it,  
16 it may, it may have been on wheels. It may not  
17 presently be now, but the wheels are capable of  
18 probably being put back under it. It can be  
19 moved. It was probably moved to the site on  
20 wheels.

21          Q. And your belief that mobile homes and the  
22 manufactured homes diminish the value of your real  
23 estate, is that based upon their value? The value  
24 of those mobile homes or the manufactured homes?

25          A. It's what's commonly understood in the



1 trade. I mean, there's common trade publications  
2 that show you that they depreciate in value.  
3 They're going down every year.

4 Q. Do you have a camper parked in your  
5 driveway?

6 A. Yes. I do.

7 Q. Do you believe that diminishes the value  
8 of your, your home and the home of your neighbors?

9 A. No. I do not.

10 MR. MATNEY: All right. Thank you,  
11 Mr. Forster.

12  
13 REDIRECT EXAMINATION BY MR. HENDERSON  
14

15 Q. Now, Mr. Forster, the----- Now, first of  
16 all, Mr. Arey asked you about the language in four  
17 different deeds and about the differences in that  
18 language, and, and your attention has been brought  
19 to the language in all four of them. Isn't it  
20 true that all four of those deeds contain the same  
21 restriction forbidding single-wide or double-wide  
22 mobile homes?

23 A. That's consistent throughout.

24 Q. Now, Mr. Arey asked you that because  
25 you've had training as an attorney whether you're

1 familiar with the concept of an implied reciprocal  
2 negative easement. You said you were?

3 A. Yes. I am.

4 Q. And he also asked you if you were aware  
5 that that a few of these lots in the subdivision  
6 didn't have a specific restriction?

7 A. I am aware of that. Yes.

8 Q. Now, is it your----- What is your  
9 understanding about the fact that the restriction  
10 is left off of one or more lots in the  
11 subdivision?

12 A. The fact that a restrictive covenant may  
13 be left off one or more deeds in a subdivision  
14 does not necessarily, well, as a matter of fact,  
15 it does not inhibit the rights of those who hold  
16 reciprocal negative easements from enforcing those  
17 easements upon all properties in the subdivision  
18 whether the particular property at issue has or  
19 doesn't have the restriction in it. In other  
20 words, it's a cross easement that every, that each  
21 person in the subdivision has in each other's  
22 property and vice-versa.

23 Q. And Mr. Matney asked you at some length  
24 about the deeds that had been recorded since the  
25 auction. I think you had mentioned earlier that

1 you're familiar with the fact that in searching  
2 the title, you Grantee up, Grantor down?

3 A. That's right.

4 Q. And the deeds that he was asking you about  
5 would be deeds from Goose Creek Partnership to  
6 various purchasers?

7 A. That's correct.

8 Q. The last of these deeds according to our  
9 exhibit as Number "89" and that's to David Wayne  
10 McKinney and his wife?

11 A. That's correct.

12 Q. And so all of the deeds that came before  
13 that from Goose Creek Partnership are in his chain  
14 of title, are they not?

15 A. That's right.

16 Q. That would include not only the ones that  
17 Mr. Matney specifically asked you about, but the  
18 ones that are marked as Plaintiffs' Exhibit "86",  
19 "87", and "88"?

20 A. That's true.

21 Q. Those also are in the chain of title?

22 A. That's right.

23 Q. And those are corrective deeds, correcting  
24 the omission in the three prior deeds?

25 A. That's right.

1 Q. And these corrective deeds all say  
2 specifically that the public auction announced  
3 that this would be used for residential,  
4 agricultural purposes and no single or double-wide  
5 mobile homes would be permitted on the property?

6 A. That's true. My understanding is that Mr.  
7 Bolling made a mistake on all those deeds here  
8 because he didn't have the proper instructions  
9 from the partnership.

10 Q. And so you have in the chain of title  
11 going down to Mr. McKinney these three deeds which  
12 not only contain the restriction against double-  
13 wide mobile homes, but note that an announcement  
14 was made at the auction and that's a matter of  
15 public record here in the courthouse?

16 A. That's correct.

17 MR. HENDERSON: Okay. You may ask.

18  
19 RE-CROSS EXAMINATION BY MR. AREY

20  
21 Q. Let me just ask just a couple of questions  
22 here. You were talking about the diminution in  
23 value of your property?

24 A. Yes.

25 Q. Have you done any research on checks

\* \* \*

1 THE WITNESS: Thank you.

2 THE COURT: Call your next witness.

3 MR. HENDERSON: Steve Yost.

4 WITNESS SWORN

5

6 DIRECT EXAMINATION BY MR. HENDERSON

7

8 GEORGE STEVEN YOST, a witness, who, after  
9 having been duly sworn was examined and testified  
10 as follows:

11 Q. State your name for the Court, please?

12 A. George Steven Yost.

13 Q. Do you go by the name of Steve?

14 A. Yes. I do.

15 Q. And what is----- Are you over the age of  
16 eighteen?

17 A. I sure am.

18 Q. What is your occupation?

19 A. I'm a real estate broker in West Virginia,  
20 and Virginia, and a certified appraiser in both  
21 states also.

22 Q. How long have you been in the, in that  
23 occupation?

24 A. Since 1985.

25 Q. What training have you had as a real

1 estate broker and as, as an appraiser just  
2 briefly.

3 A. Well, I've exceeded all the training that  
4 is needed to be either. I've served on state  
5 boards. I've served in local and state capacity  
6 in both, both avenues.

7 Q. And you're licensed by both states?

8 A. That's correct.

9 Q. As a broker?

10 A. That's correct.

11 Q. Hold a current license as a broker in  
12 Virginia?

13 A. That's right.

14 Q. And you also have a license or  
15 certification as an appraiser?

16 A. I do.

17 Q. Who is that issued by?

18 A. The state of Virginia.

19 Q. And in the ordinary course of your  
20 business, do you buy and sell properties? Do you  
21 sell properties for owners, things of that sort?

22 A. That's correct.

23 Q. And do you also do appraisals?

24 A. That's correct.

25 Q. How long have you been doing appraisals in

1 Tazewell County?

2 A. Since 1985.

3 Q. And do you have any idea how many you've  
4 done at this point?

5 A. Hundreds and hundreds.

6 Q. And as far as participating in the sale of  
7 properties in Tazewell County, Virginia, have you  
8 done-----how many of those have you done over that  
9 period?

10 A. I don't know, but quite a few.

11 Q. Over a hundred?

12 A. I would like to think so.

13 Q. Does that include sales of property in  
14 Goose Creek Estates?

15 A. That's correct.

16 Q. And you're familiar with what Goose Creek  
17 Estates is? Where it is?

18 A. Yes, sir.

19 MR. HENDERSON: Judge, I would ask,  
20 subject to voir dire by counsel that Mr. Yost be  
21 qualified as an expert based on training and  
22 experience.

23 THE COURT: Any voir dire of this  
24 witness before the Court rules on that request?

25 MR. AREY: I don't think that's

1 necessary, Judge.

2 MR. MATNEY: We have no objection,  
3 Your Honor.

4 THE COURT: All right. So received.

5 Q. (Mr. Henderson continues) Now, first of  
6 all, are you familiar with the term "manufactured  
7 home"?

8 A. That's, I, I am.

9 Q. And, and what is your familiarity with  
10 that?

11 A. Well, I know the distinction between  
12 manufactured, panelized, and modular.

13 Q. And are you also familiar with the term,  
14 "mobile home"?

15 A. That's correct.

16 Q. Now, is there a difference between  
17 manufactured home and mobile home?

18 A. If you're talking a difference between  
19 modular, panelized, and mobile. Yes.

20 Q. Now, what is a modular home?

21 A. A modular home is-----

22 MR. MATNEY: Just, just a second. I  
23 think we, we agreed to his qualifications as an  
24 appraiser and an expert, I guess, for selling real  
25 estate. We didn't realize he was going to be an



1 expert about manufactured, modular, panelized  
2 homes.

3 THE COURT: Yeah. And I, I, if  
4 that's an objection, I'm going...

5 MR. MATNEY: Yes, sir.

6 THE COURT: ...to overrule it for the  
7 moment and see where this is going.

8 MR. MATNEY: Okay. That's fine. I,  
9 I need it for the record.

10 Q. (Mr. Henderson continues) Well, let me,  
11 let me digress then. Do you have the occasion to  
12 buy or sell property, participate in the buying or  
13 selling of properties or appraising properties  
14 that have mobile homes, or manufactured homes, or  
15 other pre-made homes on them?

16 A. Many times.

17 Q. And how do you determine the values of  
18 manufactured homes?

19 A. Well, if we're talking about manufactured  
20 homes as in mobile homes, I would like to sort of,  
21 although he stopped me, I'd like to give a  
22 distinction of, of the three homes.

23 Q. Okay.

24 A. A manufactured home is a mobile home, has  
25 a steel frame is brought in on wheels and axle

1 with a tongue. Usually that home compared to the  
2 other two homes that I'm going to speak about is  
3 lesser of quality. They do have a depreciation  
4 guide put out by the manufacturers of mobile  
5 homes. Is in a NADA book. A, a modular home is  
6 also built in a factory. It is typically superior  
7 of quality and similar of quality as a site built  
8 home, of average quality. It is brought in on a  
9 flat bed truck. It is hoisted up with a crane and  
10 set on a permanent foundation. The other  
11 difference of the two when you speak of  
12 foundation, a mobile home has to have concrete  
13 block piers beneath the steel frame. The  
14 foundation around the parameter is not a permanent  
15 parameter foundation cause it doesn't sit on it.  
16 It always sits on the piers. The quality of the  
17 built, the roof line of a manufactured home as a  
18 mobile home is it lesser in steepness. A modular  
19 home again, is more like a site built house. A  
20 panelized house which could be something that was  
21 built in Goose Creek, it comes in in sections  
22 which are numbered. They're, they are put  
23 together by carpenters and they basically are a  
24 site built house, but it's a quicker site built  
25 house due to the fact that it comes in in the

1 sections.

2 Q. And so for those manufactured homes that  
3 you would refer to as mobile homes, you can  
4 determine their value by reference to a NADA book?

5 A. That's correct. Or, or compared to other  
6 mobile, manufactured homes.

7 Q. Is there a NADA book that's published for  
8 site built houses?

9 A. No.

10 Q. Now, the manufactured homes you referred  
11 to as mobile homes. Can these in your experience  
12 and to your knowledge be moved after they have  
13 been set up in a location?

14 A. And, and----- Yes. And they are probably  
15 regularly.

16 Q. And are you familiar with Richard  
17 Forster's house?

18 A. I am.

19 Q. And how are you familiar with that?

20 A. Well, I, I sold Mr. Forster his house.  
21 And I've also appraised other houses in Goose  
22 Creek.

23 Q. And have you had any opportunity to view  
24 the houses or the homes that are at issue here in  
25 the other section of Goose Creek? Let me show you

1 Plaintiffs' Exhibit Number "93".

2 A. I've driven by these homes. I've not  
3 inspected them as far as physically walking  
4 through them or around them.

5 Q. And from driving by and looking at these,  
6 can you state whether or not these are  
7 recognizable as double-wide mobile homes?

8 A. Yes, sir.

9 Q. Now, were you at the auction in June of  
10 1996?

11 A. Yes, sir.

12 Q. And did you read the announcements at that  
13 auction? Did you see the announcements ...

14 A. I saw-----

15 Q. ...at the auction?

16 A. I'd say that I probably read it. I just  
17 don't remember standing and reading it.

18 Q. And did you hear the, hear the  
19 announcements read?

20 A. Yes. I did.

21 Q. And based on the representations that were  
22 made at the auction, would, did you have an  
23 understanding of whether or not double-wide homes  
24 were allowable on the properties then offered for  
25 sale?

1           A. Well, I was at the understanding that  
2 Goose Creek was restricted against mobile homes  
3 period. That was my understanding even before the  
4 auction and at the auction.

5           Q. Now, do you have an opinion on whether the  
6 presence of mobile homes in the Goose Creek Estate  
7 Subdivision has an effect on the value of  
8 properties in the subdivision?

9           A. I do feel that mobile homes in Goose  
10 Creek, or any subdivision diminish, or can  
11 diminish values of the other...other homes, the  
12 other homes. Yes.

13          Q. Now, do you have any, any personal  
14 prejudices against double-wide mobile homes?

15          A. None whatsoever.

16          Q. Ever lived in one?

17          A. Yes. I have.

18          Q. How long did you live in one?

19          A. I lived in one probably nine years.

20          Q. Nine years?

21          A. Uh-huh. [Yes]

22          Q. And is your opinion about the value based  
23 on anything other than your professional  
24 experience and knowledge of these structures?

25          NO RESPONSE

1 Q. It's not based on any bias that you...

2 A. Oh, no.

3 Q. ...against them?

4 A. No.

5 MR. HENDERSON: Cross-examine.

6  
7 CROSS-EXAMINATION BY MR. AREY

8  
9 Q. Mr. Yost, Goose Creek is basically five  
10 acre lots, right?

11 A. Well, I think-----

12 Q. Except for the two areas, Section 4 and 5  
13 over on Whitley Branch have some smaller lots?

14 A. That's correct.

15 Q. And actually it's bigger than five acres  
16 in some respect, too?

17 A. Probably so.

18 Q. Plenty of room up there between homes?

19 A. That's right.

20 Q. Have you, you know, I, I think you said  
21 that mobile homes in a subdivision can diminish  
22 value. You're not saying in all cases, it does?

23 A. What I think that it does, Mr. Arey, is I  
24 think that mobile homes diminish market appeal to  
25 most buyers. So in return when you diminish the

1 appeal of a subdivision, you diminish value.

2 Q. And you're saying that as large as Goose  
3 Creek is with all it's different areas and parts  
4 off here and there that aren't obviously  
5 connected. One or several manufactured homes in  
6 one area is going to diminish value all the way  
7 over in another area of Goose Creek?

8 A. I'm saying that in all probability that  
9 could be true especially if you had a customer and  
10 you took a plat map up there and you went around  
11 the boundaries of the subdivision to give them an  
12 idea of what the neighborhood in which they're  
13 buying, I think that it would.

14 Q. Have you sold any property in Goose Creek  
15 lately?

16 A. No, sir.

17 Q. When was the last time that you sold  
18 property in Goose Creek?

19 A. Mr. Forster.

20 Q. You don't mean the auction sale?

21 A. No, sir. I mean. No, sir.

22 Q. Have you purchased...have you helped  
23 anybody purchase property in Goose Creek?

24 A. No, sir.

25 Q. When is the last time that may have

\* \* \*

1 A. Yes, sir.

2 Q. Do those stick built homes typically  
3 depreciate over time?

4 A. That's, that's, they can. Yes.

5 Q. Would you be surprised to learn that-----  
6 Well you, you're aware of real estate tax and how  
7 it's, how it's applied in Virginia?

8 A. Uh-huh. [Yes]

9 Q. And you're aware that each, every four  
10 years the real estate in Tazewell County is  
11 reassessed for tax purposes?

12 A. That's correct.

13 Q. Would you be surprised to learn that the  
14 manufactured homes that are the source of the  
15 subject of this litigation were reassessed at a  
16 higher value this past year than they were the  
17 year before?

18 A. My experience tells me that Tazewell  
19 County is twenty percent too high. So-----

20 Q. Twenty percent too high in its tax?

21 A. Yes.

22 Q. I think it's about ninety-nine percent too  
23 high in it taxes. Thank you. Would you be  
24 surprised to learn that the Tax Assessor or the  
25 Commissioner of Revenue attributes a higher value



1 to those manufactured housing, those manufactured  
2 homes?

3 A. I wouldn't be surprised.

4 Q. And isn't it true that a well kept  
5 manufactured home, well maintained, well kept will  
6 actually in some cases increase in value?

7 A. That's correct, too.

8 Q. You haven't had an opportunity to inspect  
9 these manufactured homes, have you?

10 A. I'm sorry?

11 Q. You haven't, you haven't looked at them?  
12 You don't know what type manufactured home they  
13 are, do you?

14 A. No. I don't.

15 Q. Do you know if they have steel frames  
16 under them, under?

17 A. I don't know that.

18 Q. So your experience would be that  
19 manufactured homes are what you can see from  
20 driving up Whitley Branch Road?

21 A. That's correct.

22 Q. And you can't testify as to the quality of  
23 those homes?

24 A. No. I can't.

25 Q. You can't testify as to whether those are

1 very high quality homes or mediocre quality homes?

2 A. No. I can't.

3 Q. Have you got some experience with what's  
4 commonly referred to as double-wide..

5 A. That's right.

6 Q. ...mobile homes? When's the last time you  
7 appraised a double-wide mobile home?

8 A. Last week.

9 Q. And how old was that mobile home?

10 A. I think it was in the early 90's.

11 Q. Have you had any experience in appraising  
12 manufactured homes built in the mid to late 90's?

13 A. Yes. I have.

14 Q. When was that?

15 A. Well, I've appraised quite a few of them.  
16 I mean so it could have been two months ago, or  
17 three months ago, or last month. I just can't---

18 Q. Are the manufactured homes made, produced  
19 in the mid to late 90's generally better quality  
20 than those manufactured homes produced ten to  
21 twenty years earlier?

22 A. I think so.

23 Q. Do they tend to hold their value longer?

24 A. I don't know.

25 Q. It would depend on how they were treated

1 and maintained?

2 A. That has a lot to do with it.

3 Q. How did the, these mobile homes, or these  
4 manufactured homes that you saw on Whitley Branch  
5 Road appear to be maintained?

6 A. Well, from these photos and when I, I did  
7 drive by them, they appear to be averagely  
8 maintained. They-----

9 Q. And you're familiar with the homes in  
10 Goose Creek Subdivision?

11 A. That's right.

12 Q. Are some of those homes----- There are  
13 some small homes in that subdivision?

14 A. There is.

15 Q. And there's some less expensive homes in  
16 that subdivision?

17 A. There's a mix of values.

18 Q. Would the less expensive homes in that  
19 subdivision tend to diminish the value of the more  
20 expensive homes?

21 A. I don't know.

22 Q. Well, isn't it true that your testimony  
23 that a manufactured home would tend to diminish  
24 value because it's a lower quality structure. Is  
25 that correct?

1 A. I did say that. Yeah. That's correct.

2 Q. Would a lower quality stick built home  
3 also diminish surrounding property values?

4 A. Could.

5 Q. Do you know the value of or have you  
6 appraised Mr. Forster's property?

7 A. Actually I appraised Mr. Forster's  
8 property for the Kellys. That is one reason I was  
9 aware that it was available.

10 Q. Were the Kellys a potential buyer before  
11 Mr. Forster?

12 A. They, they were the ones that owned it  
13 before Mr. Forster.

14 Q. Okay.

15 A. So I appraised it for the Kellys.

16 Q. Do you have an opinion as to any  
17 diminution in value of Mr. Forster's property  
18 since these manufactured homes have been erected?

19 A. No, sir.

20 Q. Have you appraised the McCoy's home?

21 A. Yes. I have.

22 Q. Do you have any opinion as to any  
23 diminution in value of their property since these  
24 manufactured homes have been put in place?

25 A. No, sir.

\* \* \*

1 mobile homes in that subdivision, especially if  
2 it's visible, if it's hidden and I don't know it,  
3 I can't tell them about it. But if there is  
4 mobile homes in that subdivision and I'm telling  
5 them that it's restricted, I think it diminishes  
6 their appeal to buy in that neighborhood. So if,  
7 if the appeal is lost from that buyer you, you  
8 could lose the whole buyer from that neighborhood  
9 and I don't know what it would diminish the value.  
10 Actually it diminished it at a hundred percent  
11 cause you lost them because of what was encumbered  
12 in that subdivision.

13 Q. These manufactured homes are no more  
14 visible to the McCoy or Forster property as is the  
15 trailer you didn't know about, are they?

16 A. That's right.

17 MR. MATNEY: Thank you.

18 THE WITNESS: Okay.

19  
20 REDIRECT EXAMINATION BY MR. HENDERSON

21  
22 Q. Now, Mr. Yost, I'm going to show you a  
23 copy of Plaintiffs' Exhibit "1-A". And this is a  
24 Plat of Section 1 of Goose Creek Estates. Are you  
25 familiar with this plat? Have you seen it before?

\* \* \*  
186

\* \* \*

1 reason we need to call him back. Doubt very  
2 seriously.

3 THE WITNESS: I'll leave my number.

4 MR. AREY: I don't believe that's  
5 going to happen, but-----

6 THE COURT: All right. Thank you.

7 BRIEF RECESS

8 RECORD RESUMED

9 THE COURT: Call your next witness.

10 MR. HENDERSON: Charles Baldwin.

11 WITNESS SWORN

12  
13 DIRECT EXAMINATION BY MR. HENDERSON

14  
15 CHARLES BALDWIN, a witness, who, after having  
16 been duly sworn was examined and testified as  
17 follows:

18 Q. Mr. Baldwin, would you state your name for  
19 the Judge, please?

20 A. Charles Baldwin.

21 Q. And what is your occupation?

22 A. I'm a retired insurance agent.

23 Q. And where do you work?

24 A. I work for Harry Homes at the present  
25 time.

1 Q. And how long have you worked there?

2 A. About a year and a half.

3 Q. And what do you do at Harry's Homes?

4 A. I'm a salesman.

5 Q. Now, in order to be a salesman at Harry's  
6 Homes, do you have any sort of license?

7 A. Yes. I do.

8 Q. And what license is that?

9 A. It's a state sales license.

10 Q. License to sell mobile homes...

11 A. Yes. It is.

12 Q. ...or manufactured homes?

13 A. Manufactured homes. Uh-huh. [Yes]

14 Q. And what brands of homes do you sell  
15 there?

16 A. Clayton.

17 Q. Now, are you familiar with the term  
18 manufactured home?

19 A. I certainly am.

20 Q. Now, are some manufactured homes the same  
21 as what people also call a mobile home?

22 A. Not since 1986, they're no longer called  
23 a mobile home since then. They've been called  
24 manufactured homes...

25 Q. But-----

1 A. ...since that time.

2 Q. They used to call them mobile homes?

3 A. Previous to that.

4 Q. Now they call them manufactured homes?

5 A. That's true.

6 Q. And what is the term double-wide refer to?

7 A. Cause it's two sections of the home  
8 brought in from the factory.

9 Q. So whether you call it a mobile home or a  
10 manufactured home, you're talking about a  
11 manufactured with two sections?

12 A. Talking about a manufactured two-section  
13 home from the factory.

14 Q. Now, let me show you these two exhibits.  
15 Plaintiffs' Exhibits "95" and "96" that have  
16 already been admitted. And at the photograph on  
17 the bottom of "95", do you recognize that?

18 A. That's where I work.

19 Q. That's where you work?

20 A. Yes, it's-----

21 Q. Harry's Bluefield Home Sales, Inc.?

22 A. That's----- Uh-huh. [Yes]

23 Q. And there's a sign there that says double-  
24 wide special \$28,995.00?

25 A. That's right.



1 Q. And that's probably the low end price for  
2 one of those?

3 A. It is.

4 Q. And that's for a double-wide?

5 A. Yes. It is.

6 Q. The other photographs show a location  
7 called Bluefield Homes Sales Pre-owned Home  
8 Center. Are you familiar with that location?

9 A. I only know that it's there. I don't work  
10 there.

11 Q. Know that it's there. And you work in  
12 the, in the new home section?

13 A. That's right.

14 Q. Now, in the used home section, are these  
15 used double-wides?

16 A. I have no idea of what their inventory is.  
17 All I know is they have some pre-used homes over  
18 there.

19 Q. Uh-huh.

20 A. Some that are manufactured homes, some are  
21 in two sections, some are in single sections.

22 Q. And so they sell used two-section  
23 manufactured homes?

24 A. That's true.

25 Q. So those homes can be picked up from where

1 they were and moved to another place?

2 A. Of course. They're on wheels.

3 Q. Okay.

4 A. At the time. Until they're delivered to  
5 the property.

6 Q. And if the wheels have been removed, they  
7 can put, be put back on and the tongue?

8 A. Well, I guess they could. I live in a  
9 manufactured home. I wouldn't think I would want  
10 to move mine, but the cost of it.

11 Q. Right. Just, but-----

12 A. My taxes went up forty percent, by the  
13 way, and not twenty.

14 THE COURT: You understand that's an  
15 ad valorem tax.

16 THE WITNESS: So I got twenty percent  
17 more than that twenty he said was under some way  
18 or another.

19 MR. HENDERSON: Yeah. Well, some people  
20 were not as happy with the reassessment as others.  
21 Cross-examine. Thank you.

22 MR. AREY: Jay, may I say something  
23 to you?

24 MR. HENDERSON: Sure.

25 COUNSEL CONFERRING

\* \* \*

\* \* \*

DIRECT EXAMINATION BY MR. HENDERSON

RAY STURGILL, a witness, who, after having been duly sworn was examined and testified as follows:

Q. Would you tell the Court your name, please?

A. Ray Sturgill.

Q. And what is your occupation?

A. I'm manager at Harry's Homes in Tazewell.

Q. And how long have you been manager there?

A. One year.

Q. What sort of homes do you sell there?

A. You mean the brand name?

Q. Brand name. Yeah.

A. Norris, Clayton, Fleetwoods, Giles, Reddmon.

Q. Do the homes you sell include single-wide and double-wide homes?

A. Yes.

Q. Now, are these the kinds of structures that people used to call mobile homes?

A. No, sir. They're different today.

Q. Well, are the kind of structures that people used to call mobile homes?

1           A. Well they's, people still call them mobile  
2 homes.

3           Q. People still call them mobile homes?

4           A. But they're, they still-----

5           Q. If I walked onto the lot and said, "I'd  
6 like to see a double-wide mobile home." What  
7 would you show me?

8           A. Whatever you want to see.

9           Q. Okay. And these things are now called  
10 manufactured homes?

11          A. Manufactured homes.

12          Q. You don't send people away cause they use  
13 the...

14          A. No. No.

15          Q. ...term mobile home?

16          A. No. If they call them trailers, I call  
17 them trailers.

18          Q. Okay, good. Now, how are these  
19 manufactured homes moved from your lot here in  
20 Tazewell to the place where the buyer is going to  
21 live?

22          A. They have a truck that transports them.

23          Q. So they have wheels?

24          A. They have wheels and a tongue. Hooks onto  
25 the truck.

1 Q. Now, the wheels and tongue. Can they be  
2 removed once these things are set up?

3 A. Yes.

4 Q. Can they put, be put back on at a later  
5 time and the structures be moved again?

6 A. Yes. They could.

7 Q. Do you have to have a license in your  
8 business?

9 A. Yes.

10 Q. What kind of license do you have?

11 A. I have a state sales license.

12 Q. And who's that issued by?

13 A. The state of Virginia.

14 Q. And was that a license to sell  
15 manufactured homes...

16 A. Yeah.

17 Q. ...specifically?

18 A. Yes.

19 Q. And does that enable you to buy and sell  
20 real estate or anything other than manufactured  
21 homes?

22 A. No, sir.

23 Q. Is it a restricted license to that...

24 A. Yes.

25 Q. ...profession?

1 MR. HENDERSON: Okay. Cross-examine.  
2

3 CROSS-EXAMINATION BY MR. AREY  
4

5 Q. Mr. Sturgill, you've been selling  
6 manufactured homes for how long?

7 A. Little over six years.

8 Q. Were you in the business before?

9 A. Yes, sir.

10 Q. You, from, the----- When did you start  
11 doing this, sir?

12 A. It was in October, six years ago.

13 Q. In your dealings, you deal with, I assume  
14 both, what's manufacture, the, the new  
15 manufactured, pre-fab modular homes. You sell it  
16 all, don't you?

17 A. Yes.

18 Q. And in that business, do you also take in  
19 older homes?

20 A. Yes. Quite often.

21 Q. So you're familiar with the different  
22 types of homes that as, as, as these type homes  
23 have been for the last twenty or thirty years?

24 A. Yes.

25 Q. What's been----- Well, the product you

1 sell now, first of all, what's the difference  
2 between a manufactured home, modular home, and it  
3 was talked about, panel built. Do you all do  
4 panel built homes?

5 A. No, sir.

6 Q. What's the difference between manufactured  
7 and modular home?

8 A. Well, modular homes have stricter codes.  
9 It's built to BOCA Codes.

10 Q. Okay.

11 A. And has several different codes it has to  
12 pass. And the manufactured home just passes a HUD  
13 inspections.

14 Q. But in all cases, are they built to the  
15 general standards of stick built homes, just built  
16 in a factory?

17 A. They're, they're built on an assembly  
18 line...

19 Q. Uh-huh.

20 A. ...and the, the reason they're built on an  
21 assembly line, is cost effective reasons.

22 Q. But, now what type-----

23 A. But they use the same materials.

24 Q. Okay.

25 A. Two by fours and use the same type

1 insulations, same type wiring that goes in the  
2 stick built houses.

3 Q. Floor joists, same difference?

4 A. Floor joists. OSB floors.

5 Q. What size floor joists?

6 A. Two by sixes and two by eights. Depends  
7 on the size of the home.

8 Q. Did I understand you said the insulation  
9 was the same?

10 A. It's the same. We use fiberglass  
11 insulation. Owens-Coring, Corning.

12 Q. How about the windows?

13 A. The windows, we use thermapane windows.

14 Q. Same as what you might get in a stick  
15 built house?

16 A. The, they are either self-sealing storm  
17 windows or thermapane windows. One or the other.

18 Q. Do you use PVC plumbing?

19 A. Yes.

20 Q. Copper wiring?

21 A. Copper wiring.

22 Q. There was a little talk earlier about roof  
23 pitch...

24 A. Uh-huh.

25 Q. ...in these things. Is there a little



1. difference roof pitch between modular and mobile  
2 homes?

3 A. There's a-----

4 Q. Or excuse me. Modular and manufactured  
5 homes?

6 A. There is. But also the manufactured homes  
7 can be adjusted and built to that specs.

8 Q. So you can build something to put over  
9 whatever pitch of a roof...

10 A. Yes.

11 Q. ...you want on it?

12 A. Up to-----

13 Q. Same as a stick built?

14 A. Up to a seven/twelve.

15 Q. How does the product you have today  
16 compare with the product that you would have,  
17 that, that you see come into your market from the  
18 mid-1970's?

19 A. No comparison.

20 Q. It's improved that much?

21 A. Yes.

22 Q. Now, both the modular homes and the  
23 manufactured homes are towed on axles and wheels,  
24 right?

25 A. Yes. Yes, sir.

1 Q. When you get to the site, are those  
2 removed?

3 A. Yes, sir.

4 Q. There's a, a tongue on those. Is that  
5 removable?

6 A. Yes.

7 Q. Were there some pretty significant  
8 changes, I think in '86?

9 A. Eighty-six.

10 Q. Okay.

11 A. HUD took over and all homes were built, no  
12 matter what brand they are at the plants, no  
13 matter what state, they're built by the federal  
14 HUD Code specs.

15 Q. Same standards?

16 A. And they have a HUD inspector on the, on  
17 the premises inspecting them.

18 Q. Before that, they could have been built to  
19 any standard?

20 A. I bought one in 1969 new and a tree fell  
21 on it and had to repair it and found out it had no  
22 insulation in it.

23 Q. But that's not the case now?

24 A. No. Not the case now.

25 Q. Do you have any experience, and maybe you

1 don't, in after the, they're brought in and  
2 they're set up. They're, if they're put on, they  
3 can be, I guess anchored down and put on a  
4 permanent foundation. Do you have any experience  
5 about the valuation of those things?

6 A. Well, insurance companies for one thing,  
7 a lot of times has a requirement that they be put  
8 on permanent foundation to get a lower rate on the  
9 insurance...

10 Q. Uh-huh.

11 A. ...they get the same rate as, as a stick  
12 built house.

13 Q. Okay. Go ahead, sir.

14 A. And the, they also can have the state that  
15 it's licensed in to do away with the titles and  
16 make it real estate property.

17 Q. Now, that wasn't true of the old mobile  
18 homes from the, trailers from the 19, mid 1970's?

19 A. I understand it wasn't. I wasn't in  
20 business...

21 Q. Okay.

22 A. ...but I understand it wasn't.

23 Q. Mr. Yost testified about some depreciation  
24 table for these. Are you aware of that?

25 A. Well, there is sometimes a depreciation.

1 But most of the times that's due to the person  
2 that's living in the house.

3 Q. Uh-huh.

4 A. How they treat it.

5 Q. Is your experience if they take care of  
6 it, that they will appreciate just like a regular  
7 house?

8 A. Yes. I've had houses we've took on trade  
9 and sell them for more than what they sold for  
10 new.

11 Q. Is that happen more often than not?

12 A. Well, don't happen that often cause like  
13 I say, people that live in them...

14 Q. Okay.

15 A. ...they don't take care of them.

16 Q. I, I assume a lot you get back are  
17 repossessed?

18 A. Well, sometimes. Yes.

19 Q. And just to reiterate, the, the modular  
20 homes and the mobile homes are at different code?

21 A. Yes.

22 MR. AREY: That's all the questions  
23 I have.

24 MR. MATNEY: Judge, I have no  
25 questions.

REDIRECT EXAMINATION BY MR. HENDERSON

Q. So you're describing the history of the changes in mobile home, manufactured home and I think you indicated the big change was in 1986...

A. Yes.

Q. ...when HUD took over?

A. Uh-huh. [Yes]

Q. How significant has the change been since 1986?

A. Well, they keep improving every, every year.

Q. A little bit?

A. Uh-huh. [Yes]

Q. Have they improved a lot since 1996?

A. Oh, I'm sure they have.

Q. Well, do you know?

A. I've, I see----- Yes. I see the improvements since I've been in the business.

Q. But it's not the same as through from 1975 to 1986 though, is it?

A. Well, not, there's not a big change. They improve like they'll add things to them that they, you can, is offered now that wasn't before.

Q. But what, what you're selling now is

1 pretty much the same thing as you were selling in  
2 1996/1995, isn't it?

3 A. Pretty, yes. Pretty close.

4 Q. And they're, you called it manufactured  
5 homes also back then?

6 A. Uh-huh. [Yes]

7 Q. Pretty much the same thing you were  
8 selling in '94 and '93?

9 A. Uh-huh. [Yes]

10 MR. HENDERSON: That's the only  
11 additional question I had, Judge.

12 THE COURT: All right. Thank you.  
13 Can this witness be released?

14 MR. AREY: Just, just one follow-up.  
15 Well, I will. Just one follow-up.

16  
17 RE-CROSS EXAMINATION BY MR. AREY  
18

19 Q. But what you're selling now is a whole lot  
20 different than what was being sold in '75/'80?

21 A. I've seen a big improvement since the six  
22 years I've been in business.

23 Q. Okay.

24 A. Big improvement on it.

25 MR. AREY: All right. Yes. He can

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\* \* \*

1 people for manufactured homes and I spoke with Mr.  
2 Henderson and we basically gotten in our  
3 information from his witness.

4 THE COURT: All right. This is the  
5 witness, James Hall.

6  
7 DIRECT EXAMINATION BY MR. HENDERSON

8  
9 JAMES A. HALL, a witness, who, after having  
10 been duly sworn was examined and testified as  
11 follows:

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

14 A. James A. Hall.

15 Q. And are you related to James S. Hall?

16 A. Yes, sir. It's my father.

17 Q. And where do you live?

18 A. North Tazewell.

19 Q. Do you live on property owned by James S.  
20 Hall?

21 A. Yes, sir.

22 Q. Is that in Goose Creek Estates?

23 A. Yes, sir.

24 Q. Now, what is the structure that you live  
25 in there?

1 A. It's a modular home.

2 Q. A modular home?

3 A. I mean a manufactured home.

4 Q. Manufactured home. And how long have you  
5 had that home?

6 A. I've had it since 1994.

7 Q. Nine, '94. And when did you move to Goose  
8 Creek Estates?

9 A. 1997.

10 Q. Where was the manufactured home before  
11 then?

12 A. Coretta.

13 Q. And you moved it from its first location  
14 to its second?

15 A. Yes, sir. I did.

16 Q. How, how was that done?

17 A. The, Lester's Mobile Home Supplies pulled  
18 it from War, West Virginia to Tazewell.

19 Q. The wheels were put back on it?

20 A. Yes, sir.

21 Q. And a tongue put back on each section?

22 A. Yes, sir.

23 Q. It was separated, moved from where it was  
24 and then set back up again on your father and  
25 mother's property?



1           A. Yes, sir. It was, but it was not on a  
2 permanent foundation at the time.

3           Q. And does this home have a steel beam  
4 structure underneath of it?

5           A. Pretty sure. Yeah.

6           Q. Ask you to look at Plaintiffs' Exhibit  
7 Number "93". Do you recognize any of those as  
8 being the home where you live?

9           A. Yes, sir. I do.

10          Q. And was, which one is it?

11          A. The first one.

12          Q. The one on the far left?

13          A. Right here.

14          MR. HENDERSON:           That's all the questions  
15 I have of this witness, Judge. Cross-examine.

16          THE COURT:               Questions of this  
17 witness?

18  
19                           **CROSS-EXAMINATION BY MR. AREY**  
20

21          Q. James, you got, that manufactured home was  
22 originally set up in West Virginia?

23          A. Yes, sir. It was.

24          Q. Was that on property you owned or someone  
25 else owned?

1 A. It was on my mother-in-law's property.

2 Q. Was it permanently affixed to the ground?

3 A. No, sir.

4 Q. Was a foundation built around it?

5 A. No, sir.

6 Q. So there wasn't any, any problem in moving  
7 it?

8 A. No, sir. Not at all.

9 Q. Had you expected to move it?

10 A. No, sir. Not at the time.

11 Q. At the time it was in West Virginia, was  
12 it taxed as real estate?

13 A. I'm not real sure on that.

14 Q. But now it's over here. It's on a  
15 permanent foundation?

16 A. Yes, sir. It sure is.

17 Q. How difficult would it be to move it?

18 A. It would be pretty difficult to move it  
19 now. I'd have to tear----

20 Q. You had the foundation bricked up?

21 A. Have to tear everything out and every,  
22 all, all my brick and everything.

23 Q. Had your plan been to brick up the whole?

24 A. My plans being I was going to brick the  
25 whole home and build on to it. And build a two-

1 garage on to it and a upstairs was my intentions.

2 Q. And would you have done that but for this  
3 suit?

4 A. Yes, sir. I'd probably done had it done  
5 by now.

6 Q. So it would look like any brick built home  
7 then?

8 A. Yes, sir.

9 Q. Now, I thought I asked this. Is, is it  
10 currently taxed as real estate?

11 A. I'm not real sure.

12 Q. You don't know? The tax tickets go to  
13 your parents?

14 A. Yeah. I think so.

15 MR. AREY: That's all the questions  
16 I have, Judge.

17 MR. MATNEY: Judge, I have no  
18 questions of this witness.

19 THE COURT: Any redirect?

20 MR. HENDERSON: Just briefly, Judge.

21  
22 REDIRECT EXAMINATION BY MR. HENDERSON  
23

24 Q. When you say it would be difficult to move  
25 it. It's not impossible to move it, is it?

1 A. No, sir. There-----

2 Q. All you have to do is remove the bricks  
3 that are underneath it, put the wheels back on,  
4 put the tongues back on and separate the two  
5 pieces and you can move it again?

6 A. Right. There's nothing impossible to  
7 move. You can move a house just as well as you  
8 can a home, so.

9 Q. Well, I don't think so.

10 A. Yeah.

11 Q. Have you ever tried to move a house?

12 A. It can be done. It's been done.

13 Q. I understand it can be done. They don't  
14 come equipped for wheels and a tongue though, do  
15 they?

16 A. No. But they can move them.

17 Q. Are you familiar with the cost of moving  
18 site built houses?

19 A. No, sir. I'm not.

20 MR. HENDERSON: I didn't think so.  
21 That's all the questions I have.

22 MR. AREY: Just one follow-up.

23 \* \* \*

\* \* \*

1 THE COURT: Thank you. You may stand  
2 aside.

3 MR. HENDERSON: Dean Johnson.

4 WITNESS SWORN  
5

6 DIRECT EXAMINATION BY MR. HENDERSON  
7

8 LARRY DEAN JOHNSON, a witness, who after  
9 having been duly sworn was examined and testified  
10 as follows:

11 Q. Would you state your name for the Judge,  
12 please?

13 A. Larry Dean Johnson.

14 Q. And what is your occupation?

15 A. Tazewell County Building Official.

16 Q. How long have you been the building  
17 official?

18 A. Approximately nine years.

19 Q. And in that occupation, are you familiar  
20 with the term manufactured home?

21 A. Yes. I am.

22 Q. How about the term mobile home?

23 A. Yes.

24 Q. Has that terminology changed recently?

25 A. Well, it's more or less interchangeable.

1 Just like Mr. Sturgill said, you know, that  
2 whatever people call them, that, that's okay, you  
3 know. Of course, the state has a definition for  
4 it.

5 Q. And they've, they've changed that in the  
6 code fairly recently. Are you familiar with that?

7 A. I looked back in my code books to 1990 is  
8 as far back as my books go and it was manufactured  
9 housing back that far.

10 Q. Now, are you familiar with the standards  
11 for building manufactured housing?

12 A. Not really.

13 Q. With what they are?

14 A. Because most of the manufactured housing  
15 is, go by federal code and we are involved with  
16 state code.

17 Q. And the standards for building site built  
18 houses come from where?

19 A. The state. Normally the Uniform Statewide  
20 Building Code.

21 Q. And what codes do they use? What building  
22 codes do they use?

23 A. Primarily on one and two family dwellings,  
24 it is either the BOCA code or the KABO one and two  
25 family dwelling.

1 Q. And that's different from the HUD  
2 requirements?

3 A. Yes.

4 Q. Well, how are manufactured homes moved out  
5 to a site?

6 A. Normally by truck.

7 Q. And you as building inspector, do you ever  
8 have to issue permits for them to be set up?  
9 Things of that sort?

10 A. We issue permits for the set-up itself  
11 because we have to inspect the, the set-ups, the  
12 utility connections, exits, and that.

13 Q. Now, once they're set up, is there  
14 anything to prevent them from being moved again  
15 after they're set up?

16 A. No.

17 Q. No impediment at all?

18 A. That normally----- No.

19 MR. HENDERSON: Cross-examine.  
20

21 CROSS-EXAMINATION BY MR. AREY  
22

23 Q. You're familiar with modular homes, too,  
24 aren't you?

25 A. Yes, sir.

1 Q. They're built by the BOCA Code?

2 A. Yes, sir. Technically the, the, the way  
3 the building code lists that is as an  
4 industrialized building.

5 Q. And they come in in two parts?

6 A. Or more.

7 Q. They're pulled on the lot just like a  
8 manufactured home?

9 A. Yes.

10 Q. And set on the lot?

11 A. Uh-huh. [Yes]

12 Q. And so that might be a double-wide,  
13 wouldn't it?

14 A. I have heard the term used for both. Yes.

15 Q. And, but they're built with the same code  
16 that a stick built home is?

17 A. Yes.

18 Q. How long have you been doing this, Dean?

19 A. Nine years.

20 Q. Have you seen or in your experience as a  
21 building inspector, I assume you see all sorts of  
22 manufactured...

23 A. Yes, sir.

24 Q. ...mobile homes, modular homes from twenty  
25 years ago, forty, thirty years ago to the present?



1           A. Uh-huh. [Yes]

2           Q. Have there been some significant changes  
3 or improvements in manufactured homes and modular  
4 homes in the last ten years?

5           A. Oh, yes. Of course, there's been  
6 improvements in all types of constructions...

7           Q. Right.

8           A. ...since then.

9           Q. You heard, I guess, Mr. Sturgill  
10 testifying about...

11          A. Uh-huh. [Yes]

12          Q. ...some of the differences. Are those  
13 correct?

14          A. Oh, yes.

15          Q. And he testified that really they're  
16 pretty much the same as a stick built home except  
17 they're built in a factory and brought to the  
18 site. Is that generally correct?

19          A. Generally. Yes.

20          Q. I understand there's some distinctions,...

21          A. Yeah.

22          Q. ...but they have much of the qualities  
23 that a stick built home has?

24          A. Basically the same materials.

25          Q. But now a mobile, a, a trailer that was

1 maybe built in the seventies, you tend to find  
2 those are a lot less quality? A lot less?

3 A. Yes.

4 Q. Generally tend to be on, still on their  
5 axles, and wheels, and have a tongue there, and?

6 A. A lot of times, especially if they've been  
7 set up for a long time.

8 Q. Are you aware that when a manufactured  
9 home, or a modular home, or whatever is  
10 permanently attached to, attached to a foundation,  
11 it is then taxed as real estate?

12 A. Well, no. I, I...

13 Q. Okay. That's fine.

14 A. I'm not familiar with that.

15 Q. I'm just asking the question. In both  
16 cases they have to obtain a building permit? Both  
17 stick built and?

18 A. That's correct.

19 Q. When you, when someone goes to or seeks to  
20 obtain a building permit, do you all do anything  
21 to check the property it's going on for  
22 restrictions or anything like that?

23 A. No.

24 Q. So in the case of all these properties,  
25 these folks did obtain a building permit?

1           A. Yes. As, as long as they meet the  
2 requirements of the health department as far as  
3 septic disposal, we can issue a permit.

4           Q. And that's the same permit if they'd done  
5 a stick built?

6           A. Yes.

7           Q. And you don't check as far as restrictions  
8 or anything other as, as you would for stick  
9 built?

10          A. No.

11          Q. Do you have the same requirements for  
12 improvements to the property to put in a  
13 manufactured home, modular home, or stick built  
14 home?

15          A. I don't-----

16          Q. I would assume like obviously septic and  
17 everything...

18          A. Yes.

19          Q. ...that that goes in?

20          A. Uh-huh. [Yes]

21          Q. The roads, you know, have to connect...

22          A. Yeah. Uh-huh.

23          Q. ...you know, have to connect to the road?

24 Your site plans the same?

25          A. Yes.

1 MR. AREY: That's all the questions  
2 I have, Judge.

3 MR. MATNEY: No further questions,  
4 Judge.

5  
6 REDIRECT EXAMINATION BY MR. HENDERSON  
7

8 Q. Dean, you mentioned that there'd been  
9 changes and improvements in all types of  
10 construction? That includes stick built houses,  
11 as well, doesn't it?

12 A. Oh, yes. Yes.

13 Q. Has better insulation?

14 A. Yeah.

15 Q. Have double and triple thermal pane  
16 windows? A lot of things you didn't have fifteen,  
17 twenty years ago.

18 A. Right. Lot of better structural materials  
19 just with the glues they have nowadays and that.

20 Q. Uh-huh. So those kinds of considerations  
21 are probably across the board, don't they?

22 A. Pretty much so. Yes.

23 Q. Now, you said you heard of modular units  
24 being referred to as double-wide. Was that a  
25 common usage or was it just something that?

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\* \* \*

1 THE WITNESS: Thank you.  
2 MR. HENDERSON: Lisa McCoy.  
3 THE COURT: Lisa McCoy?  
4 WITNESS SWORN  
5

6 DIRECT EXAMINATION BY MR. HENDERSON  
7

8 LISA COLLINS MCCOY, a witness, who, after  
9 having been duly sworn was examined and testified  
10 as follows:

11 Q. Would you state your name for the Judge,  
12 please?

13 A. Lisa Collins McCoy.

14 Q. Are you one of the owners of property in  
15 Goose Creek as a plaintiff in this case?

16 A. I am.

17 Q. So, would you tell the Court how you came  
18 to purchase the property in Goose Creek?

19 A. We were looking for acreage. We came  
20 across the partnership. There was signs  
21 advertising five acre tracts of land or more. We  
22 drove the subdivision as many roads that we could  
23 locate until we found Mr. Cartwright's home and we  
24 called him and set up an appointment to view the  
25 property.

1 Q. When you, did you then go and meet with  
2 Mr. Cartwright?

3 A. Yes. On several different lots.

4 Q. Did he show you any plats?

5 A. He showed all five to us.

6 Q. All five at the same time?

7 A. Yes.

8 Q. Did he make any representations to you  
9 concerning mobile homes in the subdivision?

10 A. He made it quite clear that they would not  
11 ever be allowed in Goose Creek.

12 Q. Now, have you seen the mobile homes at  
13 issue here?

14 A. Yes.

15 Q. Do you recognize those as being double-  
16 wide mobile homes?

17 A. In my opinion, they are double-wides.

18 Q. What condition were they in when you first  
19 saw them?

20 A. Once it was brought to my attention and I  
21 drove by there was at least one that was not  
22 completely attached. It was still in two separate  
23 pieces and I could still see what I would refer to  
24 as I-beams or steel underneath.

25 Q. So you immediately recognized that as

1 being a mobile home?

2 A. Yes.

3 Q. What people refer to as a mobile home.  
4 And based on the deed restriction and your deed,  
5 did you expect that these structures would be  
6 allowed in Goose Creek Estates?

7 A. I never thought they would be allowed and  
8 I was quite stunned to see them.

9 MR. HENDERSON: Thank you. Cross-  
10 examine.

11  
12 CROSS-EXAMINATION BY MR. AREY

13  
14 Q. Were you aware of the, and we, everybody's  
15 talked about the single-wide mobile home in  
16 Section 5. Were you aware of that?

17 A. Not till after we proceeded with the  
18 investigation in this lawsuit that it was brought  
19 to our attention that one existed.

20 Q. That's not, but that's not part of the  
21 lawsuit?

22 A. Not this one, but it will be.

23 Q. And was there any reason why you didn't  
24 just add that one to the lawsuit?

25 A. Like I said, it was not brought to our  
\* \* \*

\* \* \*

1 Q. And you say there were two of them there  
2 before, there were two of them there when you  
3 first saw them?

4 A. There were at least two. The third had  
5 not been attached.

6 Q. And that was, did you say it was on the  
7 property at that time or just didn't see it?

8 A. It was on the acreage. I don't know if it  
9 had been set up in its exact position.

10 Q. And this was in 1997?

11 A. Approximately, yes.

12 Q. When you saw those, why didn't you  
13 approach the homeowners then? This is in '97.

14 A. As far as being a good neighbor, it wasn't  
15 my place to make contact with them. I made  
16 contact with my attorney instead.

17 Q. And actually your attorney didn't contact  
18 them until November of 1998. Is that correct?

19 A. Without looking at the letters I would not  
20 know the date, but if you say...

21 Q. Well-----

22 A. ...that's the date, that's the date.

23 Q. Just so we get this correct. I say  
24 November. I apologize. Are, is this a copy of  
25 the letter your attorney sent in September of



1 1998?

2 A. [Witness reviewing letter] Yes..

3 Q. And so between the time you first saw  
4 these homes in 1997 and when your attorney finally  
5 or, or I guess you finally got with the attorney  
6 and wrote in 1998, you indicate that one, two of  
7 them were there, but one was attached?

8 A. One was unattached.

9 Q. But it became attached during that year?

10 A. Sometime...

11 Q. Foundation...

12 A. ...in that time period.

13 Q. ...put under it?

14 A. Correct.

15 Q. And how about the fourth one? Do you know  
16 whether or not it was there in 1997 when you first  
17 saw?

18 A. I have no knowledge of the one that's not  
19 visible from the road.

20 Q. So the fourth one may have been installed  
21 during the year or so, or six months, or nine  
22 months...

23 A. It's very probable.

24 Q. ...between when you first saw them?

25 A. It could be possible. \* \* \*

\* \* \*

1 Q. I believe you purchased the second lot, I  
2 believe if I look at the deeds, it was sometime in  
3 May of 1997?

4 A. That's correct.

5 MR. AREY: Judge, I believe that's  
6 all the questions I have.

7 THE COURT: Mr. Matney?

8 MR. MATNEY: No, sir. No questions.

9 MR. HENDERSON: A brief redirect.

10  
11 REDIRECT EXAMINATION BY MR. HENDERSON  
12

13 Q. Lisa, you're being asked about the time  
14 frame and I understand that it's a little bit  
15 vague. But between the time when you first saw  
16 the mobile homes and the time you consulted your  
17 attorney, did you and Charlie notify Mr.  
18 Cartwright of the situation and ask him to do  
19 something about it?

20 A. My husband did. Yes.

21 Q. And you waited for him to do something,  
22 but he didn't?

23 A. Correct.

24 Q. And after it became clear that he wasn't  
25 going to do anything then you consulted your own

1 counsel?

2 A. Correct.

3 MR. HENDERSON: That's all I wanted to  
4 bring out, Judge.

5 THE COURT: Thank you. You may stand  
6 aside.

7 MR. HENDERSON: Judge, other than the  
8 depositions excerpts, that's all we have on our  
9 case in chief.

10 THE COURT: All right. Then with the  
11 deposition testimony, did you have an opportunity  
12 to look at those?

13 MR. AREY: No, sir. We haven't had  
14 an opportunity to look at that.

15 THE COURT: All right.

16 MR. HENDERSON: We probably just  
17 distribute this.

18 THE COURT: I'll give you certainly  
19 some additional time to examine that, but I'm  
20 going to prospectively consider that inert. We  
21 may have to readdress that once you examine those  
22 redacted portions of that testimony.

23 MR. AREY: I guess I need to know  
24 who it is and-----

25 MR. HENDERSON: I have copies that I can

\* \* \*

\* \* \*

1 those conversations, do you know?

2 A. Just throughout. We've been friends with  
3 the McCoys for, ever since they moved to the  
4 subdivision which we moved up there in, about  
5 eight years ago, which was what? Ninety-  
6 two/ninety-three.

7 Q. Okay.

8 A. And then the McCoys came in afterwards and  
9 we've been friends with them for those several  
10 years.

11 Q. These conversations you've had with them.  
12 Do, do you recall when they bought  
13 property...another piece of property by your  
14 friend, Mr. Pike?

15 A. Yes. I do.

16 Q. Were those conversations with them before  
17 they bought that piece...

18 A. Yes. It was.

19 Q. ...of property? About lots that didn't  
20 have the...

21 A. Right.

22 Q. ...restrictions? Did you talk to them  
23 about or did they talk to you, the McCoys, about  
24 these manufactured homes?

25 A. The McCoys called my house and tried to

1 get us to join in this litigation.

2 Q. And do you recall when that was?

3 A. I don't know. Sometime probably in '77,  
4 maybe.

5 Q. Seventy-seven or '97?

6 A. It was '97. I'm sorry.

7 Q. And do you, do you know whether the mobile  
8 or the manufactured homes were all in place by  
9 then?

10 A. Yeah. They were already there, set up and  
11 people were living in them.

12 Q. Have you, you've seen these manufactured  
13 homes...

14 A. Yes. I have.

15 Q. ...haven't you? In comparison to your  
16 home, is there any real distinction?

17 A. My home's just like theirs. Stick built  
18 with vinyl siding.

19 Q. Uh-huh.

20 A. Sitting on a brick foundation.

21 Q. Now, these manufactured, you, you live in  
22 Section 1, don't you?

23 A. Yes. I do.

24 Q. Probably well, actually you're the next  
25 one down the road from... \* \* \*

\* \* \*

1 title work?

2 A. Probably at this point, maybe twenty-five  
3 percent.

4 Q. At one time was it greater?

5 A. Yes.

6 Q. And I believe you did a title examination  
7 on Lot 2, Section 4 for Citizens Bank when the  
8 Halls were purchasing this property?

9 A. That's correct.

10 Q. And as a result of your title examination,  
11 did you report any restrictions against placing a  
12 manufactured home, mobile home, single-wide,  
13 double-wide on that property?

14 A. No. I did not.

15 Q. You checked the chain of title that you  
16 would do in any piece of property?

17 A. Correct.

18 Q. The procedure you followed, was that the  
19 established procedure here in Tazewell County?

20 A. Yes, sir.

21 MR. HENDERSON: Objection. I don't think  
22 that's a relevant question, Judge. Tazewell  
23 County does not provide a relevant legal standard  
24 of care for attorneys.

25 THE COURT: I'll sustain counsel's

\* \* \*

\* \* \*

1 A. ...with an absolute yes.

2 Q. ...you don't know how many other lots?

3 A. No. I've never done a count on that.

4 Q. And you don't know, you haven't talked to  
5 the people of Goose Creek as to any plan or  
6 anything they had with regard to the restrictions?

7 A. No, sir. Not at all.

8 MR. AREY: Thank you.

9

10 CROSS-EXAMINATION BY MR. HENDERSON

11

12 Q. So you were aware from other title work  
13 you've done that there were restrictive covenants  
14 and deeds in Goose Creek Estates?

15 A. Correct.

16 Q. You referred earlier in your testimony  
17 that your firm has what you referred to as a base  
18 title exam on the subdivision. What is a base  
19 title exam?

20 A. When I use that phrase, I'm talking about  
21 a title examination that goes back beyond the  
22 creation of the subdivision and then you can start  
23 from that point forward to bring your title  
24 examination up to today.

25 Q. And how do you develop a base title exam?

1           A.   Someone has to do a full blown title  
2 examination at some point along the way.

3           Q.   So clearly this wasn't the first time you  
4 or your firm had looked at property in Goose Creek  
5 Estates?

6           A.   Correct.

7           Q.   Actually you've probably done quite a bit  
8 of title work on that subdivision, haven't you?

9           A.   I would say a fair amount.

10          Q.   Now you, you said that you didn't report  
11 anything to the Halls?

12          A.   Right.

13          Q.   You didn't receive any information from  
14 the Halls either I take it?

15          A.   No.

16          Q.   Mr. and Mrs. Hall didn't tell you that  
17 they had a lot already that was subject to the  
18 restriction?

19          A.   I never had any communication at all from  
20 the Halls.

21          Q.   Okay.

22          A.   With the Halls.

23          Q.   And I take it also that you did not do any  
24 sort of a check of adjacent or nearby properties  
25 in the subdivision?



1 NO RESPONSE

2 Q. In other words, what I'm thinking of Tom,  
3 is when you go down, when you Grantor down and you  
4 get to Goose Creek Estates and you hit the  
5 printout button downstairs...

6 A. Right.

7 Q. ...you get a lot of information where...

8 A. Right.

9 Q. ...they've had deeds come out. And some  
10 of those deeds are going to be to properties that  
11 are abutting or nearby this one. Did you check  
12 any of those deeds in the course of your  
13 examination?

14 A. I was aware that Lot 3 in Section 4 was  
15 affected by the restrictive covenants.

16 Q. Now, did you check any of the lots in  
17 Section 1 abutting Lot 4, Section 2?

18 A. I don't believe I did.

19 Q. Are you aware that sometimes people will  
20 obtain things like easements, water rights, things  
21 of that sort that you can only find by checking an  
22 out conveyance?

23 A. That's correct. And in our title reports  
24 we except or make the report expressly subject to  
25 the accuracy of the indexes in the clerk's office.

1 Q. Uh-huh.

2 A. So that if it says for example, Lot 1 in  
3 Section 4 doesn't have anything beyond that,  
4 typically we do not look at that deed.

5 Q. So you don't check adjacent deeds for  
6 appurtenant rights?

7 A. Not unless the indices has some indication  
8 that we should look at it.

9 Q. Now, this is, this is the practice in your  
10 firm I take it?

11 A. That's correct.

12 Q. And that's where, that's where you  
13 received your training in title examination?

14 A. Right.

15 Q. And are you familiar with the Virginia  
16 Title Examiner's Manual?

17 A. I'm not sure what you're referring to on  
18 that.

19 Q. The Virginia Title Examiner's Manual,  
20 that's the name of the book.

21 A. Who is it by?

22 Q. I don't remember the author.

23 A. But we've got two or three small volumes  
24 in the office. I'm not sure if it's the same one  
25 that you're referring to.

1 Q. Have you read those?

2 A. It's been awhile.

3 Q. Been awhile. Prior to being contacted by  
4 counsel about this case, what was your familiarity  
5 with the doctrine implied reciprocal negative  
6 easements?

7 A. It's one of those things that I was aware  
8 existed, but wasn't something I thought about  
9 every day or...

10 Q. Right.

11 A. ...lost sleep over at night.

12 Q. When you and your firm, neither you nor,  
13 nor your firm as a whole has never then correlated  
14 these deeds in the subdivision to determine  
15 whether that doctrine applies or not?

16 A. I'd say that's a fair statement.

17 Q. Now, are you familiar now with what the  
18 doctrine holds?

19 A. Yes.

20 Q. Of the Supreme Court cases. And you're  
21 familiar with the concept that where there are  
22 numerous deeds from a Grantor containing a  
23 restriction that that easement can arise?

24 A. It can arise under some circumstances.  
25 Correct.

1 Q. Under some circumstances?

2 A. Right.

3 Q. Have you taken any opportunity to review  
4 the deeds that were granted out by the partnership  
5 in Goose Creek Estates?

6 A. No. I have not.

7 Q. Now, if I told you that it's in evidence  
8 that there were seventy-nine deeds granting a  
9 hundred and thirteen parcels, would that sound  
10 right to you?

11 A. I'd say that sounds about right.

12 Q. And a hundred and five of those parcels  
13 were subject to one or another form of restriction  
14 against single or double-wide mobile homes? In  
15 other words, there were only eight that, it was  
16 omitted?

17 A. I, I can't say whether or not I'd be  
18 surprised by that or not.

19 Q. Don't you think as a title examiner that  
20 if ninety-three percent of the parcels in a  
21 subdivision were subject to that restriction that  
22 you might at least develop a strong suspicion that  
23 there was a reciprocal negative easement there?

24 A. It would depend on the circumstances.

25 Q. Well, it's a pretty strong circumstance,

1 isn't it?

2 A. Well it, it's a factor.

3 Q. But it's not one that you considered?

4 A. No.

5 Q. You didn't actually find out the  
6 information and consider that factor, did you?

7 A. That's correct.

8 Q. And as far as the Halls were concerned,  
9 you didn't report to them one way or the other?

10 A. That's correct.

11 Q. Simply to the bank?

12 A. Right.

13 Q. And all of these deeds that we're talking  
14 about from the Goose Creek Partnership to various  
15 buyers are on record here in the clerk's office in  
16 Tazewell County. Is that right?

17 A. I would assume so.

18 Q. Okay.

19 A. I've reviewed your pleading, but I haven't  
20 cross-checked it.

21 Q. You want to run do that while we wait?

22 A. No. That's okay.

23 Q. I didn't think so.

24 MR. HENDERSON: That's all the questions  
25 I have on cross, Your Honor. \* \* \*

\* \* \*

1 Q. When you saw that property, what was your  
2 intent to do with it?

3 A. We was wanting to divide and give our  
4 girls an acre apiece and we was wanting to build  
5 on the part that was left.

6 Q. And your girls, that's Stephanie and?

7 A. Margaret.

8 Q. Margaret?

9 A. Right.

10 Q. And did you discuss that with Mr.  
11 Cartwright?

12 A. Right.

13 Q. You told him what you wanted to do with  
14 the property?

15 A. Right.

16 Q. What did Mr. Cartwright tell you about  
17 restrictions on that property that you wanted to  
18 buy?

19 A. Well, I was concerned about restrictions  
20 I was concerned about dividing it up, too. And we  
21 was sitting on his porch and he said, "No, over  
22 here you couldn't do that", but he said, "Those,  
23 like those lots over there," said "you could do  
24 that."

25 Q. Well, had you been in Goose Creek Estates

\* \* \* 284

\* \* \*

1 Q. When's the first notice you had that there  
2 was some question regarding the mobile homes being  
3 on the property?

4 A. When we got that letter from Mr.  
5 Henderson.

6 Q. At that point were the mobile homes, were  
7 the manufactured homes set up?

8 A. Yes. Yeah. They'd lived there for more  
9 than a year...

10 Q. And both-----

11 A. ...when we got the first letter. Yeah.

12 Q. Both your daughters had lived there for  
13 more than a year?

14 A. Uh-huh. [Yes]

15 Q. And that's the first you'd heard of it?

16 A. Right.

17 MR. MATNEY: Thank you.

18

19 CROSS-EXAMINATION BY MR. HENDERSON

20

21 Q. Now, Mr. McKinney, you, so you admit that  
22 you talked to Mr. Cartwright about restrictions?

23 A. Right.

24 Q. And in a deposition that was taken in my  
25 office, do you recall that?

1           A. Uh-huh. [Yes]

2           Q. I asked you did Mr. Cartwright say  
3 anything, I'm looking at page 6, and I'll show  
4 those to you if you'd like, did he say anything  
5 about restrictions in other parts of the  
6 subdivision, if you recall? And you answered,  
7 "Yeah. We was sitting on his front porch and he  
8 said, 'Over here in this section', he said,  
9 'there's restrictions.' But he said, 'Those lots  
10 over there, there's no restrictions on them.'"

11          A. Right

12          Q. And Mr. Henderson: "By those lots over  
13 there, what did you understand him to mean?" And  
14 you responded, "I assumed he meant, well the ones  
15 we were buying I knowed he meant them and I just  
16 figured maybe in that other section or whatever.  
17 I didn't know how it was divided up at the time,  
18 you know, later." So essentially you agree with  
19 your wife that when you were there talking to Mr.  
20 Cartwright you mentioned that there were  
21 restrictions in the subdivision?

22          A. Right.

23          Q. But that they would not apply, he agreed  
24 that they wouldn't apply to your house?

25          A. Yeah. I was assuming like this section

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\* \* \*

1 THE COURT: All right. Thank you Mr.  
2 McKinney. You may stand aside.

3 MR. MATNEY: We call Stephanie  
4 Bowling.

5 WITNESS SWORN

6  
7 DIRECT EXAMINATION BY MR. MATNEY

8  
9 STEPHANIE DAWN BOWLING, a witness, who, after  
10 having been duly sworn was examined and testified  
11 as follows:

12 Q. State your full name, please?

13 A. Stephanie Dawn Bowling.

14 Q. You're the daughter of of David and Eva  
15 McKinney?

16 A. Yes.

17 Q. And your parents gave you a part of their  
18 property in the Goose Creek Subdivision?

19 A. Right.

20 Q. When did they give that to you?

21 A. It was in the Spring of '97.

22 Q. And did you, you're married to whom?

23 A. Scott Bowling.

24 Q. How long have you all been married?

25 A. Eleven years come this February.

1 Q. And you have children?

2 A. Yes.

3 Q. How many?

4 A. One, one son.

5 Q. How old is he?

6 A. He's eight.

7 Q. You, what did you do once your parents  
8 gave your that property?

9 A. I put my house up for sale in Adria and  
10 began looking at, for a home.

11 Q. And where did you find a home?

12 A. At Harry's at Claypool Hill.

13 Q. And what type home did you buy?

14 A. It was a Fleetwood, Fleetwood model.

15 Q. How much did you pay for that home?

16 A. It was thirty-two or thirty-four thousand.

17 Q. Did you finance that?

18 A. Yes.

19 Q. Where did you finance it with?

20 A. To start with, with Greentree.

21 Q. And then did you have the house put on  
22 your property?

23 A. Yes.

24 Q. And did you refinance the property after  
25 that?

1           A. Yes. I think it was a year later we  
2 financed, we refinanced with Bank of Tazewell  
3 County.

4           Q. All right. When you pay real estate, when  
5 you pay taxes on your home. Do you pay real  
6 estate taxes?

7           A. Yes.

8           Q. And did you get a notice last year of a  
9 reassessment of your home?

10          A. Yes. I think so.

11          Q. Was that a reassessment as to how much  
12 your home is worth?

13          A. Right.

14          Q. Was it worth more according to the  
15 Commissioner of Revenue this year than it was last  
16 year?

17          A. Yes.

18          Q. Do you know how much more?

19          A. I think maybe a couple of thousand. I'm  
20 not sure.

21          Q. Same home?

22          A. Right.

23          Q. Tazewell County thought it increased in  
24 value two thousand dollars?

25          A. Right.

1 Q. You and your husband are making payments  
2 on that home?

3 A. Right.

4 Q. Did you have any discussion with Mr.  
5 Cartwright about any restrictions?

6 A. I've never spoke to Mr. Cartwright.

7 Q. Who did a title examination?

8 A. I, I think David Harmon and then for the  
9 Bank of Tazewell County...

10 Q. Yes, ma'am?

11 A. ...it was Bowen and Bowen.

12 Q. That's a law firm here in town?

13 A. Yes.

14 Q. Did you get a copy of the letter that that  
15 law firm sent to the bank?

16 A. I think we did.

17 Q. Did you read that letter?

18 A. Yes.

19 Q. Did you seen any notice of restriction in  
20 that letter as far as mobile homes on this  
21 property?

22 A. No.

23 Q. Did anyone ever tell you that the property  
24 upon which you live, now live was restricted so  
25 that there could be no mobile home, double-wide or

1 single-wide on that property?

2 A. No.

3 Q. When did you first learn that anyone had  
4 objected to your home being on that property?

5 A. It was the first letter we got from the  
6 McCoy's attorney, maybe two or three years ago.

7 Q. That would have been-----

8 A. Two years ago. Maybe-----

9 Q. 1998?

10 A. Ninety-eight.

11 Q. How long had you lived in your house  
12 before you got that letter?

13 A. A little over a year. Maybe a year and  
14 three or four months.

15 Q. From your property, can you see the  
16 McCoy's property?

17 A. No.

18 Q. Can you see Mr. Forster's property?

19 A. No.

20 Q. Do you know either one of those families?

21 A. No.

22 Q. Is your home well maintained?

23 A. Yes.

24 Q. Do you have a foundation around it?

25 A. We have vinyl underpinning.

1 Q. And keep the yard well groomed?

2 A. Right.

3 Q. And the house is in good shape?

4 A. Right.

5 Q. Are you satisfied with the quality of the  
6 home?

7 A. Yes. Very satisfied.

8 Q. And you've got an eight year old?

9 A. Right.

10 Q. If you were ordered by this Court to  
11 remove that home from that lot, do you have  
12 anywhere else to put it?

13 A. No. Not at all.

14 MR. MATNEY: Answer Mr. Henderson's  
15 questions.

16

17 CROSS-EXAMINATION BY MR. HENDERSON

18

19 Q. Now, Stephanie, could you have built a  
20 house there for \$34,000.00, do you think?

21 A. I don't know. I'd say I probably could.

22 Q. You could, do you think? You say there's  
23 vinyl underpinning under the house?

24 A. Right. Vinyl skirting.

25 Q. Vinyl skirting and that could be removed?

1 A. Yes.

2 Q. And the tie-downs could be pulled up?

3 A. Yeah.

4 Q. And you could put the wheels back on and  
5 separate the two parts of the double-wide and move  
6 it, couldn't you?

7 A. Yes.

8 Q. Now, when you say you don't have any place  
9 to move it, you don't have any place to move it  
10 right now?

11 A. No.

12 Q. Okay.

13 A. I couldn't afford to move it. Couldn't  
14 afford to buy no land or nothing.

15 Q. But there are places it could go?

16 A. I suppose if somebody gave me the money.

17 MR. HENDERSON: That's all the questions  
18 I have.

19 MR. AREY: One question.

20 THE COURT: Ms. Bowling, the Court  
21 has a couple of questions. Do you have a  
22 question?

23 MR. AREY: May I? Just one to  
24 establish a time frame, if I may.  
25

DIRECT EXAMINATION BY MR. AREY

Q. Stephanie, is this, you may take a minute to look at the letter you received from or I guess you all received from Mr. Henderson, the attorney?

A. Yes.

Q. And what is the date of that letter?

A. September 25th, 1998.

Q. And this was a year or more than a year after you'd been there?

A. Yes.

Q. And that was the first knowledge you had yourself...

A. Yes.

Q. ...of any claim of restriction?

A. Yes. That's the first time.

Q. If you'd known of this beforehand, would you have put your house there?

A. No. Definitely not.

MR. AREY: That's all, Judge.

RE-CROSS EXAMINATION BY MR. HENDERSON

Q. Stephanie, when did you move your double-wide onto the property?



1 A. It was either August or September of '97.

2 Q. And you affixed it to the land and put the  
3 skirting on shortly thereafter?

4 A. Yes.

5 Q. Now, if you had received a letter from me  
6 in, you know, a month after you moved on, would  
7 you have then moved off the property?

8 A. No.

9 Q. Now, when you received the letter from me  
10 in September of 1998, did you respond to me at  
11 all?

12 A. No.

13 Q. Did you have anybody get in touch with me?

14 A. Uh-uh. [No]

15 Q. And you didn't look to make any  
16 arrangements to move?

17 A. No.

18 Q. You wouldn't have moved if you'd gotten  
19 that letter the day after you had moved onto the  
20 property, would you?

21 A. No.

22 Q. Now, did you contact either me or Mr.  
23 Forster or Mr. and Ms. McCoy prior to moving your  
24 trailer onto that property?

25 A. No.

1 Q. Of course not.

2 MR. HENDERSON: That's all the questions  
3 I have, Judge.  
4

5 VOIR DIRE EXAMINATION BY THE COURT  
6

7 Q. Ms. Bowling, did you get a certificate of  
8 title with the home that you placed on this  
9 property?

10 A. No. I don't think we did. A certificate  
11 of title?

12 Q. Did at the time that you purchased that  
13 get a certificate of title? That's a certificate  
14 of ownership somewhat akin or likened to a motor  
15 vehicle title?

16 A. I don't, I don't know. I'm not sure. I  
17 don't know if it was a title or I'm not really  
18 sure.

19 Q. Like from a-----

20 A. I can't, I just can't answer that.

21 Q. If there was a certificate of title issued  
22 with the purchase of this home?

23 MR. MATNEY: Your Honor, if I, if I  
24 may ask a question regarding, I think the Court's  
25 going to the character as real estate or personal

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\* \* \*

1 THE COURT: Thank you. You may stand  
2 aside.

3 MR. MATNEY: Call Margaret Brown, Your  
4 Honor.

5 THE COURT: Margaret Brown?

6 MR. MATNEY: Yes, sir.

7 WITNESS SWORN

8

9 DIRECT EXAMINATION BY MR. MATNEY

10

11 MARGARET ELLEN BROWN, a witness, who, after  
12 having been duly sworn was examined and testified  
13 as follows:

14 Q. State your name, please?

15 A. Margaret Ellen Brown.

16 Q. And you're David and Eva McKinney's  
17 daughter, is that right?

18 A. Yes.

19 Q. Who's your husband?

20 A. Dwayne Brown.

21 Q. How long have you been married?

22 A. Six years.

23 Q. Do you have any children?

24 A. One.

25 Q. How old is your child?

1 A. He's three years old.

2 Q. Was your child born, when was he born?

3 A. He was born in '93.

4 Q. I'm sorry?

5 A. Ninety, I'm sorry. '97.

6 Q. When did you move onto the property where  
7 you now live?

8 A. It was the same year, '97.

9 Q. Was your child born at the time you moved?

10 A. Yes.

11 Q. So he was an infant then?

12 A. Right.

13 Q. Your father and mother gave you about an  
14 acre of land?

15 A. Yes.

16 Q. And that's close to their home?

17 A. Yes.

18 Q. And where did you get the home you now  
19 live in?

20 A. Harry's Mobile Homes.

21 Q. How much did you pay for it?

22 A. It was thirty-seven, five.

23 Q. And what type home is that?

24 A. It's a, I believe it's a Fleetwood.

25 Q. Is it, how would you describe the home, is

1 it a nicely furnished, nicely constructed home?

2 A. Yes.

3 Q. Once you had the home taken to the  
4 property, did you put it on a foundation?

5 A. Yes.

6 Q. What type foundation?

7 A. It's cinder block. It's blocked  
8 underneath.

9 Q. And it's connected, hooked up with water  
10 and sewage?

11 A. Right.

12 Q. Have you financed that property?

13 A. The land.

14 Q. And where have you financed the land?

15 A. Bank of Tazewell.

16 Q. Bank of Tazewell County?

17 A. Uh-huh. [Yes]

18 Q. And was there a title exam done on that  
19 property?

20 A. Yes. It was, but I don't know who by.

21 Q. Did anyone ever tell you before you put  
22 that home on the property that there may be a  
23 restriction on that property so that you couldn't  
24 put a double-wide mobile home on it?

25 A. No.

1 Q. Had you been concerned about that?

2 A. No.

3 Q. Did that thought enter your mind that you  
4 may not be able to put a double-wide mobile home  
5 on that property?

6 A. No.

7 Q. When is the first you heard that anyone  
8 had questioned your right to put a mobile home on  
9 the property?

10 A. When this, when we were notified that we  
11 were being sued to move our homes.

12 Q. Was that Mr. Henderson's September 1998  
13 letter?

14 A. Yes. It was.

15 Q. Did you respond to that letter?

16 A. No. I didn't.

17 Q. Did you speak with Mr. Cartwright about  
18 that letter?

19 A. No. I didn't.

20 Q. Did you speak with anyone about the  
21 letter?

22 A. Not really. Just my family.

23 Q. Based on your conversation with your  
24 family, did you have any understanding about  
25 whether or not there would be a response to that

1 letter?

2 A. I believe so by Cartwright. I, I thought  
3 he was going to respond.

4 Q. So you believed Mr. Cartwright was going  
5 to respond to Mr. Henderson's letter.

6 A. To my understanding. I'm not for sure.  
7 I can't say.

8 Q. Now, did you intend when you put that home  
9 on the property that you would move that home off  
10 and sell it?

11 A. No.

12 Q. Did you intend for that home to stay on  
13 the property?

14 A. Yes.

15 Q. Permanently?

16 A. Yes.

17 Q. When you pay your real estate taxes, do  
18 you pay any personal property taxes on that home?

19 A. Yes.

20 Q. Do you know the difference between  
21 personal property and real property taxes?

22 A. I believe so.

23 Q. Do you get a tax ticket from the  
24 Treasurer's Office?

25 A. Yes. We pay real estate tax on-----

1 Q. On the tax ticket does it say land and  
2 improvements?

3 A. I, I don't really handle that. My  
4 husband does so I can't say.

5 Q. Your husband is here in court?

6 A. Right. Yes. He is.

7 Q. So you can't tell the Court if you pay  
8 real estate or personal property on that?

9 A. I'm pretty sure we pay real estate.

10 Q. So your child has been there all his life?

11 A. Just about. Yes.

12 Q. If you had to move your home off of that  
13 property, where would you put it?

14 A. I have no idea.

15 Q. Can you afford to move your home off the  
16 property?

17 A. No. Not at this time.

18 Q. And you're currently making payments on  
19 the land on which you own?

20 A. Yes.

21 Q. On the property which you live?

22 A. Right.

23 MR. MATNEY: Answer Mr. Henderson's  
24 questions.  
25



1 CROSS-EXAMINATION BY MR. HENDERSON

2  
3 Q. Ms. Brown, when you said that you're  
4 making payments on the land, you didn't borrow  
5 money to purchase the land, did you? You borrowed  
6 money after you-----

7 A. No. Not on. On the house. We're making  
8 payments on our home not on the land.

9 Q. Did you, do you have a deed of trust  
10 against the land?

11 A. Yes. I believe so.

12 Q. But that was after you moved onto that?

13 A. Right. Yes.

14 Q. You borrowed some money against the land?

15 A. Yes.

16 Q. That wasn't to buy it?

17 A. No.

18 Q. And whoever did the title exam for that  
19 you have no idea who it was?

20 A. No.

21 Q. Never got anything directly about that  
22 yourself?

23 A. No.

24 MR. HENDERSON: That's all the questions  
25 I have.

1 VOIR DIRE EXAMINATION BY THE COURT

2  
3 Q. So you, you have a payment against the  
4 real estate as well as the home that's on the real  
5 estate. Did I understand that correctly?

6 A. We, right. We refinanced the land, but  
7 we're just making payments on our home.

8 Q. But do you make one payment on the home  
9 and real estate or are you make, are you paying a  
10 payment on the real estate. I understood that was  
11 a gift from your parents.

12 A. Right. It is.

13 Q. So do you have one payment that you pay on  
14 the home?

15 A. Yes.

16 Q. You don't pay anything on the real estate?

17 A. No.

18 Q. So did you use the money then that you  
19 borrowed against the real estate with a structure  
20 on it to pay for the home? Is that what you're  
21 doing?

22 A. What we did is we refinanced our land to  
23 get a loan from the bank. We used the land. It  
24 went for the land.

25 THE COURT: All right. Anything

1 further?

2 MR. MATNEY: Your Honor, I've got some  
3 tax tickets from the Commissioner or the  
4 Treasurer's Office. If we could stipulate as to  
5 entry of that or I can establish it through the  
6 witnesses. As far as the character is being taxed  
7 as real estate.

8 MR. HENDERSON: Judge, I'll stipulate  
9 that those are genuine. I'd reserve an objection  
10 based on relevance. This is an architectural  
11 restriction and I don't think that it makes any  
12 difference whether or not under the law it's taxed  
13 as personal property or real estate. An  
14 architectural restriction applies in either case.  
15 And I think that the, the language of those deeds  
16 indicates that it applies in either case because  
17 it speaks about mobile homes being placed or  
18 erected. So whether or not it's attached to the  
19 land, what we're talking about here is an  
20 architectural restriction. Not a restriction  
21 against personal property. There's nothing in  
22 there that says it's a restriction because it's  
23 personal property. It's strictly architectural.  
24 I would stipulate that these records are genuine.  
25 I have no objection to their genuineness or

1 authenticity. They do appear to be authentic.  
2 But I simply don't believe that they are relevant  
3 to the issues at hand.

4 THE COURT: Well, the Court would  
5 overrule the objection and then I certainly think  
6 it's a point, circumstance the Court needs to  
7 weigh in making this determination. I would admit  
8 that over objection of counsel.

9 (The documents referred to  
10 were marked for  
11 identification as Defense  
12 Exhibit Numbers "1" and "2"  
13 and were received in  
14 evidence.)

15 MR. MATNEY: Thank, thank you, Your  
16 Honor.

17 THE COURT: Anything further of this  
18 witness?

19 MR. MATNEY: Nothing further of this  
20 witness, Your Honor.

21 THE COURT: Thank you.

22 MR. AREY: Judge, let me do a couple  
23 of things, probably as bookkeeping to start with.  
24 We've discussed, and I think I've talked and  
25 showed to the witnesses the letters that Mr.

\* \* \* 316

\* \* \*

1 THE COURT: Otherwise, the Court's  
2 not going to receive----

3 MR. AREY: No.

4 THE COURT: ....those for content.

5 MR. AREY: No. No, no. I'm, I'm  
6 looking for them to be received for the time frame  
7 of when these folks, the defendants, became aware  
8 of the restriction.

9 THE COURT: And the Court would take  
10 those as exhibits for that limited purpose.

11 (The documents referred to  
12 were marked for  
13 identification as Defense  
14 Exhibit Numbers "3" and "4"  
15 and were received in  
16 evidence.)

17 MR. AREY: And then the one other  
18 thing would be the tax tickets for the Halls and  
19 be the same reasoning.

20 MR. HENDERSON: Right. I'll stipulate  
21 that these are copies of the authentic tax  
22 tickets, Judge. Subject to the same objection  
23 based on relevance.

24 MR. AREY: This is '97, '98, '99,  
25 and 2000, Judge.

1           THE COURT:                   All right.    The Court  
2 will admit those over objection of counsel, I  
3 guess in the case of the, the Halls or cases of  
4 the Halls for the same reasons previously stated  
5 regarding the McKinney tax tickets.

6                               (The documents referred to  
7 were marked for  
8 identification as Defense  
9 Exhibit Number "5", "6", and  
10 "7" and were received in  
11 evidence.)

12           MR. AREY:                   Judge, we would call,  
13 unless you need to look at something there, we'd  
14 call Ms. Joyce Hall.

15           THE COURT:                   I would like to see those  
16 tax tickets.

17           MR. AREY:                   Oh, I'm sorry. Yes, sir.  
18 Jay, do you want to approach with me? Cause I  
19 need to explain----- I've got these a little  
20 backwards, Judge. You're looking at Lot 2,  
21 Section 4. Lot 2, Section 4 '97. This is Lot 3.  
22 That's their home. So you're looking at Lot 2,  
23 Section 4, '98. Lot 2, Section4 '99. And----

24           OFF THE RECORD

25           RECORD RESUMED

1 MR. AREY: See they, they would do  
2 it as of January 1st and there wasn't any home on  
3 the property then.

4 THE COURT: Does, doesn't ninety-  
5 eight or ninety-nine?

6 MR. AREY: Ninety-eight represents  
7 one home on it. And then in '98, late in '98, a  
8 second home or of June of 98 the second home was  
9 put on it. So that appears in your '99 tax  
10 ticket.

11 THE COURT: But I've not gotten the--

12 MR. AREY: Yes. You do.

13 THE COURT: I'm sorry. Yeah.

14 MR. AREY: I, I'm sorry. I have  
15 them messed around.

16 WITNESS SWORN

17  
18 DIRECT EXAMINATION BY MR. AREY

19  
20 JOYCE HALL, a witness, who, after having been  
21 duly sworn was examined and testified as follows:

22 Q. Would you state your name, ma'am?

23 A. Joyce Hall.

24 Q. You are the owner of actually two lots in  
25 Section 4 of Goose Creek Estates?

1 A. Yes.

2 Q. That's Lots 3 and 2?

3 A. Yes.

4 Q. Which lot did ya'll acquire first?

5 A. Three.

6 Q. And approximately when did you acquire  
7 that?

8 A. In '94.

9 Q. And you have built your home on that?

10 A. Yes, sir.

11 Q. Okay. Your, your Lot 3 we have examined  
12 the deed to that. And there is a restriction for  
13 no mobile home or double-wide on it. Is that  
14 right?

15 A. Yes. That's right.

16 Q. At the time you purchased the property,  
17 did you examine that deed for that?

18 A. Did I examine it? I recall looking at it.  
19 Yes.

20 Q. Okay. And further, it says that that  
21 restriction runs with the land and further it says  
22 that that restriction may be enforced by the  
23 Grantors or other lot owners in Goose Creek, so  
24 far as you know? Well, I guess you'll say  
25 whatever the deed says?



1 A. Yes.

2 Q. Okay. Now later on, you bought the tract  
3 next to you which is Lot 2 of Section 3?

4 A. Right.

5 Q. And when was that?

6 A. We bought that in '96.

7 Q. Ninety-six?

8 A. Uh-huh. [Yes]

9 Q. You bought it before the auction?

10 A. Yes.

11 Q. Did you meet with Mr. Cartwright about  
12 that?

13 A. Yes. I called Mr. Cartwright and----

14 Q. Okay.

15 A. ----and told him we were interested in  
16 the----

17 Q. And what occasion did you to call him?

18 A. We saw the auction sign at the end of  
19 Whitley Branch Road. My husband and I had  
20 discussed, previously discussed the property and  
21 it adjoined ours and we were interested in it.  
22 And so I told him, you know, if we're going to get  
23 the property we need to do it now.

24 Q. Did you receive any flyers or materials  
25 about the auction?

1           A.   No, sir.

2           Q.   Ya'll didn't attend the auction because  
3 you'd already done the deal?

4           A.   No, sir.

5           Q.   Okay. And when you went to Mr. Cartwright  
6 to purchase the property, did you ask him  
7 specifically about whether that property could be  
8 sold without restrictions on it?

9           A.   I don't remember the exact conversation.  
10 The only thing that I can recall is that I told  
11 him we would be interested in the property if it  
12 wasn't restricted.

13          Q.   Did you explain to him why?

14          A.   Yes. I did.

15          Q.   And what did you explain to him?

16          A.   Well I explained to him that, you know,  
17 later on, you know, in years that we wanted it for  
18 our children. We didn't know what they would put  
19 on it. But we didn't want it to be restricted  
20 like ours in case that they did want to put, you  
21 know, a manufactured home on it.

22          Q.   At the time you asked Mr. Cartwright that,  
23 did you have any knowledge yourself as to what was  
24 contained in any of the other deeds in Goose  
25 Creek?

1 A. No, sir.

2 Q. All you know was what was on your deed?

3 A. What was on my deed.

4 Q. Had you had a title examination done of  
5 your property?

6 A. Well, I'm sure it was done.

7 Q. When that title, do you recall from that  
8 title, title examination as to whether there was  
9 any statements made with regard to other tracts or  
10 restrictions based on other tracts in Goose Creek?

11 A. No. None that I know.

12 Q. So I take it now, now did Mr. Cartwright  
13 did he say he could sell it to you without the  
14 restrictions?

15 A. Yes. He did.

16 Q. And that was the agreement you all made  
17 with him?

18 A. Yes. Uh-huh.

19 Q. And you didn't, actually you had reached  
20 your agreement before the auction on June the 1st?

21 A. Yes.

22 Q. Okay. I believe that deed is dated May  
23 the 30th?

24 A. Yes.

25 Q. Do you recall whether you signed it then

1 or maybe a little later?

2 A. Probably later, but I know the deal was  
3 going probably the first day the auction signs  
4 went up we called and got in contact with Mr.  
5 Cartwright.

6 Q. When you were making your deal to buy it  
7 from Mr. Cartwright, he was the developer of the  
8 property?

9 A. Yes.

10 Q. You knew that?

11 A. Yes.

12 Q. So basically you were relying on what he  
13 was saying that he could sell it without  
14 restrictions?

15 A. Right. Uh-huh.

16 Q. Do you know whether there was a title  
17 examination done on that property, Lot 2? Did the  
18 bank have one done?

19 A. I'm sure they did.

20 Q. Okay.

21 A. You know, I relied on the bank. Mr.  
22 Cartwright, you know.

23 Q. Mr., Mr. Walk, who was here----

24 A. Yes.

25 Q. ----testifying. As far as you know, he

1 testified correctly.

2 A. I mean I'm from McDowell County, you know,  
3 I don't even know what restricted land or didn't  
4 at the time.

5 Q. When did you first find out that they were  
6 contesting, they were saying that this land was  
7 restricted and you couldn't do that?

8 A. When we received the letter. We had been  
9 on vacation and came back and----

10 Q. This is the letter from Mr. Henderson  
11 dated September 25th, 1998?

12 A. Ninety-eight. Yes.

13 Q. Well now, prior to that letter, I believe  
14 you had moved your son Jamie's manufactured home  
15 onto the property?

16 A. Yes.

17 Q. Do you recall approximately when that was?

18 A. Let's see. I think Jamie moved over  
19 possibly in June or July of '97.

20 Q. Okay. And how about your daughter,  
21 Samantha?

22 A. My daughter Samantha, I distinctly  
23 remember June the 9th of '98.

24 Q. Had you received this letter from Mr.  
25 Henderson well so you received this letter just

1 three months later from Mr. Henderson?

2 A. Yes.

3 Q. Had you received that letter from Mr.  
4 Henderson prior to June of '98, would you have  
5 placed a manufactured home for your daughter on  
6 that property?

7 A. Absolutely not.

8 Q. In fact, when the manufactured homes were  
9 placed on the property, were improvements made to  
10 them?

11 A. Yes.

12 Q. Tell me what improvements had been made to  
13 them.

14 A. Well both of the homes were bricked.  
15 There was porches put on them. And they were  
16 bricked so they could later on be bricked all the  
17 way up, you know. All they had to do was take the  
18 cap from the top and just brick them on up. Which  
19 was our intention.

20 Q. In fact, but for this suit, would you have  
21 done that?

22 A. Yes.

23 Q. By now?

24 A. We would have.

25 Q. Now these, in order to move these

1 manufactured home now, homes now I guess that the  
2 foundations would have to be knocked out?

3 A. Yes, brick. I mean they're bricked all  
4 the way around, you know.

5 Q. Now when these----

6 A. All four sides.

7 Q. When these manufactured homes were placed  
8 on the property that was, and I don't know. Do  
9 you know whether you reported to the taxing  
10 authorities here in Tazewell County or did someone  
11 else take care of that for you?

12 A. I imagine someone else did. I know I, I  
13 got the building permits and they came out and  
14 checked the property.

15 Q. Did, did you ever receive a certificate of  
16 title or did your children ever receive a  
17 certificate of title for those properties?

18 A. Not that I know of.

19 Q. They were placed on the property and then  
20 you started getting----

21 A. Tax.

22 Q. ----included in your real estate taxes the  
23 next----

24 A. Right.

25 Q. Year? Okay. And I believe that, that

1 the first year '98, it was just Jamie's trailer,  
2 your son's trailer?

3 A. Yes, sir.

4 Q. And then '99, they both appeared?

5 A. Right.

6 Q. Okay. Has there been any change in the  
7 assessed value of the property the, or, or the,  
8 the homes on Lot 2, that's your childrens' homes,  
9 between 1999 and 2000?

10 A. Yes, sir.

11 Q. Did it go up?

12 A. Yes. Uh-huh.

13 Q. About twenty-five thousand?

14 A. Yes. Uh-huh.

15 Q. When you talked to Mr. Cartwright about  
16 manufactured homes on the property or, or some  
17 sort of home like that on the property. Did he  
18 say anything about what he didn't want on it?

19 A. Yes. He told us that, that it was all  
20 right, you know. But that he had talked to his  
21 lawyer and there could be no tongues showing, no  
22 wheels left on. You know, they had to be more or  
23 less up to par like, you know, a regular home  
24 which is what we think they are.

25 Q. Did he indicate that they had to be



1 attached to the property?

2 A. Yes.

3 Q. I mean permanently attached by a  
4 foundation?

5 A. Yes.

6 Q. Now you are aware that there was a single-  
7 wide mobile home I think in Lot, in Section 5?

8 A. Yes.

9 Q. Were you aware of that before you bought  
10 your property?

11 A. No, sir.

12 Q. Were you aware of that before you bought  
13 Lot 2 or, or Lot 2?

14 A. No, sir.

15 Q. For your children?

16 A. No, sir.

17 Q. I think I asked you this. You've never  
18 seen the certificate of titles?

19 A. No, sir.

20 Q. To the property? You're not aware of  
21 there being certificate of titles for your  
22 childrens' homes?

23 A. I'm not, I'm not aware of any. No.

24 Q. And you, you pretty much took care of  
25 Samantha's, didn't you?

1 A. Yes, sir.

2 Q. In fact, I think your husband co-signed?

3 A. Yeah.

4 Q. At the bank for----

5 A. I had to come home and get him to take him  
6 back up to co-sign. Yes.

7 Q. And as far as, as you know the mobile home  
8 folks took care of whatever they had to do with  
9 those?

10 A. Everything else. Uh-huh.

11 MR. AREY: Judge, for the record,  
12 Jay, I have all these pictures. Do you want me to  
13 go through them one by one? You saw this, Judge.  
14 But for the record, I'd like to----

15 THE COURT: Why don't you just put  
16 those in the record. I don't know that there's  
17 any reason to go through and look at those cause  
18 I think counsel indicated as we went through,  
19 "I've got a picture of this. I've got a picture  
20 of this."

21 MR. AREY: Let, let me just go  
22 through it real quick.

23 Q. (Mr. Arey continues) You took a number of  
24 pictures of the area around the lot that your  
25 children have. That's of, of Lot 2 Section 4.

\* \* \*

\* \* \*

1 check a minute, Judge. I believe that's all the  
2 questions I have for her, Judge.

3 THE COURT: Cross-examine.  
4

5 CROSS-EXAMINATION BY MR. HENDERSON  
6

7 Q. Ms. Hall, at the time that you talked to  
8 Mr. Cartwright about buying the second lot. You  
9 had knowledge then that there was a restriction in  
10 the deed to you and your husband for the lot where  
11 your house is?

12 A. To our lot. Yes.

13 Q. And you were concerned that if that same  
14 restriction was in the neighboring lot that your  
15 children wouldn't be able to put manufactured  
16 homes on it. Is that correct?

17 A. Yes. I mean I didn't want it if it was  
18 restricted.

19 Q. But you actually knew about the  
20 restriction?

21 A. On our land. Yes.

22 Q. Did you know of any other lots in the  
23 subdivision that weren't restricted at that time?

24 A. I didn't know about any of the other, you  
25 know, restricted or unrestricted. I knew about

1       our land.

2           Q.   And Mr. Cartwright had sold you the land  
3       where you built your house, had he not?

4           A.   Yes.

5           Q.   He was in the business of selling that  
6       land?

7           A.   Right.

8           Q.   And had been selling it for quiet a few  
9       years. So, you went to the person who was selling  
10      it to get an opinion on whether you could buy it  
11      under the terms you wanted to buy it on. Is that  
12      correct?

13          A.   I did.

14          Q.   You didn't, neither you nor your husband  
15      at anytime consulted independent legal counsel  
16      about that matter did you?

17          A.   No, sir.

18          Q.   Now, you said that your daughter  
19      Samantha's double-wide was placed on the property  
20      in June of 1998?

21          A.   June, yes. June, July. I know that it  
22      came in-----

23          Q.   June or July?

24          A.   Yes. In June.

25          Q.   Let's say it's June or July.

1           A. I'm not exactly sure the month, but I know  
2 it was in '98.

3           Q. If you had gotten a letter from me in  
4 August would, would you have then removed that  
5 from the property?

6           A. No. But if I had gotten one from you  
7 after my son moved on I would not have put another  
8 one there.

9           Q. Okay.

10          A. Because we were out five thousand down  
11 payment. We were out three thousand dollars  
12 almost for a septic. About ten or fifteen  
13 thousand for grading just for hers.

14          Q. Now-----

15          A. So I definitely would not have put another  
16 one there.

17          Q. You're acquainted with Pat White, are you  
18 not?

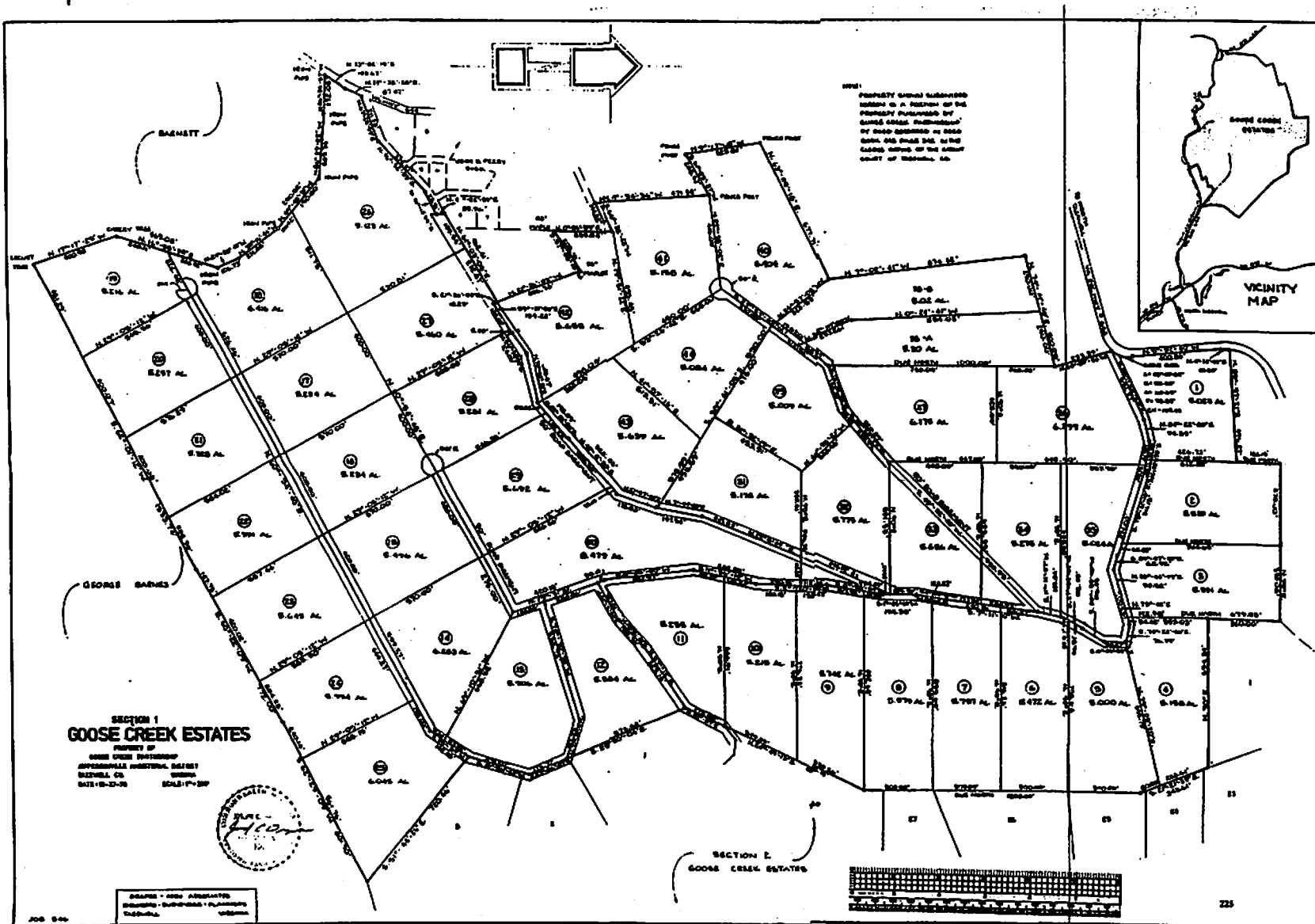
19          A. I am.

20          Q. You have known her for a long time?

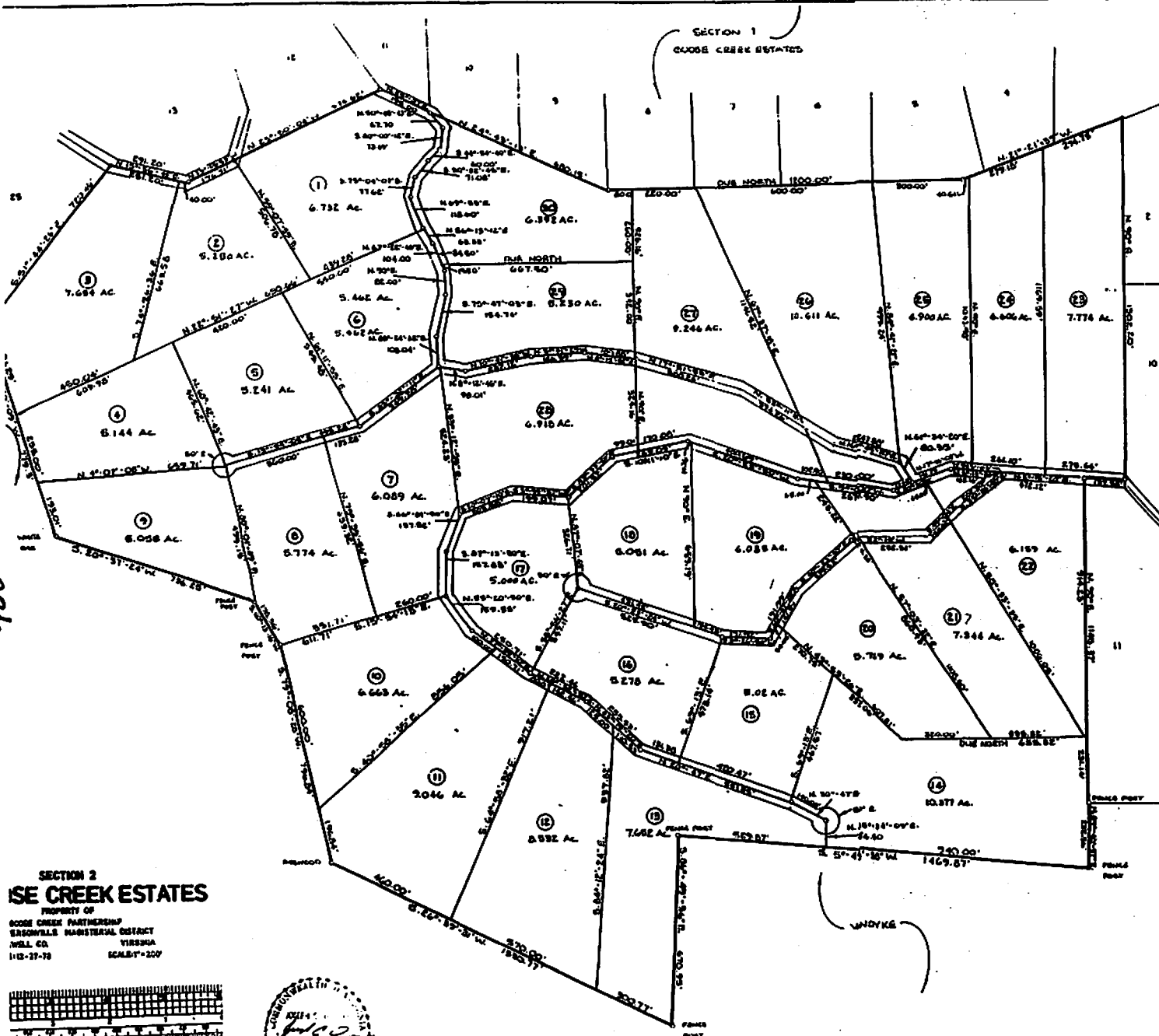
21          A. I have.

22          Q. Didn't Ms. White relate to you a  
23 conversation that she had had with Lisa McCoy  
24 shortly after your son put his double-wide on your  
25 property?

\* \* \*



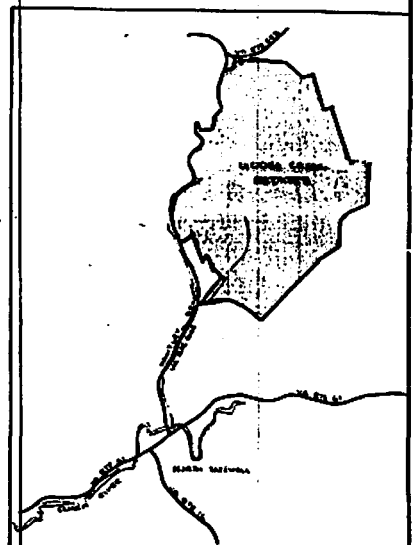
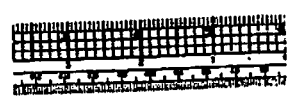
226



SECTION 2  
GOOSE CREEK ESTATES

NOTE:  
PROPERTY SHOWN SHADOWNED  
HEREON IS A PORTION OF THE  
PROPERTY PURCHASED BY  
GOOSE CREEK PARTNERSHIP  
BY DEED RECORDED IN DEED  
BOOK 440 PAGE 342 IN THE  
CLERK'S OFFICE OF THE CIRCUIT  
COURT OF TAYLOR CO.

SECTION 2  
GOOSE CREEK ESTATES  
PROPERTY OF  
GOOSE CREEK PARTNERSHIP  
BROOKVILLE MARSHALL DISTRICT  
WELL CO.  
1112-27-78



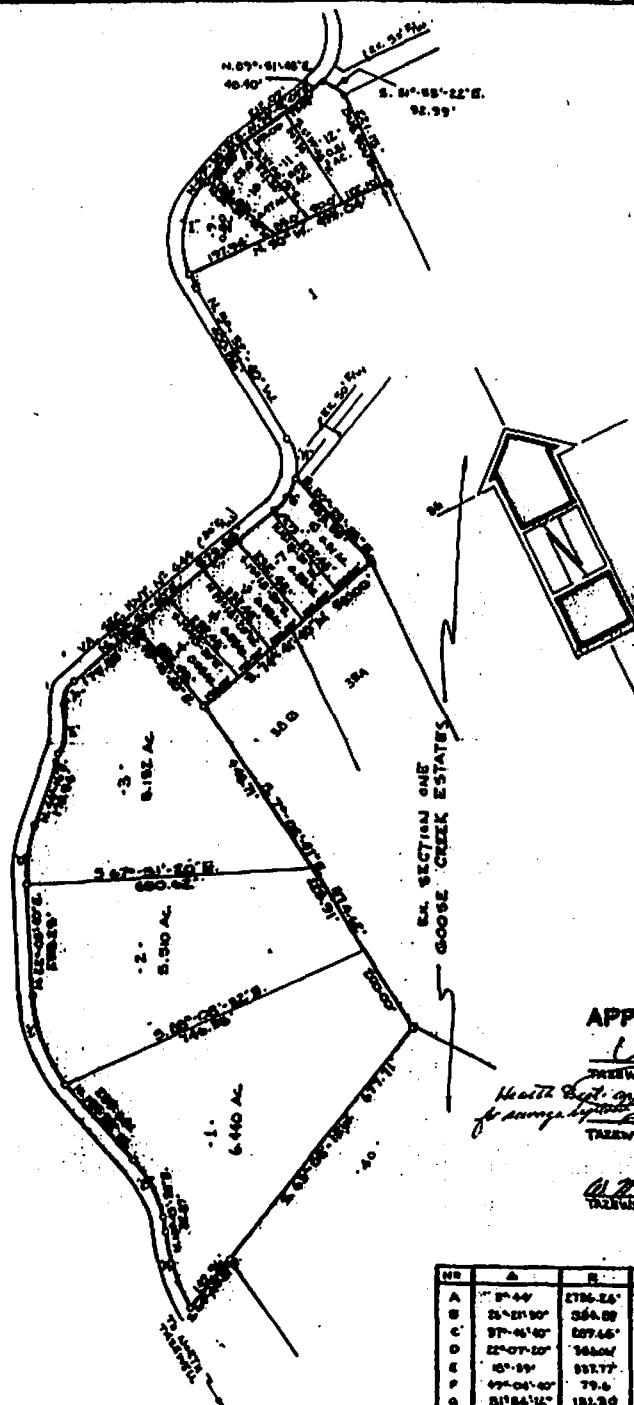
VICINITY MAP

DRAWN - ASH ASSOCIATES  
ENGINEERS - SURVEYORS - PLANNERS  
TAYLOR, MISSOURI





228



# CERTIFICATE OF TITLE:

THIS IS TO CERTIFY THAT THE LAND SUBDIVIDED HEREON IS A PORTION OF THE LANDS CONVEYED TO GOOSE CREEK PARTNERSHIP BY DEED RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF TAZEWELL COUNTY, VA. IN DEED BOOK 448, PAGE 842.

*John C. Weaver*  
JOHN C. WEAVER, CERTIFIED LAND SURVEYOR

## SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL OF THE REQUIREMENTS OF THE BOARD OF SUPERVISORS AND ORDINANCES OF THE COUNTY OF TAZEWELL, VIRGINIA, REGARDING THE PLATTING OF SUBDIVISIONS WITHIN THE COUNTY, HAVE BEEN COMPLIED WITH.

GIVEN UNDER MY HAND THIS 15 DAY OF JAN. 1979.

## OWNER'S CONSENT AND DECLARATION:

KNOW ALL MEN BY THESE PRESENTS, THAT THE SUBDIVISION OF LAND SHOWN HEREON, AND ORIGINATED AS GOOSE CREEK PARTNERSHIP ESTATES IN THE JEFFERSONVILLE MARSHFIELD DISTRICT OF THE COUNTY OF TAZEWELL, VIRGINIA, IS WITH THE FREE WILL AND CONSENT OF THE UNDERSIGNED OWNERS, AND THE LAND SHOWN HEREON HEREON WAS CONVEYED TO GOOSE CREEK PARTNERSHIP BY DEED RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF TAZEWELL CO., VIRGINIA, IN DEED BOOK 448, PAGE 842.

GIVEN UNDER MY HAND THIS DAY OF 1979.

*John York Sunday*  
PRESIDENT, GOOSE CREEK PARTNERSHIP

STATE OF VIRGINIA,  
COUNTY OF TAZEWELL, TO WIT:  
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 15 DAY OF JAN. 1979, BY

*John York Sunday*  
JOHN YORK SUNDAY  
MY COMMISSION EXPIRES *October 30, 1980*

## APPROVED:

*W. J. Hamblin* 2/14/79  
TAZEWELL CO. ADMINISTRATOR DATE

Health Dept. approved as per list sign only. Date must show to be approved for average of 10 days and must be signed on file in administrative matter.  
DATE 2/14/79  
TAZEWELL CO. HEALTH DEPT. DATE

*W. J. Hamblin* 2/14/79  
TAZEWELL CO. ENGINEER DATE

NO	A	B	C	D	E
A	5° 44'	276.24'	178.25'	91.18'	178.24'
B	26° 23' 50"	364.89'	193.49'	76.42'	192.71'
C	97° 41' 00"	297.45'	170.02'	95.11'	187.90'
D	22° 07' 20"	368.04'	148.44'	75.40'	148.14'
E	10° 59'	357.77'	109.54'	96.44'	109.46'
F	99° 04' 00"	79.6'	77.45'	36.34'	64.12'
G	51° 04' 12"	181.30'	71.54'	52.57'	72.24'
H	48° 18' 00"	191.34'	116.67'	63.87'	102.44'
I	61° 12' 20"	208.59'	223.97'	124.15'	214.85'

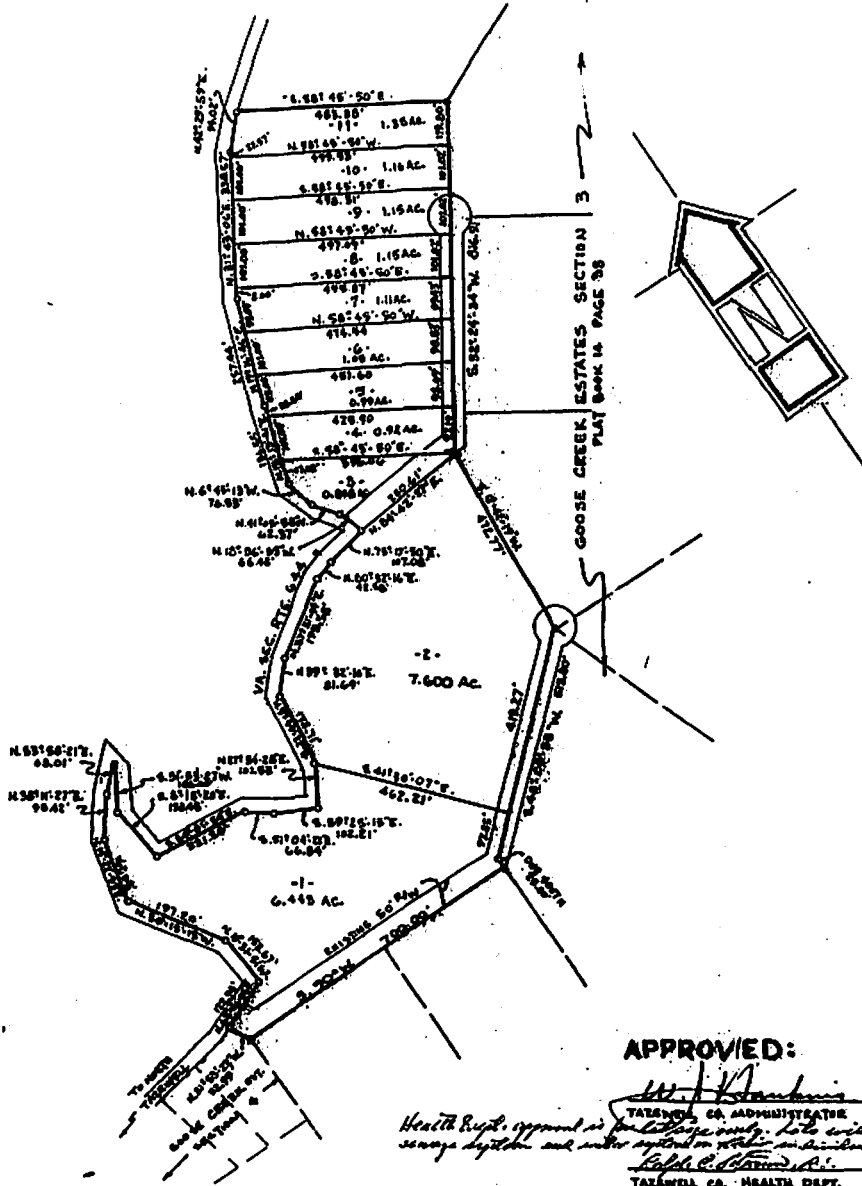
## PLAT SECTION 1 GOOSE CREEK ESTATES

PROPERTY OF  
GOOSE CREEK PARTNERSHIP  
JEFFERSONVILLE MARSHFIELD DISTRICT  
TAZEWELL CO. VIRGINIA  
DATE 1-16-79 SCALE 1"=200'

SEALED FOR JAMES ASSOCIATES  
SPRINGFIELD, VIRGINIA  
TAXES PAID, VIRGINIA

A COPY SENT TO  
JAMES S. RILEY, CLERK OF THE  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY *John York Sunday*  
DEPUTY CLERK

229



CERTIFICATE OF TITLE:  
THIS IS TO CERTIFY THAT THE LAND SUBDIVIDED HEREON IS A PORTION OF THE LANDS CONVEYED TO GOOSE CREEK PARTNERSHIP BY DEED RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF TAZEWELL COUNTY, VA. IN DEED BOOK 442 PAGE 342.

*John C. Deader*  
JOSEPH C. DEADER - CERTIFIED LAND SURVEYOR

SURVEYOR'S CERTIFICATE:  
I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL OF THE REQUIREMENTS OF THE BOARD OF SURVEYORS AND COMMISSIONERS OF THE COUNTY OF TAZEWELL, VIRGINIA, CONCERNING THE PLATTING OF SUBDIVISIONS WITHIN THE COUNTY, HAVE BEEN COMPLIED WITH.  
GIVEN UNDER MY HAND THIS 15TH DAY OF JAN., 1979.

*John C. Deader*

OWNER'S CONSENT AND DESIGNATION  
KNOW ALL MEN BY THESE PRESENTS, THAT THE SUBDIVISION OF LAND SHOWN HEREON, AND DESIGNATED AS GOOSE CREEK ESTATES SEC. 3, SITUATED IN THE JEFFERSONVILLE MAGISTERIAL DISTRICT OF THE COUNTY OF TAZEWELL, VIRGINIA, IS WITH THE FREE WILL AND CONSENT OF THE UNDERSIGNED OWNER, ALL THE LAND SHOWN SUBDIVIDED HEREON WAS CONVEYED TO GOOSE CREEK PARTNERSHIP BY DEED RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF TAZEWELL CO., VIRGINIA, IN DEED BOOK 442 PAGE 342.

GIVEN UNDER MY HAND THIS 15TH DAY OF 1979.  
*John C. Deader*  
PERMANENT GOOSE CREEK PARTNERSHIP

STATE OF VIRGINIA  
COUNTY OF TAZEWELL, TO WIT:  
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 15TH DAY OF JANUARY 1979, BY  
*John C. Deader*  
NOTARY PUBLIC  
MY COMMISSION EXPIRES DATE 12/31/80

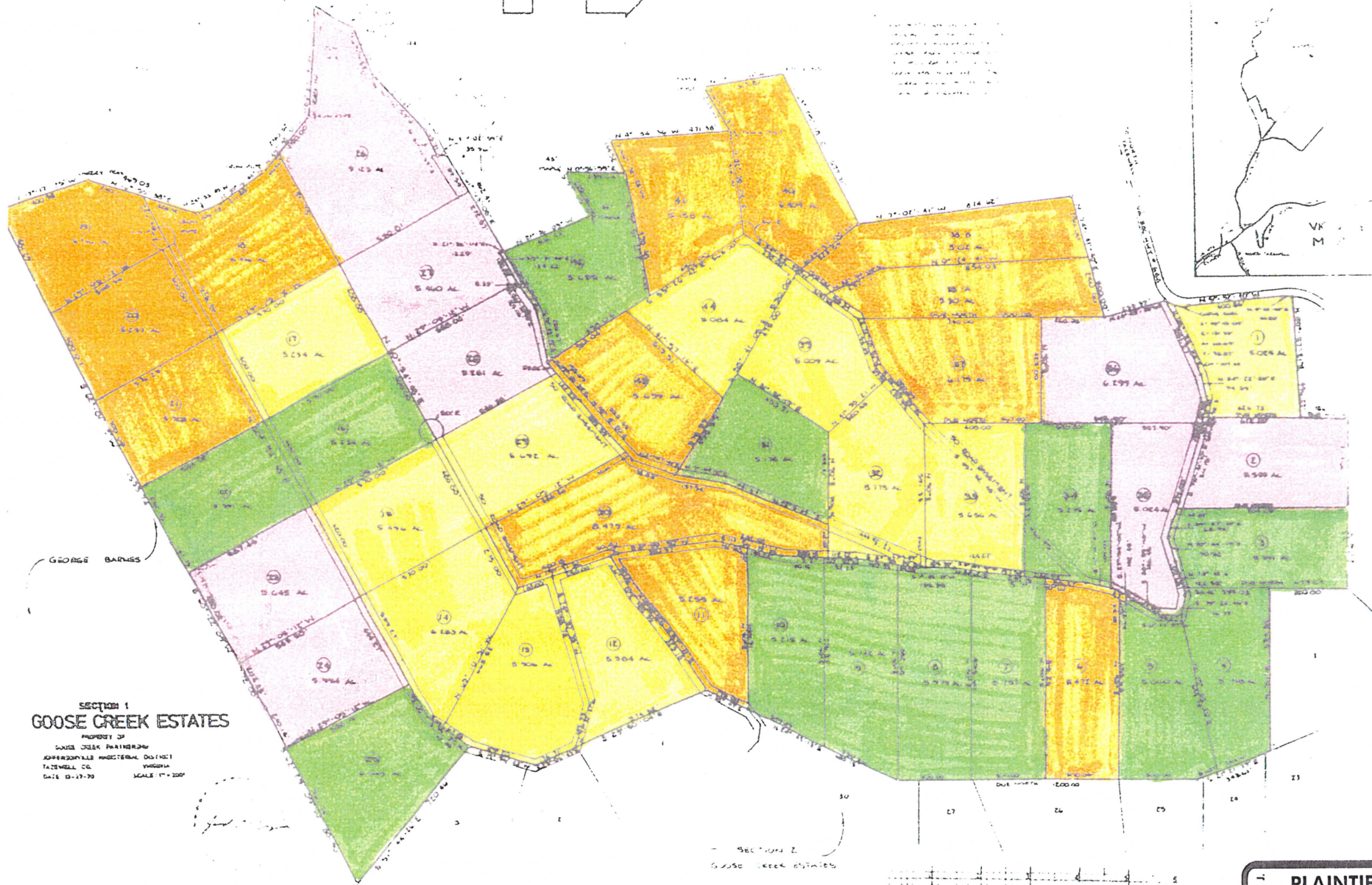
APPROVED:  
*W. J. Deader* 2/14/79  
TAZEWELL CO. ADMINISTRATOR DATE  
Health Dept. approval is for this use only. Lots will have to be approved for sewage system and water system on other individual lots.  
*Ralph C. Deader* 2/17/79  
TAZEWELL CO. HEALTH DEPT. DATE  
*W. J. Deader* 2/14/79  
TAZEWELL CO. ENGINEER DATE

PLAT  
SECTION 3  
GOOSE CREEK ESTATES  
PROPERTY OF  
GOOSE CREEK PARTNERSHIP  
JEFFERSONVILLE MAGISTERIAL DISTRICT  
TAZEWELL CO., VIRGINIA  
DATE 1-15-79 SCALE 1" = 200'  
DRAWN BY J. DEADER  
CHECKED BY J. DEADER  
DATE 1-15-79

A COPY, WITHIN  
JAMES A. KATY, CLERK OF THE  
CIRCUIT COURT OF TAZEWELL COUNTY  
VA. *James A. Katy*  
DEPUTY CLERK

# SECTION 1 GOOSE CREEK ESTATES

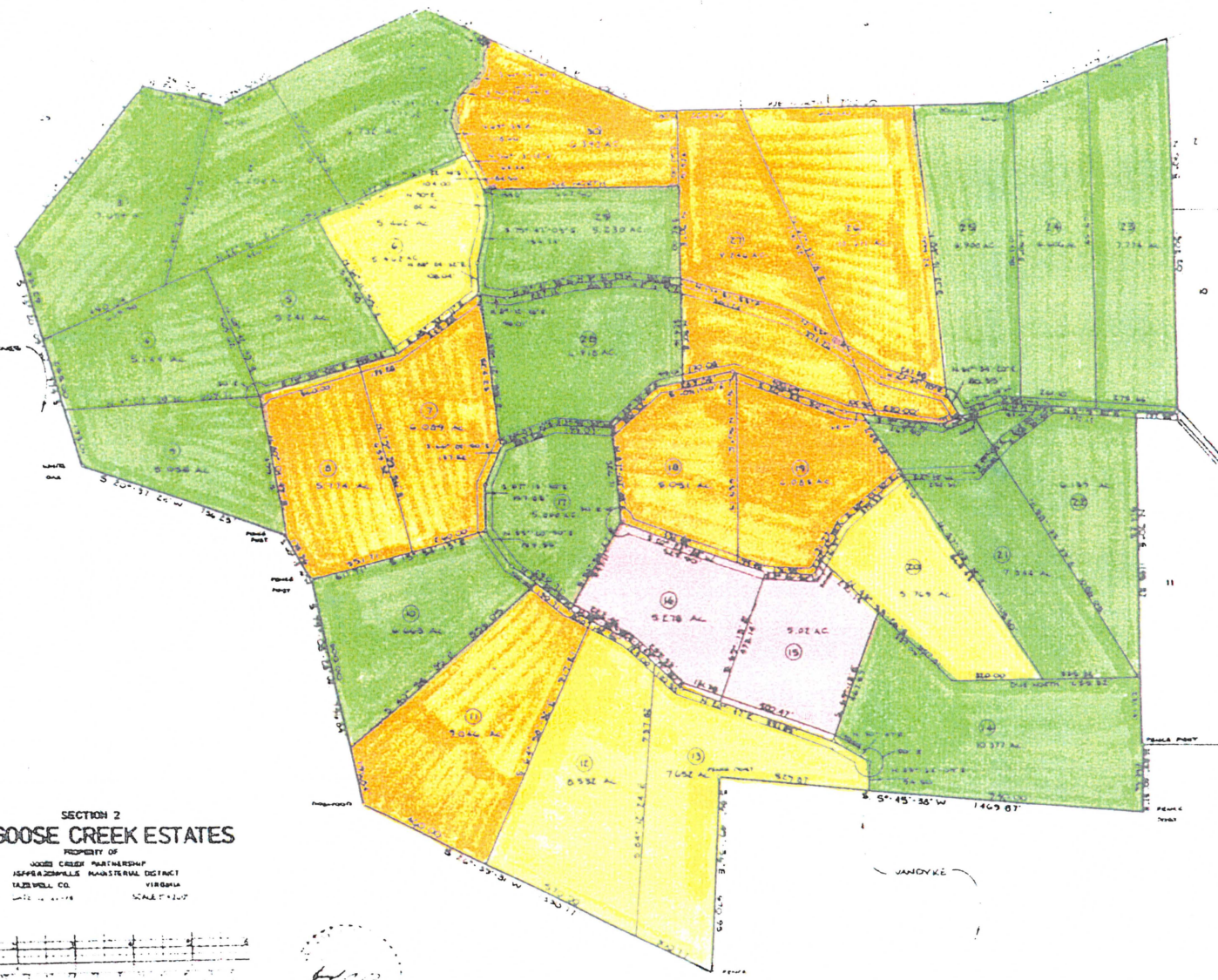
PROPERTY OF  
GOOSE CREEK PARTNERSHIP  
ADAMS COUNTY, VIRGINIA  
DATE 12-17-99 SCALE 1"=100'



SECTION 2  
GOOSE CREEK ESTATES

PENGAD-Bayonne, N. J.  
**PLAINTIFF'S  
EXHIBIT  
#1 A**

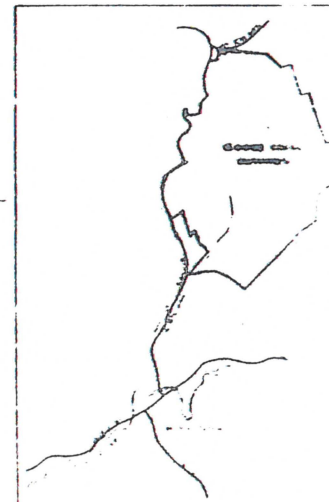




**SECTION 2  
 GOOSE CREEK ESTATES**  
 PROPERTY OF  
 GOOSE CREEK PARTNERSHIP  
 ASPENHOLM MANORIAL DISTRICT  
 TAZEWELL CO. VIRGINIA  
 DATE 10-1-1978 SCALE 1"=200'

**SECTION 5  
 GOOSE CREEK ESTATES**

NOTE  
 PROPERTY SHOWN SUBSEQUENT  
 HEREON IS A PORTION OF  
 PROPERTY PURCHASED BY  
 GOOSE CREEK PARTNERSHIP  
 ON TRAIL EQUATION IN  
 BOOK 185 PAGE 582 IN THE  
 CLERK'S OFFICE OF THE CIRCUIT  
 COURT OF TAZEWELL CO.

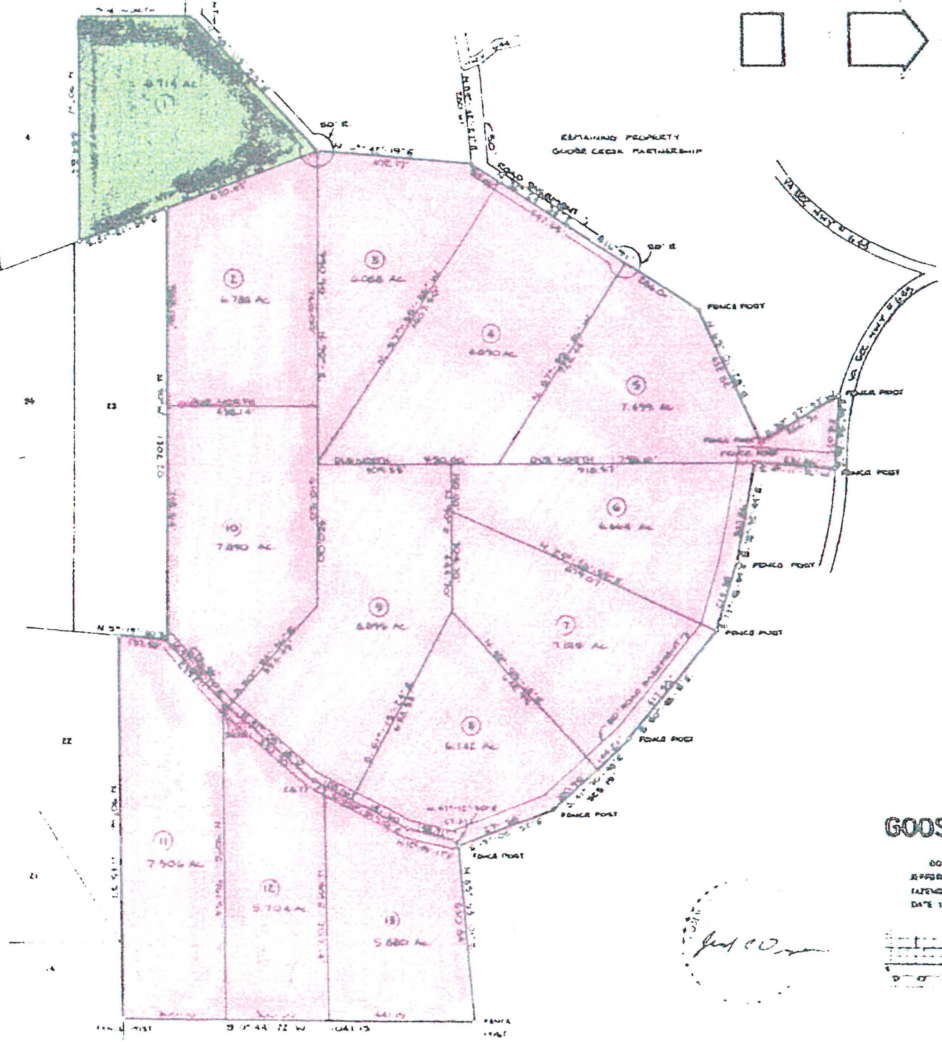


VICINITY MAP

232

SECTION 1  
 GOOSE CREEK ESTATES

SECTION 2  
 GOOSE CREEK ESTATES



NOTE:  
 PROPERTY SHOWN ON THIS  
 MAP IS A PORTION OF THE  
 PROPERTY OWNED BY THE  
 GOOSE CREEK PARTNERSHIP  
 INCORPORATED IN THE STATE OF  
 VIRGINIA, AND IS NOT TO BE  
 CONSIDERED AS A GUARANTEE OF  
 THE ACCURACY OF THE MAP.

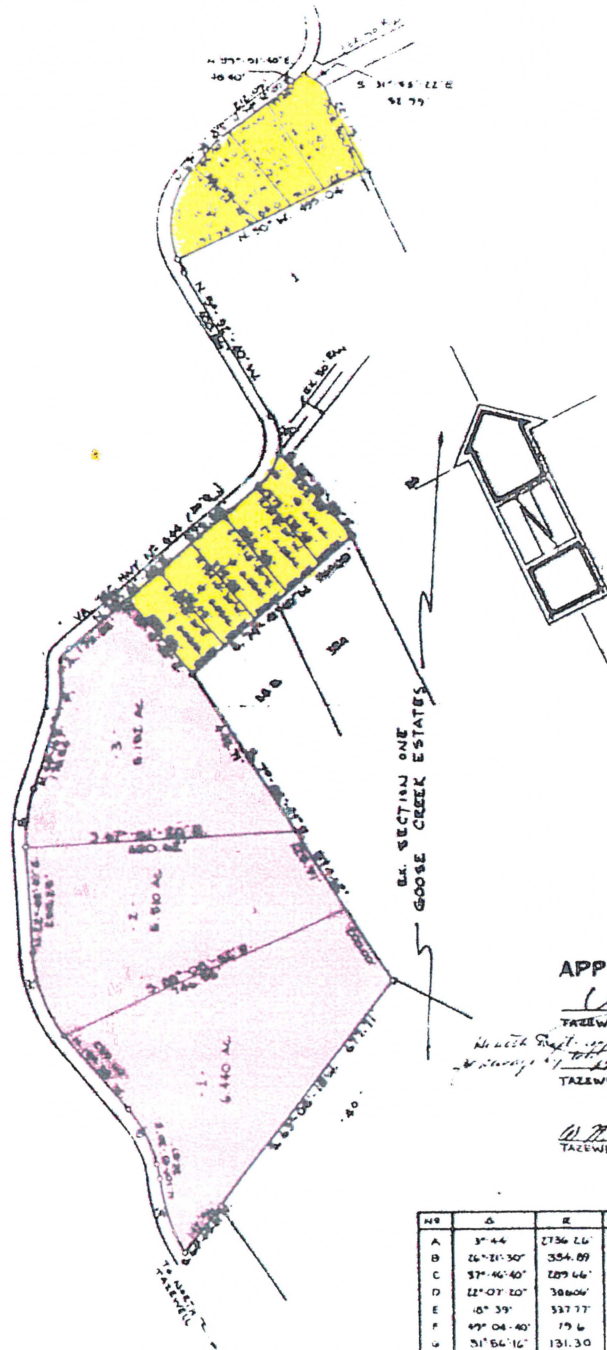
*John C. [Signature]*



PLAINTIFF'S  
EXHIBIT

4A

233



CERTIFICATE OF TITLE  
THIS IS TO CERTIFY THAT THE LAND SUBDIVIDED  
HEREON IS A PORTION OF THE LANDS CONVEYED  
TO GOOSE CREEK PARTNERSHIP BY DEED RE-  
CORDED IN THE CLERK'S OFFICE OF THE CIRCUIT  
COURT OF TAZEWELL COUNTY, VA. IN DEED  
BOOK 448 PAGE 542.

John C. Draper  
JOHN C. DRAPER - CERTIFIED LAND SURVEYOR

SURVEYOR'S CERTIFICATE:  
I HEREBY CERTIFY THAT TO THE BEST OF MY  
KNOWLEDGE AND BELIEF, ALL OF THE REQUIRE-  
MENTS OF THE BOARD OF SUPERVISORS AND  
ORDINANCES OF THE COUNTY OF TAZEWELL,  
VIRGINIA, REGARDING THE PLATTING OF SUB-  
DIVISIONS WITHIN THE COUNTY, HAVE BEEN  
COMPLIED WITH.

GIVEN UNDER MY HAND THIS 15 DAY OF  
JAN. 1979.

John C. Draper

GOOSE CREEK PARTNERSHIP  
BOTH ALL MEN BY THESE PRESENTS, THAT THE SUB-  
DIVISIONS OF LAND SHOWN HEREON, AND DESCRIBED AS  
GOOSE CREEK PARTNERSHIP SITUATED IN THE JEFFERSON-  
VILLE MAGISTERIAL DISTRICT OF THE COUNTY OF TAZEWELL,  
VIRGINIA, IS WITH THE FREE WILL AND CON-  
SENT OF THE UNDERSIGNED OWNERS, AND THE LAND  
SHOWN HEREON WAS CONVEYED TO GOOSE  
CREEK PARTNERSHIP BY DEED RECORDED IN THE CLERK'S  
OFFICE OF THE CIRCUIT COURT OF TAZEWELL CO., VIRGINIA,  
IN DEED BOOK 448 PAGE 542.

GIVEN UNDER MY HAND THIS DAY OF 1979.

John York Lindsey  
JOHN YORK LINDSEY

STATE OF VIRGINIA  
COUNTY OF TAZEWELL, TO WIT:  
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED  
BEFORE ME THIS 15th DAY OF JANUARY, 1979, BY

Emma D. Lindsey  
EMMA D. LINDSEY  
MY COMMISSION EXPIRES September 30, 1980

APPROVED:  
W. J. Harkins 2/14/79  
TAZEWELL CO. ADMINISTRATOR DATE

We with Right, signature of Mr. Carl Hays only, who was shown to be ignorant  
of the contents of this instrument, and of the facts and circumstances herein.  
Carl Hays 2/14/79  
TAZEWELL CO. HEALTH DEPT. DATE

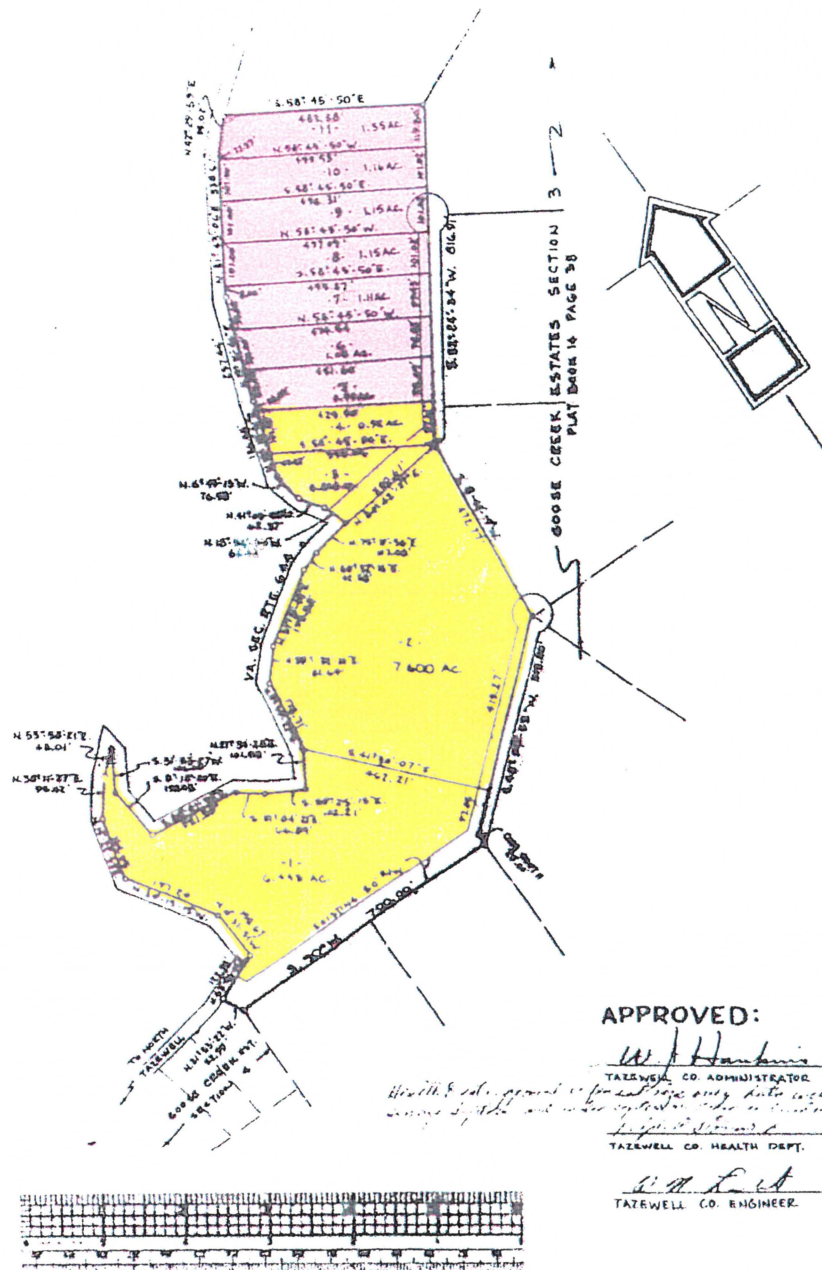
W. J. Harkins 2/14/79  
TAZEWELL CO. ENGINEER DATE

NO	D	E	A	T	C
A	3° 44'	2736.26'	170.28'	89.40'	179.20'
B	26° 20' 30"	354.09'	153.49'	70.42'	152.71'
C	37° 46' 40"	209.46'	190.03'	99.11'	187.95'
D	12° 07' 10"	308.06'	148.64'	75.46'	148.14'
E	10° 39'	537.77'	109.54'	55.46'	109.46'
F	69° 04' 40"	19.6'	77.49'	34.94'	69.12'
G	51° 56' 16"	131.30'	71.34'	37.57'	72.24'
H	48° 18' 04"	131.30'	110.51'	58.81'	107.44'
I	63° 12' 25"	205.00'	223.81'	124.13'	214.85'

PLAT  
SECTION 4  
GOOSE CREEK ESTATES

PROPERTY OF  
GOOSE CREEK PARTNERSHIP  
JEFFERSONVILLE MAGISTERIAL DISTRICT  
TAZEWELL CO. VIRGINIA  
DATE 1-15-79 SCALE: 1"=200'

DRAFTER: ADEN ASSOCIATES  
ENGINEERS, SURVEYORS, PLANNERS  
TAZEWELL VIRGINIA



CERTIFICATE OF TITLE  
THIS IS TO CERTIFY THAT THE LAND SHOWN HEREON IS A PORTION OF THE LANDS CONVEYED TO GOOSE CREEK PARTNERSHIP BY DEED RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF TAZEWELL COUNTY, VA. IN DEED BOOK 14C PAGE 34C.

*Joseph C. Draper*  
JOSEPH C. DRAPER, CERTIFIED LAND SURVEYOR

#### SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL OF THE REQUIREMENTS OF THE BOARD OF SUPERVISORS AND COMMISSIONERS OF THE COUNTY OF TAZEWELL, VIRGINIA, REGARDING THE PLATTING OF SUBDIVISIONS WITHIN THE COUNTY, HAVE BEEN COMPLIED WITH.

GIVEN UNDER MY HAND THIS 15TH DAY OF JULY, 1979.

*Joseph C. Draper*

#### OWNER'S COMMENT AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS, THAT THE SUBDIVISION OF LAND SHOWN HEREON, AND DESIGNATED AS GOOSE CREEK ESTATES SEC. B, SITUATED IN THE JEFFERSONVILLE MAGISTERIAL DISTRICT OF THE COUNTY OF TAZEWELL, VIRGINIA, IS HEREIN THIS DEED WILL AND CONSENT UP THE UNDERSIGNED OWNERS ALL THE LAND SHOWN SUBDIVIDED HEREON WAS CONVEYED TO GOOSE CREEK PARTNERSHIP BY DEED RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF TAZEWELL CO., VIRGINIA, IN DEED BOOK 14C PAGE 34C.

GIVEN UNDER MY HAND THIS 15TH DAY OF JULY, 1979.

*John C. Draper*  
DESIGNED BY: GOOSE CREEK PARTNERSHIP

STATE OF VIRGINIA  
COUNTY OF TAZEWELL, TO WIT:  
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 15TH DAY OF JULY, 1979, BY

*John C. Draper*  
HONORARY REPRESENTATIVE  
MY COMMISSION EXPIRES 12/30/1980

#### APPROVED:

*W. J. Hamlin* 2/14/79  
TAZEWELL CO. ADMINISTRATOR DATE

*John C. Draper* 2/14/79  
TAZEWELL CO. HEALTH DEPT. DATE

*W. J. Hamlin* 2/14/79  
TAZEWELL CO. ENGINEER DATE

### PLAT SECTION B GOOSE CREEK ESTATES

PROPERTY OF  
GOOSE CREEK PARTNERSHIP  
JEFFERSONVILLE MAGISTERIAL DISTRICT  
TAZEWELL CO. VIRGINIA  
DATE 1-15-79 SCALE 1" = 200'

DRAPER-ADEN ASSOCIATES  
ENGINEERS - SURVEYORS PLANNERS  
TAZEWELL VIRGINIA

JOB # 546

PENGAD-Bayonne, N. J.

PLAINTIFF'S  
EXHIBIT

5A

BOOK 457 PAGE 483

THIS DEED, made this the 4th day of May, 1979, by and between JOHN YORK LINDSEY, JAMES R. LINDSEY, H. V. LINDSEY, JR., IRA C. RATLIFF and CARL CARTWRIGHT, JR., trading and doing business as GOOSE CREEK PARTNERSHIP, party of the first part, STEPHEN ROBERT BARRETT and DEBORAH HEIDE BARRETT, husband and wife, parties of the second part, G. R. BRITTAIN, TRUSTEE, party of the third part,

**W I T N E S S E T H:**

For and in consideration of the sum of Five Thousand Dollars (\$5,000.00), cash in hand paid by the parties of the second part, to the parties of the first part, receipt of which is hereby acknowledged, the parties of the first part do grant, bargain, sell, and convey WITH COVENANTS OF GENERAL WARRANTY OF TITLE AND FREEDOM FROM ENCUMBRANCES, and subject to the restrictions as hereinafter set forth, unto the said Stephen Robert Barrett and Deborah Heide Barrett, husband and wife, as joint tenants by the entirety with right of survivorship as at common law all of that certain tract, parcel or lot of land situate in Jeffersonville Magisterial District, Tazewell County, Virginia, and being Lot No. 6 in Section No. 4 as noted on that certain map of "GOOSE CREEK ESTATES Property of Goose Creek Partnership" of record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, in Plat Book 14 at page 55 and on Plat Card 4085 and further bounded and described as follows:

BEGINNING at a point on the south edge of Virginia State Highway No. 644 a corner to Lot No. 3; thence with the line of said Highway N. 74° 41' 40" E. 100 feet to a point on the south right of way line of said Highway, a corner to Lot No. 7; thence with the line of said Lot No. 7 S. 35° 18' 20" E. 232.48 feet to a

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAESEWELL, VIRGINIA

A COPY, TESTE  
JAMES R. KLEVING, CLERK OF THE  
CIRCUIT COURT OF TAESEWELL COUNTY,  
BY David Cole  
DEPUTY CLERK

PLAINTIFF'S  
EXHIBIT  
6



BOOK 457 PAGE 484

-2-

point, the southwest corner of Lot No. 7; thence S. 74° 41' 40" W. 100 feet to a point the southeast corner of Lot No. 5; thence with the line of said Lot No. 5 N. 15° 18' 20" W. 232.48 feet to the point of BEGINNING, containing 0.53 acres, more or less.

The tract, parcel or lot herein conveyed is a portion of that same tract or parcel conveyed to the guarantors herein by Luella B. Turner et als, by deed dated August 25, 1978, of record in said Clerk's Office in Deed Book 448 at page 342.

And the party of the third part, G. R. Brittain, Trustee, in a certain Deed of Trust, dated August 25, 1978 and of record in said Clerk's Office in Deed Book 448 at page 346 at the instance and request of Luella B. Turner, Widow, and James E. Barnett and May Faye Barnett, husband and wife, holders of the note secured by said deed of trust, doth hereby grant and convey, with covenants of special warranty of title unto the said Stephen Robert Barrett and Deborah Maude Barrett, husband and wife, as tenants by the entirety, as at common law, Lot No. 6 Section 4, as shown on said plat of "Goose Creek Estates", freed and discharged from the lien of said deed of trust. Reference is here made to a certain agreement dated August 25, 1978, of record in said Clerk's Office in Deed Book 448 at page 350 wherein the party of the third part was authorized to release any property subject of the deed of trust from the lien of said deed of trust for and on behalf of the said Luella B. Turner, James E. Barnett and Mary Faye Barnett.

Reference is here made to a power of attorney from John York Lindsey, James R. Lindsey, H. V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., partners, trading and doing business as Goose Creek Partnership, dated April 27, 1979, to John York Lindsey, Managing Partner and Agent of record in

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAMMOC, TENNESSEE

said Clerk's Office in Deed Book 457 page 485, for the authority of the agent and attorney and managing partner to execute this deed.

Said property is conveyed subject to the following restrictions and covenants that no mobile homes, either single or double wide may be parked and/or erected on the property.

WITNESS the following signatures and seals.

John York Lindsey, James R. Lindsey,  
H. V. Lindsey, Jr., Ira C. Ratliff  
and Carl Cartwright, Jr., Partners,  
Doing Business as GOOSE CREEK  
PARTNERSHIP

BY: John York Lindsey (SEAL)  
JOHN YORK LINDSEY, MANAGING PARTNER

Luella B. Turner, James E. Barnett  
and Mary Faye Barnett

BY: G. R. Brittain (SEAL)  
G. R. BRITTAIN, TRUSTEE

STATE OF VIRGINIA.

COUNTY OF TAZEWELL, to-wit:

I, Gay S. Van Dyke, a Notary Public for Tazewell County, Virginia, do hereby certify that JOHN YORK LINDSEY, Managing Partner for Goose Creek Partnership, whose name is signed to the foregoing and hereto annexed writing, as and for said partnership's act and deed, dated the 4th day of May, 1979, has this day acknowledged the same before me in my County and State aforesaid.

My Commission expires September 9, 1980.

Given under my hand and official notarial seal, this the 4th day of May, 1979.



HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAEZEWELL, VIRGINIA

Gay S. Van Dyke  
NOTARY PUBLIC

BOOK 457 PAGE 486

-4-

STATE OF VIRGINIA,

COUNTY OF TAZEWELL, to-wit:

I, C. G. Holmes, a Notary Public for Tazewell County, Virginia, do hereby certify that G. R. BRITTAIN TRUSTEE, for and on behalf of Luella B. Turner B. Turner, James E. Barnett and Mary Paye Barnett, whose name is signed to the foregoing and hereto annexed writing, dated the 4th day of May, 1979, has this day acknowledged the same before me in my County and State aforesaid.

My Commission expires Jan 10, 1981.

Given under my hand and official notarial seal, this the 3 day of May, 1979.

C. G. Holmes  
NOTARY PUBLIC

VIRGINIA: In the Clerk's Office of Tazewell Circuit Court May 4 1979  
This deed was presented and upon the annexed Certificate of acknowledgment admitted to record at 11:50 A.M. The tax imposed by SS-54.1 of the Code has been paid in the amount of \$ 5.00

Teste: Alice O. Hale Deputy Clerk

HARMAN S. HARMAN  
CLERK OF THE  
TAZEWELL COUNTY

Columbus, Ohio  
2/20/81

BOOK 479 PAGE 663

THIS DEED, made the 21st day of January, 1981, by and between JOHN YORK LINDSEY, JAMES R. LINDSEY, H. V. LINDSEY, JR., IRA C. RATLIFF and CARL CARTWRIGHT, JR., Partners, Trading and doing business as Goose Creek Partnership, parties of the first part, WAYNE D. BREWSTER and STELLA M. BREWSTER, husband and wife, as hereinafter set forth, parties of the second part, LOUELLA B. TURNER, JAMES E. BARNETT and MARY FAYE BARNETT, by G. R. BRITTAIN, Agent, Attorney and Trustee, parties of the third part;

**W I T N E S S E T H:**

That for and in consideration of of the sum of Sixteen  
Five Hundred  
Thousand/Dollars (\$16,500.00), paid and to be paid as hereinafter set forth, the parties of the first part hereby sell, grant and convey, WITH COVENANTS OF GENERAL WARRANTY OF TITLE AND FREEDOM FROM ENCUMBRANCES, and subject to the restrictions of record, unto the said Wayne D. Brewster and Stella M. Brewster, husband and wife, as tenants by the entireties, with the right of survivorship as at common law, all that certain tract or parcel of land together with the improvements thereon and rights, privileges and appurtenances thereunto belonging, situate, lying and being in the Jeffersonville Magisterial District, Tazewell County, Virginia, and being known and designated as Tract Number 1, Section 1, as shown on a certain plat entitled "Goose Creek Estates, property of Goose Creek Partnership," of record in the Clerk's Office of Tazewell County, Virginia in Plat Book 14, Page 36 and shown on Plat Card 4066, said tract being further bounded and described as follows:

**Tract Number One:** Beginning at a point in the Right of way line of Virginia State secondary route number 644, at the intersection of a certain 50 foot street with state secondary route 644; thence with a curve to the left with a radius of 131.50 feet, a tangent of 58.87 feet and a chord of 107.44 feet to a point on said

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

A COPY, TESTE:  
JAMES B. ELEVINS, CLERK OF THIS  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY: [Signature]  
DEPUTY CLERK



right of way line, thence continuing with said right of way line in a generally northerly direction 400.86 feet to a point; thence continuing the said right of way line N 4° 22' 53" E 40.8 feet to a point on said right of way line, thence leaving said State secondary route 644, N 90° E 495.04 feet to a point; thence due south 426.73 feet to a point in said road leading off of said state secondary route 644; thence with the center line of said road the following three courses and distances N 86° 30' 34" W 80.15 feet to a point; thence S 84° 22' 20" W 94.39 feet to a point; thence S 65° 33' 03" W 351.27 feet to the point of beginning containing 5.025 acres, more or less.

The tract of land herein conveyed is a portion of a larger portion or tract of land conveyed to the grantors herein by Louella B. Turner, James E. Barnett and Mary Faye Barnett, husband and wife, by deed dated August 25, 1978, of record in said Clerk's Office in Deed Book 448, Page 342.

By Purchase Money Deed of Trust dated August 25, 1978, of record in said Clerk's Office in Deed Book 448, Page 346 the grantors herein conveyed said property to G. R. Brittain, Trustee, to secure the balance of purchase money due Louella B. Turner, widow, James E. Barnett and Mary Faye Barnett, husband and wife, holders of a certain note evidencing the balance of purchase money.

By a certain agreement also dated August 25, 1978, of record in said Clerk's Office in Deed Book 448, Page 350, the said Louella B. Turner, widow, James E. Barnett and Mary Faye Barnett, husband and wife, authorized the release of property sold by the parties of the first part herein and further authorize and empowered G. R. Brittain, as their agent and attorney, and as Trustee in the aforesaid Deed of Trust to release any property subject to said original purchase money deed of trust from the lien thereof for and on behalf of the said Louella B. Turner, James E. Barnett and Mary Faye Barnett.

HARMAN & HARMAN  
ATTORNEYS AT LAW  
FAIRFAX, VIRGINIA

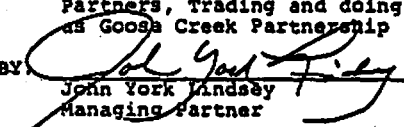
BOOK 479 PAGE 666

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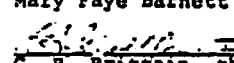
Ten Thousand Dollars (\$10,000.00), payable in twelve quarterly installments of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33), together with interest on the unpaid balance, the first of said quarterly installments becoming due and payable April 1, 1981, and a similar installment on the first day of July, 1981, October, 1981, January, 1982 and continuing on the first day of each of said quarters until the entire principal and interest are paid in full, which said note is secured by a purchase money deed of trust bearing even date herewith, executed by the parties of the second part, and conveying said property to James W. Harman, Jr., and Stephen E. Aray, Trustees, which purchase money deed of trust is intended to be forthwith admitted to record in said Clerk's Office immediately following the recordation of this deed, and reference is here made to said deed of trust for the terms and provisions thereof.

WITNESS the following signatures and seals.

John York Lindsey  
James R. Lindsey  
H. V. Lindsey, Jr.  
Ira C. Ratliff  
Carl Cartwright, Jr.,  
Partners, Trading and doing business  
as Goose Creek Partnership

BY:   
John York Lindsey  
Managing Partner

Louella B. Turner  
James E. Barnett  
Mary Faye Barnett

BY:   
G. R. Brittain, their Agent, Attorney  
and Trustee

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAYLORVILLE, VIRGINIA

307K-479 7122 (667

-5-

STATE OF VIRGINIA,

COUNTY OF TAZEWELL, to-wit:

I, Donna D. Kirby, a Notary Public for Tazewell County, Virginia, do hereby certify that JOHN YORK LINDSEY, whose name is signed to the foregoing and hereto annexed writing dated January 21, 1981, as managing partner of Goose Creek Partnership, has this day acknowledged the same before me in my County and State aforesaid for and on behalf of said partnership, and as its act and deed.

My commission expires December 17, 1984.

Given under my hand and official notarial seal this the 2nd day of January 1981.

Donna D. Kirby  
NOTARY PUBLIC

STATE OF VIRGINIA:

COUNTY OF TAZEWELL, to-wit:

I, C. G. Holmes, a Notary Public for Tazewell County, Virginia, do hereby certify that G. R. Brittain, whose name is signed to the foregoing and hereto annexed writing dated January 21, 1981, as agent, attorney and trustee for and on behalf of Louella B. Turner, James E. Barnett and Mary Faye Barnett has this day acknowledged the same before me in my County and State aforesaid for and on behalf of his principals.

My commission expires June 14, 1985.

Given under my hand and official notarial seal this the 2nd day of January 1981.

C. G. Holmes  
NOTARY PUBLIC

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

WITNESSES: In the Clerk's Office of Tazewell Circuit Court February 9, 1981.  
This deed was presented and upon the annexed Certificate of acknowledgment and act of the  
Tazewell 8:45 A.M. The tax imposed by 58-54.1 of the Code has been paid in the  
amount of \$ 16.50

Teste: Alice C. Hale Deputy Clerk

BOOK 483 PAGE 702

THIS DEED, made this the 8th day of June, 1981, by and between, JOHN YORK LINDSEY, JAMES R. LINDSEY, H. V. LINDSEY, JR., IRA C. RATLIFF and CARL CARTWRIGHT, JR., Partners, trading and doing business as Goose Creek Partnership, parties of the first part, ROGER WAYNE HAGER and RHONDA E. HAGER, husband and wife, and STEVEN ROCKY LANE and SYBOL BETH LANE, husband and wife, all as hereinafter mentioned, parties of the second part, LOUELLA B. TURNER, JAMES E. BARNETT and MARY FAYE BARNETT, by G. R. Brittain, Agent, Attorney and Trustee, parties of the third part;

W I T N E S S E T H:

That for and in consideration of the sum of Twenty Thousand Dollars (\$20,000.00), paid and to be paid as hereinafter set forth, the parties of the first part hereby sell, grant and convey, WITH COVENANTS OF GENERAL WARRANTY OF TITLE AND FREEDOM FROM ENCUMBRANCES, and subject to the restrictions of record, unto the said Roger Wayne Hager and Rhonda E. Hager, husband and wife, as tenants by the entireties, with the right of survivorship as at common law, a one-half (1/2) interest in and to all that certain tract or parcel of land hereinafter described, and unto Steven Rocky Lane and Sybol Beth Lane, husband and wife, as tenants by the entireties, with the right of survivorship as at common law, a one-half (1/2) interest in and to all that certain tract or parcel of land hereinafter described, together with all improvements thereon and the rights, privileges and appurtenances thereunto belonging, situate, lying and being in the Jeffersonville Magisterial District, Tazewell County, Virginia, and being known and designated as Tract No. 20, Section 2, as shown on a certain plat entitled "Goose Creek Estates, property of Goose Creek

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

A COPY, TESTE:  
JAMES E. ELEVINS, CLERK OF THIS  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY: [Signature]  
DEPUTY CLERK





Partnership," of record in the Clerk's Office of Tazewell County, Virginia, in Plat Book 14, page 37 and shown on Plat Card 4067, said tract being further bounded and described as follows:

**TRACT NO. 20, SECTION 2:** BEGINNING at a point in the center of a 50 foot right of way, said point being the northwest corner of said Tract No. 20 and the southwest corner of said Tract No. 21; thence with the center line of said right of way: S. 2° 10' W. 5.28 feet to a point; thence continuing with the center of said right of way S. 40° 23' 40" E. 279.52 feet to a point; thence continuing with said center line S. 60° 47' 80" E. 141.99 feet to a point, said point being a corner to Tract No. 15; thence leaving said right of way and with the division line between Tracts No. 15 and 14 on the one hand and Tract No. 20 on the other, N. 43° 53' 26" E. 607.81 feet to a point; thence continuing with the division line between Tract No. 20 and Tract No. 14, due north, 320.0 feet to a point on the division line between Tract No. 20 and Tract No. 14; thence leaving said Tract No. 14 and with the division line between Tract No. 20 and Tract No. 21 S. 57° 03' 32" W. 868.43 feet to the point of BEGINNING, containing 5.769 acres, more or less.

The tract of land herein conveyed is a portion of a larger portion or tract of land conveyed to the grantors herein by Louella B. Turner, James W. Barnett and Mary Faye Barnett, husband and wife, by deed dated August 25, 1978, of record in said Clerk's Office in Deed Book 448, Page 342.

By Purchase Money Deed of Trust, dated August 25, 1978, of record in said Clerk's Office in Deed Book 448, Page 346, the grantors herein conveyed said property to G. R. Brittain, Trustee, to secure the balance of purchase money due Louella B. Turner, Widow, James E. Barnett and Mary Faye Barnett, husband and wife, holders of a certain note evidencing the balance of purchase money.

By a certain agreement also dated August 25, 1978, of record in said Clerk's Office, in Deed Book 448, page 350, the said Louella B. Turner, widow, James E. Barnett and Mary Faye Barnett, husband and wife, authorized the release of property sold by the parties of the first part herein and further authorized and empowered G. R. Brittain, as their Agent and Attorney, and

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

as Trustee, in the aforesaid Deed of Trust to release any property subject to said original purchase money deed of trust from the lien thereof for and on behalf of the said Louella B. Turner, James E. Barnett and Mary Faye Barnett.

Now therefore in consideration of premises, the said Louella B. Turner, James E. Barnett and Mary Faye Barnett, by G. R. Brittain, their Agent, Attorney and Trustee, and pursuant to the authority granted him in said agreement of record as aforesaid, doth hereby grant and convey, with covenants of special warranty of title, unto the said Roger Wayne Hager and Rhonda E. Hager, husband and wife, and Steven Rocky Lane and Sybol Bath Lane, husband and wife, said Tract No. 20, Section 2, Goose Creek Estates, freed and discharged from the lien of said Deed of Trust.

By power of attorney dated April 27, 1979, John York Lindsey, James R. Lindsey, H. V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., partners, trading and doing business as Goose Creek Partnership, granted and conveyed unto John York Lindsey, managing partner and agent of said partnership, the full and complete authority to prepare, execute and deliver deeds for and on behalf of said partnership, which said power of attorney is found of record in said Clerk's Office in Deed Book 457, Page 422.

Reference is here made to said plat, to said deeds, and to said deeds of trust, agreements and power of attorney for all terms and provisions thereof.

It is distinctly understood and agreed that this conveyance is subject to the express restrictive covenant, running with the land that no mobile home, either single or doublewide, shall be placed on said land at any time.

HARMAN & HARMAN  
ATTORNEYS AT LAW  
FAIRFAX, VIRGINIA

The consideration of Twenty Thousand Dollars (\$20,000.00) is paid and to be paid as follows: Five Thousand Dollars (\$5,000.00)

thereof, is cash in hand paid by the parties of the second part to the parties of the first part, receipt of which is acknowledged, and the balance of Fifteen Thousand Dollars (\$15,000.00) is evidenced by a certain negotiable promissory note in said sum of Fifteen Thousand Dollars (\$15,000.00), with interest thereon, payable in sixty (60) consecutive monthly installments, and secured by a purchase money deed of trust bearing even date herewith, executed by the parties of the second part, and conveying said property to James W. Harman, Jr., Trustee, which purchase money deed of trust is intended to be forthwith admitted to record in said Clerk's Office immediately following the recordation of this deed, and reference is here made to said deed of trust for the terms and provisions thereof.

WITNESS the following signatures and seals.

John York Lindsey  
James R. Lindsey  
H. V. Lindsey, Jr.  
Ira C. Ratliff,  
Carl Cartwright, Jr.,  
Partners, Trading and doing  
business as Goose Creek Partnership

BY: John York Lindsey  
JOHN YORK LINDSEY, MANAGING PARTNER

Louella B. Turner  
James E. Barnett  
Mary Faye Barnett

BY: G. R. Brittain  
G. R. BRITTAIN, Their Agent,  
Attorney and Trustee

STATE OF VIRGINIA,

COUNTY OF TAZEWELL, to-wit:

I, Ray L. Tazewell, a Notary Public for Tazewell County, Virginia, do hereby certify that JOHN YORK LINDSEY, whose name is signed to the foregoing and hereto annexed writing, dated the 8th day of June, 1981, as Managing Partner of Goose Creek Partnership, has this day acknowledged the same before me in my County and State aforesaid for and on behalf of said Partnership, and as its act and deed.

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

BOOK 483 PAGE 796

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My commission expires Feb. 18, 1985.

Given under my hand and official notarial seal, this  
the 12th day of June, 1981.

Mary S. Vandyle  
NOTARY PUBLIC

STATE OF VIRGINIA,

COUNTY OF TAZEWELL, to-wit:                     

I, C. S. Holmes, a Notary Public for  
Tazewell County, Virginia, do hereby certify that G. R.  
BRITTAIN, whose name is signed to the foregoing and hereto  
annexed writing dated June 8, 1981, as Agent, Attorney and  
Trustee for and on behalf of Louella B. Turner, James E.  
Barnett and Mary Faye Barnett has this day acknowledged the  
same before me in my County and State aforesaid for and on  
behalf of his principals.

My commission expires June 11, 1985.

Given under my hadn and official notarial seal this the  
12 day of June, 1981.

C. S. Holmes  
NOTARY PUBLIC

VIRGINIA. In the Clerk's Office of Tazewell Circuit Court June 22, 1981  
This deed was presented and upon the annexed Certificate of acknowledgment admitted to  
record at 12.05 P. M. The tax imposed by 53-54.1 of the Code has been paid in the  
amount of \$ 20.00

Teste: Alice A. Hale Deputy Clerk

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

BOOK 495 PAGE 416

THIS DEED, made this the 30th day of April, 1982, by and between JOHN YORK LINDSEY, JAMES R. LINDSEY, H. V. LINDSEY, JR., IRA C. RATLIFF and CARL CARTWRIGHT, JR., Partners, trading and doing business as Goose Creek Partnership, parties of the first part, and C. G. TULLOCK, party of the second part;

W I T N E S S E T H:

That, for and in consideration of the sum of Eight Thousand Dollars (\$8,000.00), cash in hand paid by the party of the second part to the parties of the first part, receipt of which is hereby acknowledged, the parties of the first part hereby sell, grant and convey, WITH COVENANTS OF GENERAL WARRANTY OF TITLE AND FREEDOM FROM ENCUMBRANCES, and subject to the restrictions of record and herein set forth, unto the said C. G. Tullock, all those two certain lots or parcels of land hereinafter described, together with all improvements thereon and the rights, privileges and appurtenances thereunto belonging, situate, lying and being in the Jeffersonville Magisterial District, Tazewell County, Virginia, and being known and designated as Lots Nos. 3 and 4, Section 5, as shown on a certain plat entitled "Goose Creek Estates, property of Goose Creek Partnership," of record in the Clerk's Office of Tazewell County, Virginia, in Plat Book 14, Page 56, and shown on Plat Card No. 4086.

Due to the topography of the land, the right-of-way leading off of Virginia Secondary Route 644, between Tract No. 2, Section 5, and to the rear of Lots 3 - 9, Section 5, was not constructed as shown on said map. The parties of the first part hereby except from the operation of this deed a fifty (50) foot right-of-way leading from Virginia Secondary Route 644 across Lots Nos. 3 and 4, Section 5, and to the rear of Lots Nos. 5 - 9, Section 5, and adjacent to Tract No. 2,

HARMAN B. HARMAN  
ATTORNEY AT LAW  
TAZEWELL, VIRGINIA

A COPY, TESTE:  
JAMES B. BLEVINS, CLERK OF THIS  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY James B. Blevins  
DEPUTY CLERK



BOOK 405 PAGE 417

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Section 5, and Tracts Nos. 3, 4, and 5, Section 3, which right-of-way shall be twenty-five (25) feet on each side of the center line of the existing road, and which right-of-way shall be for the benefit of Lots Nos. 3 - 9, inclusive, Section 5, Tract No. 2, Section 5, and Tracts Nos. 3, 4, and 5, in Section 3, as shown on said Plat:

The lots of land herein conveyed are a portion of a larger portion or tract of land conveyed to the grantors herein by Louella B. Turner, James W. Barnett and Mary Faye Barnett, husband and wife, by deed dated August 25, 1978, of record in said Clerk's Office in Deed Book 448, Page 342.


By Power of Attorney dated May 22, 1979, John York Lindsey, James R. Lindsey, H. V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., partners, trading and doing business as Goose Creek Partnership, granted and conveyed unto Carl Cartwright, Jr., one of the partners, the full and complete authority as agent and attorney for said partnership, to prepare, execute and deliver deeds for and on behalf of said partnership, which said Power of Attorney is found of record in said Clerk's Office in Deed Book 458, page 370.

Reference is here made to said plat, to said deeds, and Power of Attorney for all terms and provisions thereof.

WITNESS the following signatures and seals.

John York Lindsey  
James R. Lindsey  
H. V. Lindsey, Jr.  
Ira C. Ratliff  
Carl Cartwright, Jr.,  
Partners, Trading and Doing  
Business as Goose Creek Partnership

BY:

  
CARL CARTWRIGHT, JR.,  
AGENT AND ATTORNEY

HARMAN & HARMAN  
ATTORNEYS AT LAW  
VANDERBILT, VIRGINIA

BOOK 495 PAGE 418

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STATE OF VIRGINIA,

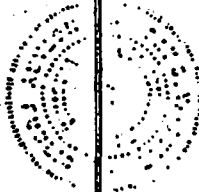
COUNTY OF TAZEWELL, to-wit:

I, Gay S. VanDyke, a Notary Public for Tazewell County, Virginia, do hereby certify that Carl Cartwright, Jr., whose name is signed to the foregoing and hereto annexed writing, dated the 30th day of April, 1982, as Agent and Attorney of Goose Creek Partnership, has this day acknowledged the same before me in my County and State aforesaid, for and on behalf of said Partnership, and as its act and deed.

My Commission expires February 18, 1985.

Given under my hand and official notarial seal, this the 3rd day of May, 1982.

Gay S. VanDyke  
NOTARY PUBLIC



VIRGINIA: In the Clerk's Office of Tazewell Circuit Court May 3, 1982  
This deed was presented and upon the annexed Certificate of acknowledgment admitted to record at 2:20 P. M. The tax imposed by 58-54.1 of the Code has been paid in the amount of \$ 8.00

(Tested)  
Petty, L. Wright Deputy Clerk

HARRMAN & HARRMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

534 DOGWOOD RD  
APT. A  
TAZEWELL, VA 24651  
6/27/88

BOOK 573 PAGE 290

THIS DEED made this the 31 day of May, 1988 by and between JOHN YORK LINDSEY, JAMES R. LINDSEY, H. V. LINDSEY, JR., IRA C. RAILIFF AND CARL CARWRIGHT, JR., partners; trading and doing business as GOOSE CREEK PARTNERSHIP, parties of the first part and WILLIAM RUSSELL STEVENSON and TANYA LEIGH STEVENSON, Husband and Wife, as more particularly hereinafter set forth, parties of the second part;

WITNESSETH:

That for and in consideration of the sum of Seventeen Thousand Dollars (\$17,000.00), cash in hand paid by the said William Russell Stevenson and Tanya Leigh Stevenson, unto the parties of the first part, receipt of which is hereby acknowledged, the parties of the first part hereby sell, grant and convey, with covenants of general warranty of title and freedom from encumbrances, and subject to the restrictions of record and as may be hereinafter set forth, unto the said William Russell Stevenson and Tanya Leigh Stevenson, husband and wife, as tenants by the entireties, with the right of survivorship as at Common Law, all that certain tract or parcel of land, together with the improvements thereon, and the rights, privileges and appurtenances thereunto belonging, situate, lying and being in Jeffersonville Magisterial District, Tazewell County, Virginia and being known and designated as Tract Number 26, Section 2, as shown on a certain plat entitled "Goose Creek Estates, property of Goose Creek Partnership, Section 2" which plat is found of record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, in Plat Book 14 page 37, and shown on Plat Card Number 4067, said tract or land being further bounded and described as follows:

TRACT NUMBER 26, SECTION 2: BEGINNING at a point on the division line between Section 1, Goose Creek Estates and Section 2, Goose Creek Estates, said point being the northwesterly corner of Tract Number 26, Section 2, herein conveyed and the southwest corner of Tract Number 25, Section 2; thence leaving Section 1 and with the division line between Tract Number 25 and Tract Number 26, Section 2 N 84° 41' 21" E 999.24 feet to a point in the center of a 50 foot right-of-way, thence with the center line of said right-of-way N 61° 34' 20" E 80.35 feet to a point in the center of an intersection of two 50 foot rights-of-way, thence with the center line of the intersecting 50 foot right-of-way S 20° 36' E 73.68 feet to a point in the center of said right-of-way, thence S 9° 0' W 230.0 feet to a point in the center of said right-of-way; thence leaving said right-of-way and with the division line between Tract Number 26 and Tract Number 27, S 67° 37' 18" W 1141.52 feet, crossing the first mentioned 50 foot right-of-way, to a point on the division line between Section Number 1 and Section Number 2 of Goose Creek Estates, said point being the southeastern corner of Lot Number 7; thence with a division line between Section Number 1

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

A COPY, TESTE:  
JAMES B. BLEVINS, CLERK OF THIS  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY [Signature]  
DEPUTY CLERK





and Section Number 2, and with the easterly boundary lines of Lots 7 & 6, Section 1, due north, 600 feet, to the point of BEGINNING, containing 10.611 acres, be the same more or less.

It is understood and agreed between the parties that the parties of the second part, their heirs and assigns, have the right to use the aforesaid 50 foot rights-of-way, along with the other owners of lands in said Goose Creek Estates, together with such other rights-of-way as are shown on the plats thereof.

The tract of land herein conveyed is a portion of a much larger tract of land conveyed to the grantors herein by Louella B. Turner, et als, by deed dated August 25, 1978, of record in said Clerk's Office in Deed Book 448 page 342. By Power of Attorney dated May 22, 1979, John York Lindsey, James R. Lindsey, H. V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., partners, trading and doing business as Goose Creek Partnership, granted and conveyed unto Carl Cartwright, Jr., one of the partners, the full and complete authority as agent and attorney for said partnership, to prepare, execute and deliver deeds for and on behalf of said partnership, and which said Power of Attorney is found of record in said Clerk's Office in Deed Book 458 page 370.

Reference is here made to said plat, to said deeds, and to the Power of Attorney for a further and more particular description of the real estate here in conveyed, and the terms and provisions of said documents.

It is distinctly understood and agreed that this conveyance is subject to the expressed restrictive covenants, running with the land, that no mobile home, either single or doublewide, shall be placed on said land at any time and this covenant may be enforced by the parties of the first part, their successors and assigns and by any owner of any of the lots or tracts shown on any portion of Goose Creek Estates.

WITNESS the following signatures and seals.

JOHN YORK LINDSEY  
JAMES R. LINDSEY  
H. V. LINDSEY, JR.  
IRA C. RATLIFF  
CARL CARTWRIGHT, JR.  
PARTNERS, TRADING AND DOING BUSINESS AS  
GOOSE CREEK PARTNERSHIP

BY *Carl Cartwright, Jr.*  
CARL CARTWRIGHT, JR. / AGENT AND ATTORNEY

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TASSELVILLE, VIRGINIA

SXA 579 - 292

STATE OF VIRGINIA

COUNTY OF TAZEWELL, to-wit:

I, Barbara H. Slat, a Notary Public for Tazewell County, Virginia do hereby certify that CARL CARWRIGHT, JR., agent and attorney for Goose Creek Partnership, whose name is signed to the foregoing and hereto annexed deed dated the 31 day of May, 1988, has this day acknowledged the same before me in my County and State aforesaid.

My Commission Expires: June 16, 1990

Given under my hand and official notarial seal this the 31 day of May, 1988.

Barbara H. Slat  
NOTARY PUBLIC

VIRGINIA: In the Clerk's Office of Tazewell Circuit Court June 9 1988  
This deed was presented and upon the annexed Certificate of acknowledgment admitted to record at 11:45 A.M. The tax imposed by 58-54.1 of the Code has been paid in the amount of \$ 1.00

Teste:

Boyd R. Miller, Jr. Deputy Clerk

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL VIRGINIA

BOOK 614 PAGE 854

THIS DEED, made this the 27th day of November, 1990, by and between JOHN YORK LINDSEY, JAMES R. LINDSEY, H. V. LINDSEY, JR., IRA C. RATLIFF and CARL CARTWRIGHT, JR., partners, trading as GOOSE CREEK PARTNERSHIP, parties of the first part, and THOMAS E. KELLEY and ANGELA A. KELLEY, husband and wife, as hereinafter set forth, parties of the second part:

W I T N E S S E T H:

That for and in consideration of the sum of Forty-eight Thousand Dollars (\$48,000.00), cash in hand paid by the parties of the second part to the parties of the first part, receipt of which is acknowledged, the said parties of the first part do hereby sell, grant, bargain and convey, with Covenants of General Warranty of Title and freedom from encumbrances, and subject to the restrictions, reservations and conditions hereinafter set forth, unto the said Thomas E. Kelley and Angela A. Kelley, husband and wife, as tenants by the entireties, with the right of survivorship as at common law, all those four certain tracts or parcels of land, situate, lying and being in Jeffersonville Magisterial District, Tazewell County, Virginia, and being known and designated as Tract Number 23, Section 2, containing 7.774 acres, Tract Number 24, Section 2, containing 6.606 acres, Tract Number 25, Section 2, containing 6.90 acres, and Tract Number 5, Section 1, containing 5.0 acres, all as shown on two certain plats of "Goose Creek Estates, property of Goose Creek Partnership" found of record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, Section 2 being found on Plat Card 4067, and in Plat Book 14, page 37, and Section 1, being found on Plat Card 4074, in Plat Book 14, page 44, said tracts of land being further bounded and described as follows:

MARMAN & MARMAN  
ATTORNEYS AT LAW  
TAZEVELL, VIRGINIA

A COPY, TESTE:  
JAMES B. ELEVINS, CLERK OF THE  
CIRCUIT COURT OF TAZEVELL COUNTY  
BY: *[Signature]*  
DEPUTY CLERK



TRACTS NUMBERS 23, 24 AND 25, SECTION 2:

BEGINNING at a point in the center of a 50 foot right of way, said point being the northeastern corner of Tract 23, Section 2, and the southeast corner of Tract No. 10, Section No. 3, of Goose Creek Estates (plat of Section 3, Goose Creek Estates, found on Plat Card 4088, and in Plat Book 14, page 38), thence leaving said 50 foot right of way and with the southerly boundary line of Tract 10, Section 3, and Tract 2, Section 3, N. 90° W. 1302.20 feet to a point on the easterly boundary line of Tract 4, Section 3; thence leaving Tract 2, Section 3, and with the easterly boundary line of Tract 4, Section 3, S. 21° 21' 39" E. 294.75 feet to a point, the last call being the westerly boundary line of Tract 23, and continuing with the westerly boundary line of Tract 24, S. 21° 21' 39" E. 279.13 feet to a point, being the westerly boundary line of Tract No. 24, Section 2 (with the last 40.61 feet being on the westerly boundary line of Tract 25, Section 2); thence with the westerly boundary line of Tract 25, Section 2, due south 300 feet to a point, said point being on the division line between Tract 5 and Tract 6 of Section 1, Goose Creek Estates; thence leaving Section 1 of Goose Creek Estates and with the southerly boundary line of Tract 25, Section 2, N. 84° 41' 21" E. 999.24 feet to a point in a 50 foot right of way; thence with the center line of said right of way, N. 61° 34' 20" E. 80.35 feet to a point in the center of an intersection of two 50 foot rights of way; thence N. 17° 48' 08" W. 141.19 feet to a point in the center of said right of way; thence continuing with said center line of said right of way, N. 5° 15' 20" E. 609.70 feet to the point of BEGINNING, containing Tracts 23, 24 and 25, Section 2, totaling 21.280 acres, be the same more or less.

TRACT NUMBER 5, SECTION 1:

BEGINNING at a point on the westerly boundary line of Tract 24, Section 2, above described; thence leaving said Tract 24, Section 2, and with the division line between Tract 4 and Tract 5, Section 1, S. 79° 03' 20" W. 655.79 feet to a point in the center of a 50 foot right of way; thence with the center line of said 50 foot right of way, S. 0° 23' 59" W. 99.47 feet to a point in the center of said right of way; thence S. 30° 55' 10" W. 106.43 feet to a point in the center of said right of way; thence S. 27° 04' 04" W. 86.51 feet to a point in the center of said right of way, being the southwest corner of Tract 5, Section 1; thence leaving said right of way and with the division line between Tract 5 and 6, N. 90° E. 758.64 feet to a point, being the southwest corner of Tract 25, Section 2; thence with the west line of Tract 25, Section 2, due north 300.0 feet to a point; thence N. 21° 21' 39" W. 80 feet to the point of BEGINNING, containing 5.0 acres, be the same more or less.

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ATTORNEYS AT LAW  
TAEHILL WAGNER

BOOK 614 PAGE 856

It is understood and agreed between the parties to this deed that the parties of the second part, their heirs and assigns shall have the perpetual right to use said 50 foot rights of way together with all other rights of way shown on said plats, along with all other owners of said lands in Goose Creek Estates, for access to the property herein conveyed and to other properties shown on said plats.

There is an additional road crossing Tract 4, Section 1, and Tract 1, Section 3, which said road is not shown on the aforesaid plats, and being a road cut by the parties of the first part for additional access to the property herein conveyed. The parties of the first part hereby grant to the said Thomas E. Kelley and Angela A. Kelley, husband and wife, their heirs and assigns, a 30 foot right of way over all present existing roads on the ground, in addition to those shown on the plat, said road crossing Tract No. 4, Section 1, and Tract No. 1, Section 3, and the use thereof shall be appurtenant to the lands herein conveyed to the parties of the second part herein, and the same were reserved in a deed of even date herewith from the parties of the first part herein to Clinton W. and Karen A. McDaniel, husband and wife, which deed is to be promptly recorded in said Clerk's Office and to which reference is here made.

The tract of land herein conveyed is a portion of a much larger tract of land conveyed to the grantors herein by Louella V. Turner, et als, by deed dated August 25, 1978, of record in said Clerk's Office in Deed Book 448, page 342. By a Power of Attorney dated May 22, 1979, found of record in said Clerk's Office in Deed Book 458, page 370, John York Lindsey, James R. Lindsey, H. V.

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ATTORNEYS AT LAW  
FAIRFAX, VIRGINIA

Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., partners, trading and doing business as Goose Creek Partnership, granted and conveyed unto Carl Cartwright, Jr., one of the partners, full and complete authority as agent and attorney for the partnership to prepare, execute, and deliver deeds for and on behalf of said partnership. Reference is here made to said Power of Attorney and to said deeds and plats of record in said Clerk's Office for a further and more particular description of the real estate herein conveyed, and the terms and provisions of each and all of said documents.

It is distinctly understood and agreed that this conveyance is subject to the express restrictive covenants, running with the land, that no mobile home, either single or doublewide, shall be placed on said land at any time, and this covenant may be enforced by the parties of the first part, their successors and assigns, and/or by the owner of any of the lots and tracts shown on any of the plats of Goose Creek Estates.

WITNESS the following signatures and seals:


JOHN YORK LINDSEY

JAMES R. LINDSEY

H. V. LINDSEY, JR.

IRA C. RATLIFF

CARL CARTWRIGHT, JR.,  
partners, trading and  
doing business as Goose  
Creek Partnership

BY  (SEAL)  
CARL CARTWRIGHT, JR., AGENT  
AND ATTORNEY

HARMAN & HARMAN  
ATTORNEYS AT LAW  
FAIRFAX, VIRGINIA

BOOK 614 PAGE 858

STATE OF VIRGINIA,

COUNTY OF TAZEWELL, to-wit:

I, Linda C. Short, a Notary Public for Tazewell

County, Virginia, do hereby certify that CARL CARTWRIGHT, JR., whose name is signed as agent and attorney for Goose Creek Partnership, has this day acknowledged the foregoing and hereto annexed instrument, bearing date the 29<sup>th</sup> day of November, 1990, before me in my County and State.

My Commission Expires: Sept. 30, 1994

GIVEN under my hand and official notarial seal, this the 29<sup>th</sup> day of November, 1990.

Linda C. Short  
Notary Public

VIRGINIA: In the Clerk's Office of Tazewell Circuit Court DECEMBER 5, 19 90  
This deed was presented and upon the annexed Certificate of acknowledgment admitted to record at 2:29 P. M. The tax imposed by 58-54.1 of the Code has been paid in the amount of \$ 48.00.

Test:

Boyer R. Nigh Deputy Clerk

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

#5092

BOOK 645 PAGE 956

THIS DEED, made this the 31<sup>st</sup> day of October, 1992, by and between JOHN YORK LINDSEY, H. V. LINDSEY, JR., IRA C. RATLIFF, CARL CARTWRIGHT, JR. and THE LINDSEY 1987 TRUST (J. YORK LINDSEY and H. V. LINDSEY, JR., TRUSTEES), partners trading as Goose Creek Partnership, parties of the first part, and CHARLES C. McCOY and LISA C. McCOY, husband and wife, as more particularly hereinafter set forth, parties of the second part;

**WITNESSETH:**

That for and in consideration of the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00), cash in hand paid by the parties of the second part to the parties of the first part, the receipt of which is hereby acknowledged, the parties of the first part do hereby sell, grant and convey, with Covenants of General Warranty of Title and freedom from encumbrances, and subject to the restrictions, reservations and conditions hereinafter set forth, unto the said CHARLES C. McCOY and LISA C. McCOY, husband and wife, as tenants by the entireties, with the right of survivorship as at common law, all that certain tract or parcel of land, situate, lying and being in Jeffersonville Magisterial District, Tazewell County, Virginia, known and designated as Tract No. 34, Section 1, containing 5.275 acres, as shown on a certain corrected plat of "Section No. 1, Goose Creek Estates, Property of Goose Creek Partnership", found of record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, in Plat Book 14, page 44, and on Plat Card 4074, said Tract No. 34 being further bounded and described as follows:

BEGINNING at a point in the center of a certain 50 foot right of way, said point being the southeasterly corner of Tract No. 34 herein conveyed and the northeasterly corner of Tract No. 33, Section 1; thence leaving said 50 foot right of way, and with the division line

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ATTORNEYS AT LAW  
TAZEVELL, VIRGINIA





between Tract No. 33 and Tract No. 34, S. 90° W. 633.59 feet to a point on the easterly boundary line of Tract No. 37, Section No. 1, being the southwesterly corner of Tract No. 34 herein conveyed and the northwesterly corner of Tract No. 33, thence leaving said Tract No. 33, and with the southerly boundary line of Tract No. 37 and Tract No. 36, Section No. 1, due north 350.0 feet to a point on the southerly boundary line of Tract No. 36, Section No. 1, being the northwesterly corner of Tract No. 34; thence with the division line between Tract No. 34 and Tract No. 35, Section No. 1, N. 90° E. 688 feet to a point in the center of the aforesaid 50 foot right of way; thence with the center line of said 50 foot right of way, S. 11° 14' 07" W. 106.04 feet to a point in the center of said 50 foot right of way with the intersection of another 50 foot right of way, crossing said Tract No. 34; thence continuing with the center line of said original 50 foot right of way above mentioned, S. 7° 11' 10" W. 248.93 feet to the point of BEGINNING, and containing 5.275 acres, more or less.

It is distinctly understood and agreed between the parties to this deed that the parties of the second part, their heirs and assigns, shall have the perpetual right to use said 50 foot rights of way above mentioned, together with all other rights of way shown on said plats, along with and in conjunction with all other owners of said lands in Goose Creek Estates, for access to the property herein conveyed and to other property shown on said plats.

It is distinctly understood and agreed that this conveyance is subject to the express restrictive covenants, running with the land, that no mobile home, either single or doublewide, shall be placed on said land at any time, and this covenant may be enforced by the parties of the first part, their successors and assigns, and/or by any owners of property shown on the plats of Goose Creek Estates.

The tract of land herein conveyed is a portion of a much larger tract of land conveyed to the grantors herein by Louella V. Turner, et als, by deed dated August 25, 1978, of record in

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ATTORNEYS AT LAW  
FAIRFAX, VIRGINIA

BOOK 645 PAGE 358

said Clerk's Office in Deed Book 448, page 342. By a Power of Attorney dated May 22, 1979, found of record in said Clerk's Office in Deed Book 458, page 370, John York Lindsey, James R. Lindsey, H.V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., partners, trading and doing business as Goose Creek Partnership, granted and conveyed unto Carl Cartwright, Jr., one of the partners, full and complete authority as agent and attorney for the partnership to prepare, execute, and deliver deeds for and on behalf of said partnership.

By agreement between the partners of Goose Creek dated December 29, 1987, James R. Lindsey, the owner of 20 percent interest of said partnership, granted one-half of his interest in said partnership unto J. York Lindsey and H.V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all of the other partners, and the Certificate of Partnership was amended to show said transfer and the acceptance of the Lindsey 1987 Trust as a partner by certificate dated December 29, 1987.

By agreement between the partners of Goose Creek dated January 4, 1988, James R. Lindsey, the owner of 10 percent interest of said partnership, granted his remaining 10 percent interest in said partnership unto J. York Lindsey and H.V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all of the other partners, and the Certificate of Partnership was again amended to show said transfer and the acceptance of the Lindsey Trust as a partner now owning a 20 percent interest in said partnership. It is here recited that the Lindsey 1987 Trust owns a 20 percent interest in said Goose Creek Partnership, the said James R. Lindsey having conveyed his entire interest as above set forth.

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ATTORNEYS AT LAW  
FAIRFAX, VIRGINIA

By Deed of Confirmation dated September 19, 1991, found of record in said Clerk's Office in Deed Book 625, page 679, and the said James R. Lindsey and Jeanette Lindsey, his wife, executed a deed granting, selling and conveying, with Covenants of General Warranty of Title and English covenants, unto the said J. York Lindsey and H.V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, and their successors, all of the undivided right, title and interest in all lands held by the said James R. Lindsey (and Jeanette Lindsey), situate on Goose Creek, near North Tazewell, in Tazewell County, Virginia, originally containing 593.52 acres and 1.039 acres, and being the same property described by metes and bounds in the original deed from Louella V. Turner, et als, to the original partners of Goose Creek, which said deed is dated August 25, 1978, and found of record in said Clerk's Office in Deed Book 448, page 342. There was expressly excepted from said conveyance executed by the said James R. Lindsey and wife to the said Trustees of the Lindsey 1987 Trust all of the various lots and parcels which were heretofore conveyed out of the original boundaries by said Goose Creek Partnership, found of record in said Clerk's Office.

By Power of Attorney dated the 31st day of December, 1991, and found of record in the aforesaid Clerk's Office in Deed Book 629, page 919, John York Lindsey and H.V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, made, constituted and appointed Carl Cartwright, Jr. and John York Lindsey, either one or both of whom may act, as the true lawful attorneys of the Trust, with authority of the Trustees and in their name, place and stead, to bargain, sell, grant and convey properties owned by Goose Creek Estates.

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ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

BOOK 645 PAGE 960

Reference is here made to each and all of the foregoing documents, deeds, plats, Certificate of Partnership, amendments thereto and Powers of Attorney, for a further and more particular description of the real estate herein conveyed and the history of the title thereto.

WITNESS the following signatures and seals:

JOHN YORK LINDSEY

H.V. LINDSEY, JR.

IRA C. RATLIFF

CARL CARTWRIGHT, JR.

LINDSEY 1987 TRUST

PARTNERS, TRADING AND DOING  
BUSINESS AS GOOSE CREEK PARTNERSHIP

By Carl Cartwright, Jr. (SEAL)  
CARL CARTWRIGHT, JR., AGENT  
AND ATTORNEY

STATE OF VIRGINIA,

COUNTY OF TAZEWELL, to-wit:

I, Barbara H. Sheet, a Notary Public for the State of Virginia, do hereby certify that CARL CARTWRIGHT, JR., whose name is signed as agent and attorney for John York Lindsey, H.V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., Lindsey 1987 Trust, partners of Goose Creek Partnership, has this day acknowledged the foregoing and hereto annexed instrument, bearing date the 31<sup>st</sup> day of October, 1992, before me in my County and State.

My Commission Expires: March 31, 1994

Given under my hand and official notarial seal, this the

31<sup>st</sup> day of October, 1992.

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

Barbara H. Sheet  
Notary Public

VIRGINIA: In the Clerk's Office of Tazewell Circuit Court, NOVEMBER 12, 19 92  
This deed was presented and upon the annexed Certificate of acknowledgment admitted to  
record at 2:41 P.M. The tax imposed by 58-54.1 of the Code has been paid in the  
amount of \$ 17.50

Tax: 17.50  
Deputy Clerk

A COPY, TESTE:  
JAMES B. ELEVING, CLERK OF THIS  
CIRCUIT COURT OF TAZEWELL COUNTY  
By Deputy Clerk  
DEPUTY CLERK

#887  
BOOK 669 PAGE 885

THIS DEED, made this the 9<sup>TH</sup> day of March, 1994, by and between JOHN YORK LINDSEY, H.V. LINDSEY, JR., IRA C. RATLIFF, CARL CARTWRIGHT, JR. and THE LINDSEY 1987 TRUST (J. YORK LINDSEY and H.V. LINDSEY, JR., TRUSTEES), partners trading as Goose Creek Partnership, parties of the first part, and JAMES S. HALL and JOYCE S. HALL, husband and wife, as hereinafter mentioned, parties of the second part:

WITNESSETH:

That for and in consideration of the sum of Fifteen Thousand Dollars (\$15,000.00), paid and to be paid as hereinafter mentioned, by the parties of the second part to the parties of the first part, and the balance secured as hereinafter mentioned, the parties of the first part do hereby sell, grant and convey, with Covenants of General Warranty of Title and freedom from encumbrances, and subject to the restrictions, reservations and conditions hereinafter set forth, unto the said James S. Hall and Joyce S. Hall, husband and wife, as tenants by the entireties, with the right of survivorship as at common law, all that certain tract or parcel of land, situate, lying and being in Jeffersonville Magisterial District, Tazewell County, Virginia, known and designated as Tract No. 3, Section No. 4, containing 5.152 acres, as shown on a plat entitled, "Section No. 4, Goose Creek Estates, Property of Goose Creek Partnership", found of record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, in Plat Book 14, page 55, and on Plat Card 4085, said tract being further bounded and described as follows:

TRACT NO. 3, SECTION 4.:

BEGINNING at a point on the edge of Virginia State Secondary Route 644, said point being the northeasterly corner of said Tract No. 3, and the northwesterly corner of Tract No. 4; thence leaving said Highway and

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ATTORNEYS AT LAW  
TAESEWELL, VIRGINIA

A COPY, TESTE  
JAMES B. ELEVINS, CLERK OF THE  
CIRCUIT COURT OF TAESEWELL COUNTY  
BY [Signature]  
DEPUTY CLERK

PLAINTIFF'S  
EXHIBIT  
72

BOOK 669 PAGE 886

with the division line between Tract No. 3 and Tract No. 4, S. 15° 18' 20" E. 232.48 feet to a point, said point being the southwesterly corner of Tract No. 4; thence leaving Tract No. 4 and with the division line between Tract No. 3 herein conveyed and Tract No. 388, Section 1 of Goose Creek Estates, S. 7° 02' 41" E. 446.71 feet to a point on said division line; thence leaving said Section 1 and with the division line between Tract No. 3 herein conveyed and Tract No. 2, Section 4, N. 67° 51' 20" W. 850.82 feet to a point on the edge of said Virginia Secondary Route No. 644; thence with the easterly right of way line of said highway, with a curve to the right, said curve having a radius of 386.06 feet to a point on said road, thence with said road, N. 44° 16' E. 170.54 feet to a point; thence following the edge of said road, with a curve to the left, with a radius of 333.77 feet to a point; thence following the edge of said road with a curve to the right, with a radius of 79.6 feet to a point; thence with the edge of said road, N. 74° 41' 40" E. 179.85 feet to the point of BEGINNING, containing 5.152 acres, be the same more or less.

It is distinctly understood and agreed between the parties hereto that the parties of the second part, their heirs and assigns, shall have the perpetual right to use the 50 foot rights of way above mentioned, together with all other rights of way shown on plats of Goose Creek Estates, in conjunction with all other owners of said lands in Goose Creek Estates, for access to the property herein conveyed and to other property shown on said plats.

It is distinctly understood and agreed that this conveyance is subject to the express restrictive covenants, running with the land, that no mobile home, either single or doublewide, shall be placed on said land at any time, and this covenant may be enforced by the parties of the first part, their successors and assigns, and/or by any owners of property shown on the plats of Goose Creek Estates.

The tract of land herein conveyed is a portion of a much larger tract of land conveyed to the grantors herein by Louella V. Turner, et als, by deed dated August 25, 1978, of record in

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ATTORNEYS AT LAW  
FAIRFAX, VIRGINIA

said Clerk's Office in Deed Book 448, page 342. By a Power of Attorney dated May 22, 1979, found of record in said Clerk's Office in Deed Book 458, page 370, John York Lindsey, James R. Lindsey, H.V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., partners, trading and doing business as Goose Creek Partnership, granted and conveyed unto Carl Cartwright, Jr., one of the partners, full and complete authority as agent and attorney for the partnership to prepare, execute, and deliver deeds for and on behalf of said partnership.

By agreement between the partners of Goose Creek dated December 29, 1987, James R. Lindsey, the owner of 20% interest of said partnership, granted one-half of his 20% interest in said partnership unto J. York Lindsey and H.V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all of the other partners, and the Certificate of Partnership was amended to show said transfer and the acceptance of the Lindsey 1987 Trust as a partner by certificate dated December 29, 1987.

By agreement between the partners of Goose Creek dated January 4, 1988, James R. Lindsey, the owner of 10% interest of said partnership, granted his remaining 10% interest in said partnership unto J. York Lindsey and H.V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all of the other partners, and the Certificate of Partnership was again amended to show said transfer and the acceptance of the Lindsey Trust as a partner now owning a 20% interest in said partnership. It is here recited that the Lindsey 1987 Trust own a 20% interest in said Goose Creek Partnership, the said James R. Lindsey having conveyed his entire interest as above set forth.

By Deed of Confirmation dated September 19, 1991, found of record in said Clerk's Office in Deed Book 826, page 879, and th

HARMAN & HARMAN  
ATTORNEYS AT LAW  
CHICAGO, ILLINOIS

BOOK 660 PAGE 888

said James R. Lindsey and Jeanette Lindsey, his wife, executed a deed granting, selling and conveying, with Covenants of General Warranty of Title and English covenants, unto the said J. York Lindsey and H.V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, and their successors, all of the undivided right, title and interest in all lands held by the said James R. Lindsey (and Jeanette Lindsey), situate on Goose Creek, near North Tazewell, in Tazewell County, Virginia, originally containing 593.62 acres and 1.039 acres, and being the same property described by metes and bounds in the original deed from Louella V. Turner, et als, to the original partners of Goose Creek, which said deed is dated August 25, 1978, and found of record in said Clerk's Office in Deed Book 448, page 342. There was expressly excepted from said conveyance executed by the said James R. Lindsey and wife to the said Trustees of the Lindsey 1987 Trust all of the various lots and parcels which were heretofore conveyed out of the original boundaries by said Goose Creek Partnership, found of record in said Clerk's Office.

By Power of Attorney dated December 31, 1991, and found of record in the aforesaid Clerk's Office in Deed Book 629, page 919, John York Lindsey and H.V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, made, constituted and appointed Carl Cartwright, Jr. and John York Lindsey, either one or both of whom may act, as the true lawful attorneys of the Trust, with authority of the Trustees and in their name, place and stead, to bargain, sell, grant and convey properties owned by Goose Creek Estates.

The consideration of Fifteen Thousand Dollars (\$15,000.00) above mentioned is paid and to be paid as follows: Four Thousand Dollars (\$4,000.00) thereof is cash in hand paid by the parties

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ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

-4-



of the second part to the parties of the first part, receipt of which is acknowledged, and the balance of Eleven Thousand Dollars (\$11,000.00) is evidenced by a certain negotiable promissory note, bearing even date herewith, executed by the parties of the second part, and payable to the order of the parties of the first part, with interest thereon, and is secured by a purchase money deed of trust against said property, bearing even date herewith, and intended to be admitted to record immediately following the recordation of this deed, to which reference is here made for the terms and provisions thereof.

Reference is here made to each and all of the foregoing documents, deeds, plats, Certificate of Partnership, amendments thereto and Powers of Attorney, for a further and more particular description of the real estate herein conveyed and the history of the title thereto.

WITNESS the following signatures and seals:

JOHN YORK LINDSEY

H.V. LINDSEY, JR.

IRA C. RATLIFF

CARL CARTWRIGHT, JR.

LINDSEY 1987 TRUST

PARTNERS, TRADING AND DOING  
BUSINESS AS GOOSE CREEK PARTNERSHIP

By Carl Cartwright, Jr. (SEAL)  
CARL CARTWRIGHT, JR., AGENT  
AND ATTORNEY

STATE OF VIRGINIA.

COUNTY OF FAZEWELL, to-wit:

I, Deborah H. Shatt, a Notary Public for the State of Virginia, do hereby certify that CARL CARTWRIGHT, JR., whose name is signed as agent and attorney for John York Lindsey, H.V.

HARMAN & HARMAN  
ATTORNEYS AT LAW  
FAZEWELL, VIRGINIA

BOOK 660 PAGE 890

Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., Lindsey 1987 Trust, partners of Goose Creek Partnership, has this day acknowledged the foregoing and hereto annexed instrument, bearing date the 7TH day of March, 1994, before me in my County and State.

Given under my hand and official notarial seal, this the 9TH day of March, 1994.

My commission expires: March 31, 1994

Barbara H. Shatt  
Notary Public

VIRGINIA: In the Clerk's Office of Tazewell Circuit Court  
This deed was presented and upon the annexed Certificate of acknowledgment admitted to record at 3:09 P. M. The tax imposed by 58-54.1 of the Code has been paid in the amount of \$ 15.00

MARCH 10, 19 94

Teste:

Robert C. Miller  
Deputy Clerk

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAEZEWELL, VIRGINIA

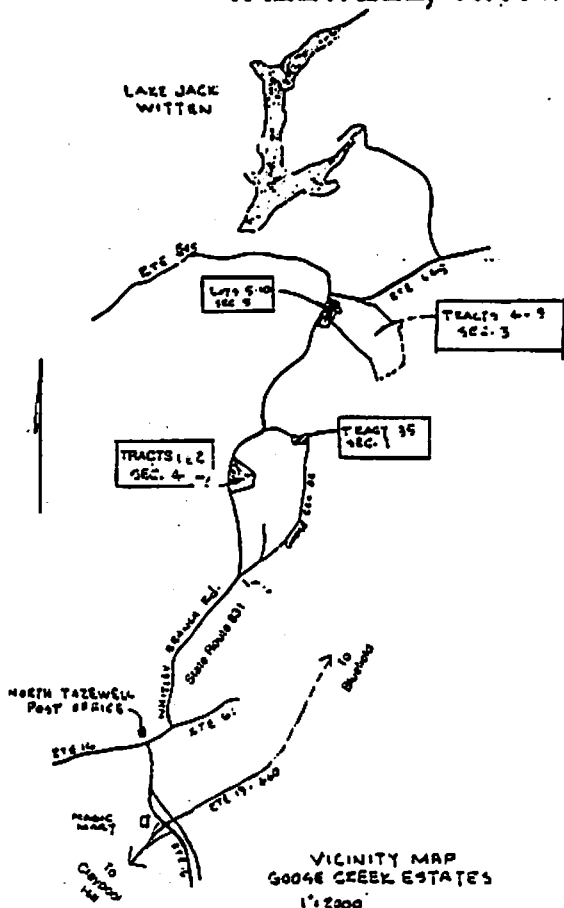
# PARTNERSHIP LIQUIDATION AUCTION

REMAINING 9 ACREAGE TRACTS - 6 HOMESITES  
GOOSE CREEK ESTATES

A MOST DESIRABLE AND CONVENIENT LOCATION  
FRONTING ON AND JUST OFF ROADS 831 AND 645  
(WHITLEY BRANCH ROAD)  
TAZEWELL, VIRGINIA

**SATURDAY  
JUNE  
1, '96  
10:30 AM**

**ON PREMISES**



**DIRECTIONS TO PROPERTY:** From Rt. 460 take exit at Tazewell Mail (Magic Mart) into North Tazewell and near the post office take Whitney Branch Road (831) approximately one mile to Goose Creek Estates — auction arrows posted.

IN A WELL ESTABLISHED DEVELOPMENT OF ATTRACTIVE AND WELL-KEPT HOMES AND NEAR TOWN, LAKE WITTEN AND PLACES OF WORK AND CENTERS OF ACTIVITY.

PARCELS WILL RANGE IN SIZE FROM 1± ACRES TO OVER 8.5± ACRES. Most of them lay well, have nice sites for homes and good views. These remaining homesites and tracts have been staked with identifying auction signs.

**TERMS:** Cash - 10% down on sale day and balance at closing, not to exceed 30 days, or bank financing available by Miners & Merchants Bank with 10% down sale day, 15% at closing and balance over a 5-year period at 9% interest. Other announcements to be made at sale. Lunches by Waffle & Egg.

LOOK IT OVER TODAY - CHOOSE THE ONES YOU DESIRE AND BE AT THE SALE PREPARED TO BID AND BUY AT BARGAIN AUCTION PRICES. Sale conducted for Goose Creek Partnership by —



**GAINES DICKENSON AUCTIONEERS**  
Real Estate Brokers  
P.O. Box 690, Castlewood, VA 24224  
Voice 540-738-9230 / FAX 540-738-8611

"Specialists in the Auction  
Method of Marketing"



VA.A.F. #119

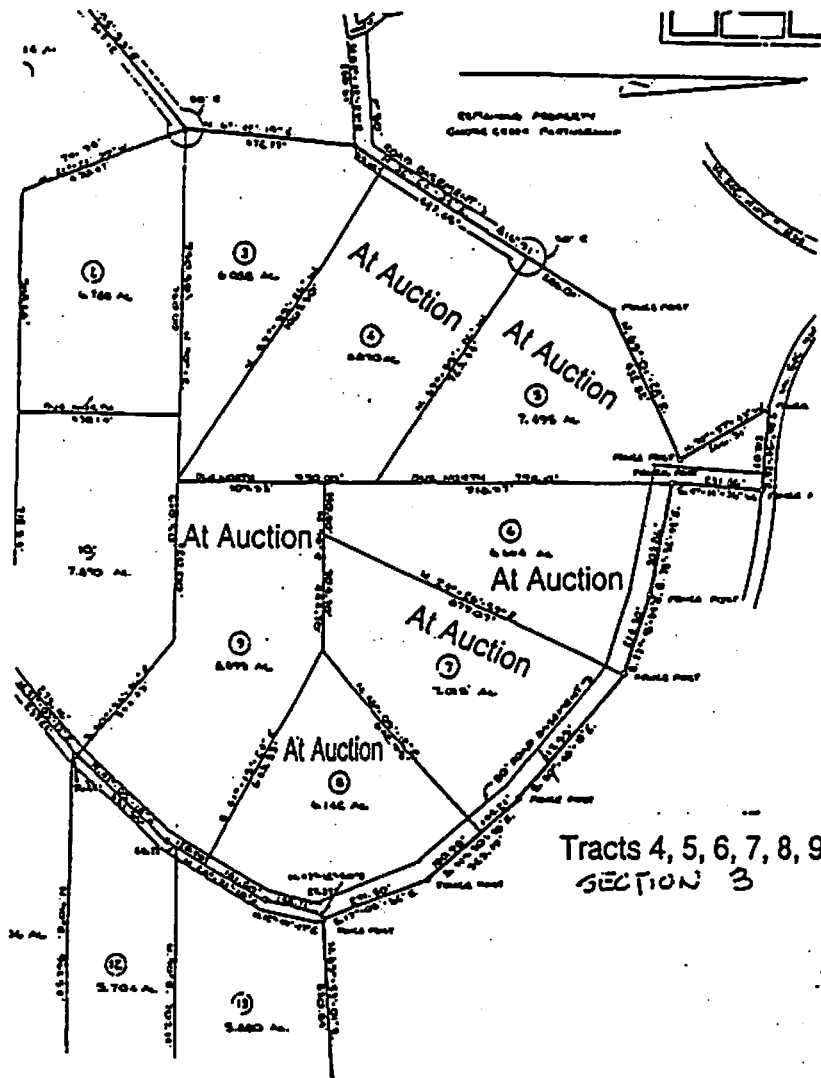
**Horney Brothers LAND AUCTION COMPANY, INC.**

P.O. Box 73 • Wytheville, VA 24382  
Phone: 540-228-4131 • Fax: 540-228-4727

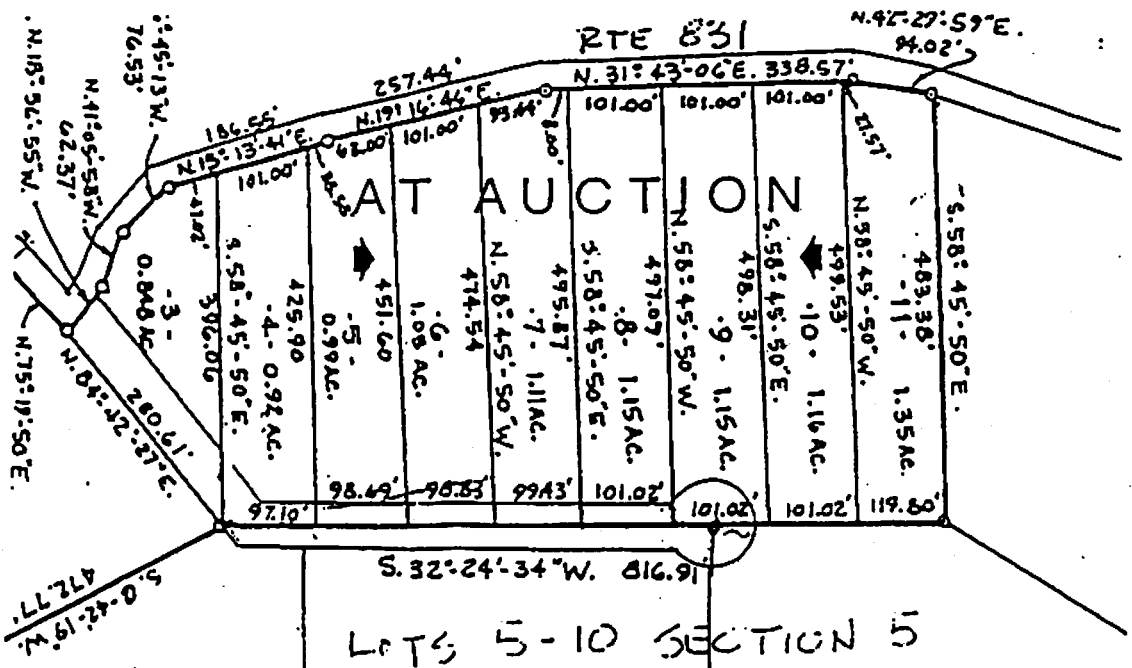
"Wytheville Our Home - The World Our Territory"

PLAINTIFF'S  
EXHIBIT





Tracts 4, 5, 6, 7, 8, 9  
SECTION 3



LOTS 5-10 SECTION 5



**VA.A.F. #119**  
 Phone: 540-228-4131 • Fax: 540-228-4727  
 P.O. Box 73 • Wytheville, VA 24382  
**Honey Brokers** LAND AUCTION COMPANY, INC.

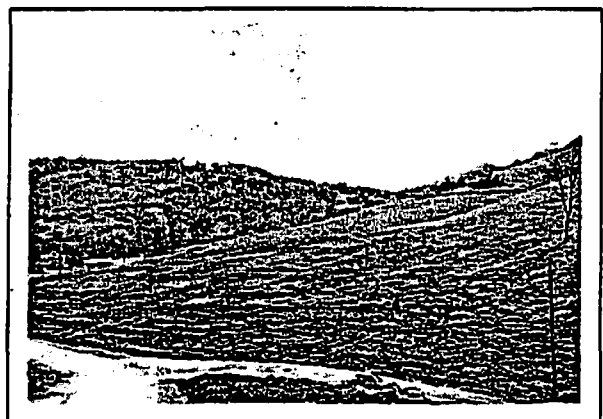
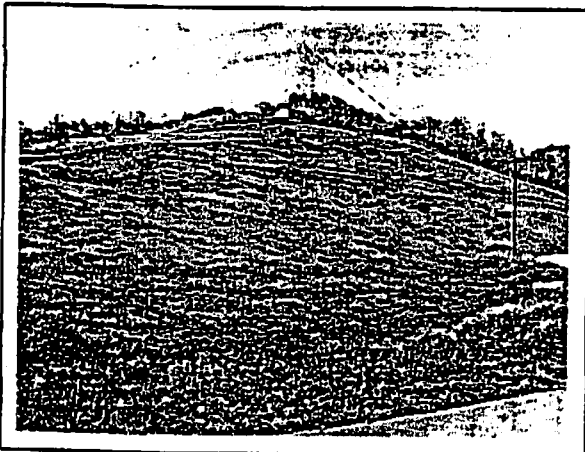
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**GAINES DICKENSON AUCTIONEERS**

**TAZEWELL, VA**  
**SAT. JUNE 1, '96 • 10:30 AM**

**REMAINING 9 ACREAGE TRACTS - 6 HOMESITES**  
**GOOSE CREEK ESTATES**  
**A MOST DESIRABLE AND CONVENIENT LOCATION**  
 FRONTING ON AND JUST OFF ROADS 831 AND 645

**AUCTION**  
**PARTNERSHIP LIQUIDATION**

**GOING AT AUCTION! SAT., JUNE 1, 1996**



#2689  
BOOK 712 PAGE 892

THIS DEED, made this the 30th day of May, 1996, by and between JOHN YORK LINDSEY, H.V. LINDSEY, JR., IRA C. RATLIFF, CARL CARTWRIGHT, JR. and THE LINDSEY 1987 TRUST (J. YORK LINDSEY and H.V. LINDSEY, JR., TRUSTEES), partners trading as Goose Creek Partnership, parties of the first part, and JAMES S. HALL and JOYCE S. HALL, husband and wife, as hereinafter mentioned, parties of the second part;

WITNESSETH:

That for and in consideration of the sum of Fifteen Thousand Dollars (\$15,000.00), cash in hand paid, by the parties of the second part to the parties of the first part, receipt of which is acknowledged, the parties of the first part do hereby sell, grant and convey, with Covenants of General Warranty of Title and freedom from encumbrances, unto the said James S. Hall and Joyce S. Hall, husband and wife, as tenants by the entireties, with the right of survivorship as at common law, and subject to the restrictions, reservations and conditions hereinafter set forth, all that certain tract or parcel of land, situate, lying and being in Jeffersonville Magisterial District, Tazewell County, Virginia, known and designated as Tract No. 2, Section No. 4, containing 5.510 acres, as shown on a plat entitled, "Section No. 4, Goose Creek Estates, Property of Goose Creek Partnership", found of record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, in Plat Book 14, page 53, and on Plat Card 4085, said tract being further bounded and described as follows:

TRACT NO. 2, SECTION 4:

BEGINNING at a point on Virginia State Secondary Route 831 (erroneously called No. 644 on the aforesaid plat), said point being the southeasterly corner of Tract No. 3, heretofore conveyed by the parties of the first part herein to the parties of the second part

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

A COPY, TESTED  
JAMES A. ELEVENS, CLERK OF THE  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY: [Signature]  
DEPUTY CLERK



BOOK 712 PAGE 893

herein, by deed dated March 9, 1994, of record in said Clerk's Office in Deed Book 669, page 885: thence with the division line between Tracts Nos. 2 and 3, S. 67° 51' 20" E. 650.62 feet to a point; thence S. 07° 02' 41" E. 225.91 feet, being the southeasterly corner of Lot No. 2 herein conveyed and the northeasterly corner of Lot No. 1 shown on said plat; thence with the division line between Tract No. 1 and Tract No. 2, N. 88° 08' 52" W. 746.38 feet to a point on the edge of said state secondary road; thence along the easterly edge of said road with a curve to the right, said curve having a radius of 289.66 feet to a point on said road; thence continuing with the easterly edge of said public road, N. 22° 08' 40" E. 255.25 feet to the point of BEGINNING, containing 5.510 acres, more or less.

It is distinctly understood and agreed between the parties hereto that the parties of the second part, their heirs and assigns, shall have the perpetual right to use all 50 foot rights of way, together with all other rights of way, shown on plats of Goose Creek Estates, in conjunction with all other owners of said lands in Goose Creek Estates, for access to the property herein conveyed and to other property shown on said plats.

Goose Creek Estates has also constructed a road leading from State Secondary Route 831 across the northwesterly corner of Tract No. 1, Section 4, and into the southwesterly portion of Tract No. 2 herein conveyed, and thence in a southeasterly direction back into Tract No. 1, and the grantors hereby grant to the parties of the second part herein, their heirs and assigns, the right to use said road right of way across the northwesterly corner of Tract No. 1 for access to Tract No. 2, and it is further understood that Tract No. 1, when conveyed, shall be granted a right of way to said road across Tract No. 2 for access to said State Secondary Route 831. Said right of way is 40 feet in width, with the constructed road being generally in the middle of said 40 foot right of way.

The tract of land herein conveyed is a portion of a much larger tract of land conveyed to the grantors herein by Louella

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ATTORNEYS AT LAW  
TAKESWELL, VIRGINIA



BOOK 712 PAGE 894

V. Turner, et als, by deed dated August 25, 1978, of record in said Clerk's Office in Deed Book 448, page 342. By a Power of Attorney dated May 22, 1979, found of record in said Clerk's Office in Deed Book 458, page 370, John York Lindsey, James R. Lindsey, H.V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., partners, trading and doing business as Goose Creek Partnership, granted and conveyed unto Carl Cartwright, Jr., one of the partners, full and complete authority as agent and attorney for the partnership to prepare, execute, and deliver deeds for and on behalf of said partnership.

By agreement between the partners of Goose Creek dated December 29, 1987, James R. Lindsey, the owner of 20% interest of said partnership, granted one-half of his 20% interest in said partnership unto J. York Lindsey and H.V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all of the other partners, and the Certificate of Partnership was amended to show said transfer and the acceptance of the Lindsey 1987 Trust as a partner by certificate dated December 29, 1987.

By agreement between the partners of Goose Creek dated January 4, 1988, James R. Lindsey, the owner of 10% interest of said partnership, granted his remaining 10% interest in said partnership unto J. York Lindsey and H.V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all of the other partners, and the Certificate of Partnership was again amended to show said transfer and the acceptance of the Lindsey Trust as a partner now owning a 20% interest in said partnership. It is here recited that the Lindsey 1987 Trust owns a 20% interest in said Goose Creek Partnership, the said James R. Lindsey having conveyed his entire interest as above set forth.

By Deed of Confirmation dated September 19, 1991, found of

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAEKOW, VIRGINIA

record in said Clerk's Office in Deed Book 625, page 679, and the said James R. Lindsey and Jeanette Lindsey, his wife, executed a deed granting, selling and conveying, with Covenants of General Warranty of Title and English covenants, unto the said J. York Lindsey and H.V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, and their successors, all of the undivided right, title and interest in all lands held by the said James R. Lindsey and Jeanette Lindsey, situate on Goose Creek, near North Tazewell, in Tazewell County, Virginia, originally containing 593.52 acres and 1.039 acres, and being the same property described by metes and bounds in the original deed from Louella V. Turner, et al., to the original partners of Goose Creek, which said deed is dated August 25, 1978, and found of record in said Clerk's Office in Deed Book 448, page 342. There was expressly excepted from said conveyance executed by the said James R. Lindsey and wife to the said Trustees of the Lindsey 1987 Trust all of the various lots and parcels which were heretofore conveyed out of the original boundaries by said Goose Creek Partnership, found of record in said Clerk's Office.

By Power of Attorney dated December 31, 1991, and found of record in the aforesaid Clerk's Office in Deed Book 629, page 919, John York Lindsey and H.V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, made, constituted and appointed Carl Cartwright, Jr. and John York Lindsey, either one or both of whom may act, as the true lawful attorneys of the Trust, with authority of the Trustees and in their name, place and stead, to bargain, sell, grant and convey properties owned by Goose Creek Estates.

Reference is here made to each and all of the foregoing documents, deeds, plats, Certificate of Partnership, amendments

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ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

BOOK 712 PAGE 896

thereto and Powers of Attorney, for a further and more particular description of the real estate herein conveyed and the history of the title thereto.

WITNESS the following signatures and seals:

JOHN YORK LINDSEY  
H.V. LINDSEY, JR.  
IRA C. RATLIFF  
CARL CARTWRIGHT, JR.  
LINDSEY 1987 TRUST

PARTNERS, TRADING AND DOING  
BUSINESS AS GOOSE CREEK PARTNERSHIP

By Carl Cartwright, Jr. (SEAL)  
CARL CARTWRIGHT, JR., AGENT  
AND ATTORNEY

STATE OF VIRGINIA.

COUNTY OF TAZEWELL, to-wit:

I, Carla Hagerman, a Notary Public for the State of Virginia, do hereby certify that CARL CARTWRIGHT, JR., whose name is signed as agent and attorney for John York Lindsey, H.V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., Lindsey 1987 Trust, partners of Goose Creek Partnership, has this day acknowledged the foregoing and hereto annexed instrument, bearing date the 30th day of May, 1996, before me in my County and State.

Given under my hand and official notarial seal, this the 4th day of June, 1996.

My commission expires: 8-31-97

Carla Hagerman  
Notary Public

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

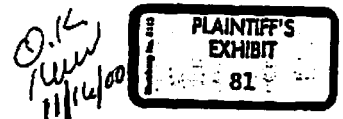
INSTRUMENT 89682649  
RECORDED IN THE CLERK'S OFFICE OF  
TAZEWELL COUNTY ON  
JUNE 14, 1996 AT 02:16PM  
\$15.00 GRANTOR TAX WAS PAID AS  
REQUIRED BY SEC 58.1-802 OF THE VA. CODE  
STATE: \$7.50 LOCAL: \$7.50  
JAMES E. BLEVINS, CLERK  
BY [Signature] DEPUTY CLERK

-5-

**ANNOUNCEMENTS**  
**AUCTION FOR GOOSE CREEK PARTNERSHIP LIQUIDATION**  
**(ONE PRINCIPAL IS OWNER/AGENT)**  
**ACREAGE TRACTS-HOMESITES**  
**ON & JUST OFF RD 831 & 645(WHITLEY BRANCH RD)TAZEWELL, VA**  
**SATURDAY, JUNE 1, 1996, 10:30 A.M.**  
**BY: HORNEY BROTHERS LAND AUCTION CO., INC. & GAINES DICKENSON AUCTIONEERS**

1. **TERMS:** CASH-TEN PERCENT (10%) OF PURCHASE PRICE REQUIRED TODAY, BALANCE AT CLOSING, NOT TO EXCEED THIRTY (30) DAYS, OR BANK FINANCING AVAILABLE BY MINERS AND MERCHANTS BANK WITH TEN PERCENT (10%), DOWN TODAY, FIFTEEN PERCENT (15%) AT CLOSING AND BALANCE TO BE MADE IN MONTHLY PAYMENTS OVER A FIVE (5) YEAR PERIOD AT NINE PERCENT(9%) INTEREST, DOWN PAYMENT CHECKS TO BE MADE PAYABLE TO C.R. BOLLING, ATTORNEY, CASHED AND PLACED IN A SPECIAL ESCROW ACCOUNT UNTIL CLOSING. CLOSING TO BE ON OR BEFORE THIRTY (30) DAYS FROM TODAY'S DATE AT THE OFFICE OF C.R. BOLLING, ATTORNEY, RICHLANDS, VA. BUYERS TO PAY CUSTOMARY CLOSING COSTS AT TIME OF CLOSING. SELLER SHALL PROVIDE A SINGLE GENERAL WARRANTY DEED OF CONVEYANCE FOR EACH BUYER.
2. **POSSESSION:** POSSESSION OF PROPERTY IS TO BE GIVEN UPON DELIVERY OF DEEDS.
3. **REAL ESTATE TAXES:** 1996 TAXES TO BE PRORATED AS OF CLOSING.
4. **THE PROPERTY WILL BE OFFERED SUBJECT TO CONFIRMATION ON ANY PART OR ALL BY OWNERS.**
5. **IN THE EVENT OF TWO PEOPLE CLAIMING THE SAME BID, THE MATTER WILL BE LEFT TO THE JUDGMENT OF THE AUCTIONEERS AND AUCTION COMPANIES.**
6. **PROPERTY IS BEING SOLD SUBJECT TO SUCH CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHT-OF-WAYS AND EASEMENTS OF RECORD TO THE EXTENT THAT THEY LAWFULLY APPLY. COUNTY ORDINANCES APPLY. IN SECTION 5, A 30FT COMMON EASEMENT IS RESERVED AT THE EXISTING CULBERT ONTO LOT 8 FOR INGRESS AND EGRESS SERVING LOTS 5 THRU 11. THE 30 FT EASEMENT SHALL BE PARALLEL AND ADJOINING THE EXISTING DITCH LINE AND ACROSS THE WESTERN PORTION OF LOTS 6 THRU 10. IN SECTION 4, TRACT 2 HAS BEEN SOLD BY OWNERS AND IS WITHDRAWN FROM THE AUCTION. IN ADDITION TO THE 50' WIDE RIGHT-OF-WAY EXISTING ALONG THE EASTERN BOUNDARY LINE OF LOTS 5 THRU 9, SECTION 5 AS SHOWN ON THE RECORDED PLAT, THERE WILL BE AN ADDITIONAL 50' WIDE EASEMENT AS EVIDENCED BY THE EXISTING ROADWAY WHICH IS GENERALLY DESCRIBED AS BEGINNING NEAR THE SOUTHEAST CORNER OF LOT 5, SECTION 5 AND CONTINUING ACROSS THE EASTERN PORTION OF LOTS 6 & 7 AND THEN CROSSING OVER THE WESTERN PORTION OF TRACT 4 IN SECTION 3 APPROPRIATE PROVISIONS WILL BE INCLUDED IN THE RESPECTIVE DEEDS TO THE AFFECTED PROPERTIES TO PROVIDE FOR THESE EASEMENTS.**  
**IN THE DEED TO LOT 5, SECTION 5, THERE WILL FURTHER BE RESERVED AN EASEMENT 30' IN WIDTH LEADING EASTERLY FROM THE EXISTING 50' WIDE ROADWAY IN THE EASTERN PORTION OF LOT 5, WHICH 30' WIDE EASEMENT IS FURTHER EVIDENCED BY AN EXISTING DRIVEWAY LEADING TO TRACT 4, SECTION 3.**  
**PLEASE NOTE A 40 FT EXISTING ENTRANCE NOT SHOWN ON MAP IS RESERVED IN SECTION 4 ACROSS PARCEL 1 INTO PARCEL 2. ALSO IN THE DEED TO PARCEL 2 THERE SHALL BE RESERVED A 40FT EASEMENT FOR PARCEL 1 FOR INGRESS AND EGRESS OVER THE EXISTING ENTRYWAY.**
7. **NEITHER SELLERS NOR SELLING AGENTS MAKE ANY WARRANTY, EITHER EXPRESSED OR IMPLIED, REGARDING THE CONDITION OF THE LAND. BUYER HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY AND PURCHASES THE SAME IN ITS PRESENT "AS IS" CONDITION. IN SECTION 5, TO ENHANCE THE SIZE AND DESIRABILITY, THE OWNERS HAVE ELECTED TO SELL LOTS 5 AND 6 TOGETHER, LOTS 7 AND 8 TOGETHER, AND LOTS 9 AND 10 TOGETHER. THESE 3 PARCELS DO HAVE APPROVED SEPTIC PERMITS. NO OTHER PROPERTY BEING SOLD TODAY HAS BEEN PERK TESTED AND SELLERS DO NOT WARRANT THAT ANY PART OF IT WILL PERK.**
8. **SALE PROCEDURE:**
  - A. WE WILL ANNOUNCE AS WE SELL HOW MANY PARCELS A PURCHASER MAY HAVE THE PRIVILEGE OF TAKING AT THE SAME PRICE, AND WE WILL SPECIFY WHICH PARCELS HE MAY HAVE THE PRIVILEGE OF TAKING. BIDDING WILL BE BY THE PARCEL AND WE WILL ALSO ANNOUNCE WHAT PROPERTIES WILL BE OFFERED WITH HIGH BIDDERS CHOICE.
  - B. BLOCKING: NO BLOCKING WILL BE PERMITTED.
  - C. THE HIGHEST BIDDER ON ANY PARCEL OR PARCELS WILL BE REQUIRED TO SIGN A SALES AGREEMENT AT THE CONCLUSION OF THE BIDDING ON THAT PARTICULAR PARCEL/PARCELS.
9. **RESTRICTIONS:** PROPERTY IS BEING SOLD FOR RESIDENTIAL AND OR AGRICULTURAL PURPOSES ONLY. NO COMMERCIAL OR INDUSTRIAL OPERATIONS ARE PERMITTED. NO SINGLEWIDE OR DOUBLEWIDE MANUFACTURED MOBILE HOME SHALL BE PERMITTED ON ANY LOT OR TRACT.
10. **WE ARE SELLING BY FINAL PLAT PREPARED BY DRAPER/ADEN, ASSOCIATES, WITH THE EXCEPTION OF LOTS 5-10 SECTION 5 WHICH ARE BEING SOLD BY REVISED MAP OF SECTION 5, GOOSE CREEK PARTNERSHIP, 11/21/91.**

THANK YOU FOR ATTENDING THIS AUCTION!



#344

This Document Was Prepared By:  
**BOLLING & HEARL**  
A Professional Corporation  
P. O. Box 1250  
Richlands, Virginia 24061

BOOK 715 PAGE 705

THIS DEED OF CORRECTION, is made and entered into on this the 15th day of July, 1996 by and between **GOOSE CREEK PARTNERSHIP**, party of the first part, as Grantor, and **CHARLOTTE HARMAN PUCKETT**, party of the second part, as Grantee.

**WITNESSETH**

WHEREAS, by deed dated July 2, 1996 and recorded in Deed Book 714, page 215, certain property more particularly herein and described was conveyed by the party of the first part to the party of the second part and whereas this property was purchased by the party of the second part at a public auction which was conducted on June 1, 1996; and,

WHEREAS, it was announced at the public auction that the property was being sold subject to the restriction that it could be used only for residential and/or agricultural purposes and that no single-wide or double-wide mobile homes would be permitted on the property; and,

WHEREAS, in reviewing the said deed as recorded in Deed Book 714, page 215, it appears that these restrictions were inadvertently omitted from the said deed and whereas the parties desire to correct this error by executing this Deed of Correction.

THAT FOR and in consideration of the premises herein, this being a Deed of Correction, the party of the first part does hereby bargain, grant, sell and convey, WITH GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, unto the said Charlotte Harman Puckett, all that certain lot or parcel, together with all appurtenances thereupon and easements benefitting the same, which property is situate on Goose Creek and Whitley Ridge, in Tazewell County, Virginia, and Tracts 5, 6, 7, 8, 9 and 10 in Section 5 of Goose Creek Estates and as shown on that plat entitled "CORRECTED PLAT OF SECTION 5 GOOSE CREEK ESTATES" which plat is recorded in the Office of the Clerk of the Circuit Court of Tazewell County, Virginia in Plat Book 32, page 19. Reference is made to the said plat for a more

A COPY, TESTE:  
JAMES B. KLEVER, CLERK OF THIS  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY [Signature]  
DEPUTY CLERK 280-



particular description of the said property and the easements applicable thereto.

The above described property as conveyed to the party of the second part is restricted and is being sold and may be used only for residential and or agricultural purposes and no commercial or industrial operations are permitted on the property. In addition, no single-wide or double-wide mobile homes are permitted on the property. These restrictions are deemed to be covenants running with the land and are binding on the party hereto their heirs, assigns, and successors and interest.

The tract of land herein conveyed is a portion of a much larger tract of land conveyed to the grantors herein by Louella V. Turner, et als, by deed dated August 25, 1978, of record in said Clerk's Office in Deed Book 448, page 342. Pursuant to the Articles of Partnership dated August 10, 1978 duly filed in the aforesaid Clerk's Office both John York Lindsey and Carl Cartwright, Jr. as Managing Partners have full and complete authority to prepare, execute, and deliver deeds for and on behalf of said partnership.

By agreement between the partners of Goose Creek dated December 29, 1987, James R. Lindsey, the owner of 20 percent interest of said partnership, granted one-half of his interest in said partnership unto J. York Lindsey and H. V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all of the other partners, and the Certificate of Partnership was amended to show said transfer and the acceptance of the Lindsey 1987 Trust as a partner by certificate dated December 29, 1987.

By agreement between the partners of Goose Creek dated the 4th day of January, 1988, James R. Lindsey, the owner of 10 percent interest of said partnership, granted his remaining 10 percent interest in said partnership unto J. York Lindsey and H. V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all of the other partners and the Certificate of Partnership was again amended to show said transfer and the acceptance of the Lindsey Trust as a partner now owning a 20 percent interest in said partnership.

It is here recited that the Lindsey 1987 Trust owns a 20 percent interest in said Goose Creek Partnership, the said James R. Lindsey having conveyed his entire interest as above set forth.

By Deed of Confirmation dated September 19, 1991, found of record in said Clerk's Office in Deed Book 625, page 679, and the said James R. Lindsey and Jeanette Lindsey executed a deed granting, selling and conveying, with Covenants of General Warranty of Title and English covenants, unto the said J. York Lindsey

and H. V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, and their successors, all of the undivided right, title and interest in all lands held by the said James R. Lindsey (and Jeanette Lindsey), situate on Goose Creek near North Tazewell, in Tazewell County, Virginia, originally containing 593.52 acres and 1.039 acres and being the same property described by metes and bounds in the original deed from Louella V. Turner, et als, to the original partners of Goose Creek, which said deed is dated August 25, 1978, and found of record in said Clerk's Office in Deed Book 448, page 342. There was expressly excepted from said conveyance executed by the said James R. Lindsey and wife to the said Trustees of the Lindsey 1987 Trust all of the various lots and parcels which were heretofore conveyed out of the original boundaries by said Goose Creek Partnership, found of record in said Clerk's Office.

By Power of Attorney dated December 31, 1991, and found of record in the aforesaid Clerk's Office in Deed Book 629, page 919, John York Lindsey, and H. V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, made, constituted and appointed Carl Cartwright, Jr. and John York Lindsey, either one of both of whom may act, as the true and lawful attorneys of the Trust, with authority of the Trustees and in their name, place and stead, to bargain, sell, grant and convey properties owned by Goose Creek Estates.

Reference is here made to each and all of the foregoing documents, deeds, amended plats, Certificate of Partnership, amendments thereto and Powers of Attorney, for a further and more particular description of the real estate herein conveyed and the history of the title thereto.

WITNESS the following signatures and seals:

JOHN YORK LINDSEY

H. V. LINDSEY, JR.

IRA C. RATLIFF

CARL CARTWRIGHT, JR.

LINDSEY 1987 TRUST

PARTNERS, TRADING AND DOING  
BUSINESS AS GOOSE CREEK PARTNERSHIP

By: [Signature] (SEAL)  
JOHN YORK LINDSEY, AGENT  
AND ATTORNEY AND  
MANAGING PARTNER

[Signature]  
CHARLOTTE HARMAN PUCKETT

STATE OF VIRGINIA  
COUNTY OF TAZEWELL, to-wit:

I, Michelle Brown, a Notary Public for the State of Virginia, do hereby certify that JOHN YORK LINDSEY, whose name is signed as agent and attorney for the Lindsey 1987 Trust and as Managing Partner for John York Lindsey, H. V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., Lindsey 1987 Trust, partners of Goose Creek Partnership, has this day acknowledged the foregoing and hereto annexed instrument, bearing date the 25th day of June, 1996, before me in my County and State. 26 July

Given under my hand and official notarial seal, this the 26 day of July, 1996.

My Commission Expires: 8-31-97

[Signature]  
Notary Public

STATE OF VIRGINIA  
COUNTY OF TAZEWELL:

The foregoing instrument was acknowledged before me on this the 19th day of July, 1996, by CHARLOTTE HARMAN PUCKETT.

My Commission Expires:

8-31-97

[Signature]  
NOTARY PUBLIC

INSTRUMENT #9603447  
RECORDED IN THE CLERK'S OFFICE OF  
TAZEWELL COUNTY ON  
JULY 29, 1996 AT 11:03AM  
JAMES E. BLEVINS, CLERK

By: [Signature] DEPUTY CLERK



721 22764

5190

THIS DEED, made this the 21st day of October, 1996, by and between John York LINDSEY, H.V. LINDSEY, JR., Ira C. RATLIFF, Carl CARTWRIGHT, JR. and THE LINDSEY 1987 TRUST (J. York Lindsey and H.V. Lindsey, Jr., Trustees), partners trading as Goose Creek Partnership, parties of the first part, and David Wayne MCKINNEY and Eva Sue MCKINNEY, husband and wife, as hereinafter mentioned, parties of the second part:

WITNESSETH:

That for and in consideration of the sum of Fifteen Thousand Dollars (\$15,000.00), cash in hand paid by the parties of the second part to the parties of the first part, receipt of which is acknowledged, the parties of the first part do hereby well, grant and convey, with Covenants of General Warranty of Title and freedom from encumbrances, unto the said David Wayne McKinney and Eva Sue McKinney, husband and wife, as tenants by the entireties, with the right of survivorship as at common law, and subject to the restrictions, reservations and conditions hereinafter set forth, all that certain tract or parcel of land, situate, lying and being in Jeffersonville Magisterial District, Tazewell County, Virginia, known and designated as Tract No. 1, Section No. 4, containing 6.440 acres, as shown on a plat entitled, "Section No. 4, Goose Creek Estates, Property of Goose Creek Partnership", found of record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, in Plat Book 14, page 55, and on Plat Card 4085, said tract being further bounded and described as follows:

TRACT NO. 1, SECTION 4:

BEGINNING at a point on the easterly boundary line of said Virginia Secondary Route No. 891, being the southwest corner of Tract 1, Section 4, as shown on said plat; thence with the easterly boundary line of said road, in a northerly direction with an arc to the

PLAT BOOK-40, PAGE 42  
PLAT CARD#-7943

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

A COPY, TESTE:  
JAMES B. ELEVINS, CLERK OF THIS  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY: [Signature]  
DEPUTY CLERK

PLAINTIFF'S  
EXHIBIT  
89

right and a radius of 2736.26 feet and a chord of 174.28 feet to a point on said road right of way; thence with said road right of way, N. 10° 15' 30" E. 32.87 feet to a point on said road right of way; thence along said road right of way in a northerly direction with an arc to the left and a radius of 334.39 feet and a chord 152.71 to a point on said road right of way; thence continuing with said road right of way, N. 15° 38' E. 239.80 feet to a point on said road right of way, being the northwest corner of Tract No. 1 and the southwest corner of Tract No. 2; thence with the division line between Tract No. 1 and Tract No. 2, S. 88° 08' 32" E. 748.58 feet to a point on the division line between Section No. 1 of Goose Creek Estates and Section No. 4 of Goose Creek Estates; thence with said division line separating said two sections, S. 7° 02' 41" E. 200 feet to a point at the intersection of the southerly line of Tract 1, Section 4, with the generally northerly line of Tract 10, Section 1, of Goose Creek Estates; thence with the division line between Tract 1, Section 4, and Tract 10, Section 1, S. 83° 03' 18" E. 677.71 feet to a point; thence continuing S. 64° 08' 21" E. 142.96 feet to the point of BEGINNING, containing 6.140 acres, be the same more or less.

It is distinctly understood and agreed between the parties hereto that the parties of the second part, their heirs and assigns, shall have the perpetual right to use all 50 foot rights of way, together with all other rights of way, shown on plats of Goose Creek Estates, in conjunction with all other owners of said lands in Goose Creek Estates, for access to the property herein conveyed and to other property shown on said plats.

Goose Creek Estates has also constructed a road leading from State Secondary Route 831 across the northwesterly corner of Tract No. 1, Section 4 (herein conveyed), to the southwesterly portion of Tract No. 2 previously conveyed to James S. Hall and Joyce S. Hall, by deed dated May 30, 1996, found of record in said Clerk's Office in Deed Book 712, page 892, and thence in a southeasterly direction back into Tract No. 1, and it is distinctly understood and agreed that the owners of Tract No. 2 hereinabove mentioned shall have the right and privilege of using said road right of way over, through and across Tract No. 1, Section No. 4 as hereinabove set forth; it is further understood

HARMAN & HARMAN  
ATTORNEYS AT LAW  
FACSIMILE SIGNATURE

that the parties of the second part herein and their successors are hereby granted the right to use said road right of way across Tract No. 2 for access to State Secondary Route 831. Said right of way is 40 feet in width and with the constructed road being generally in the middle of said 40 foot right of way.

The tract of land herein conveyed is a portion of a much larger tract of land conveyed to the grantors herein by Louella V. Turner, et al., by deed dated August 25, 1978, of record in said Clerk's Office in Deed Book 148, page 312. By a Power of Attorney dated May 22, 1979, found of record in said Clerk's Office in Deed Book 458, page 370, John York Lindsey, James R. Lindsey, H.V. Lindsey, Jr., Ira V. Hatliff and Carl Cartwright, Jr., partners, trading and doing business as Goose Creek Partnership, granted and conveyed unto Carl Cartwright, Jr., one of the partners, full and complete authority as agent and attorney for the partnership to prepare, execute, and deliver deeds for and on behalf of said partnership.

By agreement between the partners of Goose Creek dated December 29, 1987, James R. Lindsey, the owner of 20% interest of said partnership, granted one-half of his 20% interest in said partnership unto J. York Lindsey and H.V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all of the other partners, and the Certificate of Partnership was amended to show said transfer and the acceptance of the Lindsey 1987 Trust as a partner by certificate dated December 29, 1987.

By agreement between the partners of Goose Creek dated January 4, 1988, James R. Lindsey, the owner of 10% interest of said partnership, granted his remaining 10% interest in said partnership unto J. York Lindsey and H.V. Lindsey, Jr., Trustees of the "Lindsey 1987 Trust", which agreement was executed by all

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ATTORNEYS AT LAW  
TALLAHASSEE, FLORIDA

of the other partners, and the Certificate of Partnership was again amended to show said transfer and the acceptance of the Lindsey Trust as a partner now owning a 20% interest in said partnership. It is here recited that the Lindsey 1987 Trust owns a 20% interest in said Goose Creek Partnership, the said James R. Lindsey having conveyed his entire interest as above set forth.

By Deed of Confirmation dated September 19, 1991, found of record in said Clerk's Office in Deed Book 625, page 679, and the said James R. Lindsey and Jeanette Lindsey, his wife, executed a deed granting, selling and conveying, with Covenants of General Warranty of Title and English covenants, unto the said J. York Lindsey and H.V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, and their successors, all of the undivided right, title and interest in all lands held by the said James R. Lindsey (and Jeanette Lindsey), situate on Goose Creek, near North Tazewell, in Tazewell County, Virginia, originally containing 593.52 acres and 1.039 acres, and being the same property described by metes and bounds in the original deed from Louella V. Turner, et als, to the original partners of Goose Creek, which said deed is dated August 25, 1978, and found of record in said Clerk's Office in Deed Book 448, page 342. There was expressly excepted from said conveyance executed by the said James R. Lindsey and wife to the said Trustees of the Lindsey 1987 Trust all of the various lots and parcels which were heretofore conveyed out of the original boundaries by said Goose Creek Partnership, found of record in said Clerk's Office.

By Power of Attorney dated December 31, 1991, and found of record in the aforesaid Clerk's Office in Deed Book 629, page 919, John York Lindsey and H.V. Lindsey, Jr., Trustees of the Lindsey 1987 Trust, made, constituted and appointed Carl

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ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

BOOK 721 PAGE 718

Carterwright, Jr. and John York Lindsey, either one or both of whom may act, as the true lawful attorneys of the Trust, with authority of the Trustees and in their name, place and stead, to bargain, sell, grant and convey properties owned by Goose Creek Estates.

Reference is here made to each and all of the foregoing documents, deeds, plats, Certificate of Partnership, amendments thereto and Powers of Attorney, for a further and more particular description of the real estate herein conveyed and the history of the title thereto.

WITNESS the following signatures and seals:

JOHN YORK LINDSEY  
H.V. LINDSEY, JR.  
IRA C. RATLIFF  
CARL CARTWRIGHT, JR.  
LINDSEY 1987 TRUST

PARTNERS, TRADING AND DOING  
BUSINESS AS GOOSE CREEK PARTNERSHIP

By Carl Cartwright, Jr. (SEAL)  
CARL CARTWRIGHT, JR., AGENT  
AND ATTORNEY

STATE OF VIRGINIA,

COUNTY OF TAZEWELL, to-wit:

I, Charles Hagerman, a Notary Public for the State of Virginia, do hereby certify that CARL CARTWRIGHT, JR., whose name is signed as agent and attorney for John York Lindsey, H.V. Lindsey, Jr., Ira C. Ratliff and Carl Cartwright, Jr., Lindsey 1987 Trust, partners of Goose Creek Partnership, has this day acknowledged the foregoing and hereto annexed instrument, bearing date the 21st day of October, 1996, before me in my County and State.

Given under my hand and official notarial seal, this the 23<sup>rd</sup> day of October, 1996.

HARMAN & HARMAN  
ATTORNEYS AT LAW  
TAZEWELL, VIRGINIA

Charles Hagerman  
Notary Public

My commission expires: 8-31-96

INSTRUMENT # 8582194  
RECORDED IN THE CLERK'S OFFICE OF  
TAZEWELL COUNTY ON

OCTOBER 31, 1996 AT 3:52PM

\$15.00 GRANTOR TAX WAS PAID AS

REQUIRED BY SEC 59.1-302 OF THE VA. CODE

## DEED

THIS DEED OF GIFT, made this the 13<sup>th</sup> day of August 1997, by and between David Wayne McKINNEY and Eva Sue McKINNEY, husband and wife, hereinafter the GRANTORS, and Margaret BROWN, their daughter, hereinafter the GRANTEE;

WITNESSETH

That for and in consideration of the love and affection the Grantors have for their daughter the Grantee and for the further consideration of One Dollars (\$1.00) cash in hand paid by the Grantee to the Grantors, receipt of which is hereby acknowledged the Grantors do hereby sell, grant, and convey, with Covenants of General Warranty and freedom from encumbrances, unto said Margaret Brown subject to the restrictions, reservations and conditions hereinafter set forth all of that certain tract or parcel of land situate, lying and being in Jeffersonville Magisterial District, Tazewell County, Virginia known and designated as Tract 1-B of Section No. 4 Goose Creek Estates on the plate dated November 18<sup>th</sup> 1996 prepared by James D. Ribble, which plate is attached hereto and incorporated herein by reference and which tract contains 1.18 acres, said tract being further bounded and described as follows:

TRACT No. 1-B SECTION 4

BEGINNING at a point on the easterly boundary line of said Virginia Secondary Route No. 831, being adjacent to the northwest corner of Tract 1-C, Section 4, (which tract is more specifically described by deed from the Grantors herein to Stephanie Bowling executed contemporaneously with this deed); thence along said road right of way in a northerly direction with an arc to the left and a radius of

Prepared by David L. Harmon Esq.  
Katz, Kantor, Perkins, & Campbell  
996 Ben Bell Ave.  
Tazewell, Virginia 24631

A COPY, TESTE:  
JAMES B. ELEVINS, CLERK OF THIS  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY: [Signature]  
DEPUTY CLERK



EX 0736PG0817

334.39 feet and a chord of 124.28 feet to a point on said road right of way thence N 87° 31' 30" E 409.82 feet to a point and thence S 20° 19' 14" E 125 feet to a point on the southern boundary of Tract 1 Section No. 4. Thence S 87° 40' 46" W 416.33 feet to the point of BEGINNING, containing 1.18 acres, be the same more or less.

The aforesaid being a part of Tract No. 1 Section 4 conveyed to the Grantors herein by deed dated the 21<sup>st</sup> day of October 1996 from John York Lindsey, H.V. Lindsey, Jr., Ira C. Ratliff, Carl Cartwright Jr. and the Lindsey 1987 Trust, partners trading as Goose Creek Partnership, which deed is of record in the office of the Clerk of Tazewell County in Deed Book 721 at page 764.

It is distinctly understood and agreed between the parties hereto that the Grantee, her heirs and assigns shall have a perpetual right to use all the 50 foot rights of way, together with all other rights of way, shown on plats of Goose Creek Estates, in conjunction with all other owners of said land in Goose Creek Estates, for access to the property herein conveyed and to other property shown on said plate.

It is also distinctly understood and agreed between the parties hereto that the Grantee, her heirs and assigns shall have a perpetual right to use of the road right of way referred to in the October 21<sup>st</sup> 1996 Deed, which leads from State Secondary route 831 across the northwesterly corner of Tract No. 1 Section 4 to the Southwesterly portion of Tract No. 2 (which Tract had been conveyed to James S. Hall and Joyce S. Hall by deed dated May 30 1996, and found of record in the Clerk's Office in Deed Book 712 page 892) which road right of way travels thence in a southeasterly direction back into Tract No. 1. It is further distinctly understood and agreed

Prepared by David L. Harmon Esq.  
Katz, Kantor, Perkins, & Campbell  
996 Ben Bolt Ave.  
Tazewell, Virginia 24651

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between the parties that Grantors by this deed do hereby Grant unto Grantee her heirs and assigns a Twenty foot (20) road right of way over, through and across those tracts belonging to them and designated upon the November 18<sup>th</sup> 1996 plat (attached hereto) as Tract 1-A and which road right of way is shown upon the attached plat to which this deed refers to for a more specific description. Further it is understood by the Grantee that said twenty foot (20) road right of way continues on across her Tract 1-B to Tract 1-C (As shown in the aforementioned plat attached hereto) and that Stephanie Bowling, the owner of Tract 1-C, her heirs and assigns, are possessed of a road right of way across said Twenty foot wide easement for the purposes of ingress and egress to said Tract 1-C.

Additionally, it is further distinctly understood that the Grantee her heirs and assigns in ownership of tract 1-B shall possess a perpetual easement for the placement, repair and maintenance of septic lines, which lines are for the use of a single family dwelling only, adjacent to the eastern edge of the aforesaid 20 foot road right of way up to approximately 40 feet into the property of Grantors, Tract 1-A Section 4 Goose Creek estates as shown on plat attached hereto and incorporated herein by reference.

Reference is made to each and all of the foregoing documents, deeds, and plats for a further and more particular description of the real estate herein conveyed and the history of the title thereto.

This deed is exempt from recordation tax pursuant to Section 58.1-811D of the Code of Virginia, 1950, as amended.

Prepared by David L. Harmon Esq.  
Katz, Kantor, Perkins, & Campbell  
996 Ben Bolt Ave.  
Tazewell, Virginia 24651



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WITNESS the following signatures and seals:

DAVID WAYNE McKINNEY &  
EVA SUE McKINNEY

*David Wayne McKinney*  
David Wayne McKinney

*Eva Sue McKinney*  
Eva Sue McKinney

COMMONWEALTH OF VIRGINIA  
COUNTY OF TAZEWELL, to wit:

I, Trang T. Nguyen, a Notary Public for the Commonwealth of Virginia, do  
hereby certify that David Wayne McKinney, and Eva Sue McKinney, have this day acknowledged  
the foregoing and hereto annexed instrument, bearing date the 13<sup>th</sup> day of August 1997, before  
me in my County and State.

Given under my hand and official notarial seal, this the 13<sup>th</sup> day of August 1997.

*Trang T. Nguyen*  
Notary Public

INSTRUMENT #9703542  
RECORDED IN THE CLERK'S OFFICE OF  
TAZEWELL COUNTY ON  
AUGUST 20, 1997 AT 09:55AM  
JAMES E. BLEVINS, CLERK

BY *James E. Blevins* DEPUTY CLERK

Prepared by David L. Harmon Esq.  
Katz, Kantor, Perkins, & Campbell  
996 Ben Boh Ave.  
Tazewell, Virginia 24651

4

EX 0736760820

#3543

DEED

THIS DEED OF GIFT, made this the 13<sup>th</sup> day of October, 1997, by and between David Wayne McKINNEY and Eva Sue McKINNEY, husband and wife, hereinafter the GRANTORS, and Stephanie BOWLING, their daughter, hereinafter the GRANTEE;

WITNESSETH

That for and in consideration of the love and affection the Grantors have for their daughter the Grantee and for the further consideration of One Dollars (\$1.00) cash in hand paid by the Grantee to the Grantors, receipt of which is acknowledged the Grantors do hereby sell, grant, and convey, with Covenants of General Warranty and freedom from encumbrances, unto said Stephanie Bowling, subject to the restrictions, reservations and conditions hereinafter set forth, all of that certain tract or parcel of land situate, lying and being in Jeffersonville Magisterial District, Tazewell County, Virginia known and designated as Tract 1-C of Section No. 4 Goose Creek Estates on the plat dated November 18<sup>th</sup> 1996 prepared by James D. Ribble, which plate is attached hereto and incorporated herein by reference and which tract contains 1.00 acres, said tract being further bounded and described as follows:

TRACT No. 1-C SECTION 4

BEGINNING at a point on the easterly boundary line of said Virginia Secondary Route No. 831, being the southwest corner of Tract 1, Section 4, as shown on the plat entitled "Section No 4, Goose Creek estates, Property of Goose Creek Partnershp", found of record in the Clerks Office of the Circuit Court of Tazewell County, Virginia, in Plat Book 14, page 55, and on Plat Card 4085,

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Katz, Kantor, Perkins, & Campbell  
996 Ben Bolt Ave.  
Tazewell, Virginia 24631

A COPY, TESTED  
JAMES B. ELEVING, CLERK OF THE  
CIRCUIT COURT OF TAZEWELL COUNTY  
BY [Signature]  
DEPUTY CLERK  
295



BK0735PG0821

thence with the easterly boundary line of said road, in northerly direction with an arch to the right and a radius of 2736.26 feet and a chord of 178.28 feet to a point on said road right of way; thence with said road right of way N. 10° 45' 30" E. 32.87 feet to a point on said road right of way; Thence N 87° 40' 30" E. 416.33 feet to a point on the Southern Boundary of Tract 1 Section 4, Thence S 63° 05' 18" W 360 feet to a point, Thence S 64° 09' 24" W 142.96 feet to the point of BEGINNING, containing 1.00 acres, be the same more or less.

The aforesaid being a part of Tract No. 1 Section 4 conveyed to the Grantors herein by deed dated the 21<sup>st</sup> day of October 1996 from John York Lindsey, H.V. Lindsey, Jr., Ira C. Ratliff, Carl Cartwright Jr. and the Lindsey 1987 Trust, partners trading as Goose Creek Partnership, which deed is of record in the office of the Clerk of Tazewell County in Deed Book 721 at page 764.

It is distinctly understood and agreed between the parties hereto that the Grantee, her heirs and assigns shall have a perpetual right to use all the 50 foot rights of way, together with all other rights of way, shown on plats of Goose Creek Estates, in conjunction with all other owners of said land in Goose Creek Estates, for access to the property herein conveyed and to other property shown on said plat.

It is also distinctly understood and agreed between the parties hereto that the Grantee, her heirs and assigns shall have a perpetual right to use of the road right of way referred to in the October 21<sup>st</sup> 1996 Deed, which leads from State Secondary route 831 across the northwesterly corner of Tract No.1 Section 4 to the Southwesterly portion of Tract No. 2 (which Tract had been conveyed to James S. Hall and Joyce S. Hall by deed dated May 30 1996, and found of record in the Clerk's Office in Deed Book 712 page 892) which road right of way travels thence in a southeasterly direction back into Tract No.1. It is further distinctly understood and agreed

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Katz, Kantor, Perkins, & Campbell  
996 Ben Bolt Ave.  
Tazewell, Virginia 24651

BK 0735P60822

between the parties that Grantors by this deed do hereby Grant unto Grantee her heirs and assigns a Twenty foot (20) road right of way over, through and across those tracts belonging to them and designated upon the November 18<sup>th</sup> 1996 plat (attached hereto) as Tracts 1-A and 1-B and which road right of way is shown upon the attached plat to which this deed refers to for a more specific description.

Reference is made to each and all of the foregoing documents, deed, and plats for a further and more particular description of the real estate herein conveyed and the history of the title thereto.

This deed is exempt from recordation tax pursuant to Section 58.1-811D of the Code of Virginia, 1950, as amended.

WITNESS the following signatures and seals:

DAVID WAYNE MCKINNEY &  
EVA SUE MCKINNEY

*David Wayne McKinney*  
David Wayne McKinney

*Eva Sue McKinney*  
Eva Sue McKinney

COMMONWEALTH OF VIRGINIA  
COUNTY OF TAZEWELL, to wit:

I, Francis T. Nguyen, a Notary Public for the Commonwealth of Virginia, do hereby certify that David Wayne McKinney, and Eva Sue McKinney, have this day acknowledged the foregoing and hereto annexed instrument, bearing date the 13<sup>th</sup> day of August 1997, before me in my County and State.

Given under my hand and official notarial seal, this the 13<sup>th</sup> day of August 1997.

*Francis T. Nguyen*  
Notary Public in the Clerk's Office of  
TAZEWELL COUNTY ON

AUGUST 20, 1997 AT 09:59AM

JAMES E. BLEVINS, CLERK

BY: *James E. Blevins* CLERK

Prepared by David L. Harmon Esq.  
Katz, Kantor, Perkins, & Campbell  
996 Ben Bolt Ave.  
Tazewell, Virginia 24651

Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
6	457	483	5/4/79	Stephen Robert Barrett <i>et ux.</i>	4	6
7	457	869	5/15/79	William R. Barrett <i>et ux.</i>	4	5
8	462	692	9/11/79	Aaron Donald Buchanan, Jr. <i>et ux.</i>	1	17
9	462	789	9/13/79	James D. Altizer <i>et ux.</i>	2	6
10	463	45	9/18/79	Wayne D. Brewster <i>et ux.</i>	1 4	Pt 36 7-8
11	465	472	11/29/79	David Lee Hickman, Jr.	4	4
12	465	723	12/10/79	Gary G. Ratliff <i>et ux.</i>	5	2
13	469	1	4/4/80	Carlos A. Mosley <i>et ux.</i>	1	39
14	469	787	5/5/80	White & Cole Coal Co., Inc.	1	13-14
15	470	615	6/6/80	Wayne Douglas Short <i>et ux.</i>	5	1
16	470	760	6/13/80	Wayne L. Thomas	1	32-33
17	470	842	6/17/80	Joseph E. Peery, Sr. <i>et ux.</i>	1	15
18	470	851	6/17/80	Basil Asbury, Jr. <i>et ux.</i>	1	44
19	474	357	9/17/80	James D. Ribble, Jr. <i>et ux.</i>	1	12
20	479	663	2/9/81	Wayne D. Brewster <i>et ux.</i>	1	1
21	481	512	4/8/81	Leland L. Vaughn <i>et ux.</i>	2	12-13
22	483	792	6/22/81	Roger Wayne Hager <i>et al.</i>	2	20
23	486	809	8/27/81	Patsy Carol Buckles	1	29
24	488	160	10/2/81	Tony S. Frederick <i>et ux.</i>	4	9-12
25	492	355	2/15/82	James E. Boothe <i>et ux.</i>	2	18
26	492	608	2/18/82	Dudley C. Sargent <i>et ux.</i>	2	19
27	493	693	3/23/82	Carl Thompson <i>et ux.</i>	1	40-41
28	494	512	4/6/82	Steven Lee Meade <i>et ux.</i>	1	18
29	495	416	5/3/82	C.G. Tullock	5	3-4
30	500	104	10/6/82	Ralph E. Monk <i>et ux.</i>	1	19

Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
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31	500	194	10/11/82	Patty E. Kinder	1	21
32	510	382	8/4/83	David J. Elswick <i>et ux.</i>	2	8
33	530	166	2/22/85	Leland L. Vaughn <i>et ux.</i>	2	11
34	531	53	3/25/85	Hubert Douglas Addair <i>et ux.</i>	2	7
35	538	702	10/8/85	Alderson F. Lambert <i>et ux.</i>	1	43
36	545	365	4/23/86	Arvin O. Estep <i>et ux.</i>	1	20
37	548	339	6/27/86	Carl Cartwright, Jr.	1	30
38	565	328	7/2/87	V. Reina Hale	1	38A-B
39	566	147	7/16/87	Andrew G. Kulchar	1	6
40	573	271	12/31/87	3-D Construction Co.	2	27
41	579	290	6/9/88	William R. Stevenson <i>et ux.</i>	2	26
42	579	388	6/13/88	Basil Asbury, Jr. <i>et ux.</i>	1	44
43	590	321	3/3/89	Reina Hale	1	37
44	590	517	3/10/89	Sherman A. Cain	2	30
45	591	782	4/20/89	Ted R. Steele <i>et ux.</i>	1	11
46	604	784	3/27/90	Lennie White <i>et al.</i>	1	31
47	608	867	6/29/90	Leland L. Vaughn <i>et ux.</i>	2	14
48	609	330	7/13/90	Earmal Stacy <i>et ux.</i>	2	3,4,9
49	609	793	7/21/90	James David Altizer <i>et ux.</i>	2	1,2,5
50	610	187	8/2/90	Raymond Begil <i>et ux.</i>	1	10
51	611	81	8/22/90	W. Wade Lowe <i>et ux.</i>	1	7-8
52	614	854	12/5/90	Thomas E. Kelly <i>et ux.</i>	2 1	23-25 5
53	614	862	12/5/90	Clinton W. McDaniel <i>et ux.</i>	1 3	3,4 1

Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
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54	615	442	12/19/90	Hobert Douglas Addair <i>et ux.</i>	2	28
55	618	311	3/25/91	Robert J. Buffalow	2	17
56	619	817	4/26/91	Robey Lee Lail <i>et ux.</i>	1	9
57	620	922	5/24/91	Timothy R. Rutherford <i>et ux.</i>	1	16
58	621	124	5/30/91	Leland L. Vaughn <i>et ux.</i>	2	10
59	624	36	8/12/91	Martin Luther Peery <i>et ux.</i>	1	22
60	628	658	12/3/91	Michael David Deskins <i>et ux.</i>	2	21
61	629	236	12/16/91	Virgil Noakes	2	22
62	629	923	1/6/92	James R. Lindsey, Trustee	2	29
63	632	856	3/9/92	Ermal Stacy <i>et ux.</i>	1	25
64	645	956	11/12/92	Charles C. McCoy <i>et ux.</i>	1	34
65	647	247	12/4/92	Ronald W. Householder	1	42
66	650	309	2/5/93	Clinton Wayde McDaniel <i>et ux.</i>	1 3	2 2
67	651	97	2/25/93	Ecko, Inc.	1	27
68	652	494	4/2/93	Ecko, Inc.	1	28
69	658	81	7/14/93	Leland L. Vaughn <i>et ux.</i>	2	15-16
70	658	324	7/20/93	Charlotte Harman Puckett	5	11
71	662	552	10/4/93	Jesse H. Durham	3	10
72	669	885	3/10/94	James S. Hall <i>et ux.</i>	4	3
73	671	230	4/4/94	Peter R. Hickey <i>et ux.</i>	3	11-13
74	674	204	5/18/94	Clinton Wade McDaniel <i>et ux.</i>	3	3
75	675	686	6/13/94	Michael Hamm <i>et ux.</i>	1	23
76	677	402	7/12/94	Ermal Stacy <i>et ux.</i>	1	24
77	693	810	6/7/95	Herbert Wilson Roberts <i>et ux.</i>	1	36

Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
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78	710	367	5/2/96	Roger Robinette <i>et ux.</i>	1	26
80	712	892	6/14/96	James S. Hall <i>et ux.</i>	4	2
82	713	777	6/27/96	Richard A. Forster <i>et ux.</i>	1	35
83	714	215	7/3/96	Charlotte Harman Puckett	5	5-10
84	714	219	7/3/96	Charlotte Harman Puckett <i>et al.</i>	3	4-9
86	715	705	7/29/96	Charlotte Harman Puckett	5	5-10
87	715	709	7/29/96	Charlotte Harman Puckett <i>et al.</i>	3	4-9
88	716	90	8/5/96	Richard A. Forster <i>et ux.</i>	1	35
89	721	764	10/31/96	David Wayne McKinney <i>et ux.</i>	4	1
90	736	816	8/20/97	Margaret Brown	4	1-B
91	736	820	8/20/97	Stephanie Bowling	4	1-C



Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
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8	462	692	9/11/79	Aaron Donald Buchanan, Jr. <i>et ux.</i>	1	17
9	462	789	9/13/79	James D. Altizer <i>et ux.</i>	2	6
10	463	45	9/18/79	Wayne D. Brewster <i>et ux.</i>	1 4	Pt 36 7-8
11	465	472	11/29/79	David Lee Hickman, Jr.	4	4
12	465	723	12/10/79	Gary G. Ratliff <i>et ux.</i>	5	2
13	469	1	4/4/80	Carlos A. Mosley <i>et ux.</i>	1	39
14	469	787	5/5/80	White & Cole Coal Co., Inc.	1	13-14
15	470	615	6/6/80	Wayne Douglas Short <i>et ux.</i>	5	1
16	470	760	6/13/80	Wayne L. Thomas	1	32-33
17	470	842	6/17/80	Joseph E. Peery, Sr. <i>et ux.</i>	1	15
18	470	851	6/17/80	Basil Asbury, Jr. <i>et ux.</i>	1	44
19	474	357	9/17/80	James D. Ribble, Jr. <i>et ux.</i>	1	12
20	479	663	2/9/81	Wayne D. Brewster <i>et ux.</i>	1	1
21	481	512	4/8/81	Leland L. Vaughn <i>et ux.</i>	2	12-13
22	483	792	6/22/81	Roger Wayne Hager <i>et al.</i>	2	20
23	486	809	8/27/81	Patsy Carol Buckles	1	29
24	488	160	10/2/81	Tony S. Frederick <i>et ux.</i>	4	9-12
25	492	355	2/15/82	James E. Boothe <i>et ux.</i>	2	18
26	492	608	2/18/82	Dudley C. Sargent <i>et ux.</i>	2	19
27	493	693	3/23/82	Carl Thompson <i>et ux.</i>	1	40-41
28	494	512	4/6/82	Steven Lee Meade <i>et ux.</i>	1	18
29	495	416	5/3/82	C.G. Tullock	5	3-4
30	500	104	10/6/82	Ralph E. Monk <i>et ux.</i>	1	19





Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
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31	500	194	10/11/82	Patty F. Kinder	1	21
32	510	382	8/4/83	David J. Elswick <i>et ux.</i>	2	8
33	530	166	2/22/85	Leland L. Vaughn <i>et ux.</i>	2	11
34	531	53	3/25/85	Hubert Douglas Addair <i>et ux.</i>	2	7
35	538	702	10/8/85	Alderson F. Lambert <i>et ux.</i>	1	43
36	545	365	4/23/86	Arvin O. Estep <i>et ux.</i>	1	20
37	548	339	6/27/86	Carl Cartwright, Jr.	1	30
38	565	328	7/2/87	V. Reina Hale	1	38A-B
39	566	147	7/16/87	Andrew G. Kulchar	1	6
40	573	271	12/31/87	3-D Construction Co.	2	27
41	579	290	6/9/88	William R. Stevenson <i>et ux.</i>	2	26
42	579	388	6/13/88	Basil Asbury, Jr. <i>et ux.</i>	1	44
43	590	321	3/3/89	Reina Hale	1	37
44	590	517	3/10/89	Sherman A. Cain	2	30
45	591	782	4/20/89	Ted R. Steele <i>et ux.</i>	1	11
46	604	784	3/27/90	Lennie White <i>et al.</i>	1	31
47	608	867	6/29/90	Leland L. Vaughn <i>et ux.</i>	2	14
48	609	330	7/13/90	Earmal Stacy <i>et ux.</i>	2	3,4,9
49	609	793	7/21/90	James David Altizer <i>et ux.</i>	2	1,2,5
50	610	187	8/2/90	Raymond Begil <i>et ux.</i>	1	10
51	611	81	8/22/90	W. Wade Lowe <i>et ux.</i>	1	7-8
52	614	854	12/5/90	Thomas E. Kelly <i>et ux.</i>	2 1	23-25 5
53	614	862	12/5/90	Clinton W. McDaniel <i>et ux.</i>	1 3	3,4 1



Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
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54	615	442	12/19/90	Hovert Douglas Addair <i>et ux.</i>	2	28
55	618	311	3/25/91	Robert J. Buffalow	2	17
56	619	817	4/26/91	Robey Lee Lail <i>et ux.</i>	1	9
57	620	922	5/24/91	Timothy R. Rutherford <i>et ux.</i>	1	16
58	621	124	5/30/91	Leland L. Vaughn <i>et ux.</i>	2	10
59	624	36	8/12/91	Martin Luther Peery <i>et ux.</i>	1	22
60	628	658	12/3/91	Michael David Deskins <i>et ux.</i>	2	21
61	629	236	12/16/91	Virgil Noakes	2	22
62	629	923	1/6/92	James R. Lindsey, Trustee	2	29
63	632	856	3/9/92	Ermal Stacy <i>et ux.</i>	1	25
64	645	956	11/12/92	Charles C. McCoy <i>et ux.</i>	1	34
65	647	247	12/4/92	Ronald W. Householder	1	42
66	650	309	2/5/93	Clinton Wayde McDaniel <i>et ux.</i>	1 3	2 2
67	651	97	2/25/93	Ecko, Inc.	1	27
68	652	494	4/2/93	Ecko, Inc.	1	28
69	658	81	7/14/93	Leland L. Vaughn <i>et ux.</i>	2	15-16
70	658	324	7/20/93	Charlotte Harman Puckett	5	11
71	662	552	10/4/93	Jesse H. Durham	3	10
72	669	885	3/10/94	James S. Hall <i>et ux.</i>	4	3
73	671	230	4/4/94	Peter R. Hickey <i>et ux.</i>	3	11-13
74	674	204	5/18/94	Clinton Wade McDaniel <i>et ux.</i>	3	3
75	675	686	6/13/94	Michael Hamm <i>et ux.</i>	1	23
76	677	402	7/12/94	Ermal Stacy <i>et ux.</i>	1	24
77	693	810	6/7/95	Herbert Wilson Roberts <i>et ux.</i>	1	36



Exhibit #	Deed Book	Page #	Rec. Date	Grantee(s)	Section	Lot #
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78	710	367	5/2/96	Roger Robinette <i>et ux.</i>	1	26
80	712	892	6/14/96	James S. Hall <i>et ux.</i>	4	2
82	713	777	6/27/96	Richard A. Forster <i>et ux.</i>	1	35
83	714	215	7/3/96	Charlotte Harman Puckett	5	5-10
84	714	219	7/3/96	Charlotte Harman Puckett <i>et al.</i>	3	4-9
86	715	705	7/29/96	Charlotte Harman Puckett	5	5-10
87	715	709	7/29/96	Charlotte Harman Puckett <i>et al.</i>	3	4-9
88	716	90	8/5/96	Richard A. Forster <i>et ux.</i>	1	35
89	721	764	10/31/96	David Wayne McKinney <i>et ux.</i>	4	1
90	736	816	8/20/97	Margaret Brown	4	1-B
91	736	820	8/20/97	Stephanie Bowling	4	1-C





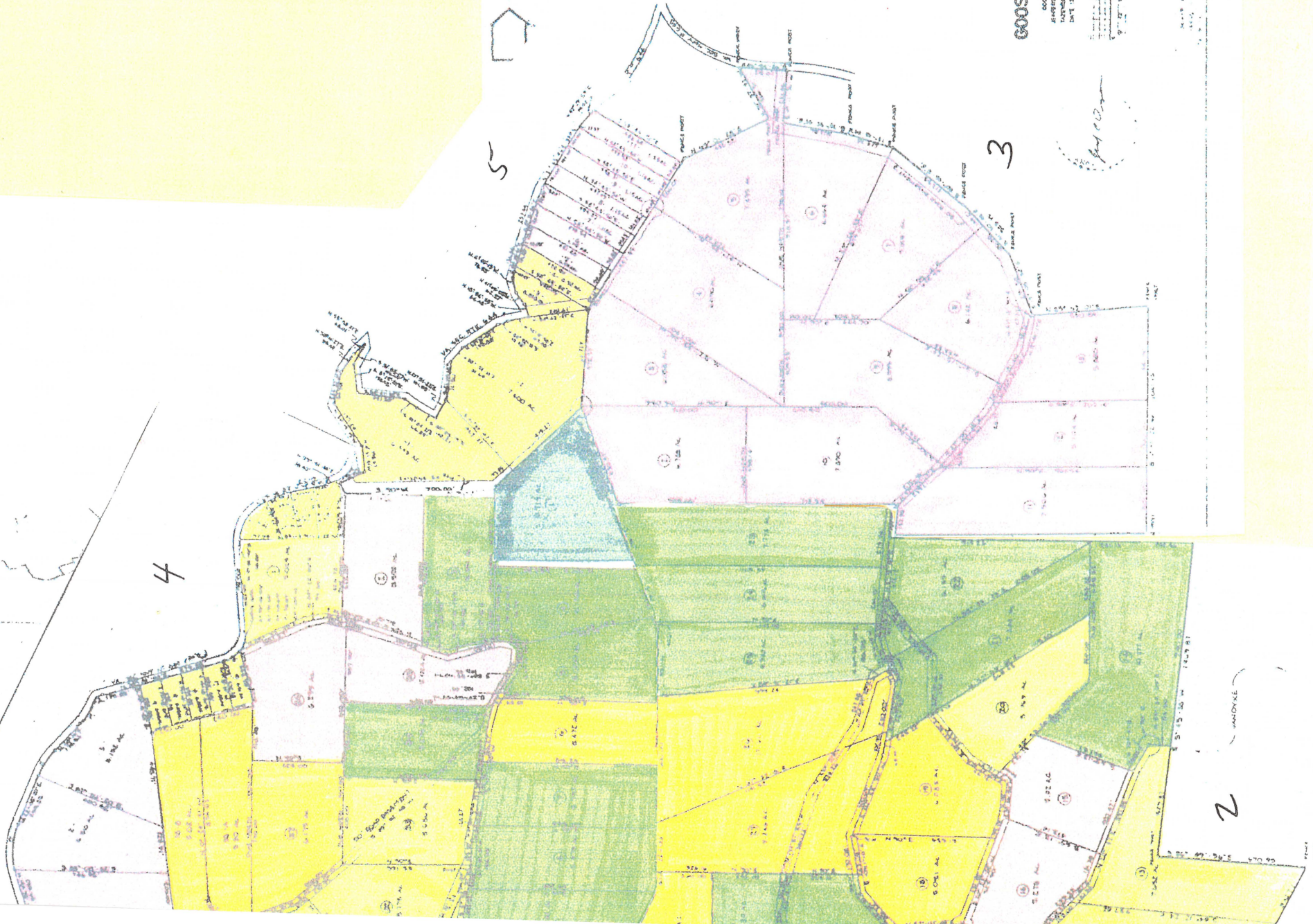












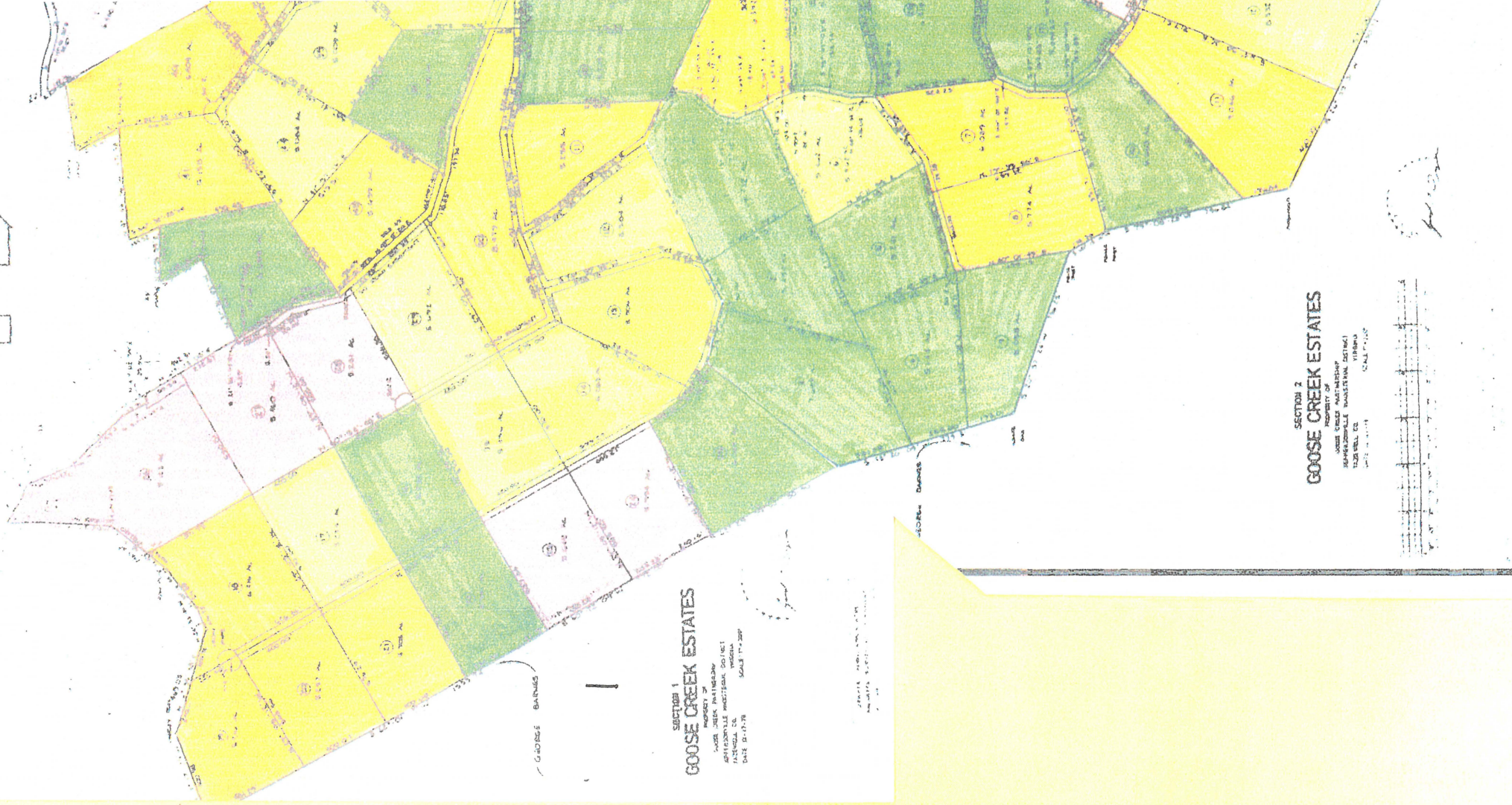
NOTES:  
1. ALL LOTS ARE TO BE  
CONVEYED TO THE  
GOOSE CREEK ESTATE  
TRUST, INC. BY  
DEED OF TRUST  
AND MORTGAGE  
NOTE.

SECTION 3  
GOOSE CREEK ESTATE  
PLAT OF THE  
GOOSE CREEK ESTATE  
TRUST, INC.  
DEED OF TRUST  
AND MORTGAGE  
NOTE  
SCALE 1" = 100'

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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2





ORIGINAL

99

VIRGINIA: IN THE CIRCUIT COURT OF TAZEWELL COUNTY

RICHARD A. FORSTER, CHARLES C.  
McCOY and LISA McCOY,

Plaintiffs

VS

CASE NO. CH99-000051

JAMES S. HALL, JOYCE S. HALL,  
DAVID WAYNE MCKINNEY, EVA SUE  
MCKINNEY, STEPHANIE BOWLING and  
MARGARET BROWN,

Defendants

October 21, 1999

DEPOSITION

OF

JAMES S. HALL

APPEARANCES:

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Henderson & de Courcy, P.C.  
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Tazewell, VA 24651  
Counsel for Plaintiffs

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Counsel for Defendants, James and Joyce Hall

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Counsel for Defendants, David and Eva McKinney,  
Stephanie Bowling and Margaret Brown

Reported by:

Phyllis M. Mullins, Court Reporter  
Rt. 4, Box 618-A  
North Tazewell, VA 24630  
(540) 979-9835

99

1 MR. HENDERSON: I'm not saying what people call you  
2 behind your back.

3 THE WITNESS: That's what they called me in the  
4 mines.

5 MR. HENDERSON: Okay. So you...People know you as  
6 Sam Hall?

7 THE WITNESS: Mm-hmm.

8 MR. HENDERSON: Okay. And other names that we won't  
9 get into. Okay.

10 MS. HALL: Hillbillies.

11 MR. HENDERSON: And you're...Unless you're  
12 sophisticated, in which case you're a hill william.  
13 Right?

14 MS. HALL: Right.

15 MR. HENDERSON: Okay. You're one of the owners of  
16 one of the pieces of property involved in this suit?

17 THE WITNESS: Mm-hmm.

18 MR. HENDERSON: Okay. And you've listened to a lot  
19 of the depositions so far?

20 THE WITNESS: Yes.

21 MR. HENDERSON: So I'm pretty sure you know why we're  
22 here. Now what do you recall about the purchase of this  
23 second piece of property from the Goose Creek Partnership?

24 THE WITNESS: Well, we bought it in good faith; we  
25 bought it for my...to move my boy on; my daughters.



JAMES S. HALL

1 MR. HENDERSON: Okay. And who did you discuss it  
2 with?

3 THE WITNESS: Mr. Cartwright.

4 MR. HENDERSON: And what did you ask Mr. Cartwright?

5 THE WITNESS: If the land, you know, if it had any  
6 restrictions on it and everything.

7 MR. HENDERSON: Now why was it you asked about  
8 restrictions, was it because you...

9 THE WITNESS: Because my property has restrictions on  
10 my tract of land.

11 MR. HENDERSON: Okay. And your intention was to  
12 have, or you wanted this property without restrictions?

13 THE WITNESS: Yes, sir.

14 MR. HENDERSON: Why was that?

15 THE WITNESS: To put my son's home on.

16 MR. HENDERSON: Okay. What kind of a home?

17 THE WITNESS: A manufactured home.

18 MR. HENDERSON: A manufactured home. Now what kind  
19 of a home did he put on there?

20 THE WITNESS: He put a manufactured home on it.

21 MR. HENDERSON: Alright. Did it come in two (2)  
22 pieces?

23 THE WITNESS: It come in two (2) pieces.

24 MR. HENDERSON: The same thing most people think of  
25 as a doublewide mobile home?

ORIGINAL

VIRGINIA: IN THE CIRCUIT COURT OF TAZEWELL COUNTY

RICHARD A. FORSTER, CHARLES C.  
McCOY and LISA McCOY,

Plaintiffs

VS

JAMES S. HALL, JOYCE S. HALL,  
DAVID WAYNE MCKINNEY, EVA SUE  
MCKINNEY, STEPHANIE BOWLING and  
MARGARET BROWN,

Defendants

CASE NO. CH99-000051

October 21, 1999

DEPOSITION

OF

DAVID WAYNE MCKINNEY

APPEARANCES:

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P.O. Box 843  
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Counsel for Plaintiffs

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Counsel for Defendants, David and Eva McKinney,  
Stephanie Bowling and Margaret Brown

Reported by:

Phyllis M. Mullins, Court Reporter  
Rt. 4, Box 618-A  
North Tazewell, VA 24630  
(540) 979-9835

DAVID WAYNE MCKINNEY

1 THE WITNESS: No. After I give them the land, we  
2 just said, you know, it's your alls.

3 MR. HENDERSON: Okay. Now you're building a house  
4 there yourself?

5 THE WITNESS: Right.

6 MR. HENDERSON: Site built?

7 THE WITNESS: Right.

8 MR. HENDERSON: Okay. The...Were you familiar with  
9 either of these homes at the time they were put on the  
10 property by your daughters; were you there when they were  
11 brought in, for example, or did you see them at the time?

12 THE WITNESS: No, I didn't, not when they was brought  
13 in, I seen them when I got home that evening, you know.

14 MR. HENDERSON: Okay. So you didn't see them until  
15 after they were there?

16 THE WITNESS: Right.

17 MR. HENDERSON: You never saw them before or didn't  
18 see them being moved in or anything like that?

19 THE WITNESS: No.

20 MR. HENDERSON: Once they were there, you were able  
21 to see what they were?

22 THE WITNESS: Oh, yeah.

23 MR. HENDERSON: Okay. And these...These are what  
24 most people refer to as doublewide mobile homes; would you  
25 agree with that?

DAVID WAYNE MCGINNEY

1 THE WITNESS: Yeah, most people would.

2 MR. HENDERSON: Okay. And they were moved onto the  
3 site and then, you know, affixed to the land there?

4 THE WITNESS: Right.

5 MR. HENDERSON: Okay. It came in two (2) pieces, as  
6 far as you know?

7 THE WITNESS: Right.

8 MR. HENDERSON: Now I asked everybody else, I'll ask  
9 you, why do you say now that these aren't mobile homes?

10 THE WITNESS: Well, I'll tell you the same thing  
11 everybody else said. They're on cinder block piers, you  
12 know, on footers, and then...Well, Dwayne and Cookie got  
13 part of theirs underpinned with cinder blocks, actually on  
14 the...you know, but they're all tied down and there's no  
15 axle, no tongues or nothing on them.

16 MR. HENDERSON: Okay. The parts that allow you to  
17 move them have been removed?

18 THE WITNESS: Right.

19 MR. HENDERSON: And they've been pinned to the  
20 ground, so to speak?

21 THE WITNESS: Right; they've got permanent porches  
22 attached to them.

23 MR. HENDERSON: Okay. Any other reason you know of  
24 why you wouldn't call that a mobile home now?

25 THE WITNESS: No.

ORIGINAL

VIRGINIA: IN THE CIRCUIT COURT OF TAZEWELL COUNTY

RICHARD A. FORSTER, CHARLES C.  
McCOY and LISA McCOY,

Plaintiffs

VS

JAMES S. HALL, JOYCE S. HALL,  
DAVID WAYNE MCKINNEY, EVA SUE  
MCKINNEY, STEPHANIE BOWLING and  
MARGARET BROWN,

Defendants

CASE NO. CH99-000051

October 21, 1999

DEPOSITION

OF

MARGARET BROWN

APPEARANCES:

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Counsel for Plaintiffs

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Counsel for Defendants, James and Joyce Hall

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Counsel for Defendants, David and Eva McKinney,  
Stephanie Bowling and Margaret Brown

Reported by:

Phyllis M. Mullins, Court Reporter  
Rt. 4, Box 618-A  
North Tazewell, VA 24630  
(540) 979-9835



MARGARET BROWN

1 ~~THE WITNESS: Just about; I believe so.~~

2 MR. HENDERSON: Okay. And what sort of homes did you  
3 look at?

4 THE WITNESS: We looked at the Clayton homes and the  
5 Fleetwoods; that's about all.

6 MR. HENDERSON: Okay. Was that just what they had  
7 there on the lot?

8 THE WITNESS: Nods yes.

9 MR. HENDERSON: When you bought it, did you...Did you  
10 order it or did you just buy one that they had?

11 THE WITNESS: Ordered it.

12 MR. HENDERSON: Ordered it. So this was built to  
13 specifications?

14 THE WITNESS: Nods yes.

15 MR. HENDERSON: And this was a home that was built at  
16 a factory. Right?

17 THE WITNESS: Right.

18 MR. HENDERSON: Do you recall where?

19 THE WITNESS: No.

20 MR. HENDERSON: And who...How did you arrange to have  
21 the home moved onto your property?

22 THE WITNESS: Harry's, it was through Harry's, the  
23 whole deal.

24 ~~MR. HENDERSON: Through Harry's?~~

25 ~~THE WITNESS: Yes.~~

MARGARET BROWN

1 ~~MR. HENDERSON: Anything of that sort, ever discussed~~  
2 ~~that with your attorneys?~~

3 ~~THE WITNESS: No, I have not.~~

4 MR. HENDERSON: Now let me ask you specifically, and  
5 once again, I'm not trying to trick you into saying the  
6 words, doublewide, but one of the things that you were  
7 asked to admit was that a doublewide mobile home was  
8 placed on your property and I think your answer to that  
9 was that there is a home there, but deny it's classified  
10 as a mobile home. Okay. Can you tell me why it's not a  
11 mobile home?

12 THE WITNESS: It's not mobile now.

13 MR. HENDERSON: Because it's now attached to the  
14 property in some way?

15 THE WITNESS: Mm-hmm.

16 MR. HENDERSON: Any other reason?

17 THE WITNESS: No.

18 MR. HENDERSON: Now isn't this, though, the same kind  
19 of home that people commonly refer to when it's sitting  
20 there on the lot to be sold, as a doublewide?

21 THE WITNESS: Yes.

22 MR. HENDERSON: And it's moved to the property by  
23 having wheels under it and a truck pulls it out there and  
24 sets it up?

25 THE WITNESS: Right.

ORIGINAL

VIRGINIA: IN THE CIRCUIT COURT OF TAZEWELL COUNTY

RICHARD A. FORSTER, CHARLES C.  
McCOY and LISA McCOY,

Plaintiffs

VS

CASE NO. CH99-000051

JAMES S. HALL, JOYCE S. HALL,  
DAVID WAYNE MCKINNEY, EVA SUE  
MCKINNEY, STEPHANIE BOWLING and  
MARGARET BROWN,

Defendants

October 21, 1999

DEPOSITION

OF

EVA SUE MCKINNEY

APPEARANCES:

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Counsel for Plaintiffs

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Stephanie Bowling and Margaret Brown

Reported by:

Phyllis M. Mullins, Court Reporter  
Rt. 4, Box 618-A  
North Tazewell, VA 24630  
(540) 979-9835

EVA SVE MCKINNEY

1 they're pretty big lots?

2 THE WITNESS: I mean they look, but I've never looked  
3 that close.

4 MR. HENDERSON: Right.

5 THE WITNESS: But we were told that there were  
6 no...there was restrictions. Carl Cartwright set on his  
7 porch and told my husband and I, now these are restricted,  
8 but yours is not.

9 MR. HENDERSON: Okay. So what he actually told you  
10 was that there were restrictions in the subdivision?

11 THE WITNESS: Where he lives.

12 MR. HENDERSON: Where he lives?

13 THE WITNESS: That side.

14 MR. HENDERSON: But he was saying that he was going  
15 to make an exception for you all or...

16 THE WITNESS: No, he said there were no restrictions  
17 there; he did not make no...

18 MR. HENDERSON: And what did you understand him to  
19 mean, was he talking about the lot you were buying or that  
20 section?

21 THE WITNESS: The lot, the land we were buying.

22 MR. HENDERSON: Just the land you were buying?

23 THE WITNESS: Is no restrictions.

24 MR. HENDERSON: Okay.

25 THE WITNESS: All of that on that side.

EVA SUE McINNERY

1 MR. HENDERSON: Now all the land on that side?

2 THE WITNESS: Mm-hmm.

3 MR. HENDERSON: Now is that what he said that all the  
4 land on that side was not restricted?

5 THE WITNESS: He said that over there is no  
6 restrictions.

7 MR. HENDERSON: Okay.

8 THE WITNESS: This over here where I live is  
9 restrictions; that was his words.

10 MR. HENDERSON: Did you actually have anybody to look  
11 to see whether there were restrictions in other people's  
12 deeds over there?

13 THE WITNESS: David Harman did that deed search and  
14 did the work for us and he found nothing.

15 MR. HENDERSON: Okay.

16 THE WITNESS: Our lawyer.

17 MR. HENDERSON: And that's what you were relying on?

18 THE WITNESS: Yeah.

19 MR. HENDERSON: I think that's all I have on follow  
20 up.

21  
22 RE-CROSS EXAMINATION BY MR. AREY

23 MR. AREY: Just one follow-up. I know the answer,  
24 but just for the record. Where you live is the part  
25 that's sort of...How do I describe it? Sticks out from

Print Key Output  
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TAZE20

Page 1  
06/15/99 14:48:25

Display Device . . . . . : W9  
User . . . . . : REGINA

Date: 6/15/99 Cash Register: TAZEWEEL COUNTY Time: 14:48:16

Cashier: REGINA KISER Account#: 000029549 Cust.Transactions:  
Trans. Type: PAY Dept/Bill#: RE1998 00038460001 P/I Date: 6/15/1999 6/15/1999  
Name: BROWN, MARGARET Bill Date: 12/05/1998 Half: 1

Name 2:  
Address: PO BOX 1170 Map#: 075 06 0001B  
NORTH TAZEWEEL VA

Zip: 24630 - 1170 Acreage: .000  
Mortg.Co.:  
Desc: GOOSE CREEK ESTATES SSN: 000 - 00 - 0000  
LOT 1B, SEC 4, 1.18 ACRES 000 - 00 - 0000

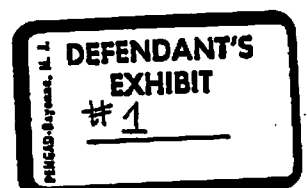
Status:  
Land: \$4,500 Improve: \$37,500 Use: \$0  
Original Bill: \$235.20 Credits: \$235.20 Discount: \$.00  
Penalty Paid: \$.00 Int Paid: \$.00 Last Date: 11/19/1998

Payment History Inquiry

Date	Type	Drawer	Trans#	Check Number	Trans. Amount	Balance
12/05/1998	CHG				\$235.20	\$235.20
11/18/1998	PAY	JW	2939	ADV/BTC	\$235.20CR	\$.00

F3=Exit History Inquiry

F13=Comments/Value/Refund Reason



Defendant's  
Exhibit #2

MAKE REMITTANCE TO:  
TREASURER OF TAZEWELL COUNTY  
P O BOX 968, TAZEWELL, VA 24651

COUNTY OF TAZEWELL, VIRGINIA  
REAL ESTATE TAXES FOR 1978  
JEFFERSONVILLE

PAGE NO  
392

LINE NO  
08

BILL NO  
3136

DESCRIPTION OF PROPERTY (Tax Rate Per \$100.00 of Assessed Value .56)	Value of Land	Value of Buildings, Improvements and/or Minerals	Total value of Land, Buildings, Improvements, and/or Minerals
075 06 0001C GOOSE CREEK ESTATES LOT 1C, SEC 4, 1.00 ACRE	4500	38100	42600
IF PAID BY DEC 5TH PAY THIS AMOUNT →			238. 56
PENALTY AND INTEREST MUST BE ADDED AFTER DEC 5TH			
BOWLING, STEPHANIE PO BOX 1579 NORTH TAZEWELL VA			2386
			437
TOTAL TAX, PENALTY AND INTEREST			266.79

PAYED  
FEB 22 1979  
TREASURER TAZEWELL COUNTY

DO NOT SEPARATE THESE CARDS-RETURN BOTH PARTS TO TREASURER'S OFFICE OR YOUR PARTICIPATING BANK FOR VALIDATION.

**HENDERSON AND DE COURCY, P.C.**

A PROFESSIONAL LAW CORPORATION

227 WEST MAIN STREET

P. O. Box 843

TAZEWELL, VIRGINIA 24651



JAMES R. HENDERSON IV  
FELICIA H. DE COURCY

TELEPHONE: 540-988-5523  
FACSIMILE: 540-988-5129

September 25, 1998

David Wayne McKinney  
Eva Sue McKinney  
P.O. Box 1087  
North Tazewell, Virginia 24630

James S. Hall  
Joyce S. Hall  
RR 5, Box 212  
North Tazewell, Virginia 24630

Stephanie Bowling  
P.O. Box 1579  
North Tazewell, Virginia 24630

Carl Cartwright, Jr.  
P.O. Box 1128  
North Tazewell, Virginia 24630

Margaret Brown  
P.O. Box 1170  
North Tazewell, Virginia 24630

**Re: Goose Creek Estates Lot Restrictions**

To the persons named above:

I have been engaged to represent certain owners of lots located in the Goose Creek Estates subdivision in Tazewell County, Virginia, with respect to conveyances of property in that subdivision to the McKinneys and the Halls by deeds of record in the Office of the Clerk of the Circuit Court of Tazewell County, Virginia, in Deed Book 721 at page 764 and Deed Book 712 at page 892. Based on my investigation of the matter, I must notify you of the following:

1. That the conveyance of Tract 1, Section 4 and Tract 2, Section 4 of Goose Creek Estates, and the later conveyances of portions of Tract 1, Section 4, violate the express and implied covenants of the subdivision which forbid the use of the property for mobile homes and double-wides.

2. That the re-division of Tract 1, Section 4 violates the plan of subdivision of Goose Creek Estates and impairs the vested rights of the owners of other lots in the subdivision.

This letter will set forth the reasons for this notification and ask that you take corrective action. Each of the notices set forth above will be treated separately and in turn.





**1. The conveyance of Tract 1, Section 4 and Tract 2, Section 4 of Goose Creek Estates, and the later conveyances of portions of Tract 1, Section 4, violate the express and implied covenants of the subdivision which forbid the use of the property for mobile homes and double-wides.**

The lots in Goose Creek Estates were sold with a uniform plan of subdivision under which, it appears, all of the deeds made by the Partnership to various purchasers, up to the conveyances cited above, contained the following language:

"It is distinctly understood and agreed that this conveyance is subject to the express restrictive covenants, running with the land, that no mobile home, either single or doublewide, shall be placed on said land at any time, and this covenant may be enforced . . . by any owners of property shown on the plats of Goose Creek Estates."

This restriction appears in dozens of deeds made prior to the conveyances cited above. It appears in the conveyance of Tract 3, Section 4, to the Halls. According to my investigation, the omission of this covenant from the deeds for Tract 1 and 2 was not inadvertent; it was requested by the purchasers, who had actual knowledge of the restrictions, and was omitted wilfully by the sellers, represented by Mr. Cartwright, in order to effect the sale. Plainly, all purchasers of these tracts had actual and/or constructive notice of the restrictions. It further appears that several mobile homes of the sort that violate the restriction recently have been placed on these lots.

The Virginia law on point is very clear. Where a common grantor develops land for sale in lots and inaugurates a general plan of improvement for the benefit of the purchasers, the grantees acquire by implication an equitable right to enforce similar restrictions against parts of the tract subsequently sold without the restrictions to a purchaser with actual or constructive notice of the restrictions and covenants. *See, e.g., Sloan v. Johnson*, 254 Va. 271 (1997). This is generally referred to as an implied reciprocal negative easement. *See, e.g., Mid-State Equipment v. Bell*, 217 Va. 133 (1976). It gives my clients the right to enforce against Tract 1 and 2 of Section 4 those same restrictions that were imposed on their properties.

In addition, I note that this was a wilful and knowing violation of my clients' rights. The grantors and grantees are put on notice that this may be asserted as a claim for punitive damages.

**Action requested:** All of the deeds should be reformed in order to contain the express restrictions that are required by law. Any non-conforming structure that is now on Tract 1 or Tract 2 (or any sub-part thereof) of Section 4 shall be removed and, in the future, no non-conforming structures will be placed on these tracts.

Please advise me by October 9, 1998, of whether you will agree to take the action requested and of the time by which non-conforming structures will be removed.

*David Wayne McKinney*  
*September 25, 1998*  
*Page 3*

**2. The re-division of Tract 1, Section 4 violates the plan of subdivision of Goose Creek Estates and impairs the vested rights of the owners of other lots in the subdivision.**

The lots in Goose Creek Estates were sold with reference to four plats, all of which were placed on record. Section Four was recorded later in time than the first three sections and was the only one of the four plats submitted for approval under the Tazewell County Subdivision Ordinance. Generally, there were no public roads in the subdivision and none were established by the plats; instead, easements were reserved over the various lots in the subdivision and lot owners were given the rights to use the easements. With the exception of certain lots located on an existing public road in Section Four, all of the lots in the subdivision were five acres or larger in size.

The deeds to Margaret Brown and Stephanie Bowling are inconsistent with that general plan of improvement. These deeds are each for less than five acres and each deed purports to convey the right to use the existing easements in the subdivision. This increases the burden on the easements and, therefore, on the lots of the other property owners. Consequently, the implied reciprocal negative easements applicable to the subdivision preclude further subdivision of lots therein.

I am aware that the re-plat of the subdivided lots was approved under the Tazewell County Subdivision Ordinance. Under Virginia law, a subdivision ordinance does not impair the vested rights of landowners; the rights of my clients vested prior to the recordation of the approved plat concerning the re-subdivision.

**Action requested:** Vacation of the plat recorded in Plat Book 40, pages 94 and 95; vacation of the conveyances to Margaret Brown and Stephanie Bowling recorded in Deed Book 736 at page 816 and Deed Book 736 at page 820.

Please advise me by October 9, 1998, of whether you will agree to take the action requested. Your prompt attention to these matters will be appreciated.

Sincerely,

**HENDERSON AND DE COURCY, P.C.**



James R. Henderson IV

JRH/hs

cc: James W. Harman, Esq.

**ALTIZER, WALK & WHITE**  
Attorneys at Law

215 West Main Street  
P. O. Box 30  
Tazewell, Virginia 24651

Telephone (540) 988-7979  
Facsimile (540) 988-6707

David Grant Altizer  
Thomas P. Walk  
Robert A. White

John W. Gillespie, 1908-1996  
Jack P. Chambers, Retired

October 1, 1998

James R. Henderson, IV, Esquire  
P. O. Box 843  
Tazewell, VA 24651

Re: Goose Creek Estates Lot Restrictions  
AWW File 16429

Dear Jay:

Our firm is retained by Carl Cartwright, Jr., to respond to your letter of September 25. Although our client is Mr. Cartwright, the other named property owners sought and received the permission of Mr. Cartwright to join with him in this response until such time as they obtain separate counsel. There are several areas to address.

First and foremost, we do not know the identity of your client or clients and to insure we do not have a conflict, we ask their identity.

Second, as to your first contention, we do not agree the lots in Goose Creek Estates were sold with a uniform plan of subdivision. Not all deeds made by the partnership contain the restriction you quote. In fact, we are told a mobile home has been within the subdivision proper since approximately 1982. One of the first deeds made for the subdivision does not contain the restriction. Ignoring for the moment your argument, there is some question as to whether or not the structures subject to your complaint are mobile homes. They are on permanent foundations and even if the restriction was applicable, they may fall outside it.

Third, as to your second contention, the map I find for Section 4 is dated 1979. The properties in question have access directly from the Whitley Branch Road, presumably about which there is no dispute whether it is a public road, and the roads in the subdivision proper are not used for access. You will find further that a number of

James R. Henderson, IV, Esquire  
October 1, 1998  
Page 2

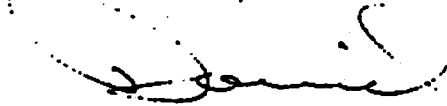
the roads within Goose Creek are public roads and for all we know, your client or clients are located upon those public roads and have no standing to complain. Section 4 has numerous lots of less than five acres. Perhaps such a complaint as your client or clients may have should have been raised many years before now.

Even if Mr. Cartwright was inclined to comply with your requested action, he would have no authority to do so. As it happens, we do not think the requested action is reasonable or enforceable. If there is some solution pleasing and acceptable to all parties, then naturally we have an interest in meeting and discussing those possibilities.

Appreciating your attention to these matters, we remain

Yours very truly,

ALTIZER, WALK AND WHITE



By: David Grant Altizer

DGA/vdj

pc: Mr. and Mrs. David Wayne McKinney  
Stephanie Bowling  
Margaret Brown  
Mr. and Mrs. James S. Hall  
Mr. Carl Cartwright, Jr.

DESCRIPTION OF PROPERTY (Tax Rate Per \$100.00 of Assessed Value .56)	Value of Land	Value of Buildings, Improvements and/or Minerals	Total value of Land, Buildings, Improvements, and/or Minerals				
075 06 0002 GOOSE CREEK ESTATES LOT 2, SEC 4, 5.51 ACRES	11000	0	11000				
IF PAID BY DEC 5TH PAY THIS AMOUNT → PENALTY AND INTEREST MUST BE ADDED AFTER DEC. 5TH			61.60				
HALL, JAMES S. & JOYCE S. RR 5 BOX 212 NORTH TAZEWELL VA			24630				
<table border="1"> <tr> <td>Penalty</td> <td rowspan="3">PAID NOV 6 1997</td> </tr> <tr> <td>Interest</td> </tr> <tr> <td>TOTAL TAX, PENALTY AND INTEREST</td> </tr> </table>			Penalty	PAID NOV 6 1997	Interest	TOTAL TAX, PENALTY AND INTEREST	
Penalty	PAID NOV 6 1997						
Interest							
TOTAL TAX, PENALTY AND INTEREST							

DO NOT SEPARATE THESE CARDS-RETURN BOTH PARTS TO TREASURER'S OFFICE OR YOUR PARTICIPATING BANK FOR VALIDATION.

MAKE REMITTANCE TO:  
TREASURER OF TAZEWELL COUNTY  
P O BOX 969, TAZEWELL, VA 24651

COUNTY OF TAZEWELL, VIRGINIA  
REAL ESTATE TAXES FOR 1999

PAGE NO

LINE NO

BILL NO

1055

07 10547

DESCRIPTION OF PROPERTY (Tax Rate Per \$100.00 of Assessed Value .56)	Value of Land	Value of Buildings, Improvements and/or Minerals	Total value of Land, Buildings, Improvements, and/or Minerals				
075 06 0002 GOOSE CREEK ESTATES LOT 2, SEC 4, 5.51 ACRES	16500	59600	76100				
IF PAID BY DEC 5TH PAY THIS AMOUNT → PENALTY AND INTEREST MUST BE ADDED AFTER DEC. 5TH			426.16				
HALL, JAMES S. & JOYCE S. RR 5 BOX 212 NORTH TAZEWELL VA			24630				
<table border="1"> <tr> <td>Penalty</td> <td rowspan="3">PAID NOV 17 1997</td> </tr> <tr> <td>Interest</td> </tr> <tr> <td>TOTAL TAX, PENALTY AND INTEREST</td> </tr> </table>			Penalty	PAID NOV 17 1997	Interest	TOTAL TAX, PENALTY AND INTEREST	
Penalty	PAID NOV 17 1997						
Interest							
TOTAL TAX, PENALTY AND INTEREST							

DO NOT SEPARATE THESE CARDS-RETURN BOTH PARTS TO TREASURER'S OFFICE OR YOUR PARTICIPATING BANK FOR VALIDATION.

MAKE REMITTANCE TO:  
TREASURER OF TAZEWELL COUNTY  
P O BOX 989, TAZEWELL, VA 24651

COUNTY OF TAZEWELL, VIRGINIA  
REAL ESTATE TAXES FOR 1998

PAGE NO  
1303

LINE NO  
03

BILL NO  
10419

JEFFERSONVILLE

DESCRIPTION OF PROPERTY

(Tax Rate Per \$100.00 of Assessed Value .58)

Value of Land

Value of Buildings,  
Improvements  
and/or Minerals

Total value of Land,  
Buildings, Improve-  
ments, and/or Minerals

075 06 0003  
GOOSE CREEK ESTATES  
LOT 3, SEC 4, 5.152 ACRES

14200

72600

86800

IF PAID BY DEC 5TH PAY THIS AMOUNT →  
PENALTY AND INTEREST MUST  
BE ADDED AFTER DEC. 5TH

486.08

HALL, JAMES S. & JOYCE S.  
RR 5 BOX 212  
NORTH TAZEWELL VA

TREASURER TAZEWELL COUNTY

24630

Penalty

Interest

TOTAL TAX, PENALTY  
AND INTEREST

DO NOT SEPARATE THESE CARDS-RETURN BOTH PARTS TO TREASURER'S  
OFFICE OR YOUR PARTICIPATING BANK FOR VALIDATION.

MAKE REMITTANCE TO:  
TREASURER OF TAZEWELL COUNTY  
P O BOX 989, TAZEWELL, VA 24651

COUNTY OF TAZEWELL, VIRGINIA  
REAL ESTATE TAXES FOR 1998

PAGE NO  
1303

LINE NO  
02

BILL NO  
10418

JEFFERSONVILLE

DESCRIPTION OF PROPERTY

(Tax Rate Per \$100.00 of Assessed Value .58)

Value of Land

Value of Buildings,  
Improvements  
and/or Minerals

Total value of Land,  
Buildings, Improve-  
ments, and/or Minerals

075 06 0002  
GOOSE CREEK ESTATES  
LOT 2, SEC 4, 5.51 ACRES

11000

26100

37100

IF PAID BY DEC 5TH PAY THIS AMOUNT →  
PENALTY AND INTEREST MUST  
BE ADDED AFTER DEC. 5TH

207.76

HALL, JAMES S. & JOYCE S.  
RR 5 BOX 212  
NORTH TAZEWELL VA

24630

Penalty

Interest

TOTAL TAX, PENALTY  
AND INTEREST

DO NOT SEPARATE THESE CARDS-RETURN BOTH PARTS TO TREASURER'S  
OFFICE OR YOUR PARTICIPATING BANK FOR VALIDATION.

DEFENDANT'S  
EXHIBIT

#6

MAKE REMITTANCE TO:  
TREASURER OF TAZEWELL COUNTY  
P.O. BOX 969, TAZEWELL, VA 24651

COUNTY OF TAZEWELL, VIRGINIA  
REAL ESTATE TAXES FOR 2000  
JEFFERSONVILLE

PAGE NO  
1058

LINE NO  
10

BILL NO  
10580

DESCRIPTION OF PROPERTY (Tax Rate Per \$100.00 of Assessed Value .56)	Value of Land	Value of Buildings, Improvements and/or Minerals	Total value of Land, Buildings, Improvements, and/or Minerals
075 06 0002 GOOSE CREEK ESTATES LOT 2, SEC 4, 5.51 ACRES	15500	80500	96000
Tax Due			537.60
Pre-Payments			
BALANCE DUE IF PAID BY DEC. 5 →			
HALL, JAMES S. & JOYCE S. RR 5 BOX 212 NORTH TAZEWELL VA			
PENALTY AND INTEREST MUST BE ADDED AFTER DEC. 5			
24630			
Penalty			
Interest			
TOTAL TAX PENALTY AND INTEREST			

DO NOT SEPARATE THESE CARDS - RETURN BOTH PARTS TO TREASURER'S OFFICE OR YOUR PARTICIPATING BANK FOR VALIDATION.  
THE TREASURER ONLY COLLECTS TAXES, DOES NOT ASSESS PROPERTY, SET RATES OR  
GRANT EXEMPTIONS, AND HAS NO AUTHORITY TO MAKE CHANGES ON THE TAX ROLL.

MAKE REMITTANCE TO:  
TREASURER OF TAZEWELL COUNTY  
P.O. BOX 969, TAZEWELL, VA 24651

COUNTY OF TAZEWELL, VIRGINIA  
REAL ESTATE TAXES FOR 2000  
JEFFERSONVILLE

PAGE NO  
1059

LINE NO  
01

BILL NO  
10581

DESCRIPTION OF PROPERTY (Tax Rate Per \$100.00 of Assessed Value .56)	Value of Land	Value of Buildings, Improvements and/or Minerals	Total value of Land, Buildings, Improvements, and/or Minerals
075 06 0003 GOOSE CREEK ESTATES LOT 3, SEC 4, 5.152 ACRES	15200	86200	101400
Tax Due			567.84
Pre-Payments			
BALANCE DUE IF PAID BY DEC. 5 →			
HALL, JAMES S. & JOYCE S. RR 5 BOX 212 NORTH TAZEWELL VA			
PENALTY AND INTEREST MUST BE ADDED AFTER DEC. 5			
24630			
Penalty			
Interest			
TOTAL TAX PENALTY AND INTEREST			

DO NOT SEPARATE THESE CARDS - RETURN BOTH PARTS TO TREASURER'S OFFICE OR YOUR PARTICIPATING BANK FOR VALIDATION.  
THE TREASURER ONLY COLLECTS TAXES, DOES NOT ASSESS PROPERTY, SET RATES OR  
GRANT EXEMPTIONS, AND HAS NO AUTHORITY TO MAKE CHANGES ON THE TAX ROLL.





























































**VIRGINIA:** Circuit Court of the County of Tazewell, on Thursday, the 31st day of January, in the year of our Lord, two thousand two.

**PRESENT:** The Honorable Keary R. Williams - Judge.

RICHARD A. FORSTER, CHARLES )  
C. MCCOY & LISA C. MCCOY, )

PLAINTIFFS )

V. )

JAMES S. HALL, JOYCE S. HALL, )  
DAVID WAYNE MCKINNEY, EVA SUE )  
MCKINNEY, STEPHANIE BOWLING & )  
MARGARET BROWN, )

ORDER  
Chancery Case No. CH99-00051


This matter is before the Court upon the pleadings, evidence presented at the hearing on November 16, 2000 and upon the arguments of counsel. In accordance with the findings and conclusions of the Court set forth in a letter dated August 14, 2001, attached to and adopted in this order; and it appearing to the Court from such pleading, evidence, argument and examination of the applicable law that an implied reciprocal negative easement was created during the development of the Goose Creek Estates Subdivision which would grant the Plaintiffs an equitable right to enforce a restriction against mobile homes; that the Defendants Hall and McKinney both purchased their lots for value, that their deeds did not contain the restriction against mobile homes, that the Halls had actual and constructive notice of the restriction against mobile homes, that the McKinneys had constructive notice of the restriction against mobile homes and that therefore the Defendants were not purchasers for value without actual or constructive notice so as to make the implied reciprocal negative easement against mobile homes unenforceable; that the Plaintiff's have an equitable right to enforce the implied reciprocal negative easement against mobile homes as it applies to lots in the Goose Creek Estates Subdivision; that the structures in question located on the Defendant's lots are


annexed to the real estate and are transferrable only by deed, are adapted to the residential use for which the realty is devoted and the intent of the owners is to make them a permanent accession to the real estate; that said structures, as they now exist are not of the type the common grantor intended to prohibit by the restrictions contained in the deeds to lots in the Goose Creek Estates Subdivision; that the said structures, as they now exist, do not violate the implied reciprocal negative easement against mobile homes.

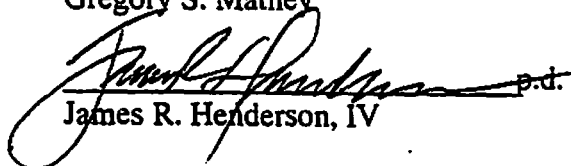
It is therefore ADJUDGED, ORDERED and DECREED as follows:

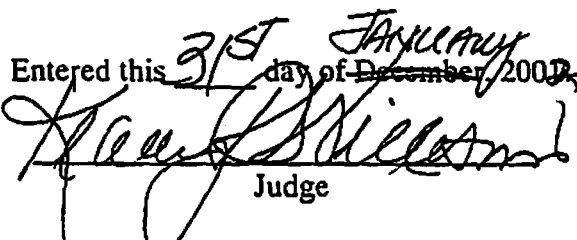
1. The lots of the Goose Creek Estates Subdivision are subject to an implied reciprocal negative easement prohibiting mobile homes and the Plaintiffs have an equitable right to enforce compliance with this restriction contained in their deeds.
2. The structures as they now exist on the Defendants' lots do not violate the restriction of the implied reciprocal negative easement prohibiting mobile homes therefore, the Plaintiffs' requested relief that these structures be removed, is denied.
3. This matter is ended on the docket of this Court.
4. The Clerk is directed to provide attached copies of this order to counsel of record. Plaintiffs' objections to Paragraph 2, above, are noted and preserved.

REQUESTED:

 p.d.  
Stephen E. Arey

 p.d.  
Gregory S. Matney

 p.d.  
James R. Henderson, IV

Entered this 31<sup>st</sup> day of January, 2002  
  
Judge



# Commonwealth of Virginia



CIRCUIT COURT JUDGES:

EARLY R. WILLIAMS  
Buchanan County Courthouse  
P.O. Box 849  
Fundy, Virginia 24614  
(540) 935-2451

NICHOLAS E. PERSIN (Retired)  
P.O. Box 606  
Fundy, Virginia 24614  
(540) 935-2451

TWENTY-NINTH JUDICIAL CIRCUIT  
COUNTIES OF BUCHANAN, DICKENSON, RUSSELL AND TAZEWell

August 14, 2001

DONALD A. McGLOTHLIN, JR.  
Russell County Courthouse  
Lebanon, Virginia 24266  
(540) 889-8049 (Lebanon)  
(540) 926-1635 (Clintwood)

DONALD R. MULLINS  
Tazewell County Courthouse  
P.O. Box 968  
Tazewell, Virginia 24651  
(540) 988-5998

Stephen Arey, Esquire  
P.O. Box 895  
Tazewell, Virginia 24651

James R. Henderson IV, Esquire  
Henderson and DeCourcy, P.C.  
227 West Main Street  
P.O. Box 843  
Tazewell, Virginia 24651-0843

Gregory S. Matney, Esquire  
Katz, Kantor, Perkins, Campbell & Matney  
996 Ben Bolt Avenue  
Tazewell, Virginia 24651

Re: Forster, et al. v. Hall, et al.  
Tazewell County Chancery  
Case No. 99-000051

Gentlemen:

This matter is before the Court following a trial held in the Circuit Court of Tazewell County on November 16, 2000. The Court thereafter received the parties' closing arguments on brief and has kept the case under advisement since that time. After fully considering the pleadings, arguments, evidence, and applicable law, the Court now makes the following findings of facts and conclusions of law:

The first issue for the Court to examine is whether an implied reciprocal negative easement was created during the development of Goose Creek Estates Subdivision that would grant the Plaintiffs an equitable right to enforce a restriction against mobile homes. Second, if the Court finds that an implied reciprocal negative easement does exist, the issue becomes whether the structures on the Defendants' land are subject to the restrictions on mobile homes.

Stephen Arey, Esquire  
James R. Henderson, IV, Esquire  
Gregory S. Matney, Esquire  
August 14, 2001  
Page 2

The doctrine of implied reciprocal negative easements has been generally described as follows:

(W)here a common grantor develops a tract of land for sale in lots and pursues a course of conduct which indicates that he intends to inaugurate a general scheme or plan of improvement for the benefit of himself and the purchasers of the various lots, and by numerous conveyances inserts in the deeds substantially uniform restrictions, conditions and covenants against the use of the property, the grantees acquire by implication an equitable right, variously referred to as an implied reciprocal negative easement or an equitable servitude, to enforce similar restrictions against that part of the tract retained by the grantor or subsequently sold without the restrictions to a purchaser with actual or constructive notice of the restrictions and covenants.

Minner v. City of Lynchburg, 204 Va. 180, 188, 129 S.E.2d 673 (1963) (citations omitted).

There is no dispute that all of the lots in Goose Creek Estates originated from a single tract of land subdivided into individual lots among five contiguous sections by the common grantor, The Goose Creek Partnership. The key factor in analyzing the existence or non-existence of an implied reciprocal negative easement is whether the common grantor engages in a course of conduct that would evidence an intent to execute a general scheme for the benefit of themselves and purchasers of the various lots. Id. Here, the evidence is substantial that The Goose Creek Partnership had such an intention.

First, as agent of the partnership, Carl Cartwright, Jr. testified that it was the intention of the grantors to include the restriction "to protect [the] property and the buyer" from mobile homes. Prior to recordation of the Halls' deed to their property at issue, sixty-nine out of seventy-three previously recorded deeds to lots in the subdivision contained an express covenant "that no mobile homes, either single or double-wide may be parked and/or erected on the property," or a covenant with substantially the same language. The fact that four deeds were executed absent the restriction does not bring into question the intention of the common grantor, because as noted above, the law

Stephen Arey, Esquire  
James r. Henderson, IV, Esquire  
Gregory S. Matney, Esquire  
August 14, 2001  
Page 3

only requires that "numerous conveyances" contain substantially uniform restrictions in order to establish an equitable right to enforce the restrictions. Id. Certainly sixty-nine out of seventy-three lots (or nearly 95%) would constitute "numerous conveyances."

The Defendants argue that the element of intent required to create an implied negative reciprocal easement is negated by the fact that the common grantor omitted the restrictions on each of their deeds. However, the Defendants ignore the fact that such easements come into existence not simply for the benefit of the common grantor and current buyer, but for prior and future purchasers as well. .

The only situation where an implied reciprocal negative easement is unenforceable is where the buyer is a purchaser for value and without actual or constructive notice. Here, the Defendants Halls and McKinneys purchased for value. Neither the Halls' nor the McKinneys' deed contained the restriction against mobile homes, however, both had some form of notice. The Halls had both actual and constructive notice. First, the Halls had previously purchased a lot subject to the restriction against mobile homes adjacent to the lot in question; second, the Halls admit they negotiated to have the restriction removed from the lot in question; and third, 95% of the deeds in all five sections recorded prior to the Halls' deed to their property in question were subject to the restriction, so as to put them on constructive notice. The evidence is conflicting as to whether the McKinneys had actual notice of the restrictions, but regardless, they also are subject to the constructive notice by virtue of the numerous deeds containing the restriction and the resulting lack of mobile homes in the Subdivision.

The Court finds that an implied reciprocal negative easement does exist and that the Plaintiffs have an equitable right to enforce compliance with the restrictions contained in the deeds. The only issue remaining is whether the structures in question are "mobile homes" as contemplated by the restrictions incorporated in the various deeds executed. While the Court agrees with the Plaintiffs that the structures are technically mobile homes, the Court is of the opinion that the structures as they now exist are not subject to the restrictions as contemplated by the common grantors.

Stephen Arey, Esquire  
 James R. Henderson, IV, Esquire  
 Gregory S. Matney, Esquire  
 August 14, 2001  
 Page 4

In making that determination, the Court finds it persuasive that the structures have been annexed to the real property and can now only be transferred by deed as real estate as opposed to personal property by certificate of title. In Virginia, making such a finding requires the weighing of three factors: (1) the degree of permanency with which the chattels are annexed to the realty; (2) the adaptation of the chattels to the use or purpose to which the realty is devoted; and (3) the intention of the owner of the chattels to make them a permanent accession to the property. Multi-Channel TV Cable v. Charlottesville Quality Cable, 22 F.3d 546, 553 (4<sup>th</sup> Cir. 1994). A relevant statute in weighing factors (1) and (3) in effect at the filing of this suit was Virginia Code Section 46.1-44. That statute stated that after a mobile home has been titled in this Commonwealth, the wheels and other appendages previously used for mobility have been removed, and the unit has been attached to the land, then the Virginia certificate of title issued for the unit may be returned to the Department of Motor Vehicles for cancellation and the unit shall thereafter be transferred only as real estate is transferred. The structures at issue here clearly have been permanently annexed to the realty. Factor (2) also weighs in favor of the Defendants since the structures are clearly being used for the purpose to which the realty is devoted, i.e. residential purposes.

While the Court realizes that whether or not the structures are classified as personal property or real property is not determinative of the issue at bar, the Court does find it persuasive that the structures are now classified as real property and can only be transferred with the property by deed. Moreover, "to determine the purpose of restrictive covenants we construe them in the light of the circumstances under which they were written." Bauer v. Harn, 223 Va. 31, 36, 286 S.E.2d 192 (1982). The Court is further persuaded to find for the Defendants on this issue by the fact that Mr. Cartwright's testimony indicates that these structures as they now exist are not of the type the common grantor intended to prohibit with the restrictions contained in the deeds. As noted previously, the intention of the common grantor is key in determining the existence of an implied reciprocal negative easement.

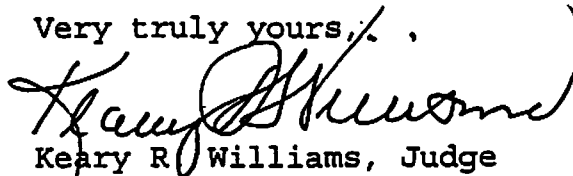
The Court does not ignore the fact that the condition of structures at the time they were moved onto the properties would have rendered them subject to the restrictions found in the various deeds. The Court suggests, without so finding, that perhaps the proper course of action by the Plaintiffs would have

Stephen Arey, Esquire  
James R. Henderson, IV, Esquire  
Gregory S. Matney, Esquire  
August 14, 2001  
Page 5

been to seek an injunction at the outset of the placement of the structures. The Court also does not ignore the fact that the structures in the future could be converted so that they could be transported. In such an event, the structures would again constitute personal property, and would be of such a nature so as to violate the restrictions contained in the numerous deeds. However, the Court finds that the structures as they now exist do not violate the restrictions, therefore, the Plaintiffs' request for relief is denied.

Counsel for the Defendants should draft and endorse an appropriate order fairly and accurately reflecting the findings in this Opinion, forward the same to Plaintiffs' counsel for endorsement and subsequent entry by the Court.

Very truly yours, .



Keary R. Williams, Judge

KRW/pjf

VIRGINIA: IN THE CIRCUIT COURT OF TAZEWELL COUNTY

RICHARD A. FORSTER, CHARLES C.  
MCCOY and LISA C. MCCOY,

Plaintiffs,

v.

JAMES S. HALL, JOYCE S. HALL,  
DAVID WAYNE MCKINNEY, EVA SUE  
MCKINNEY, STEPHANIE BOWLING,  
and MARGARET BROWN,

Defendants.

No. CH 99-51

NOTICE OF APPEAL

Now comes Richard A. Forster, by counsel, and gives this Notice of Appeal from the final decree of this Court entered on January 31, 2002.

The transcript of the bench trial in this case has already been filed on November 29, 2000.

CERTIFICATE

I hereby certify that a true copy of this document has been mailed by United States Mail, postage pre-paid, to Stephen E. Arey, Esq., counsel for James S. Hall and Joyce S. Hall, P. O. Box 895, Tazewell, Virginia 24651, and Gregory S. Matney, Esq., counsel for David Wayne McKinney, Eva Sue McKinney, Stephanie Bowling and Margaret Brown, 996 Ben Bolt Avenue, Tazewell, Virginia 24651, on March 1, 2002.

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Respectfully submitted,

RICHARD A. FORSTER

By: 

Of counsel

Received and filed in Tazewell County,

Virginia Circuit Court Clerk's Office

This the 1st day of March, 2002

### **ASSIGNMENTS OF ERROR**

1. The Circuit Court of Tazewell County erred in holding that the “Defendants’ lots do not violate” the Goose Creek Estates implied reciprocal negative easement prohibiting mobile homes.
2. The Circuit Court of Tazewell County erred in finding that the mobile homes “as they now exist are not subject to the restrictions as contemplated by the common grantors.”
3. The Circuit Court of Tazewell County erred in finding that the mobile homes “as they now exist are not subject to the restrictions as contemplated by the common grantors” because the “Structures have been annexed to the real property.”
4. The Circuit Court of Tazewell County erred in finding that the mobile homes “as they now exist are not subject to the restrictions as contemplated by the common grantors” because they had been converted pursuant to former Virginia Code Section 46.1-44 and no longer had vehicle titles.

### **ASSIGNMENT OF CROSS-ERROR**

2. The Circuit Court erred in determining that the lots in Sections 4 and 5 of Goose Creek Estates are subject to an implied reciprocal negative easement prohibiting mobile homes.