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CLERK
SUPREME COURT OF VIRGINIA

In The
Supreme Court of Virginia

SEP 24 2002

RICHMOND, VIRGINIA

RECORD NO. 020801

SHOOTING POINT, L.L.C.,
SHOOTING POINT PROPERTY OWNERS' ASSOCIATION, INC.,

Appellants,

v.

JOHN W. WESCOAT,

Appellee.

RECORD NO. 020803

JOHN W. WESCOAT,

Appellant,

v.

SHOOTING POINT, L.L.C.,
SHOOTING POINT PROPERTY OWNERS' ASSOCIATION, INC.,

Appellees.

JOINT APPENDIX
VOLUME II OF V
(Pages 388-662)

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TABLE OF CONTENTS
Volume I of V

Appendix Page

Bill of Complaint Chancery No. CH00-14, With Exhibits, filed February 16, 2000	1
---	---

Exhibits:

A. Grant of Easement Deed Made By and Between Margaret W. Wescoat, Harold Wescoat and Anne W. Holland, William W. Holland and Elizabeth S. Jones dated June 18, 1974	8
B. Deed Made By and Between Elizabeth S. Jones, Curtis H. Jones and James T. Martin, Dixon R. Doll dated September 20, 1974	11
C. Deed Made By and Between James T. Martin, Dixon R. Doll, Carol A. Doll and Shooting Point, L.L.C., A Virginia Limited Liability Company dated December 7, 1999	18
D. Plat of Shooting Point Farm Located on Church Neck, Eastville District dated December 8, 1999	21

Bill of Complaint
Chancery No. CH00-14,
With Exhibits,
filed February 16, 2000, continued:

Exhibits:

E.	Deed Made By and Between Shooting Point, L.L.C. and Jon L. Manetta dated December 16, 1999	22
F.	Deed Made By and Between Shooting Point, L.L.C., Gary C. Cole and Ruth B. Cole dated December 16, 1999	25
G.	Deed Made By and Between Shooting Point, L.L.C., Mark T. Finn and Sandra B. Finn Re: One Half Interest dated December 16, 1999	28
H.	Deed Made By and Between Shooting Point, L.L.C., Mark T. Finn and Sandra B. Finn dated December 16, 1999	30
I.	Deed Made By and Between Shooting Point, L.L.C., Paul F. Vogel and Susan L. Vogel dated January 18, 2000	33

Respondent's, Shooting Point, L.L.C., Brief in Opposition to Temporary Injunction Chancery No. CH00-14, Without Exhibits, filed March 23, 2000	35
--	----

Transcript of Motion Proceedings before The Honorable Frederick B. Lowe Re: Temporary Injunctive Relief, With Exhibits, on March 23, 2000	49
---	----

Testimony of John Wescoat:

Direct Examination by Mr. Poulson	53
Cross Examination by Mr. McFarland	72
Redirect Examination by Mr. Poulson	80

Testimony of Curtis H. Jones:

Direct Examination by Mr. Poulson	80
Cross Examination by Mr. McFarland	87
Redirect Examination by Mr. Poulson	91

Testimony of William M. Cummings, Jr.:

Direct Examination by Mr. Poulson	92
Cross Examination by Mr. McFarland	101
Redirect Examination by Mr. Poulson	119
Examination by the Court	120
Further Redirect Examination by Mr. Poulson	122

Transcript of Motion Proceedings before
The Honorable Frederick B. Lowe
Re: Temporary Injunctive Relief,
With Exhibits,
on March 23, 2000, continued:

Testimony of John Humphreys:

Direct Examination by Mr. McFarland	138
Cross Examination by Mr. Poulson	146
Redirect Examination by Mr. McFarland	152

Testimony of Marlene Cree:

Direct Examination by Mr. McFarland	153
Cross Examination by Mr. Poulson	156
Examination by the Court	161

Exhibits:

1.	Grant of Easement Deed Made By and Between Margaret W. Wescoat, Harold Wescoat and Anne W. Holland, William W. Holland and Elizabeth S. Jones dated June 18, 1974	181
2.	Aerial Photograph undated	182
3.	Colored Photographs A-J undated	183
4.	Map of Subdivision Shooting Point Farm undated	184

Transcript of Motion Proceedings before
The Honorable Frederick B. Lowe
Re: Temporary Injunctive Relief,
With Exhibits,
on March 23, 2000, continued:

Exhibits:

5. Virginia Department of Transportation
Minimum Standards of Entrances To State Highway
undated 185
6. Letter to
Sandra Benson from
K. M. Wright
Re: Necessary Permit Process
dated January 14, 2000 186

Order of
The Honorable Frederick B. Lowe
Chancery No. CH00-14
Re: Denying Plaintiff's Motion for Temporary Injunction
entered April 7, 2000 187

Respondent's, Shooting Point, L.L.C.,
Answer to The Bill of Complaint
Chancery No. CH00-14
filed April 10, 2000 190

Bill for Declaratory Judgment Chancery No. CH01-02, With Exhibit, filed January 26, 2001	195
 <u>Exhibit:</u>	
E. Department of Transportation Land Use Permit 65, Northampton dated August 14, 2000	206
 Respondents', Commonwealth Transportation Board and Charles D. Nottingham, Commonwealth Transportation Commissioners, Answer to Bill of Declaratory Judgment Chancery No. CH01-02 filed February 16, 2001	211
 Respondent's, Shooting Point, L.L.C., Answer to Bill of Declaratory Judgment Chancery No. CH01-02 filed February 23, 2001	218
 Respondent's, Shooting Point Property Owners Association, Inc., Answer to Bill of Declaratory Judgment, With Attached Proposed Order, Chancery No. CH01-02 filed March 8, 2001	224
 Respondent's, Shooting Point, L.L.C., Motion for Leave to File Cross Bill Chancery No. CH01-02 filed April 18, 2001	232
 Respondent's, Shooting Point, L.L.C., Cross-Bill Chancery No. CH01-02 filed April 18, 2001	234

Complainants' Motion for Issues Out of Chancery Chancery Nos. CH01-02, CH00-14 filed May 1, 2001	240
Respondent's, Shooting Point Property Owners Association, Inc., Response to Motion for Issues Out of Chancery Chancery No. CH01-02 filed May 4, 2001	246
Respondent's, Shooting Point, L.L.C., Brief in Opposition to Complainants' Motion for Issues Out of Chancery Chancery Nos. CH00-14, CH01-02 filed May 8, 2001	248
Letter to Counsel from Jon C. Poulson Re: Complainant's Supplemental Response to Interrogatories of Shooting Point, L.L.C. dated May 15, 2001	254A
Complainants' Demurrer Chancery No. CH01-02 filed May 25, 2001	255
Complainants' Prospective Witness List and Prospective Exhibit List Chancery Nos. CH01-02, CH00-14 filed May 29, 2001	260
Respondent's, Shooting Point, L.L.C., Brief in Opposition to Complainants' Motion for Issues Out of Chancery Chancery Nos. CH01-02, CH00-14 filed May 29, 2001	263

Respondent's, Shooting Point, L.L.C., Trial Brief Chancery No. CH00-14 filed May 29, 2001	271
Respondent's, Shooting Point Property Owners Association, Inc., Motion In <i>Limine</i> Chancery No. CH00-14 filed May 29, 2001	287
Respondent's, Shooting Point, L.L.C., Second Motion In <i>Limine</i> Chancery Nos. CH00-14, CH01-02 With Exhibits, filed May 29, 2001	290
<u>Exhibits:</u>	
A. Plat of Survey Location of 15' Right of Way Easement from S.R. 622 "Shooting Point" dated February 7, 2001	293
B. Plat of Survey Intersection of a Fifteen (15') Right of Way Easement With State Route No. 622 (Glebe Road) dated January 19, 2001	294
Respondent's, Shooting Point, L.L.C., Designation of Witnesses and Exhibits Chancery Nos. CH00-14, CH01-02 filed May 29, 2001	296
Respondent's, Shooting Point, L.L.C., Motion In <i>Limine</i> to Exclude Testimony of Sandra Gail Benson Chancery No. CH00-14 filed May 29, 2001	302

Complainants' Motion In <i>Limine</i> Chancery No. CH01-02 Re: Prohibiting the Introduction of Subdivisions Which Do Not Comply with VDOT Requirements filed May 29, 2001	311
Complainants' Response to Respondent's, Shooting Point, Motion In <i>Limine</i> As to Sandra Gail Benson's Testimony Chancery No. CH00-14 filed May 30, 2001	312A
Complainants' Response to Respondent's, Shooting Point, Motion In <i>Limine</i> As to George E. Water's Testimony and Plats Chancery No. CH00-14 filed May 30, 2001	313
Letter to Counsel from Jon C. Poulson Re: Motions Chancery Nos. CH01-02, CH00-14 dated May 29, 2001	319
Complainants' Motion to Amend Bill of Complaint Chancery No. CH00-14 filed May 30, 2001	320
Complainants' Motion In <i>Limine</i> Chancery No. CH00-14 Re: Any Testimony in Regards to Easement filed May 30, 2001	322
Complainants' Motion In <i>Limine</i> Chancery Nos. CH01-02, CH00-14 Re: Various Witnesses' Testimony filed May 30, 2001	324

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol I

on May 30, 2001 326

Testimony of John W. Wescoat, Jr.:

Direct Examination by Mr. Poulson 354

TABLE OF CONTENTS
Volume II of V

Appendix Page

**Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol II**

on May 31, 2001 388

Testimony of John W. Wescoat, Jr.:

Direct Examination by Mr. Poulson 395
Cross Examination by Mr. McFarland 400
Cross Examination by Mr. LePage 436
Further Cross Examination by Mr. McFarland 440
Redirect Examination by Mr. Poulson 443

Testimony of Curtis Jones, Jr.:

Direct Examination by Mr. Poulson 444
Cross Examination by Mr. McFarland 464
Cross Examination by Mr. LePage 475
Redirect Examination by Mr. Poulson 477
Recross Examination by Mr. McFarland 478

Testimony of Richard E. Meekins:

Direct Examination by Mr. Poulson 480
Cross Examination by Mr. McFarland 485
Cross Examination by Mr. Morris 491
Redirect Examination by Mr. Poulson 491

Testimony of John W. Wescoat, Sr.:

Direct Examination by Mr. Poulson 492
Cross Examination by Mr. McFarland 528
Redirect Examination by Mr. Poulson 538

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol II

on May 31, 2001, continued:

Testimony of Kenneth Wright:

Direct Examination by Mr. Poulson	540
Cross Examination by Mr. LePage	579
Redirect Examination by Mr. Poulson	585
Recross Examination by Mr. LePage	591
Cross Examination by Mr. McFarland	593
Cross Examination by Mr. Morris	598
Further Redirect Examination by Mr. Poulson	599
Recross Examination by Mr. McFarland	601
Examination by the Court	602

Testimony of William D. Cumming, Jr.:

Direct Examination by Mr. Poulson	606
Cross Examination by Mr. LePage	652

TABLE OF CONTENTS
Volume III of V

Appendix Page

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol III

on June 4, 2001	663
-----------------------	-----

Testimony of William D. Cumming, Jr.:

Cross Examination by Mr. McFarland	669
Redirect Examination by Mr. Poulson	694
Recross Examination by Mr. LePage	714
Further Redirect Examination by Mr. Poulson	718
Further Recross Examination by Mr. McFarland	719
Further Redirect Examination by Mr. Poulson	722
Further Recross Examination by Mr. LePage	724
Examination by the Court	725

Testimony of Suzanne Wescoat:

Direct Examination by Mr. Poulson	729
Cross Examination by Mr. McFarland	739
Redirect Examination by Mr. Poulson	751

Testimony of Denard C. Spady:

Direct Examination by Mr. Poulson	753
Cross Examination by Mr. McFarland	762
Cross Examination by Mr. Morris	768

Testimony of Sandra Benson:

Direct Examination by Mr. Poulson	771
Cross Examination by Mr. McFarland	787

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol III

on June 4, 2001, continued

Testimony of Sandra Benson:

Redirect Examination by Mr. Poulson	807
Recross Examination by Mr. McFarland	811

Testimony of B.W. James:

Direct Examination by Mr. Poulson	814
Cross Examination by Mr. McFarland	848
Redirect Examination by Mr. Poulson	865

Testimony of George E. Walters:

Direct Examination by Mr. Poulson	870
Cross Examination by Mr. McFarland	899
Cross Examination by Mr. LePage	911
Redirect Examination by Mr. Poulson	912
Recross Examination by Mr. McFarland	914

Testimony of Charles E. Cooley:

Direct Examination by Mr. Poulson	919
Cross Examination by Mr. McFarland	929
Cross Examination by Mr. LePage	935
Redirect Examination by Mr. Poulson	936
Recross Examination by Mr. McFarland	937
Recross Examination by Mr. LePage	938

TABLE OF CONTENTS
Volume IV of V

Appendix Page

**Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol IV**

on June 12, 2001 942

Testimony of James B. Latimer, II:

Direct Examination by Mr. Poulson 949
Cross Examination by Mr. McFarland 951
Redirect Examination by Mr. Poulson 953
Cross Examination by Mr. McFarland 956

Testimony of Jerry Pauley:

Direct Examination by Mr. LePage 978
Cross Examination by Mr. Poulson 990
Cross Examination by Mr. McFarland 1021
Cross Examination by Mr. Morris 1029
Further Cross by Mr. Poulson 1034
Redirect Examination by Mr. LePage 1036
Examination by the Court 1038
Recross Examination by Mr. Poulson 1040
Recross Examination by Mr. McFarland 1042
Further Recross Examination by Mr. Poulson 1042

Testimony of James Cleveland:

Direct Examination by Mr. LePage 1043
Cross Examination by Mr. Poulson 1052
Cross Examination by Mr. McFarland 1064
Further Cross Examination by Poulson 1067
Cross Examination by Mr. Morris 1070

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol IV

on June 12, 2001, continued:

Testimony of James Cleveland:

Redirect Examination by Mr. LePage	1072
Recross Examination by Mr. McFarland	1073

Testimony of James A. Cline:

Direct Examination by Mr. LePage	1076
Cross Examination by Mr. Poulson	1090
Cross Examination by Mr. McFarland	1103
Redirect Examination by Mr. LePage	1108
Recross Examination by Mr. Poulson	1110
Recross Examination by Mr. McFarland	1120
Examination by the Court	1121
Further Recross Examination by Mr. Poulson	1123
Further Recross Examination by Mr. McFarland	1124

Testimony of Jack Hodge:

Direct Examination by Mr. McFarland	1125
Cross Examination by Mr. Poulson	1157
Redirect Examination by Mr. McFarland	1183
Examination by the Court	1185
Recross Examination by Mr. Poulson	1187

Testimony of Scottie Scott, Jr.:

Direct Examination by Mr. McFarland	1189
---	------

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol IV

on June 12, 2001, continued:

Testimony of James B. Latimer, II:

Direct Examination by Mr. McFarland	1202
Cross Examination by Mr. Poulson	1225
Redirect Examination by Mr. McFarland	1232
Recross Examination by Mr. Poulson	1236

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001	1244
------------------------	------

Testimony of Stephen Castiglioni:

Direct Examination by Mr. McFarland	1256
Cross Examination by Mr. Poulson	1291
Redirect Examination by Mr. McFarland	1332
Recross Examination by Mr. Poulson	1340

Testimony of M.E. Duff, Jr.:

Direct Examination by Mr. McFarland	1345
Cross Examination by Mr. Poulson	1398
Redirect Examination by Mr. McFarland	1418
Recross Examination by Mr. Poulson	1421
Further Redirect Examination by Mr. McFarland	1422

Testimony of John L. Manetta:

Direct Examination by Mr. Morris	1424
Cross Examination by Mr. Poulson	1436

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Testimony of John L. Manetta:

Further Cross Examination by Mr. McFarland	1440
Recross Examination by Mr. Poulson	1445

TABLE OF CONTENTS
Volume V of V

Appendix Page

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Plaintiffs' Exhibits:

1.	Aerial Plat	1461
2.	Colored Photographs	1462
3.	Colored Photographs	1463
4.	Colored Photographs	1464
5.	Colored Photographs	1465
6.	Colored Photographs	1466
7.	Colored Photographs	1467
8.	Colored Photographs	1468
9.	Video Tape	1469
10.	Video Tape	1470
11.	Map Shooting Point Farm	1471

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Plaintiffs' Exhibits:

12. Grant of Easement
Deed Made By and Between
Margaret W. Wescoat, Harold Wescoat and
Anne W. Holland, William W. Holland and
Elizabeth S. Jones
dated June 18, 1974 1472
13. Deed Made By and Between
Elizabeth S. Jones, Curtis H. Jones and
James T. Martin, Dixon R. Doll
dated September 20, 1974 1475
14. Deed Made By and Between
James T. Martin, Charity H.A. Martin,
Dixon R. Doll and Carol Ann Doll
dated June 18, 1979 1482
15. Bonifant Plat
undated 1485
16. Deed Made By and Between
James T. Martin, Dixon R. Doll, Carol A. Doll and
Shooting Point, L.L.C., A Virginia Limited Liability Company
dated December 7, 1999 1486
17. Map of Subdivision
Shooting Point Farm
undated 1489

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Plaintiffs' Exhibits:

18. Declarations of Protective Covenants,
Conditions, Easements and Restrictions for Shooting Point
dated October 20, 1999 1490
19. Deed of Trust Made By and Between
Shooting Point, L.L.C. and
Farmers & Merchants Bank-Eastern Shore
dated December 29, 1999 1542
20. Deed Made By and Between
Shooting Point, L.L.C. and
Jon L. Manetta
dated December 16, 1999 1554
21. Deed Made By and Between
Shooting Point, L.L.C.,
Gary C. Cole and Ruth B. Cole
dated December 16, 1999 1557
22. Deed Made By and Between
Shooting Point, L.L.C.,
Mark T. Finn and Sandra B. Finn
dated December 16, 1999 1560
23. Deed Made By and Between
Shooting Point, L.L.C., Mark T. Finn, Sandra B. Finn and
Gary C. Cole and Ruth B. Cole
dated December 16, 1999 1563

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Plaintiffs' Exhibits:

24. Deed Made By and Between
Shooting Point, L.L.C.,
Paul F. Vogel and Susan L. Vogel
dated January 18, 2000 1566
25. First Amendments to
The Declaration of Protective Covenants, Conditions,
Easements and Restrictions for Shooting Point
dated May 22, 2001 1568
26. Escrow Agreement Made By and Between
Shooting Point, L.L.C.,
Shooting Point Property Owners Association, Inc. and
Robert C. Oliver, Jr.
dated May 24, 2001 1576
27. Virginia Department of Transportation
Minimum Standards of Entrances To State Highways
undated 1579
28. Department of Transportation
Land Use Permit
65, Northampton
dated August 14, 2000 1626
29. Letter to
Sandra Benson from
K.M. Wright
Re: Necessary Permit Process
dated January 14, 2000 1650

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Plaintiffs' Exhibits:

30. Drawing of
Sate Road and Paved Portion
undated 1651
31. Department of Transportation
Land Use Permit
65, Northampton
dated October 17, 2000 1652
32. Letter Transmission to
Mr. Hodge from
Kenny Wright
Re: Copies of Sketches A&B - Shooting Point
dated August 14, 2000 1655
33. Facsimile Transmission to
James Cline, Lynn Wagner from
Julie Brown
dated February 21, 2000 1659
34. Letter to
Julie Brown from
W.M. Cumming, Jr.
Re: Permit for Private Road
dated February 22, 2000 1660

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Plaintiffs' Exhibits:

35. Telephone Messages for
Mr. Cumming
Re: Secondary Roads
dated July 1661
36. Facsimile to
Jim Givens from
W. M. Cumming, Jr.
dated April 17 1662
37. Facsimile Letter to
W. M. Cumming, Jr. from
Stephen L. Castiglioni, P.E.
Re: Application for Entrance Permit
dated July 28, 2000 1664
38. Facsimile to
Jim Cline from
C. M. Cumming
Re: Land Use Permit
dated August 25, 2000 1669
39. Daily Record of Events
Re: Notes Referencing Project
dated January 10 through August 21, 2000 1675
40. Notes
Re: Conversation with Will
dated November 17, 2000 1678

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Plaintiffs' Exhibits:

41. Plat of Survey
dated January 19, 2001
revised May 29, 2001 1679
42. Plat of Survey
dated February 7, 2001
revised May 29, 2001 1680
43. Plat of Survey
dated May 1, 2001 1681
44. Sketch of
Proposed Shooting Point Entrance on Rt. 622
Re: Stop Sign Location
dated July 28, 2000 1682
45. Sketch of
Proposed Shooting Point Entrance on Rt. 622
Re: Stop Sign Location
dated July 28, 2000 1683
46. Sketch of
Proposed Shooting Point Entrance on Rt. 622
Re: Stop Sign Location
dated July 28, 2000 1684
47. Letter to
Lemoin B. Cree from
Stephen L. Castiglioni, P.E.
Re: 15 Foot Ingress/Egress
dated February 28, 2000 1685

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Plaintiffs' Exhibits:

48. Facsimile Transmission to
Lemoin Cree from
Steve Castiglioni
Re: Letter to Gary C. Byler
dated July 6, 2000 1689
49. Land Use: 250
Retirement Community
Description
undated 1695

Defendants' Exhibits:

1. Photographs 1702
2. Letter to
Mr. & Mrs. Mark T. Finn from
John W. Wescoat
dated January 13, 2000 1703
3. Map Plat
dated October 20, 1999 1705
4. Aerial Photograph
undated 1706
5. Oversized Photograph 1707
6. Photographs 1708
7. Department of Planning and Zoning
dated November 1, 1999 1709

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Defendants' Exhibits:

8.	Virginia Department of Transportation Subdivision Street Requirements undated	1710
9.	Plat Including Photographs and Information about Westerhouse Road undated	1711
10.	Aerial Photograph	1712
11.	Aerial Photograph	1713
12.	Aerial Photograph	1714
13.	Photographs	1715
14.	Deed Made By and Between James T. Martin, Dixon R. Doll and Baxley T. Tankard dated September 20, 1974	1716
15.	Photographs	1722
16.	Aerial Photograph taken October 5, 1989	1723
17.	Aerial Photographs	1724
18.	Map	1725
19.	Photograph (1979 Bonifant Survey)	1726

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol V

on June 21, 2001, continued:

Defendants' Exhibits:

20. Photographs	1727
21. Photograph	1728
22. Video Tape	1729
23. Photograph	1730

Transcript of Trial Proceedings before
The Honorable Frederick B. Lowe
Vol VI

on July 10, 2001	1731
------------------------	------

Respondent's, Shooting Point Property Owners Association, Inc.,
Post Trial Brief
Chancery No. CH00-14

filed July 10, 2001	1845
---------------------------	------

Respondent's, Shooting Point, L.L.C.,
Post Trial Brief
Chancery No. CH00-14

filed July 10, 2001	1857
---------------------------	------

Letter to
Counsel from
Jon C. Poulson
With Attached Proposed Decree,
Chancery Nos. CH01-02, CH00-14

dated August 2, 2001	1879
----------------------------	------

Letter to
Counsel from
The Honorable Frederick B. Lowe
Re: Entry of Final Decree
Chancery Nos. CH01-02, CH00-14
dated October 19, 2001 1892

Final Decree of
The Honorable Frederick B. Lowe
Chancery Nos. CH01-02, CH00-14
entered January 2, 2002 1893

Respondent's, Shooting Point, L.L.C.,
Motion for Reconsideration of Rulings Set Forth in Final Decree
Chancery Nos. CH01-02, CH00-14
filed January 25, 2002 1905

Complainants' Notice of Appeal
Chancery Nos. CH01-02, CH00-14
filed January 29, 2002 1909

Letter to Collette at
Zahn, Hall & Zahn, Ltd. from
Jon C. Poulson
Re: Request for Preparation of Trial Transcripts
Chancery Nos. CH01-02, CH00-14
dated January 28, 2002 1914

Respondent's, Shooting Point Property Owners Association,
Notice of Appeal
Chancery Nos. CH01-02, CH00-14
filed February 1, 2002 1916

Respondent's, Shooting Point, L.L.C.,
Notice of Appeal
Chancery Nos. CH01-02, CH00-14
filed February 1, 2002 1918

Letter to
Kenneth F. Arnold, Clerk from
Robert W. McFarland
Re: Request for Motion for Reconsideration to Be Withdrawn
Chancery Nos. CH01-02, CH00-14
dated February 18, 2002 1922

Complainants' Notice of Filing of Transcripts
Chancery Nos. CH01-02, CH00-14
filed February 26, 2002 1923

Letter to
Kenneth F. Arnold from
Jon C. Poulson
Re: Transcripts Volume I - VI
Chancery Nos. CH01-02, CH00-14
dated February 26, 2002 1926

Letter to
Kenneth F. Arnold from
Robert W. McFarland
Re: No Objection to The Transcripts File by Complainants
Chancery Nos. CH01-02, CH00-14
dated February 28, 2002 1928

Respondent's, Shooting Point, L.L.C.,
Motion to Enforce the Final Decree
(Show Cause) in Part, and To Stay The Final Decree, in Part
Chancery Nos. CH01-02, CH00-14
filed March 13, 2002 1929

Respondent’s, Shooting Point, L.L.C,
Memorandum In Support of Respondent’s Motion to
Enforce the Final Decree, In Part, and
To Stay The Final Decree, In Part
Chancery Nos. CH01-02, CH00-14
With Exhibits,
filed March 13, 2002 1931

Exhibits:

A-1. Colored Photograph of
New Stakes 1936

A-2. Colored Photograph of
New Stakes 1937

A-3. Colored Photograph of
New Stakes 1938

A-4. Colored Photograph of
New Stakes 1939

A-5. Colored Photograph of
New Stakes 1940

A-6. Colored Photograph of
New Stakes 1941

A-7. Colored Photograph of
New Stakes 1942

A-8. Colored Photograph of
New Stakes 1943

A-9. Colored Photograph of
New Stakes 1944

A-10. Colored Photograph of
New Stakes 1945

Respondent's, Shooting Point, L.L.C,
Memorandum In Support of Respondent's Motion to
Enforce the Final Decree, In Part, and
To Stay The Final Decree, In Part
Chancery Nos. CH01-02, CH00-14
With Exhibits,
filed March 13, 2002, continued:

Exhibits:

A-11. Colored Photograph of New Stakes	1946
A-12. Colored Photograph of New Stakes	1947
A-13. Colored Photograph of New Stakes	1948
A-14. Colored Photograph of New Stakes	1949
A-15. Colored Photograph of New Stakes	1950
A-16. Colored Photograph of New Stakes	1951
A-17. Colored Photograph of New Stakes	1952
A-18. Colored Photograph of New Stakes	1953

Respondent's, Shooting Point, L.L.C,
Memorandum In Support of Respondent's Motion to
Enforce the Final Decree, In Part, and
To Stay The Final Decree, In Part
Chancery Nos. CH01-02, CH00-14
With Exhibits,
filed March 13, 2002, continued:

Exhibits:

B. Certification of Tree Boring
dated October 12, 2001 1954

C. Colored Photograph 1955

Assignments of Error
(020801) 1956

Assignment of Error
(020803) 1957

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF NORTHAMPTON COUNTY

3 MARGARET WESCOAT and JOHN WESCOAT,)

4 Plaintiffs,)

5 v.) CHANCERY NO. 01-02

6 SHOOTING POINT PROPERTY OWNERS)

7 ASSOCIATION, INC., et al,)

8 Defendants.)

9 MARGARET WESCOAT and JOHN WESCOAT,)

10 Plaintiffs,)

11 v.) CHANCERY NO. 00-14

12 SHOOTING POINT PROPERTY OWNERS)

13 ASSOCIATION, INC., and SHOOTING)

14 POINT LLC, and COMMONWEALTH)

15 TRANSPORTATION BOARD, and THE)

16 HONORABLE CHARLES W. NOTTINGHAM,)

17 Defendants.)

18 TRIAL TRANSCRIPT

19 VOLUME II

20 Before: THE HONORABLE FREDERICK B. LOWE

21 May 31, 2001

22 Northampton County, Virginia

23 Appearances:

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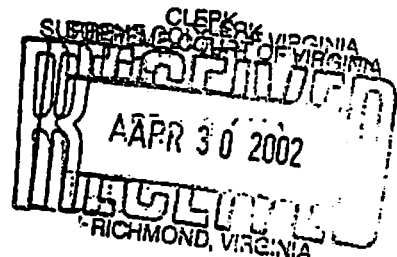
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Filed: Feb. 24, 2002
Teste: Clerk
NORTHAMPTON COUNTY CIRCUIT COURT

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I N D E X

WITNESSES

PAGE:

ON BEHALF OF THE PLAINTIFFS:

JOHN W. WESCOAT, JR.

Direct Examination by Mr. Poulson	70
Cross-Examination by Mr. McFarland	75
Cross-Examination by Mr. LePage	111
Further Cross-Examination by Mr. McFarland	115
Redirect Examination by Mr. Poulson	118

CURTIS JONES, JR.

Direct Examination by Mr. Poulson	119
Cross-Examination by Mr. McFarland	139
Cross-Examination by Mr. LePage	150
Redirect Examination by Mr. Poulson	152
Recross-Examination by Mr. McFarland	153

RICHARD E. MEEKINS

Direct Examination by Mr. Poulson	155
Cross-Examination by Mr. McFarland	160
Cross-Examination by Mr. Morris	166
Redirect Examination by Mr. Poulson	166

JOHN W. WESCOAT, SR.

Direct Examination by Mr. Poulson	167
Cross-Examination by Mr. McFarland	203
Redirect Examination by Mr. Poulson	213

I N D E X

WITNESSES

PAGE:

ON BEHALF OF THE PLAINTIFFS:

KENNETH WRIGHT

Direct Examination by Mr. Poulson 215

Cross-Examination by Mr. LePage 254

Redirect Examination by Mr. Poulson 260

Recross-Examination by Mr. LePage 266

Cross-Examination by Mr. McFarland 268

Cross-Examination by Mr. Morris 273

Further Redirect Examination by Mr. Poulson 274

Recross-Examination by Mr. McFarland 276

Examination by the Court 277

WILLIAM D. CUMMING, JR.

Direct Examination by Mr. Poulson 281

Cross-Examination by Mr. LePage 327

	E X H I B I T S		
	NO.	DESCRIPTION	MARKED
	<u>ON BEHALF OF THE PLAINTIFFS:</u>		
4	11	BADGER PLAT ✓	171
5	12	DEED OF EASEMENT ✓	176
6	13	DEED FROM JONES TO MARTIN DALL ✓	178
7	14	DEED FROM MARTIN DALL TO MEEKINS ✓	180
8	15	BONIFANT PLAT ✓	180
9	16	MARTIN TO SHOOTING POINT DEED ✓	186
10	17	SUBDIVISION PLAT ✓	186
11	18	DECLARATIONS, ORIGINAL COVENANTS ✓	186
12	19	SHOOTING POINT DEED OF TRUST ✓	189
13	20	DEED, SHOOTING POINT TO MANETTA ✓	189
14	21	DEED, SHOOTING POINT TO COLE ✓	190
15	22	DEED, SHOOTING POINT TO FINN ✓	190
16	23	DEED, SHOOTING POINT TO FINN AND COLE ✓	190
17	24	DEED, SHOOTING POINT TO VOGEL ✓	191
18	25	FIRST AMENDMENTS TO DECLARATION ✓	192
19	26	ESCROW AGREEMENT ✓	195
20	27	DOCUMENT ✓	218
21	28	PERMIT APPLICATION WITH AMENDMENTS ✓	222
22	29	JANUARY LETTER TO MS. BENSON ✓	224
23	30	DOCUMENT ✓	233
24	31	TAVI PERMIT ✓	264
25	32	LETTER OF TRANSMISSION TO MR. HODGE ✓	266

E X H I B I T S

NO.	DESCRIPTION	MARKED
-----	-------------	--------

ON BEHALF OF THE PLAINTIFFS:

33	LETTER FROM MS. BROWN TO MR. CUMMING ✓	289
35	MR. CUMMING'S TELEPHONE MESSAGES ✓	305
36	MR. CUMMING'S TELEPHONE MESSAGES ✓	305
37	LTR FROM BALDWIN AND GREGG ✓	315

E X H I B I T S

NO.	DESCRIPTION	MARKED
<u>ON BEHALF OF THE DEFENDANTS:</u>		
1	PHOTOGRAPHS ✓	89
2	LETTER ✓	91
3	COPY OF PLAT ✓	116
4	PHOTOGRAPH ✓	147
5	PHOTOGRAPHS ✓	210
6	PHOTOGRAPHS ✓	396

TRIAL TRANSCRIPT

(The court reporter was duly sworn.)

THE COURT: All right. Mr. Poulson, are you ready to proceed?

MR. POULSON: Yes, sir.

JOHN W. WESCOAT, JR., called as a witness by and on behalf of the Complainants, previously being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. POULSON:

Q. Mr. Wescoat, you previously indicated, and it's been identified for identification purposes a video, Complainant's Exhibit 10. Did you tape that video?

A. Yes, sir, I did.

Q. And what does the video purport to show, sir?

A. It shows a local contractor's low-boy trailer that's used for transporting construction equipment going through the right-of-way particularly around the turns of the right-of-way.

Q. And this particular construction trailer, how it is used, sir?

A. How is it used?

1 Q. Yes.

2 A. It's just a low-boy trailer that you
3 would put road construction, home construction equipment,
4 excavator, that sort of thing up on it to transport it to
5 a job site.

6 Q. Now, how big was this tractor-trailer,
7 by the way?

8 A. Well, the length or the width?

9 Q. Total length and width, both.

10 A. Okay. The width of the tractor was nine
11 feet six inches, and the total length was fifty-nine feet
12 four inches of the tractor and trailer together.

13 Q. All right.

14 MR. POULSON: If you'll start that
15 videotape, please, sir.

16 (Whereupon, the videotape was played for
17 the Court.)

18 MR. MCFARLAND: Judge, I've never seen
19 this video before, but if the Court just wants to watch it
20 at its leisure, that's all right with me.

21 THE COURT: How long is it?

22 THE WITNESS: Five or six minutes.

23 This is the truck coming in the
24 entrance. This is the same entrance you saw yesterday,
25 just the poles are missing on the right-hand side. I had

1 to put these stakes back up. The poles mysteriously
2 disappeared one night a few weeks ago.

3 BY MR. POULSON:

4 Q. Are there survey markers?

5 A. Yes, sir. They're steel stops, and I
6 stuck the survey markers back up right next to the steel
7 stops, and I put some little bamboo sticks with flags.

8 I apologize. It was very bright. It's
9 about two in the afternoon.

10 This is when he's coming into the first
11 turn entering from 622. I asked him to try not to knock
12 down the interior posts with the trailer, so you can see
13 he's swinging his way out, and he's going over the marker
14 right there.

15 See, he's getting back on the
16 right-of-way now, but the trailer is right up next to the
17 post.

18 That's a post right there. And I just
19 asked him to stop here so I could show basically as far
20 over as he could get to make the turn going in, and the
21 road tractor is just, like I said, is now getting back on
22 the right-of-way.

23 And then the second turn is the one I
24 asked him to swing his tractor closer because all of the
25 posts that were torn down were on the left side, and the

1 ones on the right side were left, so he could actually get
2 his tractor close to the right side going through this
3 turn.

4 And then you see the -- that's a bamboo
5 stick right there. There's one. You're going to see a
6 snap there. There's the next one. There's a stake, and
7 then right now the tractor is on the right-of-way and the
8 trailer is going off.

9 This is the right-of-way line here.
10 That's the stake. That just broke. There's a stake.
11 That just broke right there.

12 So now the trailer is pretty much
13 completely off of the right-of-way. I believe the truck
14 is on, but the trailer is off.

15 And then I went back around. The
16 surveyor mark has a steel pole in the ground, and I stuck
17 a little bamboo stick back in the hole, and then went back
18 around the other side to show what it looked like once he
19 was past it, so you could see how far off he was.

20 See, I put the stakes back up right
21 there. So the trailer is completely off of the
22 right-of-way.

23 That's a surveyor marker, and a hole.
24 And I looked straight down the line, and you can see the
25 tractor is off right there. The trailer is completely

1 off. Now he's getting back on.

2 And then the only other thing, I had him
3 come back out on his driver's side and really get close up
4 to the pole markers. And, so, that's what he's doing
5 right here, coming out, and I asked him to get as close as
6 he possibly could without knocking down the poles.

7 That one was snapped off. That's the
8 only one that got snapped off, that one right there. The
9 rest of the poles on the inside were left up. So you're
10 going to see he cut pretty close.

11 You see them start snapping. There's
12 one. And this one is going to get broken next. I asked
13 him not to tear down the inside, so he doesn't. He swung
14 out like he has to do to make the turn with the trailer.
15 So the tractor is completely -- well, almost off now, and
16 he's getting back on.

17 See the post right there. Now he's
18 getting the tractor back on.

19 BY MR. POULSON:

20 Q. Now, the term "wide load" appearing on
21 the front of the tractor and the trailer, what does that
22 refer to?

23 A. That's for the piece of equipment.

24 MR. MCFARLAND: I'm sorry. I can't --

25 THE WITNESS: Did you hear his question?

1 MR. MCFARLAND: I did not.

2 BY MR. POULSON:

3 Q. The term "wide load" on the front of the
4 tractor and on the tail or the rear of the trailer, what
5 does that refer to?

6 A. That's to warn people that the piece of
7 equipment they're carrying will hang over the side of the
8 trailer, would be wider than legal width of the trailer.

9 Q. From your observation, does equipment,
10 the nature of this particular equipment, will it extend
11 over the sides of the trailer?

12 A. An excavator definitely will. A pan
13 will be right on the edge, and the blade on the motor
14 grater (phonetic) will definitely be over.

15 Q. Okay.

16 MR. POULSON: Answer these gentlemen's
17 questions.

18

19 CROSS-EXAMINATION

20 BY MR. MCFARLAND:

21 Q. Good morning, Mr. Wescoat.

22 A. Good morning.

23 Q. Did I follow correctly, sir; you were
24 born in 1969?

25 A. That's correct.

1 Q. And your family moved into the residence
2 that they now occupy in the mid 1970's?

3 A. I believe the spring of '77.

4 Q. Now, the house that they live in now,
5 that itself was an old farmhouse that needed some
6 extensive renovation?

7 A. Yes. They basically did the whole
8 interior over again.

9 Q. And that farmhouse had been vacant for
10 approximately twenty years before your parents fixed it
11 up?

12 A. I believe that's true, but I honestly
13 don't know the number of years.

14 Q. All right. Now, if you moved into the
15 home that your parents now live in in the mid 1970's, you
16 obviously never saw the condition of the right-of-way
17 before Elizabeth Jones was given the deed of easement in
18 1974, correct?

19 A. Not that I would be cognizant. My
20 parents knew for years and years they were going to redo
21 that house, and we were going down there. But again, I
22 would have only been five years old in '74, so I wouldn't
23 know what I was necessarily looking at.

24 Q. Right. And you certainly can't tell
25 this Court what the condition of the right-of-way was in

1 the late 70's when your parents moved into their house?

2 A. Oh, sure. I mean, I was a little boy
3 going all around that farm from the day we moved in there.
4 I was going down that road from the day we moved in there.

5 Q. I understand, but you're not telling
6 this Court that you have a specific memory of where the
7 right-of-way was actually located in 1977 when you moved
8 into your parent's home, are you, Mr. Wescoat?

9 A. I'm telling the Court it never moved
10 from 1977 on, that the usage, the tracks that went down
11 there that you can see have been in the same place the
12 whole time.

13 Q. Your testimony is that that right-of-way
14 has never moved in usage from 1977 to 1999?

15 A. Correct, other than when people have
16 swung out, like I said yesterday, and gone around it. But
17 the general route of the right-of-way has been in the same
18 place.

19 Q. And you're sure of that because how,
20 sir? Because you've got photographs dated from '77 to
21 '99?

22 A. No, because I've been going down that
23 road since then.

24 Q. Were you present when a survey was done
25 in 1979?

1 A. No, I was not.

2 Q. When Mr. Meekins purchased the property?

3 A. No.

4 Q. Now, I do understand that you used to
5 work the property as an assistant for the farmer?

6 A. Yes.

7 Q. Which would be back in the 1980's?

8 A. Yes.

9 Q. Late 1980's?

10 A. No, mid to -- let's see. I guess it
11 would have been from around '81 through '84 or 5, '85
12 maybe.

13 Q. You started when you were twelve?

14 A. Yes.

15 Q. Okay. Now, I'm correct that obviously
16 farm vehicles have always been using this right-of-way?

17 A. As far as I know.

18 Q. I mean, the property has been farmed
19 since before your parents moved into their home, correct?

20 A. Correct.

21 Q. Okay. And the farm vehicles, some of
22 them that would use this right-of-way are
23 substantial-sized vehicles?

24 A. The combines, yes.

25 Q. Combines can be up to twenty feet in

1 width, correct?

2 A. Well, the header, yes.

3 Q. With the header?

4 A. Yes.

5 Q. Okay. Now, back when you recollect
6 working the property as a farm assistant, those vehicles
7 would use the right-of-way, correct?

8 A. Yes.

9 Q. And they were able to negotiate the
10 turns without a problem, correct?

11 A. Yes. Well, I will say this -- if you're
12 asking if a combine would negotiate it all the way back,
13 it depends on what's planted in the field.

14 Q. I understand. But a combine would on
15 occasion have to go through at least one or two of those
16 turns that we've seen on all of these videotapes?

17 MR. POULSON: Judge, I'm going to object
18 to the question simply because we've got a different --
19 one factually legal situation here. We have a fifteen
20 foot easement anyway we cut it.

21 Now, whether there was a combine which
22 made the turn is immaterial because the tenant farmer
23 obviously had a right to be on the land that he was
24 renting, whether he goes over fifteen feet or not.

25 THE COURT: I think it's a fair

1 question. He can answer it, if he says he could.

2 THE WITNESS: Well, first of all, I
3 personally never drove a combine. I told you in
4 deposition I didn't drive anything. And, I mean, I can't
5 tell you what a combine did or didn't do on the road.

6 BY MR. MCFARLAND:

7 Q. Well, you were out there working,
8 correct, Mr. Wescoat?

9 A. Yes.

10 Q. You saw the vehicles use the easement,
11 correct?

12 A. I was a potato harvester rider.

13 Q. And sometimes you were on the vehicles
14 as an assistant?

15 A. The vehicles that I saw use the
16 right-of-way included tractors and potato trucks.

17 Q. Right. And they were able to use the
18 right-of-way and make the turns without going off into the
19 woods, correct?

20 A. Well, see, I worked for --

21 Q. It's a simple question, Mr. Wescoat.
22 Were they able to use the right-of-way and make the turns
23 without going off into the woods?

24 A. I can't explain it to you if you won't
25 let me answer your --

1 Q. I'm happy to have you explain; I just
2 want the answer first.

3 A. The point is, I was working for P.C.
4 Kellam and Sons which rented the Shooting Point farm on
5 our side. We had potatoes in that field, and the
6 harvester would enter at the very beginning and start
7 harvesting, and we only harvested that side.

8 We weren't harvesting the potatoes on
9 the Shooting Point property. That was farmed by Curtis
10 Jones, like I told you in the deposition.

11 So I don't know about going back into
12 the Shooting Point Cree because we weren't going back in
13 there. We were only harvesting potatoes in the Wescoat
14 field.

15 Q. Is all you did was harvest potatoes
16 during your --

17 A. These people were potato farmers, and
18 that's all they did.

19 Q. Well, then, if I'm following you
20 correctly, you actually had two different farmers farming
21 the property, the entire property. Mr. Jones is
22 farming -- he and his father were farming what we call
23 Shooting Point?

24 A. Yes.

25 Q. And Mr. Kellam was farming the land that

1 your parents --

2 A. Yes, and that's the man I worked for.

3 Q. So we have two different farmers, both
4 having farming equipment, correct?

5 A. Right.

6 Q. Did you ever see any accidents involving
7 these farmers and their farm equipment?

8 A. No.

9 Q. Did Mr. Kellam ever complain to you,
10 Geez, I'm having a hard time getting my farm equipment
11 down this right-of-way?

12 A. No.

13 Q. You certainly knew Curtis Jones because
14 he's your cousin?

15 A. Sure.

16 Q. Did Mr. Jones ever complain to you, Gee,
17 I had an awful hard time getting the farming equipment
18 down this right-of-way?

19 A. No.

20 Q. You testified, I believe, that you were
21 on the right-of-way approximately twenty to thirty times
22 last year?

23 A. Correct.

24 Q. And I take it that that's a fairly
25 consistent use for you over the years since you've

1 returned to the Eastern Shore?

2 A. To be honest, I would say that's on the
3 higher side. Due to the events that were going on, I was
4 probably on it more last year.

5 Q. And you yourself never had any accident
6 on that right-of-way?

7 A. No

8 Q. Never witnessed any accidents?

9 A. No.

10 Q. And you yourself had never had to back
11 out of the right-of-way, correct, sir?

12 A. No.

13 Q. And I believe you testified yesterday
14 that from your observations, what you had seen when two
15 larger vehicles come together at the right-of-way, the one
16 coming in will give way to the one going out, and wait for
17 the one going out to exit?

18 A. To the extent that I was able to
19 remember the vehicles, I told you one was waiting there,
20 and one was coming out, I can't honestly recall, but I
21 know that one was waiting.

22 Q. All right. And no one has ever
23 complained to you about a problem exiting the
24 right-of-way, correct?

25 A. Exiting the right-of-way? No.

1 Q. Either your cousin, Curtis Jones, or
2 someone, a friend of your family who might use the
3 property for hunting, or fishing? No one has ever said,
4 Boy, I'm having a tough time getting out of this
5 right-of-way because of traffic coming down Route 622?

6 A. Out of the right-of-way, no. Out of the
7 adjoining one, people have been concerned because of
8 coming out of our dock road, it's wide, and my sister has
9 complained about people zooming out the farm road.

10 Q. But that's the dock road?

11 A. Right.

12 Q. Okay. I understand that after the
13 property was purchased in 1999, you and your family took
14 some actions to delineate the easement?

15 A. Yes.

16 Q. Now, before the end of 1999, the
17 beginning of 2000, your family had never saw the need to
18 delineate the easement, correct?

19 A. I can't answer that. I can't speak for
20 my parents.

21 Q. Well, let me see if I can ask you a more
22 specific question.

23 What I meant was beginning at the year
24 2000, there were some stakes and a sign put at the
25 beginning of the right-of-way, correct?

1 A. Correct.

2 Q. In order to demonstrate visibly --

3 A. I'm sorry. I thought you were talking
4 about regarding surveying.

5 Q. No.

6 A. No.

7 Q. Even when the property was sold by
8 Ms. Jones, your, I guess, great aunt, to Mr. Martin, and
9 Mr. Dohl in 1974, and that's when this easement was
10 granted, and you're aware of that, your parents didn't see
11 the need at that point to demarcate the easement, did
12 they?

13 A. You're asking something of a
14 five-year-old to answer, and I --

15 Q. Well, you had observations. I'm hearing
16 you say that you go out to this easement all the time,
17 Mr. Wescoat, right?

18 A. Yes, but I was five years old.

19 Q. When you went out there all those times,
20 did you ever see stakes --

21 A. No.

22 Q. -- such as you have put out at the
23 beginning of 2000?

24 A. No.

25 Q. Okay. Were there any posts put out at

1 any point before the year 2001?

2 A. There was a gate a long time ago on the
3 farm, but it's been probably over twenty years.

4 Q. And before January 2000, are you aware
5 of any conversations that your parents had with Mr. Martin
6 and Mr. Dohl, the former purchasers of the property, in
7 which they were specifically told to be sure they only
8 used the fifteen-foot easement?

9 MR. POULSON: Judge, I'm going to object
10 to this question. He's calling for information that
11 obviously would be hearsay from some source.

12 THE COURT: Sustained. I think the
13 point, Mr. McFarland, is prior to that time they didn't
14 care if somebody swayed off it a little bit or not, and
15 now they do. That's where we are.

16 MR. MCFARLAND: All right. I'll move
17 along, Your Honor.

18 BY MR. MCFARLAND:

19 Q. Now, with respect to the actions that
20 were taken in January of 2000, Mr. Wescoat, you mentioned
21 yesterday that you put some bamboo stakes in the ground?

22 A. Yes.

23 Q. Okay. And you also put up a sign,
24 correct?

25 A. No, I didn't put it up; my mother put it

1 up.

2 Q. Your mother put up a sign. And the sign
3 said, Begin fifteen foot right-of-way?

4 A. I believe that's correct, yes.

5 Q. And the purpose of that was to
6 specifically delineate where the right-of-way began, and
7 the course that it followed, correct?

8 A. No, it was to show the buyers that they
9 only had fifteen feet, and what it looked like.

10 Q. Well, the only way the buyers could get
11 through the right-of-way, Mr. Wescoat, was to go through
12 the stakes that were put up, correct?

13 A. Yes.

14 Q. Okay. And, in fact, when the stakes
15 were placed, it was done after you did an examination of
16 Route 622 and the right-of-way to place them in the
17 appropriate spot?

18 MR. POULSON: I'm going to object until
19 we have a better foundation of what the examination
20 entailed.

21 BY MR. MCFARLAND:

22 Q. You went out to 622?

23 A. I didn't examine 622. What I did was I
24 went out there with my metal detector hoping that maybe
25 there were some stakes or something. So I started poking

1 around with my metal detector, and I found one that I
2 uncovered first. It was a bent stake.

3 And then I tried to find -- I thought
4 maybe that was one side of the entrance that was on the
5 wood side, so then I started going, moving out across the
6 road trying to find one fifteen feet on the other side.

7 I couldn't find one fifteen feet. I
8 found one about -- I got a mark. I didn't dig it up. I
9 got a mark about eight feet, the same sort of display on
10 the detector, but there was nothing on the other side of
11 fifteen feet. So I found and uncovered one stake that was
12 bent on the wood side of the right-of-way.

13 And, so, what I did was, that seemed to
14 be almost to -- if you looked at the right-of-way, there
15 are two tire tracks that are about eight or nine feet
16 wide. If you then extrapolate fifteen feet splitting the
17 distance, that's what I did. I put a stake on one side,
18 and a stake on the other side.

19 Q. Okay. To demarcate where the
20 right-of-way began, and where it was?

21 A. No, in fact, it was further in than
22 where it began. It was off, out of the way, so you
23 wouldn't run in -- our dock road intersects with the
24 right-of-way like this. And, so, if you put them at the
25 beginning of the right-of-way, they would be right in the

1 middle of our dock road.

2 So I actually put them further in than
3 where it comes up to 622. It's probably a good, I don't
4 know, fifteen feet in from 622, something like that.

5 Q. All right. Well, let me show you a
6 photograph.

7 MR. POULSON: Judge, I have no
8 difficulty with the photograph; I have a difficulty with
9 the notes on the side.

10 MR. MCFARLAND: I will take them off.

11 Let me just share with the other
12 counsel, Your Honor, for a moment.

13 THE COURT: No objection?

14 MR. POULSON: No, sir, just the
15 photograph itself, sir.

16 MR. MCFARLAND: Thank you, Your Honor.

17 BY MR. MCFARLAND:

18 Q. Mr. Wescoat, let me hand you what has
19 been --

20 THE COURT: Defendant's Exhibit Number
21 1.

22 (Photographs were marked Defendant's
23 Exhibit 1 for identification.)

24 BY MR. MCFARLAND:

25 Q. -- Defendant's Exhibit Number 1. You

1 recognize what is shown in those two photographs, correct?

2 A. Yes, I do.

3 Q. And the top photograph, the bigger photo
4 of the bamboo stakes that you placed --

5 A. Actually, those are not bamboo. They
6 are wooden, but --

7 Q. All right. Those are the stakes that
8 you placed, correct, sir?

9 A. Yes.

10 Q. Back in January of 2000?

11 A. Uh-huh.

12 Q. And then we've got a picture of the
13 sign?

14 A. Right. Fifteen foot right-of-way.

15 Q. Fifteen foot right-of-way. Okay.

16 A. We debated on that, whether it should be
17 foot or feet.

18 Q. Thank you.

19 MR. POULSON: Judge, I would have no
20 objection to the photograph as such. Of course, we do
21 have an objection to the legal theory here, that that is
22 sufficient to establish a right-of-way or a course of a
23 right-of-way.

24 THE COURT: Okay, sir.

25 BY MR. MCFARLAND:

1 Q. Now, the placement of those stakes,
2 Mr. Wescoat, was done after your father had sent a letter
3 to the lot purchasers in Shooting Point, correct?

4 A. I don't know. I don't know when -- it
5 was all right around the same time.

6 Q. Well, you certainly remember drafting
7 for your father a letter to the purchasers of lots at
8 Shooting Point?

9 A. Yes.

10 THE COURT: You've seen it, Mr. Poulson?

11 MR. POULSON: I've seen it, but I don't
12 know what the materiality is for it's being offered to the
13 Court, sir.

14 THE COURT: I'll admit it as Defendant's
15 2 for whatever relevancy it may have.

16 You agree this is a letter signed by
17 Mr. Wescoat, one of the complainants?

18 MR. POULSON: Yes, sir, by the
19 plaintiff, not by Mr. Wescoat, Jr.

20 THE COURT: Identified as Defendant's
21 Exhibit 2.

22 (Letter was marked Defendant's Exhibit 2
23 for identification.)

24 THE COURT: Do you need for him to do
25 anything with it?

1 MR. MCFARLAND: I do, Your Honor. I'm
2 going to have him look at it.

3
4 BY MR. MCFARLAND:

5 Q. Defendant's Exhibit Number 2,
6 Mr. Wescoat, is actually a letter that you drafted,
7 correct?

8 A. Well, as we discussed in the deposition,
9 I typed it, and my father edited it.

10 Q. Right. You prepared it, and your father
11 reviewed it, put it on his letterhead, and sent it out to
12 the purchasers of lots as of January 2000, correct?

13 A. If that's the date on there, yes.

14 Q. Now, would you read for us, please, the
15 third sentence in the last paragraph of page two?

16 A. Okay. "The next time you are over here,
17 the right-of-way should be clearly marked so you can see
18 for yourself how truly limiting it is."

19 Q. And that's what you did. That was your
20 purpose in putting up the stakes in January of 2000, and
21 putting the sign up, so you could demarcate for purchasers
22 of lots at Shooting Point where the right-of-way was, and
23 how limiting fifteen feet was, correct?

24 MR. POULSON: We're going to object to
25 the question. We're going to object to the whole theory

1 that's being advanced by Mr. McFarland here.

2 THE COURT: I'm going to overrule the
3 objection because I think it's a fair question on
4 cross-examination. The issue of whether or not what he
5 went out there and did as the actual establishment of the
6 legal right-of-way is a whole different story.

7 MR. POULSON: That's fine.

8 THE WITNESS: Demarkation is not really
9 in my vocabulary, but if you're saying did I go out and
10 identify fifteen feet so people could see how wide it was,
11 that's what I did.

12 BY MR. MCFARLAND:

13 Q. Well, you didn't just identify fifteen
14 feet, Mr. Wescoat. You didn't identify fifteen feet
15 alongside of the right-of-way. You didn't identify
16 fifteen feet in one of your fields.

17 You identified fifteen feet at the
18 beginning of the right-of-way where it comes off 622,
19 didn't you, sir?

20 A. As I told you before, I put them on
21 either side of the established tracks. I split the
22 difference and put up two stakes so you can see how wide
23 fifteen feet is.

24 The idea is that you can see that
25 clearly two sets of tracks wouldn't fit inside fifteen

1 feet; only one set of tracks, and that's why I put the
2 stakes up, so you could see that two vehicles couldn't go
3 side by side on the thing at the same time.

4 Q. And you put them on the sides of the
5 established tracks, correct? One stake on each side of
6 the established tracks?

7 A. Yes.

8 Q. Correct, Mr. Wescoat?

9 A. Yes.

10 MR. POULSON: It's been asked and
11 answered three times. It's very clear what he said.

12 THE COURT: Next question.

13 BY MR. MCFARLAND:..

14 Q. Now, you mentioned yesterday,
15 Mr. Wescoat, that you thought the tracks in the easement
16 had expanded since the property was purchased in late
17 1999?

18 A. At the turns.

19 Q. At the turns?

20 A. And a couple of other wet spots. Mostly
21 around -- there were mud holes at the turns, and that's
22 where they swung out around the mud holes.

23 And then the inside turn number two,
24 they just progressively kept migrating further out into
25 the field over -- I think I measured it was twenty-five

1 feet outside of where the edge of the woods ran.

2 Q. Now, you took some photographs --

3 MR. MCFARLAND: And I apologize, Your
4 Honor; I can't remember exactly which number they are.

5 MR. POULSON: Either three or four.

6 BY MR. MCFARLAND:

7 Q. Let me hand you, for example, what is, I
8 guess, 3.

9 MR. MCFARLAND: We didn't delineate
10 these into 3A through K specifically?

11 THE COURT: No.

12 MR. MCFARLAND: Okay.

13 BY MR. MCFARLAND:

14 Q. Well, let me hand you the first one that
15 actually bears Complainant's Exhibit 3.

16 A. Yes, that's the one I've been talking
17 about.

18 Q. Okay. And is it your testimony -- this
19 was taken when, sir?

20 A. That was in the winter of last year
21 before the first court case. It was early -- I'm going to
22 guess -- in January, I think.

23 Q. All right. Of 2000?

24 A. Uh-huh.

25 Q. All right. Is it your testimony that --

1 I take it this is -- there's a lot of water there, but I
2 take it if you could measure it, you would agree that
3 that's more than fifteen feet?

4 A. This is fifteen feet, and this -- I
5 didn't write this down, but to the best of my knowledge,
6 that was twenty-five feet.

7 Q. Okay.

8 A. The camera angle makes it difficult to
9 see.

10 Q. Is it your testimony that where you
11 found twenty-five feet was created solely after December
12 of 1999 to January of 2000?

13 A. Well, this was the whole reason we were
14 complaining is -- see, this is winter time. The farmer is
15 not using the road now. This is all the traffic of the
16 people that were going back to the lots, or whoever was
17 doing what back there, and they were making all of these
18 ruts and mud holes.

19 And on this corner particularly, there's
20 an enormous mud hole that took up the entire right-of-way,
21 and they were swinging out completely around it. I don't
22 think I photographed -- maybe I photographed that one.

23 The same thing here. They were just
24 cutting the corner, and they were getting lazier, and
25 lazier, and we watched it, like I said, migrate it right

1 on out.

2 Q. Okay. So your testimony is that
3 anything beyond fifteen feet was done strictly after
4 December 1999?

5 A. I can't testify to that.

6 Q. Okay. In fact, there are occasions when
7 the farming equipment does continue to go down the
8 right-of-way in the winter, correct, Mr. Wescoat?

9 A. It depends what's planted, but the only
10 thing that would go down there would be the sprayer to
11 fertilize wheat in the late winter or early spring, but
12 they don't do any farming in the winter time.

13 Q. Okay. Just so I'm clear, this happened
14 to be, I believe, the third photograph in the stack?

15 A. Yes. That's the same thing again,
16 looking back out.

17 Q. So it's your testimony that the entire
18 width here that we see was done after December 1999?

19 A. No, no. See, right here, this is the
20 road --

21 THE COURT: I think you're beating a
22 dead horse, Mr. McFarland. I think we're back to the same
23 point. I mean, I'm not stupid enough --

24 MR. MCFARLAND: I don't want to beat the
25 dead horses, Your Honor, but I --

1 THE COURT: Well, over the years, I'm
2 sure, as I said before, they didn't care. People would go
3 out there, and it didn't make any difference. Nothing was
4 planted in the field, and they didn't care if you swung
5 out a little bit.

6 Now it's a whole different story. Now
7 there are confrontations. It's a whole different ball
8 game.

9 MR. MCFARLAND: Well, it's a whole
10 different story, Your Honor, but it also shows the use of
11 the turns, and what's a reasonable use of the easement as
12 the law requires.

13 MR. POULSON: No. The easement is
14 fifteen foot no matter what, and the mere fact that a user
15 who has permission to use it may drive over ten feet is
16 totally legally immaterial, sir.

17 THE COURT: I agree with you on that.
18 Nobody cared. They could drive up to the middle of the
19 field, and tear it up, and take it, I suppose.

20 MR. MCFARLAND: I'm not arguing with the
21 fifteen feet; I'm disputing the location of the fifteen
22 feet.

23 THE COURT: I understand. I understand.

24 BY MR. MCFARLAND:

25 Q. Now, with respect to the posts that you

1 mentioned, Mr. Wescoat, those were placed at the beginning
2 of this year, 2001?

3 A. The posts on the outside of the
4 surveyor's marks?

5 Q. Yes.

6 A. I don't know if it was really the
7 beginning. I think it was in February,

8 Q. The second month this year?

9 A. The second month, yes, February, maybe
10 even early March. I think February.

11 Q. And is it your understanding that the
12 posts were also placed to demarcate or delineate the
13 easement?

14 A. That and just to protect the survey, so
15 it didn't get destroyed.

16 Q. I'm sorry. To protect the survey?

17 A. Well, all the surveyor had was little
18 markers that you could go along and pull up, and they're,
19 of course, metal stops, but you have to use a metal
20 detector to find them.

21 So we put the posts outside of the metal
22 stops so that you could see it, first of all, and you
23 could visually look down and identify how small fifteen
24 feet is; and secondly, so nobody could come along and just
25 jerk up the flags, and then there would be nothing for a

1 lot buyer to see when they came in there.

2 Q. And the posts, it's your understanding,
3 were showing where the surveyor had done a survey as of
4 what, the beginning of 2001?

5 A. Yes. Whenever he completed it, we went
6 right behind him.

7 Q. Okay. Now, you would agree with me that
8 there are points on the right-of-way as marked out by the
9 posts that are not consistent with the usage over the past
10 twenty-something years?

11 MR. POULSON: Again, it's immaterial
12 what the usage has been unless they're prepared to
13 establish some sort of adverse use which has never been
14 pled, or descriptive use.

15 MR. MCFARLAND: It's relevant, Your
16 Honor. To the extent how this easement has been used over
17 time is relevant to show that we are entitled to a fifteen
18 foot easement reasonable turns as used over time.

19 The law is that they can cannot change
20 the easement particularly when this is not a meets and
21 bounds specifically delineated easement. They can't
22 change the course of the easement to make it unreasonable
23 as to the turns.

24 And clearly, the Court can see from the
25 photographs where it has now been surveyed, and posts have

1 been put up is not the course of this easement in the
2 turns.

3 And that's the point of the majority of
4 this examination. The Wescoat's are attempting to change
5 the direction of the easement, and the law does not permit
6 that.

7 MR. POULSON: Number one, as far as the
8 course of this easement is concerned, the survey will
9 indicate that it is the same thing as the 1979 survey, and
10 will indicate the same thing as the subdivision plat
11 survey other than on the extreme south end, and that is
12 how the turns are marked.

13 THE COURT: Well, I think we are going
14 to get to that when we get the professionals on the stand.
15 I don't know that this gentleman necessarily can answer
16 those questions.

17 I will overrule the objection. But,
18 again, I mean, all I've got out of his testimony so far
19 from cross-examination is that he went out there and put
20 up posts where the survey stakes were put, put the sign up
21 to show people what he thought it was going to look like,
22 and that's about it.

23 MR. MCFARLAND: And there's a
24 difference, Your Honor, between where those posts are and
25 where that easement has been used by everyone in the past.

1 MR. POULSON: And I will take exception
2 to that. You may be able to prove that, but I take
3 exception to that.

4 MR. MCFARLAND: If I could see the
5 photographs that depict the posts.

6 BY MR. MCFARLAND:

7 Q. Do you have any photographs of the
8 turns, Mr. Wescoat, that you-all took --

9 A. It should be --

10 Q. -- with the posts?

11 A. Yes, there's photographs.

12 MR. MCFARLAND: I don't want to tie
13 up --

14 MR. POULSON: It should be 4,
15 Mr. McFarland. It should be in that group.

16 THE WITNESS: Look in that stack. I
17 think it's in there.

18 MR. POULSON: It's going to be 4.

19 THE WITNESS: I think it's in that stack
20 right there.

21 MR. MCFARLAND: That's all right.
22 That's not exactly what I'm looking for. Thank you.

23 BY MR. MCFARLAND:

24 Q. Your family owns all of the surrounding
25 land on both sides of the right-of-way, correct, sir?

1 A. Yes.

2 Q. So the turns as depicted presently where
3 the posts are with the severity that presently exists
4 given how you've staked the posts, those turns, you agree,
5 could be flattened, if your family desired?

6 MR. POULSON: Objection. Immaterial.

7 THE COURT: Overruled. It's a fair
8 question. Go ahead.

9 MR. POULSON: He's asking this witness
10 to conclude something on behalf of his parents, or among
11 other things.

12 THE COURT: Well, I think the question
13 was -- I mean, it goes without saying. The question was
14 it could be changed, if they so desire.

15 THE WITNESS: You could make it into
16 just about a straight line coming in there if you move the
17 entranceway. But what we asked the surveyor to do was to
18 mark it according to your plat, and also according to the
19 old recorded survey, which follows the woods line. And
20 that's what they did; they followed the woods line.

21 If you're saying the road moved from the
22 woods line out, if that, in fact, had been over a period
23 of twenty years, then the space between where the road was
24 moved to and the corner, there would be sapping trees ten
25 feet tall growing in there. But, in fact, they're not.

1 That's because the farmer farmed right
2 up to the corner and left a row around the edge. And it
3 was during the winter that you-all cut the corner number
4 two progressively further over.

5 And if you look to the right, there's no
6 trees, there's no nothing. It was field. If it had been
7 left like that for years, there would be trees at least
8 twenty feet tall. I'm in the nursery busy; I know how
9 fast trees grow.

10 We asked them to mark it next to the
11 woods line, and that's what they did.

12 THE COURT: Do you want to withdraw your
13 objection?

14 MR. POULSON: Just about.

15 BY MR. MCFARLAND:

16 Q. The easement -- the right-of-way has
17 migrated out from the woods line, correct?

18 A. In turn number two, as we discussed in
19 looking at the photo, it had been moved out. That's what
20 got me irritated. Not only had it moved out, it had moved
21 out and broaden to twenty-five feet wide during the
22 winter.

23 Q. It's moved out in more than just turn
24 two, sir?

25 A. No. Turn one is right on the edge of

1 the woods, and turn three is right on the edge of the
2 woods. Coming in, it's a right-hand turn that goes around
3 the edge of the woods.

4 Now, right before turn number one, you
5 started moving around a big mud puddle. Like I said
6 before, there's a big mud puddle right in the middle of
7 the road, and they were going around that, and they were
8 running over the actual wheat then.

9 Q. All right. And you would agree with me
10 that the turns in turn two, turn one, turn three, can be
11 flattened if your family so desired?

12 A. I just said they could be made almost
13 straight if you ran it from a different entrance point.
14 You could pick a diagonal pathway to my parents house, and
15 run a straight line back to Shooting Point.

16 Q. Okay. And I take it you would agree
17 with me that with the posts up, it's more difficult for
18 large vehicles to travel the right-of-way?

19 A. With the posts up?

20 Q. Yes.

21 A. As opposed to no posts there?

22 MR. POULSON: Again, I'm going to object
23 to this question. Mr. McFarland is taking the position
24 that we can't put a post on our own land.

25 THE COURT: Well, I think the answer is

1 very obvious. Yes, it's more difficult. Go ahead. Next
2 question.

3

4 BY MR. MCFARLAND:

5 Q. I mean, you'd agree to that?

6 A. Sure.

7 Q. Okay. And it would certainly be easier
8 for emergency vehicles to travel the right-of-way without
9 the posts?

10 A. It would be easier for them to travel it
11 if they ran on our land, too, but that's not -- the point
12 is to keep them on the right-of-way. People were off the
13 right-of-way. We wanted them on the right-of-way.

14 We wanted them to see the size of the
15 right-of-way, realize they were getting into a mess with
16 the size of the right-of-way, and they shouldn't have all
17 of this traffic on this little, teeny road. That's the
18 point.

19 Q. I'm not asking about lot purchasers.
20 I'm saying --

21 A. Emergency vehicles, cranes, helicopters,
22 nothing can go down there very well that's got a long
23 wheel base without getting off of the right-of-way.

24 You can't turn a ninety-degree turn on a
25 fifteen feet right-of-way without cutting across the

1 right-of-way, as I showed on the truck.

2 Q. So if we flattened the turns, it would
3 be easier for emergency vehicles, correct?

4 A. Sure.

5 Q. Okay. And if you flattened the turns,
6 it would be easier for the farm equipment that is used by
7 Curtis Jones who rents your family's land, correct?

8 MR. POULSON: Again, that is totally
9 immaterial.

10 THE COURT: Sustain the objection. He
11 doesn't have to use it. He can cut across the field, if
12 he wants to. Go ahead. Next question.

13 BY MR. MCFARLAND:

14 Q. Emergency vehicles would use that
15 right-of-way to access part of your family's property if a
16 fire broke out back there, correct, Mr. Wescoat?

17 A. It depends. You would be talking about
18 a forest fire, I suppose? We don't have any dwellings, or
19 buildings back there.

20 Q. I understand, but a timber fire can
21 occur? And depending on where the fire occurred, that may
22 be the best access route --

23 A. It very well could be.

24 Q. -- for an emergency vehicle coming up
25 622. That's actually the first access route --

1 A. Actually, access to that field to the
2 Shooting Point side, that would be the more logical way to
3 come in.

4 Q. Okay. And, sir, do I understand it was
5 your desire to actually acquire this property back for
6 your family?

7 A. Sure.

8 Q. Okay. And you hoped to put it back in
9 the family --

10 A. Yes.

11 Q. And you made inquiries to that respect,
12 correct?

13 A. To an extent. I, unfortunately, was
14 duped early on in my inquiries. I was told that the
15 Cree's had an exclusive listing on the property for a
16 year, asking something over a half million and a half, and
17 that we would have to wait until the year was up and try
18 to approach Martin and Dohl with an offer.

19 In reality, what they were doing was
20 paying a quarterly -- I think it's called a right of
21 refusal as they were lining up the lot buyers, so that the
22 first time they got to move, the day they bought the farm,
23 they had five lots to record at the same time.

24 We didn't realize what was going on. We
25 thought that they had a listing. My fault, because I took

1 the word of somebody who didn't know what they were
2 talking about on that.

3 But I certainly would have been
4 interested. We couldn't come up with a million and a
5 half. We couldn't borrow that much money to service the
6 debt, so it was out of our price range. Nine hundred
7 thousand, it comes close to what we might have been able
8 to scrape together.

9 Q. The answer to my question then is yes,
10 you and your family had an interest in acquiring this
11 property?

12 A. We had an interest. We didn't walk to
13 the Cree's about it, but we had an interest.

14 Q. But you would like to acquire it back
15 into -- make it a part of your family's holding?

16 A. It's been a family farm for a couple of
17 generations.

18 Q. And I guess -- and I think this is
19 probably my final question. To use the Court's phrase, I
20 don't mean to beat this horse to death, but I'm really
21 confused.

22 Is it your testimony that in the 1970's
23 the 1980's, and the 1990's, before the purchase of the
24 property by Shooting Point, that farm equipment that would
25 go down that right-of-way had to make ninety-degree turns?

1 MR. POULSON: Again, it's -- well, I'll
2 withdraw the objection.

3
4 BY MR. MCFARLAND:

5 Q. Is that your testimony from what you
6 have witnessed, and your own experience is --

7 A. Yes.

8 Q. -- that farm equipment was making the
9 harsh turns, ninety-degree turns as your present posts
10 staking, your present staking of the posts depicts?

11 A. They would have been turning along the
12 woods line. They followed the woods line. It's been
13 field and woods the whole time. They made ninety-degree
14 turns in three places, and following the woods line in.

15 Now, if they went over in our land, it
16 was a cousin, and we didn't worry about it. And in the
17 last ten years, he's been farming both of these, so he
18 could be on there if he wanted to or not.

19 MR. MCFARLAND: I think that's it, Your
20 Honor. Just a moment.

21 THE COURT: All right. Either of the
22 other counsel desire to ask any questions?

23 MR. MORRIS: No, Your Honor. The horse
24 is dead for me.

25 MR. LePAGE: I have a few relating to

1 the entrance issue, and I will be brief.

4 CROSS-EXAMINATION

5 BY MR. LePAGE:

6 Q. Mr. Wescoat, you testified in response
7 to a question by Mr. McFarland that you put up the
8 fifteen-foot stakes at the entrance, and on the easement
9 to show that two vehicles could not pass side by side
10 within fifteen feet; is that correct?

11 A. Correct.

12 Q. Did you measure the road at the point
13 where the right-of-way intersects with it?

14 A. I did. The day before yesterday, I went
15 down there, and what I did was, I laid a tape from about
16 two and a half feet across the shoulder at the corner up
17 to the stake that VDOT indicated that was actually on
18 their right-of-way.

19 I don't know if you're familiar, but the
20 last stake that the surveyor marked, when he put the
21 wooden post in, they said that that was actually impinging
22 on theirs by, I think, two or three inches, something like
23 that.

24 I laid a tape from that stake across the
25 corner to the other side, and two and a half feet off, or

1 three feet off on the shoulder.

2 Q. Well, did you measure the pavement?

3 A. That was twenty-seven feet across there.
4 I didn't measure just the paved section.

5 Q. You did not?

6 A. It was about twenty -- I figure
7 twenty-seven less, about eight feet, seven feet.

8 Q. So your testimony would be it would be
9 approximately twenty feet wide there?

10 A. Now, it's narrower as you get away from
11 the corner.

12 Q. Did you measure that?

13 A. I didn't. I think it was -- I measured
14 the shoulder. I laid the tape across there and measured
15 the shoulder. I think it's about fourteen feet.

16 Q. Did you conduct any experiments with
17 large trucks on 622 at any point between where the --

18 A. No, I didn't anything on 622.

19 Q. And at some points, the road is
20 fourteen-feet wide?

21 A. I would guess. I didn't even measure
22 the road itself other than when I laid the tape across to
23 measure the shoulder.

24 Q. And what you refer to as the shoulders
25 are not paved, are they?

1 A. No, it's grass.

2 Q. In fact, it's grass grown up, isn't it?

3 A. No, I take that back. Our road, there's
4 not that much traffic on it, so when you scrape the grass
5 away, there's actually pavement under a lot of the grass;
6 it's just crept up onto the road. So you can't really
7 tell just looking at it how much is paved and how much is
8 grass.

9 Q. In fact, as you're driving down the
10 road, and as the grass has encroached onto the road, at
11 points it looks even narrower than fourteen feet, doesn't
12 it?

13 A. I don't know. I measured the shoulders,
14 and I think it was about fourteen feet.

15 Q. You would not be able to dispute that?

16 A. I didn't measure it.

17 Q. So you've answered my question.

18 Did you measure -- at one point on one
19 of the videos you measured the sight distance when you
20 were making a turn into the easement itself. As one
21 vehicle approached the corner and the other vehicle
22 approached the corner, it's about thirty-four feet?

23 A. That was coming out on turn number one.

24 Q. Did you measure any sight distance when
25 a car was stopped at the intersection of the easement and

1 Route 622? Did you measure any sight distance in either
2 direction --

3 A. That's all the -- that's all measured --

4 Q. In fact, there's a lot of sight distance
5 there, isn't it?

6 A. I'm not sure I understand the question.

7 Q. Well, as you're at the intersection of
8 the easement, if you look to the left, down 622, you can
9 see for several hundred feet, can't you?

10 A. If you're at the intersection of the
11 easement, and if you're on the easement --

12 Q. And you're getting ready to pull out
13 onto 622 from the right-of-way --

14 A. There is no paved road to your left.
15 There's our dock road to your left.

16 Q. 622, as you look off, you can either
17 pull left, or pull right on 622?

18 A. No, you go straight, or you make a
19 right.

20 Q. All right. As you're looking straight
21 down the easement then, you can see for several hundred
22 feet, can't you?

23 A. Yes, you can see to the next turn in the
24 paved road.

25 Q. And as you look to your right down 622,

1 you see further --

2 A. You can see to my parents' house.

3 MR. LePAGE: Okay. I don't have any
4 further questions.

5 THE COURT: Anything else from anybody?

6 MR. MCFARLAND: Just very briefly, Your
7 Honor.

8

9 FURTHER CROSS-EXAMINATION

10 BY MR. MCFARLAND:

11 Q. Mr. Wescoat, when you did this
12 recreation experiment with the fire trucks out on the
13 right-of-way at your property, how many firemen came out
14 to the property?

15 A. About a bunch of them. They were out
16 responding to a call.

17 Q. Was there a call on your property?

18 A. No.

19 Q. They just came by to --

20 A. I think they had been asked to come, and
21 then it turned out there was a call shortly before the
22 time. I don't know. I showed up, and they were already
23 there.

24 Q. Pardon?

25 A. They were already there when I got

1 there.

2 Q. Okay. But they weren't responding to
3 any actual emergency on your property?

4 A. No.

5 Q. Did I understand you to say, sir, that
6 you reviewed the plat filed by Shooting Point?

7 A. I think -- I went in the clerk's office
8 right when I read in the paper that the thing had been
9 recorded, and I asked to see what I believed is your plat.

10 THE COURT: Is that it, Mr. Poulson?

11 MR. POULSON: Sir?

12 THE COURT: Is that it?

13 MR. POULSON: That's a copy of it. I'm
14 not going to object that it's a copy.

15 THE COURT: Then it is what it is.

16 Defendant's Number 3.

17 MR. MCFARLAND: Thank you, Your Honor.

18 (Copy of plat was marked Defendant's

19 Exhibit 3 for identification.)

20 BY MR. MCFARLAND:

21 Q. Let me hand you what's been marked as
22 Defendant's Exhibit Number 3, Mr. Wescoat. Does that look
23 familiar to you?

24 A. Yes.

25 Q. Okay. And I apologize, I'm going to

1 point right here. This that I'm pointing to now is the
2 depiction of the right-of-way?

3 A. It's separated here.

4 THE COURT: I think it speaks for
5 itself. I mean, I don't know that he's been qualified as
6 an expert.

7 MR. MCFARLAND: I'm not asking any
8 expert.

9 BY MR. MCFARLAND:

10 Q. You reviewed this, correct?

11 A. Yes.

12 Q. Can you read for us, please, what is
13 written there on the plat?

14 A. Fifteen foot right-of-way to Route 622.

15 Q. And underneath it?

16 A. DB 179 page 29.

17 Q. And that's a reference to the grant of
18 easement, correct, that's recorded, the deed of easement?

19 A. I don't know.

20 Q. Okay.

21 MR. MCFARLAND: That's all I have, Your
22 Honor.

23 MR. POULSON: I have one question, and I
24 hesitate to ask it.

25

REDIRECT EXAMINATION

BY MR. POULSON:

Q. Mr. Wescoat, the figures here, for example, site 79 degrees, 19 minutes, 40 seconds east, 37135, do you know what that is?

A. No. I didn't actually remember seeing that. No.

MR. POULSON: Okay. Thank you, sir.

THE COURT: All right. Thank you. Is that it?

MR. MCFARLAND: That's it for me, Your Honor.

THE COURT: Thank you, sir. You may step down.

Who do you intend to call next, Mr. Poulson?

MR. POULSON: Curtis Jones, Jr., sir.

THE COURT: How long do you anticipate Mr. Jones' testimony to be?

MR. POULSON: Judge, I would expect, you know, probably thirty minutes, maybe.

THE COURT: Is he going to tell us about the farm in the area?

MR. POULSON: Yes, sir.

THE COURT: Well, let's go ahead and get

1 started and see how far we get.

2 Can we all say for the purposes of this
3 hearing that he is the same Curtis Jones as referred to in
4 previous testimony, and all accept the fact that who he
5 is, what relationship he has, and what relationship he had
6 to this particular piece of property?

7 You can just move right on into it.

8
9 CURTIS JONES, JR., called as a witness
10 by and on behalf of the Plaintiff's, being first duly
11 sworn, testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. POULSON:

15 Q. Mr. Jones, trying to move through as
16 quickly as we can, please, what is the approximate size of
17 your operation?

18 A. Sixteen hundred acres.

19 Q. And are you familiar with the Wescoat
20 property at Church Neck as well as the property referred
21 to as Shooting Point?

22 A. Yes.

23 Q. Was there a time when Shooting Point
24 property was in your family?

25 A. Yes.

1 Q. And approximately when -- did your
2 mother sell the property?

3 A. Correct.

4 Q. Do you recall approximately when?

5 A. I believe early '70s. I'm not positive.

6 Q. And at the time that -- she was the
7 owner of the property, obviously, at this time?

8 A. Yes.

9 Q. And who was farming the property prior
10 to her selling it?

11 A. Our family. Her husband, and then I
12 came back in '69.

13 Q. And this has been a family farm, part of
14 the family farming operation?

15 A. Yes.

16 Q. Okay. Can you give us roughly some idea
17 of how long you and your father had farmed the property,
18 or more accurately your father prior to '74?

19 A. I don't really know when he started it.
20 It's just been we farmed it a long time, back to the '50s
21 probably.

22 Q. Now, after it was sold, who continued
23 farming it?

24 A. I did.

25 Q. And how long did you farm it?

1 A. Up through 2000.

2 Q. Now, from the Wescoat property, how do
3 you get over to the Shooting Point property?

4 A. On the last turn, we just shoot straight
5 in on that sandy road alongside Mr. Wescoat's farm.

6 Q. And has this been the entrance, or
7 right-of-way for the property --

8 A. Correct.

9 Q. -- for as long as you can remember?

10 A. Yes.

11 Q. Approximately how much cleared land is
12 on Shooting Point?

13 A. Seventy-something acres.

14 Q. And the Wescoat track?

15 A. On that Shooting Point block about a
16 hundred and ten.

17 Q. When did you start farming the Wescoat
18 track?

19 A. I think in the early '90s.

20 Q. Before you, who farmed the Wescoat
21 parcel?

22 A. P.C. Kellam and Family.

23 Q. Now, in your going over to the Shooting
24 Point parcel over the years, did you ever claim any right
25 in excess of fifteen feet insofar as being able to get to

1 it?

2 A. No, not really.

3 Q. You and Mr. Wescoat are related?

4 A. Yes.

5 Q. And what is that?

6 A. My grandmother and his grandmother are
7 sisters.

8 Q. Is there the remnants of an old house on
9 Shooting Point?

10 A. Yes.

11 THE COURT: We all agree it's the house
12 in the picture?

13 MR. MCFARLAND: Yes, sir.

14 THE COURT: Okay. Go ahead.

15 BY MR. POULSON:

16 Q. Have you seen the pictures?

17 A. No. It's only one house.

18 THE COURT: Is that it?

19 THE WITNESS: Yes.

20 THE COURT: Referring to Plaintiff's
21 Exhibit Number 2.

22 BY MR. POULSON:

23 Q. In your memory, Mr. Jones, do you ever
24 recall anyone living in that house at Shooting Point?

25 A. No, sir.

1 Q. Since at least 1974, as well as in your
2 memory, what uses have been made of the Shooting Point
3 area subdivision?

4 A. Agricultural, farming, hunting, and
5 fishing would be the extent.

6 Q. If you will, sir, if you will go through
7 and describe the farming operations that occurred on both
8 of the farms by you from your initial -- I guess, when you
9 go to look to see what you're going to do in the winter,
10 or spring, and kind of carry us through, if you will,
11 indicating to the Court, or giving the Court some idea of
12 what may be going on on the farm, and the adjacent roadway
13 or easement within the period of a year.

14 A. In the early part of the year, when
15 we're not working, we would be just going down to check
16 the condition of the land, taking soil samples, maybe
17 liming the land at that time. We would be preparing the
18 land for the spring crops.

19 We have two different types of
20 operations. One would be the grain. The grain could be
21 growing from the previous year where we planted in the
22 fall, so the grain, you would be checking your grain
23 conditions and putting fertilizer or chemicals on the
24 grain.

25 If there are vegetables, we would only

1 start working the land in March or April, preparing the
2 land for the vegetables. So each crop, each general
3 category would be different to some degree. So we would
4 be in and out, you know, overseeing those crops. The
5 vegetable crops we would primarily put in in April.

6 The early spring crops, if it's a fall
7 crop, we would plant the vegetable crop in the fall. If
8 it's a grain crop, we would continue to grain all through
9 the spring, and harvest the grain crop in June or July,
10 and replant the second crop behind that.

11 So normally there would be something
12 going on throughout the year to some degree depending on
13 which crop it is. We tried to rotate the crops some
14 depending on the market conditions, or different
15 situations.

16 Q. For the last ten years, other than, I
17 take it, if somebody was recreating on Shooting Point, it
18 would be either with your permission or in your company?

19 A. To the best of my knowledge.

20 Q. Okay. Did anybody use Shooting Point in
21 the last ten years prior to the end of '99, 2000 other
22 than you, and your guests, and invitees?

23 A. No one had permission, to my knowledge,
24 no.

25 Q. On the Wescoat parcel, before you

1 started, you said P.C. Kellam rented that?

2 A. Yes.

3 Q. Any uses on that other than Mr. Kellam's
4 agricultural, and/or recreational, hunting, fishing?

5 A. No, same uses.

6 Q. What kind of equipment would it be that
7 went in on your farm and on the roadways?

8 A. The general tractors, plowers, planters,
9 combines, you know, dealing with grain. If it's a
10 vegetable crop, it could be individuals bring crew members
11 in, or pickers, trucks hauling the product out.

12 The custom work people might come in
13 with fertilizer trucks, or water trucks to spray, apply
14 chemicals.

15 Q. And what would be the width of some of
16 this equipment?

17 A. All of the equipment would be standard
18 width, you know, normal highway type of equipment. The
19 tractor is wide over the wheels, but much of the large
20 equipment folds up.

21 The only exception to that would be a
22 combine with a twenty- or twenty-two-foot header on the
23 front of it.

24 Q. In general, would two pieces of
25 equipment be able to pass each other on the road, or would

1 they block each other?

2 A. They would block each other.

3 Q. And I should say the easement road.

4 A. They would block each other.

5 Q. And I'm not going to ask you, in the
6 interest of time, to describe fully the easement, but for
7 the record, tell us about the three turns.

8 A. The three turns are the same as I've
9 always known them, other than maybe an encroachment of
10 sand; or dirt blowing in on the -- or the bushes growing
11 out to some degree. But as far as I know, the same
12 configuration.

13 Straight in you have one right-hand
14 turn, another left-hand turn, a right-hand turn before you
15 get to the entrance of Shooting Point. It's just a sandy
16 road.

17 Q. What, if any, was there a relationship
18 to the woods on the woods land on the right?

19 A. That's just a boundary. It's a lot of
20 sand blown up over the years prior to us farming it, and
21 the wind blowing across the field has built it up high in
22 that area.

23 Q. What was the course of the roadway
24 relative to the woods land?

25 A. It always followed the woods land in.

1 Q. Okay. Mr. Jones, from your observations
2 and use of the easement over the years, sir, is the
3 fifteen-foot roadway wide enough for the use or operation
4 of two vehicles going in opposite directions?

5 A. No.

6 MR. MCFARLAND: I'm going to object to
7 the question, Your Honor. I think it needs to be
8 clarified what vehicles he's speaking about.

9 THE COURT: Well, you know, I think the
10 answer is pretty obvious. Two Volkswagens would be fine.
11 If it's something else, it might not be.

12 MR. MCFARLAND: All right.

13 THE COURT: Next question.

14 BY MR. POULSON:

15 Q. Mr. Jones, over the years, have there
16 been situations as you've observed at the entrance of
17 vehicles waiting to come onto the easement if there is
18 another vehicle coming out, and vice versa?

19 A. Maybe on some occasions you would stop
20 and wait for somebody to come out.

21 Q. How close do you plant your crops to the
22 right-of-way?

23 A. Well, we would be trying to utilize all
24 of the land, so we would plant right up to the
25 right-of-way.

1 Q. And I'll ask you an obvious question
2 perhaps, but would your crops be damaged or injured if
3 people came off the right-of-way, if you had crops planted
4 up to the right-of-way?

5 A. Certainly.

6 Q. Over in the period of some time early
7 March 2001, did you observe any posts directed by the
8 Wescoat family on the right-of-way?

9 A. Yes.

10 Q. Near the area of the right-of-way?

11 A. Yes.

12 Q. Okay. In general, the course marked by
13 those poles, how did it compare with the course of the
14 roadway over the years?

15 A. Very consistent with what I've always
16 remembered.

17 Q. Now, on what I will refer to as the east
18 end where it goes onto Shooting Point, is there a problem
19 there, or some present deviation?

20 A. I think they have been bearing off to
21 the left. There is a large limb. Several years ago,
22 we've always had a railroad tie with a bob-wire fence that
23 went to the left of that going north.

24 My father at one time had cattle down
25 there, and we took that post down, and the fence down to

1 try to eliminate the grass weed problem that we had in
2 that area.

3 Q. Now, since about the end of 1999, early
4 2000, had you observed situations where tracks come out of
5 the roadway, or course?

6 A. During the year of 2000, people were
7 going in and out of the mud holes, and you could see where
8 they swung out in the field to bypass the mud holes, yes.

9 Q. You drive a Pickup?

10 A. Yes.

11 Q. Do you worry about mud holes with your
12 Pickup?

13 A. No. You know, the rule of thumb on
14 muddy roads, you stay in the tracks; you don't deviate.
15 You get in trouble when you deviate out of the existing
16 tracks.

17 Q. Mr. Jones, let me ask you this question,
18 and I come from a background of a farming family, too.

19 In the summertime, tell the Court how
20 hectic it gets for a farmer in the use of the farm land
21 and the roadway.

22 A. Well, the end of June would be an
23 example with -- prior to June with trying to get all of
24 the grain out, that would be late June, early July, and
25 trying to replant the second crop, which would normally be

1 soy beans behind the grain, if you had vegetable crops, ,
2 which we do at the same time, we're irrigating, trying to
3 maintain those crops throughout this period, and we are
4 stuck harvesting most of these vegetable crops at the end
5 of June through July.

6 So we normally have about three weeks
7 where we're trying to accomplish a year's work, or at
8 least a half year's work.

9 At which time, you know, normally, prior
10 to that, we had been staying up a lot of nights irrigating
11 all night long, and then at the point of harvest, we'll
12 run into -- in my situation, I have my own packing house,
13 so we are responsible for trying to pack and ship the
14 product, which is a full-time job. So we are quite, quite
15 busy, and tired, and stressed out.

16 Q. Now, you had a combine fire back there
17 recently, or in the recent past?

18 A. Last fall.

19 Q. Last fall. Describe to the Court how
20 you came out of the roadway, so to speak.

21 A. Well, I tried to extinguish it with a
22 fire extinguisher. I thought I could control it, and then
23 I got to the point where I thought I could not, so I raced
24 out to Mr. Wescoat's house to use the phone to call the
25 fire engine down there to try to save the combine.

1 Q. With grain farmers, how prevalent are
2 combine fires?

3 A. Fairly prevalent on old ones. Bearings
4 will go bad, and the heat -- they'll fall apart, and the
5 heat will fall down and start to straw. In this case, we
6 don't know which, but it was an electrical type of wiring
7 that started the fire.

8 But it spread through the field, or the
9 field can catch on fire, and with the winds blowing, it
10 can take out the whole field pretty quick.

11 Q. Did you meet anybody on the turns that
12 day?

13 A. Not that day, no.

14 Q. Was there an occasion where you did meet
15 a cucumber truck one day?

16 A. Yes. I did run into my own cucumber
17 truck back in the '70s, or some period of time.

18 Q. Mr. Jones, let me you a question, if I
19 may, please, relative to your use of the roadway on the
20 Wescoat parcel, bearing in mind your farming operation as
21 a tenant on the Wescoat parcel, and the affect of certain
22 factors, so to speak.

23 And I'm going to ask you to assume
24 first, if you will, please, a subdivision on Shooting
25 Point with eighteen lots with a single-family residence on

1 each.

2 And I'm going to ask you further to
3 assume that there will be uses on the roadway from
4 Shooting Point of cars, trucks, farm vehicles, motorized,
5 and non-motorized vehicles;

6 That there will be vehicle traffic
7 generated by residential use, and it will vary by number
8 and uses of homes being built and occupied.

9 Assume further that there will be
10 recreational use which will vary with the owner's interest
11 in utilizing the property for the same;

12 That there will be farm use which will
13 vary with the seasons and crops cultivated on
14 approximately fifty acres.

15 Assume further, if you will, please, the
16 uses normally attended to a residential area such as house
17 construction, delivery people, and things of that nature.

18 Assume, if you will, please, an
19 additional factor of one of the lots is subdivided and it
20 becomes nineteen lots with single-family residences.

21 Okay?

22 As a variable, if you'd like, assume
23 that each lot can have a guest cottage, but it's not
24 rentable to outsiders, so to speak, only to domestic help.

25 And assume further, if you may, please,

1 if you desire to do so, that one of the lots may instead
2 of a house have a four-bedroom bed and breakfast, or,
3 alternatively, a ten-bedroom country inn.

4 Having used this easement for all of
5 these years, and your familiarity with it, what affect, if
6 any, would those uses of Shooting Point have on the use of
7 the Wescoat fifteen-foot roadway from your perspective as
8 a Wescoat tenant farmer?

9 MR. MCFARLAND: For the record, Your
10 Honor, I note an objection to this question.

11 THE COURT: Overruled. Go ahead.

12 BY MR. POULSON:

13 Q. That's a big question, but --

14 A. That would just create a tremendous
15 hardship on, you know, ourselves farming, or the people in
16 and out, if we're using the road, or the trucks are parked
17 out -- normally, a big tractor-trailer parked with water
18 if they're spraying the entire fifty acres would be
19 sitting there for a while waiting for the machine to load
20 up and spray, and then come back and load up again.

21 My main concern would be that the
22 management level from the issue that I am responsible for,
23 whether we're spraying, or people fussing about the noise.

24 We irrigate at night. We run the
25 irrigation motors at night a lot because of wind

1 conditions during the day.

2 MR. MCFARLAND: Well, I'm going to
3 object to the fussing about the noise. That's absolutely
4 irrelevant. The question -- the only thing he can talk
5 about is the easement.

6 THE COURT: The question wasn't about
7 the noise. I think the answer was. To that extent, I'll
8 disregard the noise.

9 BY MR. POULSON:

10 Q. Try to gear your answer to the equipment
11 on the roadway.

12 A. It's mainly a safety issue from my being
13 responsible for hurting someone, or my being responsible
14 if my man there or someone runs into them. It's very
15 dangerous with the blind turns. I've had an experience
16 myself.

17 It just impossible not to -- someone at
18 some point in time not to be racing in and out for an
19 emergency, or just lack of thought, or children on
20 four-wheelers. I mean, we've seen them down there
21 already, young children, or if you have families. Once
22 they get to a country site, they are used to the city, the
23 first thing they want is motor bikes --

24 MR. MCFARLAND: I don't mind him
25 answering as to what he knows about farm equipment, but

1 we're sort of speculating and getting astray about
2 children's use of --

3 MR. POULSON: Well, he's already seen
4 it, apparently, if I understand correctly his answer.

5 Go ahead. You can answer.

6 THE WITNESS: Some of the perspective
7 buyers had children with those type vehicles last year,
8 during 2000.

9 And we have other people roam around
10 other times on the roads that we don't control, racing in
11 and out. I think anyone that lives in the area can
12 testify to that.

13 We've had trouble the last two weeks of
14 cutting my fields up. There are roots down there now that
15 you see that's deep running across my cucumber field.

16 So you cannot control people in and out.
17 They're either racing in late at night shooting deer, or
18 just having a good time with a four-wheeler, seeing how
19 much dirt they can throw around.

20 It's mainly a safety issue in the
21 management of spraying and coordinating what people
22 expect, and don't want.

23 BY MR. POULSON:

24 Q. But your farm equipment, to the extent
25 that you use our farm equipment in a year's time, will

1 vehicles coming in and out of Shooting Point such as
2 construction vehicles, will that interfere with your use?

3 A. Oh, yes.

4 Q. With that consequence, what affect, if
5 any, will that have on the ability of the owner to
6 continue to rent this parcel of land?

7 A. Well --

8 MR. MCFARLAND: This I would object to,
9 Your Honor. He's now giving testimony about the affect on
10 the owner. The owner can testify perhaps as to that, but
11 not the tenant.

12 MR. POULSON: The tenant is in a better
13 position than the owner.

14 THE COURT: I think you'd better
15 rephrase the question. My guess is the question is if it
16 got bad enough, would you just want to stop renting the
17 property and stop farming it. Is that about where you
18 want to go?

19 MR. POULSON: Essentially, that's my
20 question.

21 BY MR. POULSON:

22 Q. Did you hear the Court?

23 A. Certainly. It's reasonable that you do
24 not want to create anymore headaches, or have more
25 worries. You would deviate or try go somewhere else, if

1 you have the choice.

2 Q. Is farm land generally available these
3 days, other farm land, so to speak?

4 A. Yes, I think there's quite a bit.

5 Q. Now, let's talk about the drainage, if
6 we may, please. Let's say farmers in this era, this time.
7 Are you-all concerned about drainage and things of that
8 nature?

9 A. Yes. Water would be one of the primary
10 problems. Too much water creating diseases.

11 Q. And what are you-all trying to do as far
12 as shaping, or draining the farm land?

13 A. Well, we've spent a lot of money on
14 Mr. Wescoat's land grating land, or shaping land. You can
15 see the ditches or the variations of where we've taken
16 dirt away from the edges to try to get it to drain
17 properly.

18 Q. And what happens when you get too much
19 water, or standing water?

20 A. It creates a lot of root problems,
21 disease. Eventually, the crop will just die.

22 Q. And you say you plant right up to these
23 easement?

24 A. Yes.

25 MR. POULSON: Judge, Exhibit 3. They

1 are a sets of pictures.

2 BY MR. POULSON:

3 Q. I show you by way just a picture of
4 Plaintiff's Exhibit 3 which was taken in the first part of
5 the year 2000. Standing water is there now?

6 A. Yes.

7 Q. Okay. Mr. Jones, what would happen from
8 your observations, and practices, and experience if such a
9 roadway should be hard surfaced?

10 Number one, where will the water go?

11 A. Well, it would run off in that area more
12 so because it not enough sand for it to go through. It
13 would just create more and more water.

14 Q. Does the roadway absorb some water at
15 this point in time?

16 A. Yes. Primarily sand.

17 Q. And it would go where?

18 A. It would run off into the edge of the
19 field.

20 Q. That's absent a ditch, or something of
21 that nature?

22 A. Right.

23 Q. And when it runs off into the field,
24 what affect will that have on your crops? And you may
25 already have answered this.

1 A. Disease, or kill the crop.

2 MR. POULSON: Okay. Answer

3 Mr. McFarland, please.

4

5 CROSS-EXAMINATION

6 BY MR. MCFARLAND:

7 Q. Good morning, Mr. Jones.

8 A. Good morning.

9 Q. With respect to this run-off that you've
10 just discussed, you keep a buffer, sir, off Route 622,
11 correct, between Route 622 and your crop?

12 A. I have some buffers on certain lands
13 where I'm paid by the government to do that.

14 Q. Okay. And you keep some buffers, I take
15 it, off the right-of-way that we've been discussing this
16 morning?

17 A. Not really. I've had a -- if you see
18 the pictures, or have the pictures, you can tell that
19 we've sloped the land right down to the ditch.

20 Q. But you could keep some buffers off the
21 right-of-way to your crops, correct?

22 MR. POULSON: I'm going to object to
23 that. He's not obligated to do it. He's paying for it,
24 and he's renting.

25 THE COURT: I understand he's not

1 obligated to do it. The question is could he, if he
2 wanted to, and I assume the answer to that is obviously
3 yes.

4 BY MR. MCFARLAND:

5 Q. Correct?

6 A. Yes.

7 Q. And, in fact, you could get paid for it
8 by the government to keep a buffer?

9 A. No, not there.

10 Q. Not there?

11 A. No.

12 Q. Now, if we go back, Mr. Jones, you farm
13 a total of sixteen hundred acres?

14 A. Correct.

15 Q. And approximately five hundred of those
16 acres are owned by Mr. Wescoat?

17 A. Yes.

18 Q. And do I understand, sir, you and your
19 family have been farming this property for thirty plus
20 years?

21 A. I would say it went back to the '50s,
22 but I'm not exactly sure.

23 Q. And certainly you've been farming it
24 since there was a grant of easement in 1974?

25 A. Yes.

1 Q. Okay. And do I understand that it was
2 your understanding that with respect to that right-of-way,
3 you had fifteen feet for use of that right-of-way?

4 A. Yes.

5 Q. Okay. And in using that fifteen-foot
6 right-of-way, you didn't have any trouble maneuvering your
7 farm vehicles down the right-of-way, correct?

8 A. No.

9 Q. Meaning that you could make the turns
10 without going off into the woods?

11 A. Correct.

12 Q. And without endangering the operator of
13 the vehicle's safety?

14 A. Well, that's only if you didn't meet
15 someone.

16 Q. We'll get to that in a minute.

17 But in terms of the vehicles themselves
18 traveling down the right-of-way since at least 1974, the
19 course that they have used has been adequate for that
20 purpose, correct?

21 A. Presumably so. Of course, I had that
22 accident also.

23 Q. We'll get to that in a minute. I'm not
24 talking about meeting other vehicles, Mr. Jones. I'm
25 talking about the ability of your farm equipment to use

1 the right-of-way since 1974.

2 MR. POULSON: Perhaps -- I would object
3 to the form of the question because there's all kinds of
4 sizes of farm equipment.

5 THE COURT: Overrule your objection.
6 It's a fair question. Go ahead.

7 BY MR. MCFARLAND:

8 Q. Correct?

9 A. Yes.

10 Q. Okay. With respect to this one incident
11 that you've mentioned where you met -- I think you met one
12 of your cucumber trucks, I understand?

13 A. Yes.

14 Q. That occurred in the 1970's?

15 A. Some point in time back there. It was a
16 long time ago.

17 Q. Long time ago. Okay.

18 And that's the only accident that you're
19 aware of in all these years on that right-of-way?

20 A. The only accident that I've had.

21 Q. It's the only accident that anyone has
22 even reported to you, correct? None of your employees
23 have ever reported to you a similar situation such as you
24 described when you ran into the cucumber truck?

25 A. Right.

1 Q. And they certainly would have done so?

2 A. Maybe. Maybe not.

3 Q. Okay. And I believe your testimony is
4 when you've got two large vehicles, one exiting the
5 right-of-way, and one coming in off Route 622, what you've
6 witnessed, or what you yourself have done, the courteous
7 thing, is to let the vehicle exiting go out?

8 A. That's right, if you haven't gotten on
9 the road. If you've gotten on the road, you can't back up
10 normal times.

11 Q. Right. And at one point, do I
12 understand, Mr. Jones, that you were farming what I am
13 going to term the Shooting Point property, and Mr. Kellam
14 was farming property that Mr. Wescoat has always owned,
15 correct?

16 A. Yes.

17 Q. So we've got two large farming
18 operations going on in that area simultaneously for a
19 number of years, correct, sir?

20 A. Correct.

21 Q. You didn't have any problem in terms of
22 each other's equipment getting down the right-of-way,
23 anything like that, did you?

24 A. No. Well, another thing you have to
25 remember, most of this equipment moves slow, and we aren't

1 racing in and out, and we are to trying work together.

2 Q. And you said you're trying to work
3 together?

4 A. In that situation, certainly.

5 Q. Okay. Now, do I understand, sir, there
6 is apparently a number of planting seasons depending on
7 the crop?

8 A. Correct.

9 Q. Okay. There is a late planting season
10 where, I guess, you would plant, say, about this time of
11 year, May or June?

12 A. That would be their -- in vegetables,
13 that could be the early planting season, and we would have
14 another one in the fall. We do crops a year in
15 vegetables.

16 Q. All right. If one were to plant soy
17 beans at the present time, one would harvest those soy
18 beans sometime in September, October, November, correct?

19 A. Correct.

20 Q. Okay. So it was certainly common for
21 your farming of this property that you would be harvesting
22 crops as late as October, November?

23 A. Yes.

24 Q. Now, at the present time, unless you've
25 just planted, nothing has been planted yet on the property

1 adjoining the right-of-way, correct?

2 A. That's correct.

3 Q. Okay. So that land is currently fallow?

4 A. Yes.

5 Q. And do I understand, sir, that among the
6 farm equipment that you use on this property, the combine,
7 the header on it can be as wide as twenty feet?

8 A. Correct.

9 Q. In fact, I guess that's the standard
10 width now for a modern combine?

11 A. Generally.

12 Q. And am I also correct, sir, that the
13 farming equipment that you use on this property is not
14 stored on the property?

15 A. That is correct.

16 Q. Okay. You actually have to drive it
17 from your storage area to Shooting Point, correct?

18 A. Yes.

19 Q. Which means it has to travel on the
20 state roads?

21 A. Yes.

22 Q. And I take it that is a distance of
23 seven to eight miles?

24 A. Generally.

25 Q. Now, the easement that we've been

1 speaking about this morning is not the only access to the
2 area that you farm, correct, sir?

3 A. It's a large farm. There are other
4 entrances in other locations, yes.

5 Q. Right. In fact, if one travels down
6 Route 622, this would be the first entrance, correct, off
7 622?

8 A. Yes.

9 Q. If we're going towards Mr. Wescoat's
10 home?

11 A. Correct.

12 Q. This is the first entrance, but shortly
13 thereafter is another road that would take you back to the
14 area you farm, correct?

15 A. Yes.

16 Q. Okay. And that road, as far as you're
17 aware, is not encumbered by any type of easement for other
18 properties, correct?

19 A. Not my knowledge.

20 Q. Okay.

21 THE COURT: You've seen this?

22 MR. POULSON: Yes, sir.

23 THE COURT: Any objection?

24 MR. POULSON: My objection is to the
25 extent that it's trying to, I guess, float a theory or

1 idea that he should use another roadway and not use the
2 one to which he has a legal right to use.

3 THE COURT: Well, I mean, you know, I'm
4 not naive enough to think if he's going in the field with
5 a tractor, he can probably turn off anywhere he wants to
6 unless the ditch is deep enough, or if it's fenced. I
7 think it goes without saying.

8 THE WITNESS: May I see the picture?

9 THE COURT: Sure, as soon as I get it
10 marked. What number is it?

11 MR. MCFARLAND: I think this is 4, Your
12 Honor.

13 THE COURT: Defendant's Number 4.

14 (Defendant's Exhibit 4 was marked for
15 identification.)

16 BY MR. MCFARLAND:

17 Q. Let me hand you what's been marked as
18 Defendant's Exhibit 4, Mr. Jones. Do you recognize the
19 property that is shown by that photograph?

20 A. Yes.

21 Q. You agree with me that that's Shooting
22 Point and the Wescoat property?

23 A. What road are you referring to as the
24 second road?

25 Q. Let's do this.

1 A. Here's a turn.

2 Q. Yes. This would be where one comes in.
3 This is 622?

4 A. Yes.

5 Q. Where my thumb is now, and I recognize
6 it's not much good to anybody but Mr. Poulson, myself, and
7 you, but where my thumb is now, that's the easement we've
8 been spending the majority of the time this morning on,
9 correct?

10 A. Correct.

11 Q. Okay. If we travel down Route 622
12 toward Mr. Wescoat's home, then the next what is sort of a
13 demarcation I see on this is what I'm pointing to now,
14 correct?

15 A. That's a ditch.

16 Q. This right here?

17 A. Yes.

18 Q. Okay. And we keep going down, and this
19 is all land that you farm?

20 A. Yes.

21 Q. Okay. We keep going down, this right
22 here is a point of access to your farm?

23 A. That's one, yes.

24 Q. Okay. And that's a straight shot back
25 to either side of the area that you farm, correct,

1 Mr. Jones?

2 A. Well, it's laid into other blocks. We
3 normally break this up in different planting blocks, so
4 all of it would not necessarily be planted in the same
5 crop.

6 Q. Okay. But if you want to, you can get
7 to any area that you farm from using the entrance in the
8 road that I'm pointing to right now, correct?

9 A. Yes, if I did not have other crops that
10 I would have to damage to get back to this location.

11 Q. Okay. But you can get to any area that
12 you farm by using that road?

13 A. On the north side.

14 MR. POULSON: The question has been
15 asked and answered.

16 THE COURT: Sustain the objection.

17 BY MR. MCFARLAND:

18 Q. And there are no encumbrances on this
19 road that we've just now been speaking out about, correct?

20 A. Not that I know of.

21 Q. Okay. And is there also another road a
22 little farther down that runs near Mr. Wescoat's home?

23 A. To go to the south portion?

24 Q. Uh-huh.

25 A. Yes.

1 Q. Okay. Can you point that out, please?

2 A. Here.

3 Q. Okay. All right. So there is actually
4 two other points of access to the area that you farm?

5 A. But only one other to the Shooting Point
6 Cree part.

7 Q. The other one being the --

8 A. The second part would be another branch
9 on the main.

10 MR. MCFARLAND: Just one moment, Your
11 Honor.

12 THE COURT: Any other counsel have any
13 questions while he's thinking?

14 MR. LePAGE: Just one or two, if I may,
15 Your Honor.

16

17 CROSS-EXAMINATION

18 BY MR. LePAGE:

19 Q. Good morning, Mr. Jones.

20 Mr. Jones, you testified that you
21 constructed some sort of buffer near 622 to keep the
22 drainage off of your farm property; is that correct?

23 A. I don't know how it came out. I shaped
24 different portions of the land, plain the land, and taken
25 the land out in the field to try to get it to drain

1 properly.

2 I was trying to explain that certain
3 properties that we have we have buffers that the
4 government helps pay for that leave grass strips. I do
5 not have them there.

6 Q. Where are your buffers?

7 A. On some other properties --

8 THE COURT: He said he didn't have them
9 there.

10 MR. LePAGE: Okay. I understand.

11 BY MR. LePAGE:

12 Q. Now, you testified that you bring your
13 farm equipment on Route 622?

14 A. Yes.

15 Q. Have you ever met any other vehicles on
16 622 while you were --

17 MR. POULSON: It's immaterial. We'd
18 object. It's immaterial that the Highway Department may
19 have a substandard road that has nothing to do with this.

20 MR. LePAGE: Your Honor, it's highly
21 relevant.

22 THE COURT: I understand. Go ahead. He
23 can answer the question.

24 BY MR. LePAGE:

25 Q. Have you had any difficulty passing any

1 other vehicles on 622?

2 A. I'm sure we've had some instances. We
3 usually have someone in front of it with a Pickup on state
4 highways with lights or radios.

5 Q. But you've had to stop and slow down and
6 let them pass?

7 A. Oh, sure.

8 THE COURT: Anything else?

9 Mr. McFarland, anything else?

10 MR. MORRIS: No, Your Honor.

11 MR. POULSON: I've got about two
12 questions.

13

14 REDIRECT EXAMINATION

15 BY MR. POULSON:

16 Q. Mr. McFarland indicated that the land is
17 fallow at this point in time?

18 A. Yes. There's not anything planted on
19 it.

20 Q. When will you be planting?

21 A. Within a week.

22 Q. And number two, over the years as you
23 went back to the Shooting Point along the easement back to
24 Shooting Point as such, and I'm talking about Cree
25 Shooting Point, other than the crops on your left, did you

1 have any concern about whether you stayed on the fifteen
2 foot or not?

3 A. No.

4 Q. And as far as a point of entrance
5 further south or further west of Mr. Wescoat's farm, you
6 may have answered this, are your crops always the same, or
7 are they different within the tracks?

8 A. They would be different within the
9 tracks to some degree sometimes.

10 Q. And if you went another way, would the
11 tire exist in such that they would be running over crops
12 to get back to the east, so to speak?

13 A. Certainly.

14 Q. Okay. And other than coming in with a
15 combine, the way that you plant, do you basically work off
16 of the easement road in this particular parcel of land?

17 A. Yes.

18 MR. POULSON: All right. Thank you.

19 MR. MCFARLAND: Very briefly, Your
20 Honor, on that redirect.

21

22 RECROSS-EXAMINATION

23 BY MR. MCFARLAND:

24 Q. You can come in the second of the road
25 we've spoken about, Mr. Jones, and work off that way,

1 correct?

2 A. If I have the same crop in the entire
3 parcel, yes.

4 Q. Well, last year, in the year 2000, all
5 you grew on that property was soy beans, wasn't it,
6 Mr. Jones?

7 A. Correct.

8 Q. Okay.

9 THE COURT: Probably lost money on this,
10 too.

11 THE WITNESS: It was close.

12 MR. POULSON: You did better than most.

13 BY MR. MCFARLAND:

14 Q. And it's always been your understanding,
15 as told to you by your father, that you have a
16 fifteen-foot right-of-way to that property to use the
17 easement, correct?

18 A. Correct.

19 THE COURT: All right. Thank you,
20 Mr. Jones. You may be excused.

21 MR. POULSON: Mr. Meekins, please.

22 THE COURT: Let's take about a ten- or
23 fifteen-minute recess.

24 (Brief recess.)

25 THE COURT: Who do you have next,

1 Mr. Poulson?

2 MR. POULSON: Mr. Meekins, Judge. And
3 we've already got him in, sir.

4 THE COURT: All right.

5

6 RICHARD E. MEEKINS, called as a witness
7 by and on behalf of the Plaintiffs, being first duly
8 sworn, testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. POULSON:

12 Q. Mr. Meekins, state your name, please,
13 sir.

14 A. Richard E. Meekins.

15 Q. And where do you live?

16 A. I live on the Point, down there on Cree
17 Point.

18 Q. And are you retired, sir?

19 A. I'm retired.

20 Q. Some years ago, did you purchase a piece
21 of the Shooting Point farm from Mr. Martin and Mr. Dall?

22 A. Yes.

23 Q. And do you recall approximately when
24 that was?

25 A. Approximately about fifteen years ago.

1 Q. And how big was the parcel that you
2 purchased?

3 A. 13.2 acres.

4 Q. And what was the state or status of the
5 property when you purchased it?

6 A. Undeveloped.

7 Q. And where was it located relative to,
8 let's say, the turn in the road where this fifteen-foot
9 easement is, in the interest of time?

10 A. Right at Glebe Road where it turns to go
11 to Mr. Wescoat, and you go right straight across into
12 the -- I call it nothing but an easeway.

13 Q. And in the interest of time, would this
14 have been at the bottom of the Shooting Point farm, for
15 lack of a better description?

16 A. The bottom? I guess I did get the
17 bottom.

18 Q. Okay. Now, you built a house?

19 A. I built a house.

20 Q. Approximately when was that?

21 A. Well, I've been working on it off and on
22 for fifteen years.

23 Q. Okay. And what was your legal
24 right-of-way to get from your property back out to the
25 state road?

1 A. The same easeway that it is now.

2 Q. And maybe I'd better refine that
3 question a little bit. What do you mean the same thing as
4 it is now?

5 A. With the farm, the farm property.

6 Q. The fifteen-foot right-of-way?

7 A. Right.

8 Q. Now, how often have you been at home
9 over the years, so to speak? Did you live here, or live
10 away, move back, or --

11 A. Yes, I live in Norfolk.

12 Q. Okay.

13 A. And I came over on weekends, more or
14 less.

15 Q. Okay.

16 A. Whenever I could, and worked on it. It
17 was sort of a hobby to me.

18 Q. Now, during that period of time, and
19 over the years, the Wescoat farm, was that being farmed?

20 A. Yes, sir, it was.

21 Q. And whom was it being farmed years ago,
22 and by whom is it farmed now, if you know?

23 A. Well, basically, I think it was the
24 Kellams. I can't -- I really don't know that much about
25 it, because I -- Mr. Kellam, I think, farmed it, the

1 Kellam brothers.

2 Q. All right. And do you know by whom it
3 is farmed now?

4 A. No, I don't.

5 Q. Okay. Now, how is Shooting Point being
6 used?

7 A. Shooting Point, I believe, was being
8 used by Mr. Curtis Jones. He was farming it.

9 Q. Now, if you will, please, I want you to
10 tell the Court over the years about your use of the
11 fifteen-foot right-of-way, and the affect of the farming
12 operations on it, and vice versa, your affect on the
13 farming operations.

14 A. Well, I'll put it this way: I think --
15 they were very -- their affect on me was -- I guess it
16 really wasn't intentional, but the heavy equipment they
17 were using, and what have you, I was just fighting that
18 piece of land constantly trying to get in and out of it.

19 As you said, it was only fifteen feet,
20 and if somebody was parked there, or a vehicle was parked
21 there, or a piece of equipment was parked there, you just
22 either had to wait, or you had to get out, and go and ask
23 them if they could move it so you can get by.

24 So that, along with the weather when I
25 was coming over in the winter time, it was terrible. I

1 mean, I bought a four-wheel drive truck, and I still have
2 it just to make sure I can get in and out of there.

3 Q. Would there be times when you would meet
4 vehicles on the road either coming in or out?

5 A. Yes. Oh, yes. Basically, then it was
6 divided up into four sections, and I really wasn't meeting
7 anyone except the hunters, or some hunters. They would
8 come up in four-wheel drives.

9 And, as I say, the farmers, they were
10 the ones that was principally my problem.

11 Q. Did the farmers irrigate on
12 Mr. Wescoat's parcel?

13 A. Oh, yes, they really did. See, you have
14 no drainage there, and when they irrigate, they had sort
15 of like these guns that shot and went around in circles,
16 or what have you, and it would hit in those areas there,
17 and it would make big places where you could get stuck in,
18 or hard to get through with.

19 Q. How long did you struggle with that
20 right-of-way?

21 A. I struggled with it until I think
22 Mr. Wescoat and Mrs. Wescoat felt sorry for me, and
23 Mr. Wescoat stopped by and he said, Meekins, my wife -- I
24 never will forget what he said. Meekins, my wife has been
25 thinking it over, and I have a road that run downs to my

1 boat place. He said, You can use it. And that's what
2 I've been using, and I have been happy ever since.

3 Q. Okay. Did there come one occasion with
4 you and a farmer or a farm employee where it got really
5 bad?

6 A. It really did. I would rather not get
7 into that.

8 Q. Did it nearly come to fist to cuffs, as
9 the expression goes?

10 A. Well, yes, and I just walked away. I
11 felt it wasn't worth it.

12 MR. POULSON: All right. Answer these
13 other counsel, Mr. Meekins.

14

15 CROSS-EXAMINATION

16 BY MR. MCFARLAND:

17 Q. Good morning, Mr. Meekins. My name is
18 Robert McFarland. I represent Shooting Point, L.L.C. in
19 the lawsuit that's brought you here to testify. I have
20 just a couple of questions for you.

21 You purchased your property when, sir?

22 A. Approximately fifteen years ago. I
23 would have to get the deed to give the exact date.

24 Q. All right. And when is it that
25 Mr. Wescoat granted you the right to get to your property

1 by what we've been calling the dock road?

2 A. Well, I guess I was struggling with it
3 off and on for a few years, and, as I say, I was very
4 perturbed, and I was to the point of just about throwing
5 up my hands, and I guess Mr. Wescoat had been observing
6 it, and Mrs. Wescoat, that I was just spinning my wheels.

7 And my friends, they wouldn't come down
8 to see me. It was that bad; I tell you.

9 Q. The question is when did Mr. Wescoat
10 give you the right to use the entrance that you're
11 currently using?

12 A. I cannot give you the exact date.

13 Q. Now, is there any written grant or
14 document memorializing your use of the dock road?

15 A. No.

16 Q. So it's really just -- your use of the
17 dock road now is solely at Mr. and Mrs. Wescoat's
18 pleasure?

19 A. That's right.

20 Q. Did you ever advise Mr. Wescoat when you
21 would be attempting to travel down the fifteen-foot
22 easement, and you would come across a parked vehicle, did
23 you ever advise him of these situations?

24 A. No, I seldom did. Once or twice I've
25 seen a couple of vehicles down there, but they didn't

1 bother me, and I didn't bother them. They were a little
2 bit below it.

3 Q. So you were able to still get by?

4 A. No.

5 Q. You never had any accident on this
6 easement?

7 A. I've come to close to having accidents
8 on Glebe Road itself.

9 Q. I understand, but I'm talking about the
10 right-of-way.

11 A. On the right-of-way? No.

12 Q. Okay. Your testimony is you've come
13 close to having accidents on Glebe Road, which is also
14 known as Route 622?

15 A. Right.

16 Q. Okay. You would agree with me that 622
17 is itself a pretty narrow road?

18 A. It really is.

19 Q. And it's pretty hard for two large
20 vehicles --

21 MR. POULSON: Object, Judge. Totally
22 immaterial 622's width. It's a substandard road.

23 THE COURT: Overruled.

24 BY MR. MCFARLAND:

25 Q. And you would agree with me that it's

1 pretty hard for two large vehicles to go by each other on
2 622?

3 A. Well, you have two big curves there.
4 Two large curves there. And to me, they are very narrow,
5 and they are sort of inserts. You cannot see around them.
6 And anyplace like that, if you were to meet anybody with
7 any speed, you would be in trouble.

8 I travel maybe fifteen miles, twenty
9 miles an hour up to those points, and then I slow down.

10 Q. On 622?

11 A. That's 622.

12 Q. Right. Now, with respect to the
13 easement, Mr. Meekins, you don't travel -- when you had to
14 use it, you certainly didn't travel very fast on that
15 easement, did you?

16 A. No, I really did not.

17 Q. In fact --

18 A. I couldn't.

19 Q. Exactly. The condition of the road was
20 such that you couldn't travel fast on it?

21 A. That's correct.

22 Q. Okay. You would agree with me, sir,
23 that when one is exiting the easement, you can look to
24 your left and see any oncoming traffic, correct?

25 A. Where I'm coming out at now? Currently

1 coming out?

2 Q. Not where you're coming out now. Not
3 the dock road. I'm talking about back when you had to use
4 the right-of-way.

5 A. Right-of-way. Right.

6 Q. You get to the end of the right-of-way
7 where it intersects with 622?

8 A. I couldn't see anybody no, coming out.

9 Q. If you looked to the left, though, you
10 can certainly see cars that are coming down?

11 A. If I was going in.

12 Q. Okay.

13 A. If I was going in, it's clear. I can
14 see Mr. Wescoat's house.

15 Q. All right. If you're going in, that
16 would be looking to your left?

17 A. Right.

18 Q. Okay. And if you're coming out?

19 A. And I'm looking to my left?

20 Q. Yes.

21 A. When I get into those --

22 Q. If you look straight? You look
23 straight.

24 A. Well, it's not straight.

25 MR. MCFARLAND: Maybe I'd better get a

1 photograph.

2 THE COURT: I know where it is.

3 MR. MCFARLAND: Okay.

4 BY MR. MCFARLAND:

5 Q. You mentioned that there was some kind
6 of problem sometimes when the farmers used irrigation?

7 A. Right.

8 Q. That it would collect on the
9 right-of-way?

10 A. Uh-huh.

11 Q. Okay. That's where the farmers are
12 collecting the water and transporting it, correct?

13 A. I don't know how they were getting
14 water. All I know is they used the gun, and I didn't pay
15 that much attention only to the fact of what it was doing
16 to that easement.

17 Q. Okay. Did you ever complain about that?

18 A. Just to Mr. Wescoat.

19 Q. Okay. And what was his response?

20 A. He helped me out.

21 Q. Okay.

22 MR. MCFARLAND: One moment. I think
23 that's all I have.

24 THE COURT: Anything from either side
25 over here?

1 MR. LePAGE: No, sir.

2 MR. MORRIS: Your Honor, I do have one
3 question, if you don't mind. If I can ask from here?

4 THE COURT: All right.

5

6 CROSS-EXAMINATION

7 BY MR. MORRIS:

8 Q. Mr. Meekins, have you ever encountered
9 any of the property owners that are currently owners of
10 the property at Shooting Point on any of the right-of-way?

11 A. No.

12

13 REDIRECT EXAMINATION

14 BY MR. POULSON:

15 Q. Do you even use the right-of-way
16 anymore, Mr. Meekins?

17 A. No, I certainly don't.

18 Q. Route 622, Glebe Road, does it have
19 shoulders in addition to the paved highway?

20 A. If there are shoulders, it's covered up
21 with grass, a lot of it.

22 MR. POULSON: Okay. That's all. Thank
23 you, sir.

24 THE COURT: Anything else?

25 All right. Thank you, sir. You may

1 step down.

2 Who do you have now, Mr. Poulson?

3 MR. POULSON: Judge, I'd call
4 Mr. Wescoat, and it's probably going take time.

5 THE COURT: Okay. Well, let's go ahead
6 and get started.

7 Why don't you just kind of take him up
8 to where we started to get to some relevant questions. I
9 think we can all agree that he is one of the plaintiffs in
10 this case, he owns the property through which this alleged
11 easement travels, and kind of go from there.

12 MR. POULSON: All right. I will try to
13 get through, Judge.

14

15 JOHN W. WESCOAT, SR., called as a
16 witness by and on behalf of the Plaintiffs, being first
17 duly sworn, testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. POULSON:

21 Q. Mr. Wescoat, let me kind of pick through
22 as I go. You, of course, previously testified that you
23 are an attorney. Do you specialize in any particular
24 aspects of the law?

25 A. I probably do more real estate work than

1 anything else.

2 Q. Where is your residence located relative
3 to the Shooting Point development?

4 A. Between a half to three-quarters of a
5 mile away, roughly.

6 Q. And that would, for purposes of the
7 record, be in which direction?

8 A. Essentially to the west.

9 Q. How long have you and Mrs. Wescoat lived
10 there?

11 A. My son said '77. I thought it was more
12 like '75, but to tell you the truth, I'm not sure.

13 Q. Your children grew up there with you and
14 Mrs. Wescoat?

15 A. Well, they were actually born before we
16 moved, but they were very young.

17 Q. Now, over the years, and prior to
18 1974 -- and let me ask you this: Were you familiar with
19 Shooting Point prior to moving down there in the period of
20 '74, '75?

21 A. I was.

22 Q. And how were you familiar with Shooting
23 Point?

24 A. Well, I was aware of the fact that when
25 a lady died in the 30's and left my mother an interest in,

1 or essentially divided the farm into two pieces, one went
2 to my mother, and my aunt, which I ultimately acquired,
3 and the other part went to my aunt, Elizabeth Stevenson,
4 who had the property.

5 Q. And this is Mr. Curtis Jones, Jr.'s,
6 mother?

7 A. That is correct.

8 Q. Prior to '74, what were the uses of the
9 Shooting Point parcel?

10 A. As it's been testified, purely
11 agricultural with some farming, very little fishing in the
12 fresh water pond that's on the property, and people would
13 spotlight deer down there on a regular basis, but other
14 than that, not very much other use.

15 Q. And was it hunted?

16 A. I was hunted.

17 Q. Did you hunt it?

18 A. I did hunt it, yes.

19 Q. The old house on the property. Are you
20 familiar -- you've seen the photograph, of course. Are
21 you familiar with that?

22 A. I've seen it many times.

23 Q. Over your history and memory, did
24 anybody ever live in that old house?

25 A. No.

1 Q. What was made of the Wescoat part? And
2 actually, the Wescoat parcel that we're talking about was
3 part of Shooting Point?

4 A. Right. They were both named Shooting
5 Point, the Jones track as well as our track. Shooting
6 Point was the entire parcel. My expectation is that the
7 actual Shooting Point that it referred to was the mouth of
8 Nassawadox Creek, which was a place, a duck hunting spot,
9 which was actually my Shooting Point.

10 Q. Which was actually your part of Shooting
11 Point?

12 A. Right, the part that we acquired.

13 Q. Now, on your part of Shooting Point,
14 what uses were made of that property over the years?

15 A. Same use, basically hunting, fishing the
16 same pond, and agricultural use.

17 Q. For the period in question, who tended
18 the Wescoat parcel?

19 A. P.C. Kellam and Sons did it prior to my
20 cousin, Curtis Jones, beginning to farm it sometime in the
21 early '90s.

22 Q. Now, if I may, please, let me show you
23 for the record --

24 THE COURT: What do you have there,
25 Mr. Poulson?

1 MR. POULSON: Plaintiff's Exhibit 11,
2 Judge. It's the badger plat.

3 THE COURT: Has everybody seen that? Is
4 there any objection?

5 MR. MCFARLAND: I've seen it, but it
6 depends on --

7 MR. MORRIS: No objection.

8 MR. LePAGE: No objection.

9 THE COURT: All right. It will be
10 Plaintiff's Exhibit 11.

11 (Badger plat was marked Plaintiff's
12 Exhibit 11 for identification.)

13 BY MR. POULSON:

14 Q. And briefly, Mr. Wescoat, in the
15 interest of time, do you recognize that plat?

16 A. I am familiar with the plat.

17 Q. And the plat shows Shooting Point parcel
18 to the right, so to speak?

19 A. Right.

20 Q. And your parcel is somewhat shown as an
21 adjoining?

22 A. Here over on this side, basically, and,
23 of course, to the south, too. Now, of course, Mr. Meekins
24 is in here.

25 Mr. Meekins basically owns from

1 roughly -- let's see. This is the property line here. He
2 owns the portion through the woods. I don't know where
3 his line is, but coming here basically back to the creek.

4 Q. Mr. Meekins does not enjoin the
5 fifteen-foot right-of-way?

6 A. No, he does not.

7 Q. Now, Mr. Wescoat, 1974, were you
8 practicing law at that time in Eastville?

9 A. Yes, I was.

10 Q. Now, during approximately spring of that
11 year, 1974, were there any discussions about an easement
12 or record right-of-way?

13 A. There were.

14 Q. And had there been, from your knowledge,
15 a previous legal right-of-way for this property?

16 A. In terms of when the property was
17 divided, there was no provision in terms of a deeded
18 easement as far as going into the other property.

19 Q. And discussions did start in 1974 about
20 a record right-of-way, give or take?

21 A. In that general range. I cannot say
22 that I know it was '74, but it was about that time.

23 Q. And were you privy to and part of those
24 negotiations?

25 A. I was.

1 Q. Your father, what was his occupation?

2 A. He was a farmer.

3 Q. At that time, was there anyone
4 representing Elizabeth Jones, the property owner?

5 A. Actually, Tanker, who is an attorney
6 here in Eastville.

7 Q. And, essentially, how did those
8 negotiations play out?

9 MR. LePAGE: I object, Your Honor.
10 Hearsay.

11 THE COURT: As a result of the
12 negotiations, what happened, I guess is what you want to
13 know, right?

14 MR. POULSON: We'll, Judge, Elizabeth
15 Jones was the predecessor in title here, and anything that
16 happened there, these people are certainly bound by that.

17 MR. MCFARLAND: Your Honor, we're bound
18 by the documents, not --

19 THE COURT: Not by parole evidence, I
20 don't think, Mr. Poulson.

21

22 BY MR. POULSON:

23 Q. And as a consequence, what came out of
24 those negotiations?

25 A. Essentially, the deed of easement that

1 has been recorded giving a fifteen-foot easement going
2 into the property.

3 Q. And did you limit it to fifteen foot?
4 And I say you --

5 MR. MCFARLAND: Objection, Your Honor.
6 The easement deed speaks for itself.

7 THE COURT: I will accept the fact that
8 it was limited to fifteen feet. Go ahead.

9 MR. POULSON: Judge, one of the things
10 we're looking at is what was contemplated at the time so
11 far as what the uses were, and what was contemplated.
12 That, we submit to the Court, is one of the issues that we
13 look at here.

14 MR. MCFARLAND: No, I don't think so,
15 Your Honor. What we look at is what the easement says,
16 and what the usage has been since the easement, or what
17 the usage was, but we don't look at contemplations.

18 MR. POULSON: We look at why fifteen
19 feet.

20 MR. MCFARLAND: No, Your Honor. That's
21 parole evidence, and I would absolutely object.

22 THE COURT: I don't think that he can
23 testify as to what she said. I suspect he could probably
24 testify as to what -- well, it's going to get you to the
25 same place anyway.

1 MR. POULSON: What was your intention --

2 THE COURT: If you ask him what it's
3 been used for then, and what it's been used for since
4 then, and I think you've got the same answer.

5 MR. POULSON: Let me try to go more than
6 that.

7 BY MR. POULSON:

8 Q. What was your intention at the time,
9 Mr. Wescoat, as to the fifteen feet?

10 MR. MCFARLAND: I'm going to object,
11 Your Honor. It doesn't matter what his intentions were.
12 That's what they ended up with is fifteen feet. Fifteen
13 feet in the document is what it was.

14 THE COURT: I understand that. And I
15 think the question is proper. The answer may not end up
16 being proper, but the question is proper. So, go ahead.

17 THE WITNESS: Would you repeat the
18 question?

19 BY MR. POULSON:

20 Q. What was your intention as to the
21 fifteen feet?

22 A. We were trying to limit the use.

23 THE COURT: All right. I'll disregard
24 that part of the answer. If the intention was to give
25 them fifteen feet to get in and out of the piece of

1 property, then that's okay. Go ahead.

2 BY MR. POULSON:

3 Q. Right prior to the granting of the
4 easement, Mr. Wescoat, what was the use of the property?

5 A. Prior to the granting, it's the same use
6 that was after, hunting, fishing, and agriculture.

7 Q. And you've already answered it was the
8 same use afterwards also?

9 A. Right.

10 Q. Okay.

11 MR. POULSON: Judge, we'd offer 12 which
12 is the --

13 THE COURT: That's the deed of easement?

14 MR. POULSON: Yes, sir.

15 THE COURT: Okay.

16 MR. MCFARLAND: No objection.

17 THE COURT: Plaintiff's Number 12. Go
18 ahead.

19 (Deed of easement was marked Plaintiff's
20 Exhibit 12 for identification.)

21 BY MR. POULSON:

22 Q. Mr. Wescoat, according to the deed
23 itself, does the deed state the purpose of the easement,
24 sir?

25 A. It says the purpose of egress and

1 ingress, I believe.

2 Q. Had there ever been any utility lines on
3 the right-of-way?

4 A. No.

5 Q. Quickly, within the terms of the
6 easement, was the route of the easement described?

7 A. It was.

8 Q. And what was it?

9 A. Basically following the woods line.

10 Q. And the width?

11 A. Fifteen feet.

12 Q. Insofar as any other existing easements
13 that may have existed at the time this was executed and
14 entered into, what happened to those?

15 A. They were specifically released.

16 Q. Now, later did Ms. Jones sell the
17 property?

18 A. Yes, she did.

19 MR. POULSON: Exhibit 13 for
20 identification, deed September 20, 1974, Jones, Martin,
21 and Dall.

22 THE COURT: Has everybody seen that?
23 Any objection?

24 MR. MORRIS: No objection.

25 MR. LePAGE: No objection.

1 MR. MCFARLAND: No objection, Your
2 Honor.

3 THE COURT: Plaintiff's 13.

4 If you've got whole chain there, go
5 ahead and get them altogether.

6 MR. POULSON: Okay. 13 would be the
7 previously referenced deed, Jones to Martin.

8 (Deed dated September 20, 1974 was
9 marked Plaintiff's Exhibit 13 for
10 identification.)

11 MR. POULSON: 14, Martins to Meekins
12 deed.

13 15, Bonifant plat.

14 MR. MORRIS: Your Honor, do you mind if
15 we take a look at it to make sure it's verified in terms
16 of all of the elements of the chain of title?

17 If he had presented that as a chain of
18 title, I'd like to make sure and look at it.

19 THE COURT: Yes, you can take a look at
20 it.

21 MR. MORRIS: Your Honor, on behalf of
22 the Property Owners Association, I'd like to just state
23 that this appears to be the chain of title and ownership.
24 It doesn't represent some other chains of title between
25 Meekins and his family, and also between Meekins and some

1 trustees, and also some trustees.

2 THE COURT: That's correct. That's
3 correct.

4 MR. POULSON: It has no materiality.

5 MR. MORRIS: I just want to make sure
6 that it's established on the record. Thank you.

7 THE COURT: Al right. So we've got 13.

8 MR. POULSON: 13, 14 and 15, Judge.

9 THE COURT: Go ahead and describe those
10 for the record.

11 MR. POULSON: 13 is deed from Jones to
12 Martin and Dall.

13 14 is deed from Martin and Dall to
14 Richard E. Meekins, R., and Charlie B. Meekins.

15 And 15 is a survey part of property of
16 Shooting Point farm which is referred to as the Bonifant
17 plat.

18 THE COURT: All right. This plat is the
19 description of -- describes, I would take it, a deed to
20 Meekins; is that right?

21 MR. POULSON: Yes, sir.

22 THE COURT: The 13.20 acres is his
23 piece?

24 MR. POULSON: Yes, sir, specifically
25 incorporated and made part of the deed.

1 THE COURT: Okay.

2 (Deed from Martin, Dall to Meekins was
3 marked Plaintiff's Exhibit 14 for
4 identification.)

5 (Bonifant plat was marked Plaintiff's
6 Exhibit 15 for identification.)

7 BY MR. POULSON:

8 Q. Mr. Wescoat, after Martin and Dall
9 bought Shooting Point, what, if anything, occurred to its
10 uses?

11 A. It stayed the same.

12 Q. The particular plat there, are you aware
13 of that plat?

14 A. Which plat?

15 Q. The Bonifant plat.

16 A. I have seen it recently. I very well
17 might have seen it some time ago. I'm not sure.

18 THE COURT: For the record, it's
19 Plaintiff's Exhibit 15.

20 BY MR. POULSON:

21 Q. Have you ever disputed that plat?

22 A. No.

23 Q. It would indicated that there are pins
24 in your fields, and woods indicating the course of the
25 right-of-way?

1 A. That's correct.

2 Q. Have any dispute with that?

3 A. I have never had any dispute with that.

4 Q. Over the years, 1974 onward in
5 particular, what has been the volume in kinds of traffic
6 on the roadway from your observation?

7 A. Well, primarily agricultural use in
8 terms of farm vehicles at various times. Depending on the
9 season, it would depend on the volume, depending on what
10 was planted on the property, if there were vegetable
11 crops, there could be on some occasions, a number of
12 pickers, and whatnot, that would utilize it.

13 During the winter, there would be very
14 limited agricultural. There would be some traffic based
15 on hunters going in to hunt the property.

16 But you would have occasional -- if
17 there were grain on the property, then there would be a
18 limited amount of traffic very sporadically as far as
19 things were concerned. It would depend to some extent
20 primarily in terms of most of the traffic as to what
21 agricultural use was being made of it.

22 Q. Now, when farmers were either planting
23 potatoes, or digging potatoes on your parcel, or getting
24 grain out, would the use be intense on the property from
25 the farmers' use of the roadway?

1 A. Much more so in terms of potatoes,
2 because a lot of volume of traffic in terms of carrying
3 potatoes out and so forth across it. In terms of the
4 grain, of course you would fill up a body typically, or a
5 grain truck, but that would not be as intense use.

6 Q. Over the years, has it ever been any
7 wider on the grind than basically a two-track, one
8 vehicle?

9 MR. MCFARLAND: I'm going to object,
10 Your Honor. I think there needs to be a better foundation
11 than that.

12 THE COURT: Overruled. Go ahead.

13 THE WITNESS: In my memory, it's only
14 been a one-track situation in terms of going in and out,
15 basically. You've always just been able to see, you know,
16 where the two tire prints go in and out across the
17 easement. There's never been any more than that shown.

18 BY MR. POULSON:

19 Q. As of 1999, what was you and your
20 family's personal use of the fifteen-foot roadway?

21 A. Well, when Curtis Jones still owned the
22 property, I would -- for example, my wife would walk
23 across the property. We would occasionally go back that
24 way.

25 Sometimes when we would hear gunshots in

1 the night, I would use that to try and ascertain who that
2 was. And I would once in a while go down the road to look
3 at something or, you know -- it was a sporadic use as far
4 as things were concerned.

5 Q. Now, at one point, Mr. Meekins was
6 utilizing the right-of-way as ingress and egress from his
7 house?

8 A. He was.

9 Q. And without going through all of that
10 again, you've heard Mr. Meekins testify, and is that
11 essentially a correct recitation of what you knew of what
12 transpired?

13 A. He had a horrible time in terms of
14 accessing his property, and ultimately I felt like the
15 neighborly thing to do was to give him a better route as
16 far as getting to his property, which I did.

17 Q. Does he continue to use that?

18 A. Yes. He's used it for a number of years
19 now.

20 Q. Now, Mr. Jones has tended the Wescoat
21 parcel since -- again, in the interest of time, early
22 1990's?

23 A. Right.

24 Q. From your observations, and coming from
25 a farm family yourself, what use did he make of the

1 roadway insofar as the tending and planting of his crops?

2 MR. MCFARLAND: I'm going to object,
3 Your Honor. Number one, we've heard it from Mr. Jones.
4 That's the best testimony as to how Mr. Jones used the
5 property. So it's cumulative, and there's really not a
6 foundation. He's not out there all the time.

7 THE COURT: Well, I'll overrule the
8 objection. But you can move right along with it. I mean,
9 everybody in the courtroom knows exactly what he's going
10 to say, including me, so go ahead.

11 BY MR. POULSON:

12 Q. Do farmers farm from the road?

13 A. They utilize in some cases the road in
14 terms of at the end of the road putting stuff onto like
15 seed, or fertilizer, or water, or whatnot, so in that
16 sense, they do farm from the road to a degree.

17 Q. Okay. And a tractor that one may be
18 cultivating, where does he turn at to go back the other
19 way if he is in the field?

20 THE COURT: He turns around on the road,
21 too. Go ahead.

22 MR. POULSON: All right.

23 BY MR. POULSON:

24 Q. The other entrance to the farm land
25 that's available there, where is that situated?

1 A. Between my wife's vineyard.

2 Q. Did he use that on occasion?

3 A. He does.

4 MR. POULSON: 16, Martin to Shooting
5 Point deed.

6 17, subdivision plat.

7 18, declarations.

8 THE COURT: All right. Has everybody
9 seen all of these?

10 MR. MCFARLAND: Yes.

11 THE COURT: Any objection?

12 MR. MCFARLAND: Let me just share them
13 with counsel.

14 MR. POULSON: 16 is the deed from Martin
15 and Dall to Shooting Point, L.L.C. 17 is the plat of
16 survey. There's already one in.

17 THE COURT: 17 is the same as
18 Defendant's Number 3.

19 MR. POULSON: Yes, sir.

20 And 18 is the original covenants.

21 THE COURT: Thank you, sir.

22 All right.

23 (Deed from Martin and Dall to Shooting
24 Point was marked Plaintiff's Exhibit 16 for
25 identification.)

1 (Plat of survey was marked Plaintiff's
2 Exhibit 17 for identification.)

3 (Original covenants were marked
4 Plaintiff's Exhibit 18 for identification.)

5 BY MR. POULSON:

6 Q. Now, Mr. Wescoat, let me ask you a few
7 questions about that.

8 THE COURT: He's looking at Plaintiff's
9 Exhibit 17; is that right?

10 MR. POULSON: Yes.

11 THE COURT: Which is the same exhibit
12 that we just identified as Defendant's Exhibit 3, titled,
13 Division Shooting Point farm to be known as Shooting Point
14 Baldwin and Gregg, October the 20th, 1999? Is that it?

15 MR. POULSON: Yes, sir.

16 BY MR. POULSON:

17 Q. Mr. Wescoat, relative to that plat, is
18 that plat recorded?

19 A. Yes, it is.

20 Q. Does that particular plat show an
21 easement from the property to 622?

22 A. Yes, it does.

23 Q. How does that easement shown on there
24 compare to the easement shown on the Bonifant 1979 plat?

25 MR. MCFARLAND: I'm going to object,

1 Your Honor. I don't think there is a foundation laid for
2 that at this point.

3 THE COURT: Sustain the objection. I'm
4 looking at both of them right here. That's a decision
5 that the Court has to make.

6 I'm pretty sure you're going put
7 somebody else on besides Mr. Wescoat, and you're probably
8 going to put a surveyor on.

9 MR. POULSON: I'm going to put a
10 surveyor on, but Mr. Wescoat has a background as a real
11 estate lawyer.

12 THE COURT: Well, you can ask him that
13 question. I mean, you can ask the next witness that
14 question.

15 MR. POULSON: I'm sorry?

16 THE COURT: Ask the next witness that
17 question.

18 MR. POULSON: All right, sir.

19 THE COURT: Go ahead.

20 BY MR. POULSON:

21 Q. Now, Mr. Wescoat, at the same time that
22 the plat was recorded, was there a declaration of
23 protective covenants conditions, easements, and
24 restrictions also put to record?

25 A. There were.

1 Q. And we won't take the time to explain
2 what one is.

3 MR. POULSON: Now, relative to the
4 declarations, Judge, again, in the interest of time, I
5 don't know any need to take four questions to go through
6 that one. The Court obviously knows the parameters of it.

7 THE COURT: I think all of the documents
8 speak for themselves, and if counsel for the defendants
9 have any cross-examination, I'm sure they can ask, but I
10 think the exhibits basically speak for themselves.

11 BY MR. POULSON:

12 Q. Mr. Wescoat, the few points under that,
13 under the covenants, and the declarations themselves, is
14 there any provision or issue in the declaration about
15 expanding or relocating the right-of-way from route 622?

16 A. There were some statements concerning
17 that possibility.

18 Q. And that is at, what, page 6 of the
19 declaration, I believe?

20 A. I don't think I made a note in terms of
21 that. Yes, it looks like 6 1D, maybe, declaring at the
22 declarant's expense prior to sell shall have the right to
23 expand or relocate the right-of-way from 622 to the
24 property, and so forth, following the sell of all parcels
25 by declarant except parcel 17.

1 The Association at its expense shall
2 have said right to relocate subject to approval of such
3 action by eighty percent of its membership.

4 Q. In general, what was the width of the
5 roadways within the subdivision?

6 A. I believe they were twenty-five feet.

7 Q. Now, on the same day that Shooting Point
8 put these documents to record, did it have occasion to
9 execute a deed of trust?

10 A. There was a deed of trust that was
11 placed on one lot.

12 MR. POULSON: Complainant's Exhibit 19.

13 MR. MCFARLAND: Your Honor, no
14 objection.

15 THE COURT: All right.

16 MR. POULSON: Shooting Point deed of
17 trust number 19.

18 THE COURT: Okay.

19 (Shooting Point deed of trust was marked
20 Plaintiff's Exhibit 19 for identification.)

21 MR. POULSON: Number 20 would be a deed,
22 Shooting Point to Manetta.

23 THE COURT: All right.

24 (Deed was marked Plaintiff's Exhibit 20
25 for identification.)

1 MR. POULSON: 21, deed, Shooting Point
2 to Cole.

3 THE COURT: Okay.

4 (Deed was marked Plaintiff's Exhibit 21
5 for identification.)

6 MR. POULSON: 22 is Shooting Point to
7 Finn.

8 THE COURT: All right.

9 (Deed was marked Plaintiff's Exhibit 22
10 for identification.)

11 MR. POULSON: 23 is Shooting Point to
12 Finn and Cole.

13 (Deed was marked Plaintiff's Exhibit 23
14 for identification.)

15 MR. POULSON: And Shooting Point to
16 Vogel.

17 THE COURT: That will be 24?

18 MR. POULSON: Yes, sir.

19 (Deed was marked Plaintiff's Exhibit 24
20 for identification.)

21 MR. POULSON: Mr. Wescoat, let the Judge
22 finish marking them, and I want to ask you something about
23 each one of them, and we will do it as a group.

24 THE COURT: 22 was just to Finn. I
25 assume all of these deeds read the same?

1 MR. POULSON: Yes. They may be separate
2 exhibits, but the same thing.

3 BY MR. POULSON:

4 Q. With the deed of trust, as well as all
5 of these deeds, relative to the easement, Mr. Wescoat,
6 what is the language as to the easement?

7 A. Together with the right to use, and
8 enjoy along with others, a perpetual non-exclusive
9 easement of right-of-way over and across the private roads
10 that's shown on said plat of survey, including but not
11 limited to that certain fifteen-foot right-of-way between
12 the division of Shooting Point and Virginia State Route
13 622 as shown on said plat of survey.

14 Q. The plat was incorporated into the
15 description of the right-of-way?

16 A. That's correct.

17 Q. Now, Mr. Wescoat, from your review of
18 the covenants, and the restrictions, is there anything at
19 all in the covenants, and restrictions that requires that
20 these lots or parcels be sold as retirement homes, or for
21 retirees?

22 A. No.

23 Q. Were you present at several of the
24 depositions involved in this case?

25 A. I was.

1 Q. And during the course of those suits, of
2 the suits prior to coming to trial during the course of
3 the depositions, did any topics arise as to B and B's,
4 country inns, and fire protections?

5 A. They were discussed.

6 Q. And, sir, within the last --

7 MR. POULSON: I show you Exhibit 25 for
8 purposes of identification.

9 THE COURT: Plaintiff's 25. First
10 amendments to declaration of protective covenants and
11 easements, et cetera, for Shooting Point.

12 (Amendments to declaration was marked
13 Plaintiff's Exhibit 25 for identification.)

14 BY MR. POULSON:

15 Q. Mr. Wescoat, what was -- obviously, we
16 know what they are, the covenants and declaration was
17 amended?

18 A. Right.

19 Q. When was that done?

20 A. They were done by this Exhibit 25. It
21 was recorded on May 23rd, 2001 at 3:28 p.m.

22 Q. And, in general, what was the effect of
23 that covenant and restriction change?

24 A. They basically struck out the provision
25 regarding a bed and breakfast. They struck out the

1 provisions that each lot were to have a free-standing
2 guest cottage. There were provisions for two guest
3 cottages, I believe, on lot 17, and I think that was
4 deleted.

5 Q. Country inn?

6 A. I'm looking for country inn. I see bed
7 and breakfast, or other, but -- free-standing guest
8 cottage, free-standing guest cottage, guest cottages.

9 Oh, up in the beginning -- let's see.
10 The country inn provision, I do not see where it is
11 deleted. They have referenced to what was provided.

12 Okay. Deleting all references to guest
13 cottages. Deleting reference in the declaration to the
14 right of owner of parcel 17 of Shooting Point as set forth
15 in Article 2, Section 15C thereof to construct a bed and
16 breakfast, or a bed and breakfast country inn. That is
17 provided up in the heading.

18 MR. POULSON: Okay. To my
19 understanding, that's been deleted. Does anybody have a
20 different understanding?

21 MR. MCFARLAND: Correct.

22 THE WITNESS: Down in the items that are
23 itemized, the country inn is not specifically mentioned,
24 but it does provide here deleting reference as far as
25 country inn up in the whereas portion of --

1 THE COURT: I think we all can assume
2 for the sake of all the legal talent here that the country
3 inn is out?

4 MR. LePAGE: Yes, sir.

5 MR. MCFARLAND: Yes.

6 MR. MORRIS: Yes.

7 BY MR. POULSON:

8 Q. Now, who executed that, Mr. Wescoat?

9 A. Mr. Cree, it looks like. Lemoine B.
10 Cree, Manager of Shooting Point, L.L.C.

11 Q. Okay. And on the others, are they by
12 how many lodged owners?

13 A. Mr. Manetta apparently was on one. The
14 Coles would appear to be on that one, and then the last
15 one the Finns.

16 Q. Okay. So basically we've got the
17 developer, and then some either three or four lot owners
18 signed off on it? Eight percent requirement to amend the
19 covenants?

20 A. That's right.

21 Q. As this has been done, may it also be
22 reversed?

23 A. Certainly.

24 Q. Okay.

25 MR. POULSON: 26, an escrow agreement

1 relative to the installation of a dry hydrant.

2 MR. MCFARLAND: No objection.

3 MR. LePAGE: No objection.

4 MR. MORRIS: No objection.

5 THE COURT: All right. Plaintiff's 26.

6 (Escrow agreement was marked Plaintiff's

7 Exhibit 26 for identification.)

8 BY MR. POULSON:

9 Q. I show you 26, purported to be an escrow
10 agreement relative to the installation of a dry hydrant,
11 correct?

12 A. Correct.

13 Q. Who executed that?

14 A. Mr. Cree, both as manager and president,
15 and Robert Oliver, escrow agent.

16 Q. Now, there are actually three parties
17 for that?

18 A. There are three signatures to it.
19 Shooting Point, L.L.C., Shooting Point Property Owners
20 Association, and the escrow agent.

21 Q. Did Mr. Cree execute on behalf of two
22 parties?

23 A. On the -- yes, right. Shooting Point,
24 L.L.C., and Shooting Point Property Owners Association.

25 Q. And Mr. Oliver as the escrow agent?

1 A. Correct.

2 Q. Might that likewise be cancelled or
3 reversed?

4 A. I would assume.

5 MR. MCFARLAND: Well, with all due
6 respect, if he knows in his legal capacity, that's fine.
7 But if he's guessing, then I would have an objection. I
8 don't want to be hyper-technical, but --

9 THE WITNESS: I would hate to state my
10 legal opinion that that would be the case, because I
11 really have not exhaustingly examined this, to tell you
12 the truth.

13 MR. MCFARLAND: Well, then I move to
14 strike, Your Honor.

15 THE COURT: Okay. Next question.

16 BY MR. POULSON:

17 Q. Now, that is executed on behalf of the
18 Property Owners Association?

19 THE COURT: I think he said the Property
20 Owners Association as well as the L.L.C.

21 BY MR. POULSON:

22 Q. Mr. Wescoat, let me ask you, if I may,
23 please, what is obviously another legal question, but in
24 your experience as a real estate lawyer, would there have
25 been ways to lock that in place, all of those documents,

1 so they could not have been --

2 MR. LePAGE: Your Honor, at this point,
3 I am going to object on the grounds of speculation. And I
4 don't mean to be difficult, but can we move this along in
5 terms of --

6 THE COURT: Sustain the objection.

7 MR. LePAGE: -- who is signing all of
8 these documents?

9 THE COURT: Sustain the objection.

10 MR. LePAGE: It's not an issue.

11 THE COURT: Sustain the objection.

12 MR. LePAGE: Thank you.

13 THE COURT: Next question, please.

14 BY MR. POULSON:

15 Q. Now, from your review of the -- even
16 after the amendments, what affect, if any, did it have on
17 farming on lot 17 as originally permitted under the
18 covenants and restrictions?

19 A. Would you repeat the question?

20 Q. Insofar as farming on lot 17 permitted
21 under the original covenants and restrictions?

22 A. I don't think it would have any affect.

23 Q. Nothing has changed --

24 A. Not as to the farm.

25 Q. -- from your review?

1 Mr. Wescoat, in your perspective as the
2 owner over whom the fifteen-foot easement traverses, how
3 have the uses worked in the past, over the years where the
4 uses --

5 MR. LePAGE: Your Honor, I'm going to
6 object. Again, this has been asked and answered about
7 twelve times already today.

8 THE COURT: I don't think it's been
9 asked of him, but I'm willing to speculate that he's going
10 to say it's been very compatible. Go ahead.

11 BY MR. POULSON:

12 Q. Speculation correct?

13 A. Correct.

14 Q. Based on your knowledge of the
15 fifteen-foot right-of-way and its present uses, and the
16 entrance, and the use by you, and your tenant, and your
17 family, if you would, please, sir, assume along with that
18 an 18-lot subdivision with single-family residences that
19 would be used by cars, trucks, farm vehicles, motorized,
20 and non-motorized vehicles --

21 THE COURT: Let me stop you,
22 Mr. Poulson, because the witness was seated in the
23 courtroom when you went through the original hypothetical
24 question.

25 Do you recall the hypothetical question

1 he went through with the other witness?

2 THE WITNESS: Yes.

3 THE COURT: Can we all agree that it's
4 the same hypothetical question, and let him answer?

5 MR. MORRIS: Yes, sir.

6 MR. LePAGE: Yes, Your Honor.

7 THE COURT: Okay. Go ahead.

8 BY MR. POULSON:

9 Q. What affect would those uses have on
10 your use of the easement? And when I say your use, your
11 use and your tenant's use -- or the tenant's use of the
12 easement or roadway through your parcel, sir?

13 A. It would be extremely detrimental. It
14 might even complicate the situation in that you couldn't
15 even really utilize it as far as farm equipment is
16 concerned.

17 MR. MCFARLAND: I would move to strike
18 that aspect of it, Your Honor. It's calling pure
19 speculation.

20 MR. POULSON: It's not speculation.
21 This man knows as much about this easement as anybody.

22 THE COURT: Overruled. Go ahead.

23 BY MR. POULSON:

24 Q. The drainage situation along the
25 easement, what is the present situation with drainage,

1 Mr. Wescoat?

2 A. Basically, the water settles. It runs
3 toward the field as far as the current easement is
4 concerned, and, of course, being a primarily sandy road,
5 the road soaks up a fair amount of rain, too, but there is
6 some runoff as far as that is concerned.

7 Q. And from your observations, what affect,
8 in any, if that road should be hard surfaced?

9 A. Well, obviously, it would increase the
10 volume of water that would go to the field, and it would
11 harm the edge as far as farming purposes are concerned.

12 Q. Now, direct your attention, if I may,
13 please, to March the 23rd, 2000. Did you have occasion to
14 be here in circuit court with Judge Lowe presiding?

15 A. I was.

16 Q. And in the interest of time, that was a
17 preliminary injunction request?

18 A. That's correct.

19 Q. Did Mr. Will Cumming, Jr., was he
20 present on that day?

21 A. He was here.

22 Q. And what was his position?

23 A. Position in what respect?

24 Q. His official position?

25 A. Oh, he was here as resident engineer for

1 the Department of Highway.

2 Q. Okay. And did Mr. Cumming testify at
3 that point in time during that proceeding?

4 A. He did.

5 Q. And did he testify under oath?

6 A. He did.

7 Q. And what was the subject of his
8 testimony?

9 MR. LePAGE: Your Honor, I'm going to
10 object. It's in the record of the Court in the prior
11 case.

12 MR. POULSON: I don't know that it is in
13 the record because I don't know that the transcript has
14 been made a part of the court record.

15 THE COURT: The transcript may not have
16 been made a part of the record in this proceeding, but
17 it's all the same in the same suit, so it would be a part
18 of the record as far as wherever the original motion or
19 the actual original Bill of Complaint. It's part of that
20 record.

21 MR. POULSON: Well, with the
22 understanding that we could mark the transcript as an
23 exhibit or whatever.

24 MR. LePAGE: No objection.

25 THE COURT: I don't really think we'd

1 mark it as an exhibit, Mr. Poulson. I think that the
2 transcript -- that transcript is a part of the record of
3 this proceeding.

4 MR. MCFARLAND: Right.

5 THE COURT: And trust me, I know exactly
6 where you're going, and I know exactly what he says. Go
7 ahead.

8 MR. POULSON: Okay.

9 All right. Thank you, Mr. Wescoat.

10 THE COURT: All right. Prior to -- I'm
11 sure there will be some cross-examination, so why don't we
12 take this opportunity to break for lunch.

13 It's one o'clock. Let's try to get
14 started right at two.

15 You can step down, Mr. Wescoat.

16 MR. MCFARLAND: Your Honor, it's
17 obvious -- well, I don't want to say it's obvious, but it
18 does not appear that we are going to get to my witnesses
19 today. Can I have some idea where Mr. Poulson is going so
20 I can --

21 THE COURT: Well, we're going to get
22 that idea in a minute. I'm going to ask you-all to step
23 up here.

24 We'll be in recess as far as the hearing
25 is concerned. If the lawyers would come up here for a

1 minute.

2 (Lunch recess.)

3 THE COURT: All right. Mr. McFarland.

4

5 CROSS-EXAMINATION

6 BY MR. MCFARLAND:

7 Q. Good afternoon, Mr. Wescoat.

8 A. Good afternoon.

9 Q. Do I understand, sir, that your
10 residence is a half mile to three-fourths of a mile away
11 from the easement that we've been discussing?

12 A. Actually, from the easement it's almost
13 exactly a half a mile.

14 Q. Okay. So other than you wanted to just
15 go down to the property, or that part of the property, or
16 maybe you were jogging or walking, you certainly don't use
17 the right-of-way on a regular basis?

18 A. Correct.

19 Q. In fact, it's fair to say that by
20 vehicular means, you use it probably once a month?

21 A. Probably in that neighborhood.

22 Q. There's been some testimony about the
23 old house that's on the Shooting Point property?

24 A. Right.

25 Q. You're aware that at one point there was

1 electricity running to that house?

2 A. No.

3 Q. You're not? Okay.

4 And the house you yourself live in, do I
5 understand that at one point that had been abandoned, and
6 you and your family rehabbed it?

7 A. Well, it was a quasi abandoned, I guess.
8 Nobody had lived in it for, I don't know, twenty or thirty
9 years prior to us moving there.

10 Q. Okay. Now, we've heard some testimony
11 about the grant of easement. Do I understand,
12 Mr. Wescoat, that at the time the easement was given to
13 Elizabeth Jones, you were serving in essentially an
14 attorney capacity for your parents?

15 A. As everybody is in a parent-child
16 situation, it was somewhat as an attorney, and also, of
17 course, a parental relationship too.

18 THE COURT: You didn't charge anything?

19 THE WITNESS: Absolutely.

20 BY MR. MCFARLAND:

21 Q. Certainly, I mean, you were employing
22 your legal background in reviewing the document?

23 A. I was.

24 Q. Okay.

25 MR. MCFARLAND: Can we give him a copy

1 of the grant of easement, Your Honor?

2 THE COURT: If I can find it.

3 MR. MCFARLAND: I don't remember exactly
4 which number it is.

5 MR. POULSON: 12 is my exhibit.

6 MR. MCFARLAND: Okay.

7 BY MR. MCFARLAND:

8 Q. This easement is dated June the 18th of
9 1974, sir?

10 A. Correct.

11 Q. You had ban practicing law since 1967?

12 A. Correct.

13 Q. And by 1974, even back then, I take it,
14 that real estate was the substantial portion of your
15 practice?

16 A. Absolutely.

17 Q. Okay. You would agree with me that this
18 is not a metes and bounds easement?

19 A. I would certainly agree.

20 Q. Okay. And do I understand that there
21 was no survey done for the granting of this easement?

22 A. That's correct.

23 Q. Okay. And in terms of how the easement
24 is described, I would like for you to read for me -- I
25 guess it starts at the bottom of page one and onto line

1 two.

2 Is that where we find the description of
3 the easement?

4 A. Well, it depends on whether you're
5 saying the fifteen-feet aspect is a part of the
6 description.

7 Q. Right. And what I'm most specifically
8 referring to is because we've heard some testimony about
9 it following the woods, and I want to make sure we're all
10 on the same wave length.

11 Beginning next to the last line on page
12 one, please?

13 A. Said right-of-way easement to follow the
14 present road leading from Virginia State Route 622 to
15 lands of Elizabeth F. Jones, known as Shooting Point farm.

16 Said present road running generally in a
17 northern direction on point, a turn of said Virginia State
18 Route 622 to a point at or near a corner of a certain
19 woods, next turning in a generally easterly direction
20 running along the northern edge of said woods to a point
21 at or near the edge of said woods, next turning and
22 running in a generally northerly direction following along
23 of the edge of said woods to a point at or near a corner
24 of said woods, next turning in a general easterly
25 direction running along the edge of said woods until the

1 boundary lines separating Shooting Point farm from the
2 land of said Margaret W. Wescoat, and Ann W. Hollowman, at
3 which boundary line of said right-of-way easement
4 terminate.

5 Q. Okay. You read that little quickly, and
6 I was trying to follow along.

7 But as I see the language of this
8 easement, when it's describing, and it's talking about the
9 general directions it's running in, at times it's using
10 the language along the woods, but it does not say as to
11 the turns that they are specifically alongside the woods,
12 correct?

13 THE COURT: I mean, I think it speaks
14 for itself.

15 MR. MCFARLAND: All right, Your Honor.

16 THE COURT: It's in evidence. Go ahead.

17 MR. MCFARLAND: Okay.

18 BY MR. MCFARLAND:

19 Q. Now, Mr. Wescoat, you also indicated
20 that you had an opportunity to review the subdivision
21 plat?

22 A. I've seen it. I didn't review it
23 extensively, but I saw it.

24 Q. And that has been marked as either
25 Defendant's Exhibit 3, or I think Plaintiff's 17 is the

1 same thing.

2 Let me hand you what's been marked as
3 Defendant's Exhibit 3. The subdivision plat contains a
4 reference to easement, correct?

5 A. It does.

6 Q. Okay. It contains some depiction of the
7 easement?

8 A. Right.

9 Q. Okay. And it references the easement --
10 I hate to point across you, but I think it's probably the
11 best way.

12 A. Sure.

13 Q. Am I correct what I'm pointing to now
14 would be a reference to the easement?

15 A. What you point to, the fifteen-foot ROW,
16 which I assume stands for right-of-way, to Route 622, and
17 then D.B. 179 P. 29.

18 Q. Okay. So on the subdivision plat that
19 was recorded, there is a specific reference to this deed
20 book, correct, and page?

21 A. Right.

22 Q. And you understand that to be the
23 recorded grant of easement?

24 A. Correct.

25 Q. Okay. By the way, we heard some

1 testimony about a potential B and B, or a country inn.
2 From your experience as an attorney in Northampton County,
3 that would require a different kind of zoning approval
4 from the county than is presently granted to this
5 property, correct?

6 A. It is -- I have dealt with a B and B at
7 one point. I have never dealt with a country inn. I have
8 no experience with those at all.

9 But depending on what district it's in,
10 and what is granted as a matter of right, and what you
11 need go to before the zoning authorities, without
12 reviewing the zoning ordinance, I wouldn't be able to give
13 you a positive answer as far as that is concerned.

14 THE COURT: Defendant's Exhibit 5.
15 You've seen this? Is there any objection?

16 MR. POULSON: Not at this point.

17 THE COURT: It appears to be two
18 photographs, actually three, I guess, taped together of
19 the general entrance from Route 622 to the easement in
20 question.

21 Defendant's number 5.

22 (Photographs were marked Defendant's
23 Exhibit 5 for identification.)

24 MR. MCFARLAND: Thank you, Your Honor.

25 BY MR. MCFARLAND:

1 Q. Mr. Wescoat, you had the area of the
2 easement where it comes in off Route 622 surveyed at the
3 beginning of this year?

4 A. Yes.

5 Q. And I think you hired Shore Engineering
6 for that purpose?

7 A. That's correct.

8 Q. And after that survey was done, if I
9 followed your son's testimony correctly, some posts were
10 put up?

11 A. That's correct.

12 Q. What is your understanding of what the
13 posts are marking?

14 A. The posts were marking essentially where
15 the surveyor indicated the right-of-way was, and he put
16 down various markers, and we put posts to the outside of
17 those markers.

18 Q. Let me show you what's been marked as
19 Defendant's Exhibit 5, and direct your attention to the
20 bottom photograph.

21 A. Okay.

22 Q. Do you recognize what's depicted in
23 Defendant's 5, sir?

24 A. I do.

25 Q. Would that be a photograph looking down

1 the right-of-way from Route 622?

2 A. It would.

3 Q. And it would show now the area that's
4 been demarcated by the posts?

5 A. Right.

6 Q. And I take it any vehicle that's going
7 to travel the right-of-way at that point in time had to go
8 through the posts, correct?

9 A. Well, they wouldn't absolutely have to.
10 They could have gone on the field, but that's obviously
11 what we hoped that they would do.

12 Q. Okay. By the way, the lease that Curtis
13 Jones has with you is a year-to-year lease, sir?

14 A. I believe the last written lease we did
15 was a three-year lease that provided that unless one or
16 the other of us gave notice prior to October 1st, it would
17 continue on a year-to-year basis, is my recollection of
18 it.

19 Q. Okay. So unless someone gives notice,
20 the lease automatically renews for the next year?

21 A. Right.

22 Q. But if someone gives notice, then it can
23 terminate if they give the notice by October?

24 A. Right.

25 Q. And I take it Mr. Jones didn't give you

1 notice in October of 2000?

2 A. He did not.

3 Q. That he was going to terminate for 2001?

4 A. No.

5 Q. So he still has the right to farm?

6 A. I hope he is.

7 Q. This year?

8 A. Right.

9 Q. To date, Mr. Jones has never complained
10 to you about problems to his crops from use of the
11 easement?

12 A. He has not.

13 MR. MCFARLAND: I appreciate the Court's
14 patience. I'm just trying to make sure I get it done
15 without short-circuiting.

16 THE COURT: Is that it?

17 MR. MORRIS: No questions, Your Honor.

18 MR. LePAGE: No questions.

19 THE COURT: Anything else, Mr. Poulson?

20 MR. MCFARLAND: I just have one
21 question.

22 BY MR. MCFARLAND:

23 Q. I take it, Mr. Wescoat, that if possible
24 you would have liked to have purchased the property and
25 brought it back into the family fold?

1 A. I certainly would.

2

3 REDIRECT EXAMINATION

4 BY MR. POULSON:

5 Q. Mr. Wescoat, very quickly, two
6 questions.

7 Number one, when you and Mrs. Wescoat
8 redid the Glebe, did it look anything like Complainant's
9 Exhibit 2A and 2B?

10 A. It was not in a state of good repair,
11 but it certainly was not at that point. No, it had a
12 roof, and it was -- even though the windows were boarded
13 and whatnot, it was in a decent enough shape that we had
14 something to work with.

15 Q. All right. If you will, please, pick up
16 the Shooting Point subdivision plat I think that you laid
17 up there.

18 Mr. McFarland asked you about the fact
19 that on the left-hand side of the plat near the
20 right-of-way there is a reference to a deed book page
21 number?

22 A. That's correct.

23 Q. In addition to the deed book and page
24 number of the -- obviously the deed of easement, does the
25 plat likewise purport, and illustrate, and show courses

1 and distances for the fifteen-foot right-of-way?

2 A. It does.

3 MR. POULSON: Thank you, sir.

4 THE COURT: Anything else?

5 All right. Thank you, sir. You may
6 step down.

7 Who do you have next, Mr. Poulson?

8 MR. POULSON: Kenny Wright.

9 THE COURT: Come on up and be sworn,
10 please.

11 (Mr. Wright was duly sworn.)

12 MR. POULSON: Your Honor, we want to
13 take Mr. Wright as an adverse witness, sir.

14 MR. MCFARLAND: I would have some
15 objection, Your Honor. He's not here as a party
16 represented for VDOT. That's Mr. Cumming.

17 MR. POULSON: That's immaterial.
18 Mr. Wright was one of the parties that issued this permit.
19 He and Mr. Cumming between them are the issuing parties
20 who acted on behalf of the Transportation Commission.

21 MR. MCFARLAND: With all due respect,
22 Your Honor, that does not create adversity.

23 MR. POULSON: Yes, it does, when they're
24 the issuing officials.

25 MR. MCFARLAND: Well, that's not going

1 to be his testimony.

2 THE COURT: Well, why don't we do this,
3 Mr. Poulson: Why don't we start with questions as if he's
4 your witness, and then if it turns out it's adverse -- I
5 don't think you can automatically claim it at this point,
6 as far as I understand.

7
8 KENNETH WRIGHT, called as a witness by
9 and on behalf of the Plaintiff's, being first duly sworn,
10 testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. POULSON:

14 Q. Mr. Wright, state your name, please.

15 A. Kenneth Wright.

16 Q. And where do you live?

17 A. Olney, Virginia.

18 Q. And your occupation?

19 A. Assistant resident engineer Virginia
20 Department of Transportation.

21 Q. And how long have you been the assistant
22 resident engineer?

23 A. Fourteen and a half years.

24 Q. And prior to that, did you work for
25 VDOT?

1 A. Yes.

2 Q. Approximately how long, sir?

3 A. Total of thirty-eight, almost
4 thirty-nine years.

5 Q. And what are your duties as the
6 assistant resident engineer?

7 A. To assist Will Cumming in the running of
8 the whole Eastern Shore of Virginia on highway matters.

9 Q. And Mr. Cumming, is of course, the
10 resident engineer?

11 A. Yes, sir.

12 Q. Is part of your duties issuing entrance
13 permits?

14 A. Yes, sir.

15 Q. And as a practical matter, do you handle
16 the vast majority of those applications and permits?

17 A. I do.

18 Q. And what is an entrance permit?

19 A. An entrance permit is an entrance that
20 has been reviewed to see that it meets, first of all,
21 safety standards, and comes close to meeting some minimum
22 standards set up for it.

23 Q. And what does an entrance permit do?
24 What is it?

25 A. An entrance permit gives permission of

1 that entrance to be used --

2 THE COURT: Entrance onto a public road,
3 I assume, from a private road, or driveway, to private
4 area. Go ahead.

5 BY MR. POULSON:

6 Q. Now, Mr. Wright, those entrance permits
7 are controlled by what, sir?

8 A. They are controlled?

9 Q. Are they controlled by a set of
10 regulations?

11 A. Yes, sir.

12 MR. POULSON: Judge, we're going to
13 offer at this point in time Plaintiff's Exhibit 27.

14 Basically, what we're offering is that
15 part of this book which constitutes basically on the Code
16 Section and regulations, parts of it.

17 THE COURT: Plaintiff's 27.

18 (Plaintiff's Exhibit 27 was marked for
19 identification.)

20 MR. LePAGE: Your Honor, I'm a bit
21 confused and to what it is that we've offered as an
22 exhibit. Can we get more elaboration on that, please?

23 MR. POULSON: Yes. We're offering as an
24 exhibit what are the Code Sections, and what is the
25 regulations themselves.

1 THE COURT: I guess starting with 24 VAC
2 30-71-60 minimum standards.

3 MR. POULSON: Proposed introductions,
4 and words from the commissioner, and so forth.

5 THE COURT: All right.

6 MR. LePAGE: Well, I would move to
7 introduce the whole thing, Your Honor.

8 THE COURT: Well, the whole thing is in
9 evidence. I think all he was doing is just pointing out
10 that part that was of concern to this particular
11 testimony.

12 MR. MCFARLAND: 27? Did I follow that
13 correctly.

14 MR. POULSON: Yes.

15 BY MR. POULSON:

16 Q. Mr. Wright, look at that. And is that
17 the current -- does it contain the current regulations
18 that were in effect at the time that this permit --

19 A. Yes, as far as I can tell.

20 Q. Now, generally, what is the procedure
21 for getting an entrance permit? How does it work?

22 A. Usually, the property owner or his
23 representative will contact our office, present -- either
24 meeting on-site -- usually, I always require to meet
25 on-site, take a look at the site, what's going to happen.

1 And then they will either supply me with
2 some type of sketch, minimum, looking at the entrance
3 design, and I will compare it and see if it meets what I
4 can accept, and then I have an application form that they
5 fill out.

6 Q. And if have you a question, where do you
7 go?

8 A. If I have a question?

9 Q. Yes.

10 A. Well, if I have a question myself, due
11 to the design or something like that, then I will refer it
12 to my traffic engineering staff.

13 Q. And that's where? In Suffolk?

14 A. Yes.

15 Q. Now, within your duties as the assistant
16 resident engineer, I take it that you applied and
17 interpret the minimum standards?

18 A. Yes, sir.

19 Q. Now, you-all's office here on the
20 Eastern Shore, this is a residency office, right?

21 A. Yes, sir.

22 Q. And administratively, you are under
23 whom?

24 A. The Hampton Roads District. It used to
25 be the old Suffolk district.

1 Q. Now, Mr. Wright, if you would, please,
2 if I can get you to do something for me, tell me how you
3 measure the width of this credenza, sir.

4 A. The width of the credenza?

5 Q. Yes.

6 A. It would be length of one side to the
7 other. Now, which side would be the -- you can consider
8 one of them the length, and the other is the length. It
9 could be either.

10 Q. Well, step up here, if you will, please,
11 sir.

12 Which one do you consider the length?

13 A. Facing it like this, on this credenza it
14 would be -- either way. I mean, the length is going this
15 way, and the width is that way. And if you turn it the
16 other way, it would be the opposite.

17 Q. Well, the length is normally longer than
18 width, isn't it?

19 A. Usually.

20 Q. All right. Measure the width for me.

21 Are you measuring length or width now?

22 A. Well, it depends on what my wife would
23 want.

24 Q. And what is it?

25 A. Seventeen inches.

1 Q. Approximately seventeen inches?

2 A. Eighteen inches.

3 Q. Eighteen?

4 A. Uh-huh.

5 Q. And basically what you've done is
6 measured the right angles across?

7 A. Yes.

8 Q. Okay. Have a seat.

9 Now, if I may, please, let me show you
10 28A, B, and C.

11 THE COURT: Are they pictures,

12 Mr. Poulson?

13 MR. POULSON: No, sir. They are permits
14 and revisions.

15 THE COURT: Have you already put them
16 in?

17 MR. POULSON: No, sir.

18 THE COURT: Oh, you've got them.

19 MR. MCFARLAND: I just want to make sure
20 it's -- if I can take a peek.

21 MR. POULSON: 28A, B, and C.

22 THE COURT: Is this just one, or all
23 three of them?

24 MR. POULSON: Judge, what it is, there
25 is an original permit. There was a subsequent revision,

1 and a second revision, and that's why I would like to
2 identify them as 28A, 28B, and 28C.

3 THE COURT: I'm going to make them all
4 28, and we'll put them together, and I will put "A" on
5 this one, "B" on this one, and "C" on this one.

6 (Permits were marked Plaintiff's Exhibit
7 28 for identification.)

8 BY MR. POULSON:

9 Q. Mr. Wright, if you will thumb them,
10 please. Do you recognize them?

11 THE COURT: Is everybody in agreement as
12 to what it is? I take it it's a permit for the easement
13 in question?

14 MR. LePAGE: Yes, sir, it's the permit
15 application itself.

16 MR. MCFARLAND: And then there were two
17 amendments, Your Honor.

18 BY MR. POULSON:

19 Q. Mr. Wright, you signed off on two of
20 them, I believe, B and C; is that correct?

21 A. Yes, sir.

22 Q. And on A, Mr. Cumming's is name is
23 signed, but you actually signed the name for Mr. Cumming?

24 A. Right.

25 Q. Now, VDOT insofar as it's requirements

1 of permitting entrances of subdivisions uses a different
2 definition of subdivision than does Accomac or Northampton
3 County; is that correct?

4 A. Yes, sir. From my understanding, yes,
5 sir.

6 Q. So something can be exempt from a
7 subdivision, but you-all still have to act on it, or
8 permit it?

9 A. We would like to, yes, sir. We prefer
10 to. Not all the times do we know about it, but if it's
11 brought to our knowledge, then we have our separate rule
12 that we apply to it.

13 Q. Basically, you try when you find out
14 about it, and when you get it?

15 A. Yes.

16 Q. And I take it over the years you-all
17 have encouraged the county people to get them to you?

18 A. Yes, sir.

19 Q. Now, Mr. Wright, referring you to
20 Complainant's Exhibit 29, the January letter to Benson.

21 (Letter was marked Plaintiff's Exhibit
22 29 for identification.)

23 BY MR. POULSON:

24 Q. Mr. Wright, was that written relative to
25 Shooting Point, sir?

1 A. Yes, sir.

2 Q. And within that letter, did you set out
3 in that letter any requirements for an entrance?

4 A. Yes, sir.

5 Q. And if you will, please, will you read
6 quickly what those requirements were?

7 A. Said entrance would have to meet minimum
8 standards for a commercial entrance, which is thirty feet.
9 To meet the standard, it requires a minimum of
10 fifty-five-foot right of way directly adjoining VDOT's
11 existing thirty-foot right-of-way.

12 There is not room to add the twelve and
13 a half foot minimum on VDOT right-of-way. If developer
14 plans to connect this location to some other location,
15 then fifty-five foot right-of-way will be required.

16 Q. You had been down there to look at the
17 right-of-way?

18 A. Yes, sir.

19 Q. And commercial entrance, a subdivision
20 entrance is classed as a commercial entrance, private
21 subdivision?

22 A. No, sir, it's not. It's got a separate
23 design in the manual.

24 Q. Separate design in the manual?

25 A. Yes.

1 Q. Well, what were you saying here as to
2 what you needed?

3 A. I applied the commercial, thinking about
4 notifying the people that they had to get a permit for the
5 entrance that they were planning, I wrote the word use the
6 commercial entrance standard.

7 Q. In actuality, you were correct, were you
8 not?

9 A. Well, not according to it being a
10 subdivision I was not correct. I should have used the
11 design for private subdivision, which I did not. I used
12 the commercial standard.

13 Q. But if it had a country inn, you would
14 have to use a commercial entrance, wouldn't you?

15 MR. MCFARLAND: I'm going to object,
16 Your Honor. That calls for a conclusion that is beyond
17 his realm. That would have to be --

18 MR. POULSON: Well --

19 MR. MCFARLAND: Can I finish my
20 objection, please?

21 Mr. Wescoat just testified on my
22 cross-examination that he wasn't sure that a country inn
23 would require a commercial entrance. So it certainly is
24 beyond the realm of this gentleman as to what the zoning
25 requirements are for commercial versus residential versus

1 exempt --

2 THE COURT: I don't think he's asking
3 for zoning requirements. I think he's asking the VDOT
4 requirements for an entrance.

5 MR. LePAGE: Your Honor, I have an
6 objection, too, if I may. VDOT permits whatever is
7 applied for. There was no application pending at the time
8 that Mr. Wright wrote his letter, and so it's really
9 speculative as to what entrance application would be
10 applicable.

11 MR. POULSON: It doesn't have to be
12 pending. It's platted with propose uses of a country inn,
13 a bed and breakfast, and so forth, and Mr. Cumming
14 testified last time, Judge, as soon as that plat goes to
15 record, it's supposed to be an application anyway.

16 THE COURT: Overrule the objection. Go
17 ahead.

18 BY MR. POULSON:

19 Q. Now, Mr. Wright, if you had known that
20 there was a proposed within the declaration a country inn
21 with ten bedrooms, and cooking facilities for transients,
22 or alternatively a bed and breakfast with four bedrooms
23 for a transients, would you have required a commercial
24 entrance in your terminology over and above a private
25 subdivision entrance?

1 MR. MCFARLAND: I have an objection,
2 Your Honor, because that misstates what the declaration
3 stated. The Court can look at the declaration as to
4 country inn. It reserves the right on one lot on the
5 property for a country inn.

6 No application was pending. It doesn't
7 say that there will be a country inn. It reserves the
8 right, and that's a different language than Mr. Poulson is
9 misstating in his question.

10 MR. POULSON: It is permitted.

11 MR. LePAGE: Also, Your Honor, there is
12 no evidence in the record that the county would have
13 permitted that.

14 THE COURT: Well, you-all took care of
15 that little problem to make sure everything was taken care
16 of, I assume. And Mr. Poulson will say, Well, if you put
17 it back, and I assume if you put it back, then that is
18 going to change what his testimony would be, and so here
19 we are.

20 MR. POULSON: What we're looking at is
21 two points here, Judge. Number one, if it's invalid to
22 start with, does it suddenly get turned valid later.

23 The second question is this: To
24 illustrate the fact that the Highway Department had
25 absolutely no idea what it was doing in no way, shape, or

1 form as to what was going in there, and didn't bother to
2 make the necessary inquiries certainly shows a lack of a
3 rational interpretation --

4 MR. LePAGE: Judge, I object to him
5 editorializing at this point.

6 THE COURT: Obviously, I'm not taking
7 that as testimony. Anyway, I think I know what your point
8 is, and you're sort of beating a dead horse here. I'm
9 going to assume for the sake of everybody here that he
10 would say yes if he had known, that it would have had to
11 be a commercial. Go ahead.

12 BY MR. POULSON:

13 Q. You were not aware of that, Mr. Wright,
14 were you at the time?

15 A. No, I was not.

16 Q. Did you read the declarations?

17 A. No, sir.

18 Q. Did you ask for the declarations?

19 A. No, sir.

20 Q. From the applicant?

21 A. No, sir.

22 Q. Did the applicant submit you any
23 information including the declaration?

24 A. No, sir.

25 Q. You were given no information along

1 those lines?

2 A. No, sir.

3 Q. And likewise, the same question of a bed
4 and breakfast?

5 A. No, sir.

6 Q. You were not cognizant either of that?

7 A. No, sir.

8 Q. Mr. Wright, are you aware of any
9 authority that you have to lessen or waive the minimum
10 standards as shown under the regulations of the
11 Commonwealth of Virginia, sir?

12 A. The manual in the wording in the front
13 gives discretion. This is to be used as a guide.

14 Q. Where does it say "guide"?

15 A. It says guidelines are set forth for
16 commercial entrance primarily.

17 Q. When it says "guidelines," you take that
18 just as a guide?

19 A. Try to apply what's in here, if you can.
20 If it cannot be, you can make engineering judgments.

21 Q. Do you recall when we took your
22 deposition indicating that you were not aware of any
23 authority on --

24 MR. LePAGE: I object, Your Honor. If
25 he wants to give a specific reference to a deposition to

1 try to impeach him, that's fine. But to just randomly
2 quote, I object to it.

3 THE COURT: Give him the page and line
4 number, and just ask him.

5 MR. POULSON: Page 13 at line 23.

6 THE COURT: Just ask him if he remembers
7 being asked this question and giving this answer.

8 BY MR. POULSON:

9 Q. Mr. Wright, do you remember at the time
10 being asked, "And is there a document that authorizes you
11 to make leeways?"

12 And your response was, "Not that I -- I
13 don't really know."

14 Question: "Ever seen any such
15 document?"

16 Answer: "I don't know that. I mean,
17 I'm just going on general principles of what we do."

18 Question: "Just general principles?
19 That's what you operate under?"

20 Answer: "Right."

21 "Is that what you're telling me?"

22 Answer: "Yes."

23 BY MR. POULSON:

24 Q. Do you recall making those statements
25 during your deposition?

1 A. Sure. Sure.

2 MR. MCFARLAND: I'm going to object,
3 Your Honor. That's not inconsistent with his testimony.
4 The Court can decide, but the question has to do
5 specifically with the manual and guidelines.

6 THE COURT: It's just a question of
7 relevance as far as whether or not it's an inconsistent
8 statement. Go ahead.

9 BY MR. POULSON:

10 Q. Now, Mr. Wright, I take it it is your
11 thought at this time that the private subdivision, page 29
12 of the manual, that particular regulation is the one that
13 applies?

14 A. Yes, sir.

15 Q. And that is the one that you-all
16 purportedly issued the permit under?

17 A. Yes, sir.

18 Q. Now, under that particular regulation,
19 what is the required minimum paved surface width of an
20 entrance?

21 A. Minimum paved width would be twenty-four
22 feet.

23 Q. And is there any requirement according
24 to the regulations or anything on the side of the
25 twenty-four feet?

1 A. They are showing an area here. I guess
2 you can consider it a shoulder area.

3 Q. A shoulder? And how wide are they?

4 A. It would be -- they're showing here
5 thirty foot, so three feet each side.

6 Q. So a total of thirty feet, obviously?

7 A. Yes.

8 Q. Now, and this thirty feet is measured
9 where, sir?

10 A. Thirty feet would be measured across the
11 back of the entrance. However the road -- you would
12 measure from the end of the pavement of the road back.

13 Q. How many feet back from the edge of the
14 road?

15 A. Twenty-five foot back.

16 Q. Is that --

17 A. A minimum of twenty-five foot. I've
18 looked at it so many times.

19 Q. From the right-of-way line?

20 A. No, from the edge of pavement. Okay.

21 MR. POULSON: Now, Exhibit 30 for
22 purposes of identification.

23 MR. LePAGE: Your Honor, I have an
24 objection to the exhibit.

25 THE COURT: All right. Well, I'll have

1 to look at it. At this point, 30 for identification
2 purposes.

3 (Plaintiff's Exhibit 30 was marked for
4 identification.)

5 THE COURT: All right. What's your
6 objection?

7 MR. LePAGE: It's irrelevant.

8 MR. POULSON: No, it's not irrelevant.
9 Our purposes is it shows how to measure a right-of-way
10 going into a state road.

11 MR. LePAGE: That's a portion of the
12 deposition at which Mr. Poulson instructed him how to
13 measure it.

14 THE COURT: Well, Let's let him ask the
15 question and see what he says. It may be relevant, and it
16 may not be relevant.

17 BY MR. POULSON:

18 Q. Mr. Wright, do you recognize Plaintiff's
19 Exhibit 30?

20 A. Sure.

21 Q. And what did you purport to do there?

22 A. To measure that width of that road.

23 Q. You measured the width of the road?

24 A. Sure.

25 Q. And what did you get for the width?

1 A. Eight foot.

2 Q. And that's the way you measured it at
3 that process?

4 A. On this straight sketch, yes.

5 Q. Okay.

6 THE COURT: He's offering it now.

7 MR. LePAGE: Well, I object. That was
8 offered after Mr. Poulson instructed him to measure it
9 side to side, and I think it's not relevant to anything.

10 MR. MCFARLAND: I would agree, Your
11 Honor. It has no probative value whatsoever to this case.

12 MR. POULSON: Judge, the whole issue is
13 this manner in which the Highway Department now, according
14 to their testimony, contrary to anything that's ever done
15 for decades, suddenly decides how it's going to measure
16 twenty-four feet.

17 THE COURT: I think what he has done is
18 he has testified as how you are supposed to do it. I
19 assume you are offering this only as an example as to what
20 his testimony previously was?

21 MR. POULSON: And how he does it.

22 THE COURT: In that case, it's only for
23 purposes of illustration, and really is not probative
24 evidence. It would be no more if he got up on a
25 blackboard and showed us how he did it.

1 For that reason, I'll sustain the
2 objection.

3 MR. POULSON: All right. We'll leave it
4 for identification.

5 THE COURT: We'll leave Plaintiff's 30
6 for identification. Is not admitted into evidence, but it
7 is basically used for illustrative purposes. Go ahead.

8 BY MR. POULSON:

9 Q. Mr. Wright, did you know how many lots
10 there were to be within the Shooting Point subdivision?

11 A. I did not.

12 Q. Never made any inquiry?

13 A. I came and looked at the plat. The plat
14 was more than two, so -- I would think right away it
15 qualified for them to get a permit from us.

16 Q. And based on that, that was the only
17 thing you knew was more than two?

18 A. If it's more than two and not within a
19 family, that's it. They need to do something.

20 Q. Did you have any knowledge of what use
21 was to be made of the lots?

22 A. I did not.

23 Q. And were you provided any information by
24 the applicant as to what uses were to be made of the lots?

25 A. No, sir.

1 Q. And I believe you previously testified
2 you never read the declaration of covenants and
3 restrictions?

4 A. No, sir.

5 Q. Now, within the permit -- do you have
6 the permit with you, sir?

7 A. Uh-huh.

8 Q. Look at that first set. There is a
9 letter from Mr. Cumming dated April 4th.

10 THE COURT: This year?

11 MR. POULSON: April 4th, 2000.

12 THE COURT: Last year.

13 BY MR. POULSON:

14 Q. You've got that letter there?

15 A. Yes.

16 Q. What was that letter?

17 A. It's a letter to Mr. Cree discussing the
18 design of the actual entrance.

19 Q. Were there some conditions on there on
20 any kind of permit that might be issued?

21 MR. MCFARLAND: Your Honor, I'm going to
22 object because the author of the letter is sitting right
23 here at counsel table, and is going to testify in this
24 case, and he is the person who --

25 THE COURT: Well, you know, again, the

1 exhibit speaks for itself. If you want to get him to read
2 a certain sentence for emphasis purposes, point it out to
3 him and let him read it.

4 BY MR. POULSON:

5 Q. Look at paragraph number two, and
6 basically what does that say?

7 A. That he provide us with a legal right of
8 use of land beyond the right-of-way under the connection
9 as noted in the one above.

10 Q. Now, in the interest of time, imagine if
11 you will, please, remember the old Lionel train tracks,
12 the three tracks --

13 MR. LePAGE: Your Honor, before we get
14 into the intent of the author, I would object and suggest
15 that --

16 THE COURT: Well, let me finish the
17 question first.

18 BY MR. POULSON:

19 Q. Do you remember the old Lionel train
20 tracks?

21 A. Yes.

22 Q. With the three rail?

23 A. Yes.

24 Q. Okay. To use the phrase "butt up to,"
25 you know what I'm talking about by using that phrase in

1 the train-track illustration?

2 A. Generally.

3 Q. Under the permit, was the easement to
4 butt up to the back of the entrance?

5 A. That was the intent of this letter, yes.

6 Q. That was the intent of the letter?

7 A. Uh-huh.

8 Q. Now, you later signed off on the permit.
9 You signed Mr. Cumming's name, I believe?

10 A. Yes.

11 Q. That was with his authority?

12 A. Yes.

13 Q. In fact, I believe you said he might
14 have been in the next room?

15 A. Could have been. I don't know.

16 Q. Look at the drawing there, A, the first
17 diagram under --

18 A. On A?

19 Q. Yes, sir. Dated July 28th of diagram A,
20 schedule A, whatever it is.

21 A. Okay.

22 Q. See it?

23 A. Yes.

24 Q. Okay. Now, within that, do you see a
25 purported center line for the easement coming into the

1 permit?

2 A. Yes.

3 Q. See it?

4 A. Yes.

5 Q. It doesn't line up with the center of
6 the permit entrance, does it?

7 A. In this drawing, no.

8 Q. It doesn't?

9 A. No.

10 Q. You never saw it?

11 A. Not until --

12 Q. Not until very recently, some few days
13 ago?

14 A. Right.

15 Q. Didn't look or what, sir?

16 MR. MCFARLAND: Well, I'm going to
17 object. I mean, he either saw it, or he didn't. Now
18 you're asking him to speculate why he didn't see it.

19 THE COURT: Sustain the objection. Next
20 question.

21 MR. POULSON: All right.

22 BY MR. POULSON:

23 Q. But you are aware that it was a
24 condition of the permit?

25 A. Well, he was referring. I know it was a

1 condition that it should butt up.

2 Q. Now, if you will, please, look at
3 revisions B, Exhibit 28B, and 28C, which are -- and I
4 don't have the dates right in front of me.

5 Let me see if I can help, in the
6 interest of time. Let's look at July --

7 All right. We're looking at 28B and
8 referring you to what says revision of plan B. B was if
9 the road would fit and that sort of thing?

10 A. Yes.

11 Q. Where is the center line there?

12 A. Same place.

13 Q. Same place? You didn't notice it when
14 you signed off on it?

15 A. I didn't review it.

16 MR. MCFARLAND: Let me note an
17 objection, Your Honor, because what the witness is now
18 being asked to look at is an amendment that was submitted
19 in October of 2000, but it's an amendment to plan B. It's
20 not for the same document that he was previously
21 testifying about, so it's irrelevant.

22 MR. POULSON: It's not irrelevant. It
23 shows that they didn't see it.

24 MR. MCFARLAND: May I finish my
25 objection, Mr. Poulson, please?

1 MR. POULSON: Yes, sir.

2 MR. MCFARLAND: He was testifying in the
3 original application about plan A, which is really the
4 only plan that matters in this case. Plan B is simply in
5 the event that the estate should later decide to expand
6 the right-of-way to fifty feet. But he was specifically
7 questioned on plan A in the original application.

8 Now Mr. Poulson is trying to get him to
9 compare plan A to plan B.

10 THE COURT: Well, I guess you can ask
11 him if he ever looked at plan B.

12 MR. MCFARLAND: If he looked at B, it's
13 in conjunction with the original B, but not the original
14 A.

15 THE COURT: I understand that.

16 MR. MCFARLAND: Okay.

17 MR. POULSON: I'm not going to do that.

18 BY MR. POULSON:

19 Q. With reference to B, Mr. Wright, again,
20 the center line is not lined up with the entrance?

21 A. Where there distance is showing, it
22 doesn't line up.

23 Q. Did you ever look at that when you
24 approved the permit?

25 A. Not that.

1 Q. Okay. Now, if you will, please, move to
2 28C which is a November 27th from that's part of that from
3 Baldwin and Gregg, a revision for plan A, current
4 situation in this particular case.

5 And you recall that?

6 A. Yes.

7 Q. Now, where is the center line in that?

8 A. They've slid it up so that it shows an
9 arrow going over to it where it is supposed to be.

10 Q. They slid it up?

11 A. Well, the picture is more -- if it's a
12 drawn picture, it looks like the arrow is continued up.
13 It's got an arrow where these pictures didn't show it.

14 Q. Does it show it now to be in the center,
15 so to speak?

16 A. Yes.

17 Q. Did you ever raise a question about how
18 does the center line get shifted?

19 A. I didn't review this thing back where
20 this location is. I only reviewed at this point where the
21 connection is. I mean, where the right-of-way line ends.

22 Q. Well, the right-of-way center line --

23 A. Right-of-way on this road right there is
24 as far as I reviewed.

25 Q. But you agree the easement has to run

1 through the entrance, do you not? And it shows it?

2 A. Yes.

3 Q. And that's my point. Did you ever ask
4 anybody, Well, what's going on here? How did the center
5 line suddenly shift?

6 A. No. These points on B and on A show the
7 distance, or that center line back from where I reviewed.
8 I only reviewed up to that right-of-way line, the actual
9 entrance.

10 Q. Well, you tell us going back to revision
11 plan B when I shows center line easement up there, you
12 didn't know where it was running to?

13 A. The center line appeared to be on these
14 sketches here, it appeared to be at the right-of-way line
15 in the center, not back here. I don't have anything to do
16 with back there on that road.

17 Q. And we're looking at attachment 5,
18 revision of plan B, on 28B, and you're telling me that you
19 took this to mean that the center line is right in the
20 middle of where it intersects the right-of-way at?

21 A. I was satisfied with the connection
22 being butted up to that point.

23 Q. Well, what tells you that's the center
24 line?

25 A. It doesn't.

1 Q. It's nothing. In fact, the center line
2 is shown with a course which actually carries it out off
3 the entrance, does it not?

4 A. That line you're talking about, I think
5 is in reference to it being the edge of the road.

6 Q. What is this, Mr. Wright? It says
7 easement "see L." What does that mean?

8 MR. LePAGE: At this point, Your Honor,
9 I'm going to object. He's badgering the witness. This is
10 his own witness.

11 THE COURT: Sustain objection. Just ask
12 him to explain it as best he can.

13 BY MR. POULSON:

14 Q. Does it say center line easement there,
15 Mr. Wright?

16 A. It says easement center line there, but
17 that's a solid line. If you'll look at this line
18 continuing on here, it's dashed.

19 Q. Well, what is this right here where it
20 keep on right at the -- underneath the tractor that's
21 shown there, right there? What's that line right there?
22 Isn't that a continuation of the center line running
23 actually to what is up here?

24 A. That could be. I mean, what I'm saying
25 from my view point, it's right here.

1 Q. Well, show me, if you will -- take a
2 pen, if you will, and mark where you say the center line
3 is on this revised B, number 28B.

4 MR. MCFARLAND: Well, "B" is irrelevant,
5 Your Honor. This is exactly what I was afraid of. "B" is
6 irrelevant. The permit was issued on plan A, and so to
7 pull out "B," we can pull out the Mona Lisa, and I don't
8 mean to be facetious, but it's not relevant.

9 MR. LePAGE: That's correct, Your Honor.

10 THE COURT: Objection sustained.

11 MR. POULSON: Judge, this is part of the
12 permit itself, and what we're trying to show here, we're
13 not showing "B" as going in tomorrow. But what we're
14 trying to show here is that basically the Highway
15 Department simply signed off on this without any knowledge
16 whatsoever.

17 THE COURT: I think you've made that
18 point perfectly clear, what your purpose is, but they're
19 right as far as whether or not that was considered as part
20 of the permitting process, and apparently it wasn't.

21 MR. POULSON: According to what they're
22 saying.

23 MR. LePAGE: Well, I would object to the
24 editorializing.

25 THE COURT: Well, I'm not -- we don't

1 have a jury, so -- go ahead.

2 BY MR. POULSON:

3 Q. Now, Mr. Wright, relative to, as you've
4 indicated, what the course would be the center line of the
5 easement now, I guess -- we're looking at C and we're
6 looking at plan A.

7 You take it now, and the center line it
8 says easement center line entrance time and an arrow
9 running up here, and purports to run through the center?

10 A. Uh-huh.

11 Q. And that didn't make any bells go off
12 with you or anything how this thing suddenly got changed?

13 A. Like I said before, I did not review it
14 back there. I didn't even pay any attention to the center
15 line back here. I was only interested in the entrance at
16 the right-of-way line, and it looked like it was in the
17 center.

18 Q. And you didn't construe this to mean
19 that the center line ran on up?

20 A. I could have at that time, but, I mean,
21 what I reviewed appeared to match the entrance that was
22 designed.

23 Q. So you didn't call Suffolk? You didn't
24 call Mr. Cumming --

25 A. Not on these two revisions, no.

1 MR. LePAGE: Objection, Your Honor.
2 He's attempting to impeach his own witness.

3 THE COURT: Sustain objection.

4 BY MR. POULSON:

5 Q. Now, Mr. Wright, with these entrances
6 that you issue, I take it probably -- and I won't say on a
7 daily basis, but quite often, right?

8 A. Yes.

9 Q. With this -- and when we're talking
10 about this particular entrance, with these entrances, are
11 two vehicles supposed to be able to enter and exit at the
12 same time?

13 A. That's the design, yes, sir, from my
14 understanding.

15 Q. Well, that's the intent of the entrance
16 requirements, is it not, sir?

17 A. From my understanding.

18 Q. And under the permit, there was a permit
19 condition that two vehicles be able to enter and exit at
20 the same time through the entrance, was it not?

21 A. That was the letter Mr. Cumming referred
22 to, yes.

23 Q. All right. And also within Baldwin and
24 Gregg's letter of July 28th, paragraph number one, on page
25 two, is that condition likewise reinforced and understood?

1 A. Should be able to enter -- two vehicles
2 should be able to enter and exit the entrance
3 simultaneously.

4 Q. Thank you.

5 Now, Mr. Wright, looking at -- and let's
6 use the last revision that you approved on November 29th.
7 Let's use this one right here. That's the one we're
8 talking about.

9 See that tractor and trailer over there?

10 A. Uh-huh.

11 Q. How wide is that tractor and trailer
12 supposed to be length and width?

13 A. Eight foot by fifty-five.

14 Q. Is there another vehicle shown on there?

15 A. Sports utility.

16 Q. And what's the length and width of that?

17 A. Six-foot something. I can't read it.

18 It's six-foot something.

19 Q. I think we would all agree it's six-foot
20 nine inches on there, I think?

21 A. Okay. By nineteen feet.

22 Q. All our eyes are bad at this age in
23 time.

24 Now, Mr. Wright, how wide si a
25 tractor-trailer, sir?

1 A. Standard would be eight foot and about
2 ninety-six inches, and I think they can go to a hundred
3 and two.

4 Q. You're saying a standard tractor-trailer
5 is eight foot?

6 A. Well, I think they say ninety-six
7 inches.

8 Q. How wide really is a tractor-trailer,
9 Mr. Wright?

10 A. How wide?

11 Q. Yes. How long really is a tractor?

12 MR. MCFARLAND: Your Honor, he's asked
13 him three times now, and he's said a standard
14 tractor-trailer is eight foot, or ninety-six inches.

15 THE COURT: That's what he said.

16 BY MR. POULSON:

17 Q. Mr. Wright, are you assuming without
18 mirrors?

19 A. No. They're exempt.

20 Q. They're exempt from what?

21 A. From the width requirement law.

22 Q. What width requirement law?

23 A. Ninety-six inches.

24 Q. You mean on the highway?

25 A. Yes.

1 Q. How much wider than eight foot is a
2 tractor with its mirrors?

3 A. That, I don't know.

4 Q. You don't have any idea, sir?

5 A. It could vary. You could have little,
6 standard, small mirrors, and probably only be three or
7 four inches outside of the trailer width, or you could
8 have the great, big West Coast mirrors, and it might be --
9 I don't know. I mean, I've never measured them.

10 Q. You've seen a lot of tractor-trailers,
11 haven't you, Mr. Wright?

12 A. Oh, sure.

13 MR. LePAGE: Your Honor, he's trying to
14 impeach his own witness again.

15 THE COURT: Sustain the objection.

16 BY MR. POULSON:

17 Q. Mr. Wright, with its mirrors, sir, will
18 a tractor and trailer fit on that easement with another
19 vehicle six feet nine inches, sir?

20 THE COURT: Not unless they are an inch
21 and a half on each side. Go ahead. Next question.

22 THE WITNESS: Very close.

23 BY MR. POULSON: .

24 Q. What do you mean "very close"?

25 A. They possibly could be, and possibly

1 could not. It depends on the width. I don't know how to
2 say that.

3 Q. Assume a tractor is about nine feet six
4 inches with its mirrors, sir.

5 MR. MCFARLAND: Wait a minute. I have
6 an objection --

7 MR. LePAGE: Judge, if we're going to
8 assume things --

9 THE COURT: Wait now. Let's -- you-all
10 don't need to be up here.

11 MR. MCFARLAND: Well, the reason I'm up
12 here is if he's referring to documents.

13 THE COURT: Well, he's not going to be
14 referring to anymore. We're now off of the
15 tractor-trailer kick. We've got a tractor-trailer is
16 eight feet wide. We've got a sports utility which is six
17 feet nine inches. That gives us fourteen feet nine
18 inches. That give us three inches to play with.

19 If he's got mirrors an inch and a half
20 on each side, he's okay. Anything bigger than an inch an
21 a half isn't going to make it. That's all pretty obvious.
22 So let's move on to the next question.

23 BY MR. POULSON:

24 Q. Mr. Wright, do you agree, sir, that two
25 vehicles with essentially no clearance can't pass side by

1 side on an entrance?

2 A. If the entrance is restricted, it would
3 have trouble, yes.

4 Q. It would have trouble?

5 A. Yes. You would hit mirrors, or go
6 outside the area.

7 Q. And that's not a safe entrance, is it,
8 Mr. Wright?

9 A. That I cannot say.

10 Q. Mr. Wright, you've been doing this how
11 many years, sir? You are going to come in here and tell
12 this Court you can't say on that?

13 A. I cannot say. This entrance, as far as
14 I'm concerned, was safe.

15 Q. As far as you were concerned, it was
16 safe?

17 A. Yes.

18 Q. And tell me how it was safe relative to
19 two vehicles, one coming out of the entrance, and the
20 other one coming into the entranceway with a width of
21 eight feet without mirrors on the tractor, and six feet
22 nine inches. And does that assume no mirrors on the other
23 vehicle?

24 MR. MCFARLAND: Your Honor, and I
25 recognize we're not here before a jury, but I'm going to

1 object. This is argumentative. He's badgering. And he
2 misstates what the condition says.

3 The condition says two vehicles. It
4 doesn't say that a tractor-trailer and SUV, or two
5 tractor-trailers, or a tractor-trailer and another large
6 vehicle has to pass. It says two vehicles.

7 THE COURT: Well, I think, in all
8 fairness, the illustration that was shown on there, and I
9 suppose as cases generally are of this nature to try to
10 make it seem as though you get the biggest and the best
11 through there. I think we all know that three inches
12 clearance is a little tight, and I think we can accept --

13 MR. MCFARLAND: I'll stipulate, Your
14 Honor, it's tight.

15 THE COURT: And let it go at that.

16 MR. MCFARLAND: Yes.

17 BY MR. POULSON:

18 Q. Mr. Wright, in your capacity as the
19 assistant resident engineer, sir, would you issue an
20 entrance permit where one vehicle has to stop outside the
21 entrance and let another vehicle out before it can proceed
22 in through the entrance?

23 A. No, sir.

24 MR. LePAGE: I'm going to object to the
25 speculative nature of that question.

1 THE COURT: Overruled.

2 MR. POULSON: Answer counsel.

3 MR. MCFARLAND: Your Honor, it might
4 make the most sense for me to defer to Mr. LePage at this
5 point.

6 THE COURT: Probably, yes.

7

8 CROSS-EXAMINATION

9 BY MR. LePAGE:

10 Q. Mr. Wright, I'll be brief. First, can
11 you tell me about what your normal policy is about when --

12 MR. POULSON: Judge, I have a few more
13 questions. I'm sorry. But I'll just pick back up when he
14 finishes.

15 BY MR. LePAGE:

16 Q. Can you tell the Court what your normal
17 policy is when somebody comes and they ask you about an
18 entrance permit in terms of whether you look at the
19 declarations, and whether you do a survey out there, and
20 if not, why not?

21 A. Okay. If a person comes and tells me
22 what he is going to do, I have a policy that I always
23 physically go look at the site. If it's commercial
24 development, or business type, conducting business, then I
25 have to know what he is going to do with it, probably what

1 kind of business and that type of thing.

2 If it's a subdivision, then I treat it
3 as a residential subdivision. And after that, he makes
4 application, and I ask for a site plan, and we go from
5 there.

6 Q. Does your application review process, is
7 it tailored to whether or not whatever the use is going to
8 be out there?

9 A. Commercial, business. Not tailored, but
10 I mean, I need to know that use.

11 Q. How about if it's a private subdivision?

12 A. If it's a subdivision, which I consider
13 in other words, residential living, then I don't review
14 anything at all about the subdivision itself.

15 Q. And if someone comes to you with a
16 private subdivision application for an entrance permit,
17 you assume that's going to be the purpose, don't you?

18 A. Residential. I mean, if it's brought to
19 me first, then I refer them to the county. And then if
20 the county is good enough to let me know about it, you
21 know, first, I mean, we work together, but a lot of times
22 I don't know about it.

23 Q. And if the purpose changes at some
24 point, and a commercial enterprise goes in, what do you do
25 about the permit then?

1 A. If I'm aware of it, then they're going
2 to have to upgrade the entrance to meet some type of
3 different standard.

4 Q. All right. You testified that the
5 pavement width here under the page 29 of the minimum
6 standards has to be twenty-four feet?

7 A. Yes, sir.

8 Q. How is the pavement width measured
9 normally? Isn't it measured parallel to the --

10 MR. POULSON: Objection. Leading
11 question.

12 MR. LePAGE: I'm on cross-examination.

13 THE COURT: Overruled.

14 MR. POULSON: It's his own client.

15 MR. LePAGE: It's your witness.

16 THE COURT: Overrule the objection.

17 BY MR. LePAGE:

18 Q. Isn't it measured parallel to the edge
19 of the pavement normally?

20 A. Yes.

21 Q. Isn't that standard VDOT practice?

22 A. Right.

23 Q. So you don't measure it side to side as
24 shown on that previous refused exhibit?

25 A. If you're measuring that road, you would

1 measure it on the edge of pavement. On that paper, I
2 measured it side to side.

3 Q. Right. But you measure the pavement
4 width normally parallel to the edge of pavement, do you
5 not?

6 A. That's what the book said.

7 Q. And you got twenty-four feet when you
8 measured this easement, measuring it that way?

9 A. Yes.

10 Q. What about shoulders? Isn't it, in
11 fact, a normal policy that --

12 A. That's one of the standards in the
13 manual that it's all sheet flow water in there. In other
14 words, there is no gutters, or anything like that to
15 take the water away on the easement. It's sheet there, so
16 the shoulders itself aren't needed on this specific
17 entrance.

18 Q. And isn't that standard with VDOT
19 policy?

20 A. Yes. I mean, the twenty-four foot is
21 what I would be looking for in the pavement, yes.

22 Q. Now, you testified about the center line
23 issue. You knew that the applicant had access to Route
24 622, did you not?

25 A. Yes, sir.

1 Q. And you knew they had a
2 fifteen-foot-wide easement, didn't you?

3 A. That had been told to me it had been a
4 fifteen-foot easement there, yes, sir.

5 Q. Now, in terms of vehicles passing each
6 other at the entrance of this fifteen-foot easement, have
7 you gone out and measured Route 622?

8 A. Yes.

9 Q. Can you tell me where you measured it,
10 and what those measurements were?

11 MR. POULSON: Again, Judge, 622's
12 measurements are immaterial to this case.

13 MR. LePAGE: They're highly material,
14 Your Honor.

15 THE COURT: Overrule the objection. Go
16 ahead.

17 BY MR. LePAGE:

18 Q. How wide is the pavement on 622 at the
19 point the easement hits it? Do you know?

20 A. Approaching the easement, it's fourteen
21 foot. Right in the middle of the curve, it's fifteen. I
22 think fifteen feet, fifteen one or something like that.
23 And then after you go out of that curve, it's back to
24 fourteen again.

25 Q. And the fact that the road is only that

1 wide, factored into your assessment that this provided a
2 safe entrance, did it not?

3 A. Definitely.

4 Q. And the fact that the traffic on that
5 road is very light also figures in, does it not?

6 A. Practically, you know, very low traffic.

7 Q. Do you know what the traffic count is
8 out there?

9 A. I'm thinking it's somewhere around
10 thirty vehicles a day is the last time I remember looking
11 at the manual.

12 Q. So thirty vehicles a day would be highly
13 unlikely that vehicles would pass each other?

14 A. You go out there several days, and never
15 see a car, and then you might see two.

16 MR. POULSON: Judge, whether the Court
17 permitted me to take him as an adverse witness or not, I
18 would strongly object to the commissioner putting on its
19 very own employee and essentially leading him all the way
20 through this examination.

21 MR. LePAGE: I'm doing it to expedite,
22 Your Honor.

23 THE COURT: Overrule the objection. Go
24 ahead.

25 MR. LePAGE: I have no further

1 questions.

2

3

REDIRECT EXAMINATION

4

BY MR. POULSON:

5

Q. Mr. Wright, how old is 622, by the way?

6

A. Sir?

7

Q. How old is 622, Route 622?

8

A. How old?

9

Q. Yes.

10

A. I haven't checked the records. It could

11

be a 1933 --

12

Q. It's very old?

13

A. Very old.

14

Q. A substandard road?

15

A. Yes, sir.

16

Q. No question that it's substandard?

17

A. No, sir.

18

Q. By the mere fact that it is substandard,

19

do we make an entrance substandard like the right-of-way?

20

MR. MCFARLAND: I'm going to object.

21

THE COURT: Well, you may want to

22

rephrase the question.

23

MR. MCFARLAND: Let me note, Your Honor,

24

Mr. LePage was permitted to use leading questions because

25

he is on cross-examination. And there's a Virginia

1 Supreme Court case that said that --

2 THE COURT: All right, sir.

3 MR. MCFARLAND: Mr. Poulson is back on
4 redirect. He doesn't get to lead.

5 MR. POULSON: And I don't think I was
6 leading.

7 THE COURT: Go ahead.

8 BY MR. POULSON:

9 Q. You will agree that 622 is substandard?

10 MR. LePAGE: That's a leading question.
11 I object.

12 THE COURT: Go ahead.

13 BY MR. POULSON:

14 Q. In your opinion, Mr. Wright, assuming
15 that 622 is substandard as you have said, does this mean
16 that it's okay, and sufficient, and safe to have a
17 substandard entrance?

18 A. I don't feel that we have a substandard
19 entrance.

20 Q. You don't feel like you have a
21 substandard entrance?

22 A. No, sir.

23 Q. Never felt that way, I take it?

24 A. No, sir.

25 Q. Okay. Now, your measurement, you agree

1 it's a fifteen-foot easement, right?

2 A. Yes, sir.

3 Q. Okay. But you say it turns out to be
4 twenty-four feet really for purposes of applying this
5 regulation?

6 A. You measure at how the connection is
7 made on the very point in the curve, then you measure it
8 from the edge of pavement on the radius, and it comes out
9 to be twenty-four feet.

10 Q. So basically what you're telling us --
11 of course, this regulation, and I don't believe it uses
12 the word parallel to the edge of the pavement anywhere in
13 there, does it?

14 A. No, sir.

15 Q. Okay. So basically what you're telling
16 us that you can do, or your procedure, despite your
17 measurements and drawings, is that you go up off the
18 radius and you draw a line down that happens to be
19 parallel with the edge of the roadway; is that right?

20 A. That's how this one was.

21 THE COURT: Edge of the pavement. I
22 mean, I understand what his testimony was. It certainly
23 gets twenty-four out of fifteen.

24 BY MR. POULSON:

25 Q. So basically you're able to turn fifteen

1 into twenty-four?

2 MR. MCFARLAND: I'm going to object,
3 Your Honor. It's not turning fifteen into twenty-four,
4 it's --

5 THE COURT: Mr. Poulson?

6 MR. POULSON: Yes, sir.

7 THE COURT: I understand the point. I
8 mean, it's geometric is what it boils down to.

9 BY MR. POULSON:

10 Q. Does 622 have shoulders, Mr. Wright?

11 A. Minimal shoulders.

12 Q. How much, sir?

13 A. Anywhere from none to maybe two foot.

14 Q. Have you measured?

15 A. A couple of places approaching there was
16 about eighteen inches.

17 Q. On each side?

18 A. On each side.

19 Q. Does that have the effect of actually
20 expanding the width of the road from the McAdam part?

21 A. It gives the impression, as you're
22 driving, it will give you just a little bit of comfort
23 zone.

24 Q. And people do it, do they not, from your
25 experience and observation?

1 A. Yes.

2 Q. Of course, with this fifteen-foot
3 easement, there is nothing on the side, is it?

4 A. Theoretically, no.

5 Q. Now, let me show you, if I may, please,
6 Exhibit 31.

7 THE COURT: Is this new?

8 MR. POULSON: Yes, sir, and I will do 32
9 at the same time.

10 THE COURT: Plaintiff's 31.

11 MR. MCFARLAND: Just so I can follow
12 along, what is this, Judge?

13 MR. POULSON: Tavi permit.

14 (Tavi permit was marked Plaintiff's
15 Exhibit 31 for identification.)

16 THE COURT: All right, sir.

17 BY MR. POULSON:

18 Q. Do you recall the Tavi permit that was
19 issued down in Northampton County?

20 A. Yes.

21 Q. Did you, in fact, issue that one?

22 A. Yes, sir.

23 Q. And who all was involved in that
24 application? Do you remember?

25 A. I don't know. I would have to go back

1 and look in my file.

2 Q. Was Jack Hodge involved in it?

3 A. His company, yes.

4 Q. His company?

5 A. Yes.

6 Q. Mr. Hodge personally was involved in it,
7 was he not?

8 A. I didn't talk to him. I got the
9 application. I don't know if John Humphreys was involved
10 in this or not. I can't remember.

11 Q. Was Baldwin and Gregg involved in it?

12 A. That's who the application came from.

13 Q. But you believe Mr. Hodge's company was
14 likewise involved?

15 A. I don't know. I mean, I can't remember
16 off the spur of my head. I don't remember.

17 MR. POULSON: And number 32.

18 MR. MCFARLAND: I've got an objection to
19 31, Your Honor. It doesn't have anything to do with this
20 case. It's an application for somebody else's entrance.
21 I thought Mr. Poulson was objecting when I wanted to --

22 MR. POULSON: And we will be connecting
23 it up with a witness, Judge.

24 THE COURT: All right. Subject to it
25 being connected up, it will be an exhibit.

1 I assume 32 is --

2 MR. POULSON: Judge, in the interest of
3 time, 32 is simply a memo where Mr. Wright transmitted the
4 original A's and B's back to Jack Hodge.

5 THE COURT: This is just a letter of
6 transmission back for what we just saw in 29.

7 (Letter of transmission was marked
8 Plaintiff's Exhibit 32 for identification.)

9 MR. POULSON: That's all I have of
10 Mr. Wright.

11 THE COURT: All right. Any other
12 questions of Mr. Wright?

13 MR. LePAGE: Yes, sir.

14 MR. MCFARLAND: And I have a few, too,
15 Your Honor.

16 THE COURT: All right. Well, let him
17 finish up.

18 MR. MCFARLAND: That's fine.

19

20 RECROSS-EXAMINATION

21 BY MR. LePAGE:

22 Q. Mr. Wright, a lot has been made on
23 redirect of substandard roads, and Route 622 being a
24 substandard road.

25 It's a fact that the county sets the

1 policy on when roads are upgraded, isn't that true,
2 through the six-year plan?

3 A. That's the proper way, yes, sir.

4 Q. And has the county in this case decided
5 that the road should be updated?

6 A. Not 622.

7 MR. POULSON: I don't know if that's
8 material.

9 MR. LePAGE: It's highly material. He
10 made a big issue about it.

11 THE COURT: Overruled.

12 BY MR. LePAGE:

13 Q. They've decided that their priorities
14 are that they will spend their money elsewhere and upgrade
15 roads; is that correct?

16 A. Yes, sir.

17 MR. POULSON: I'm going to object to him
18 calling for a conclusion from this witness. The witness
19 has no basis --

20 THE COURT: Sustained. As far as he
21 knows, there hadn't been any plans for upgrading the road.
22 He doesn't know about where else they decided to spend
23 their money, I don't think.

24 BY MR. LePAGE:

25 Q. And isn't it a fact that the road only

1 carries twenty-eight or thirty cars a day?

2 A. That's last track obtained, yes, sir.

3 MR. POULSON: And, of course, prior to
4 the subdivision? That is prior to any subdivision?

5 THE WITNESS: Yes.

6

7 CROSS-EXAMINATION

8 BY MR. MCFARLAND:

9 Q. Mr. Wright, what is VDOT's overriding
10 concern when it examines an entrance?

11 A. Safety.

12 Q. Okay. You reviewed this entrance
13 personally, correct?

14 A. Yes, sir.

15 Q. Okay. As a vehicle is coming out of the
16 entrance, what are the sight lines? What's the visibility
17 into 622?

18 A. To the west towards the vineyard,
19 probably six hundred and fifty, seven hundred feet. And
20 to the southeast I guess would be six hundred feet.

21 Q. Okay. That's good visibility, correct?

22 A. Yes, sir.

23 Q. Okay. And the only thing to the right
24 in terms of a residence or a business is Mr. Wescoat's
25 house, correct?

1 A. That's all.

2 Q. 622 dead-ends at Mr. Wescoat's house?

3 A. Yes, sir.

4 Q. Okay. So we've got good sight distance
5 for this exit?

6 We've heard so much about the passing of
7 vehicles for a day and a half. I take it it's difficult
8 for two tractor-trailers to pass each other while moving
9 on 622?

10 MR. POULSON: Objection, unless this
11 witness has seen it. And I don't know if he has any
12 foundation for saying that.

13 BY MR. MCFARLAND:

14 Q. Isn't it difficult for two large
15 vehicles to pass each other on 622?

16 A. Yes, sir.

17 Q. And it's not uncommon when we're dealing
18 with ingress, egress roads on the Eastern Shore that a
19 vehicle coming into the entrance may have to wait for a
20 vehicle exiting first to completely exit before it goes
21 in?

22 MR. POULSON: Judge, that is totally
23 immaterial. The permit requirements are that a vehicle be
24 able to exit and one be able to enter at the same time is
25 expressed condition of the permit.

1 MR. LePAGE: Your Honor, I don't know if
2 that's expressed condition of the permit. That remains to
3 be seen.

4 THE COURT: Well, I suppose to the
5 extent the question asked have they approved entrances
6 before that would require or not require two vehicles to
7 be able to you, you can ask it that way, if you want to,
8 to determine, I suppose, whether or not and Mr. Poulson
9 contentions are valid, the decision was arbitrator and
10 capricious.

11 I assume If you ask him whether they've
12 approved them whether they were safe or unsafe like that
13 before, then I guess that's a proper question.

14 MR. MCFARLAND: Let me rephrase, Your
15 Honor, and move along.

16 BY MR. MCFARLAND:

17 Q. Were you satisfied, Mr. Wright, after
18 your personal examination of the entrance of the easement
19 in question where it intersects with Route 622 that this
20 was a safe entrance?

21 A. I was.

22 Q. Just so we're clear, what's been marked
23 as Complainant's Exhibit 29, when you initially -- that's
24 your letter to Ms. Benson of January 14, 2000.

25 When you initially made a reference to a

1 commercial entrance, and the commercial entrance
2 requirements, that was incorrect. The governing standard
3 here is for a private subdivision?

4 A. The standard would be private. I
5 referred to it as commercial.

6 Q. Okay. And the governing standard found
7 on page 29 of the VDOT manual?

8 A. Yes.

9 Q. Okay. Now, you were asked a number of
10 questions about not only the initial application, but also
11 the two amendments thereto, correct?

12 A. Yes.

13 Q. Let me refer you -- I think it's 28C,
14 and it's -- if I could maybe see if I can find it for you,
15 Mr. Wright.

16 A. It's here.

17 Q. Okay. Look at the cover letter. Do you
18 recall receiving this late November of last year,
19 Mr. Wright?

20 A. Sure.

21 Q. Okay. Read the first three paragraphs
22 of this letter, please.

23 A. Unfortunately, another ministerial
24 mistake has been found in both plan A and plan B prepared
25 by our firm which are part of the Shooting Point entrance

1 permit.

2 We have noted the center line
3 designation of the easement of the drawing has not been
4 properly placed on the drawing. The center line
5 designation shown on the drawing previously submitted was
6 a holdover from the conceptual drawing that should have
7 been changed on the following drawing.

8 The center line and the easement
9 designation has been corrected on plan A and plan B. It
10 is requested that the enclosed plan be submitted for the
11 plans previously submitted to VDOT.

12 I wish to emphasize that this correction
13 is simply administerial correction to the plan and has no
14 impact whatsoever on the drawings of the entrance and the
15 portion of the easement related thereto which are based on
16 a field survey.

17 Q. And, in fact, in addition to that
18 language from your stand point, the designation of a
19 center line on the drawing didn't make one whit of
20 difference as to whether this was a safe entrance, did it?

21 A. None whatsoever. I didn't review it.

22 Q. And, in fact, the designation of a
23 center line isn't even required on an application drawing,
24 is it?

25 A. I have a lot without them.

1 Q. I'm sorry?

2 A. I have a lot without them.

3 Q. And you've certainly approved them in
4 the past without a center line designation?

5 A. Without the center line, yes.

6 MR. MCFARLAND: I think that's all. One
7 moment, if I might, Your Honor.

8 MR. MORRIS: Your Honor, may I ask one
9 question?

10 THE COURT: Sure.

11

12 CROSS-EXAMINATION

13 BY MR. MORRIS:

14 Q. Mr. Wright, my name is Daniel Morris.

15 In your experience as assistant resident
16 engineer, how many entrance permits have you seen that
17 were required for the county of Northampton for
18 residential use?

19 MR. POULSON: Again, totally immaterial.

20 THE COURT: Overruled.

21 BY MR. MORRIS:

22 Q. How many permits have you seen, or
23 applications for permits come across your desk for
24 entranceways into residential --

25 A. For private road subdivisions?

1 Q. Correct.

2 A. Maybe six or eight.

3 Q. And how long have you worked there?

4 A. Thirty-eight years. Fourteen, fifteen
5 years in that office.

6 MR. MORRIS: That's all.

7

8 FURTHER REDIRECT EXAMINATION

9 BY MR. POULSON:

10 Q. Mr. Wright, you-all have called for them
11 from Northampton County? You and Mr. Cumming have
12 requested from the Northampton County personnel to be able
13 to see private subdivisions, have you not, over the year,
14 right?

15 A. Yes, sir.

16 Q. Okay. And you've gotten them when you
17 could get them?

18 A. Yes, sir.

19 Q. And enforced them when you could enforce
20 them?

21 A. When we could enforce them, yes.

22 Q. Now, talking about no center line, you
23 say you never pay any attention to a center line?

24 A. Not when shown beyond the right-of-way
25 line.

1 Q. When it's shown beyond the right-of-way
2 line. But you do agree that when you do an entrance, the
3 person has got to have the right use of road behind it,
4 right? I mean, it can't be staggered like this. That
5 don't work, does it?

6 A. It shouldn't. My responsibility is only
7 the entrance.

8 Q. And you don't care --

9 A. No. And this letter -- Mr. Cumming
10 wrote them and told them that it must butt up. And the
11 right-of-way line they butted up.

12 Q. The right-of-way line they butted up,
13 even though the center line is shown coming in a different
14 place?

15 A. That center line was back several feet
16 further than that, and I did not review the center line at
17 that time when I looked at it.

18 Q. In other words, you didn't see it, point
19 blank?

20 A. No, I didn't see it.

21 Q. And another question you were asked, let
22 me be sure we're on the same wave length here because it's
23 kind of important, sir.

24 You-all would not issue an entrance
25 permit on a private subdivision, or any other entrance

1 permit from the commissioner unless one car could come out
2 and another car could come in, would you?

3 A. That's the design.

4 Q. I mean, it has to.

5 A. With twenty-four foot of pavement.

6 Q. Right. In other words, traffic has to
7 be able to exit freely and enter freely at the same time,
8 correct?

9 A. That's the design.

10 Q. On any kind of permit?

11 A. Any kind.

12 THE COURT: Anybody else have anything
13 for Mr. Wright?

14
15 RECCROSS-EXAMINATION

16 BY MR. MCFARLAND:

17 Q. With respect to cars, there is no
18 question, Mr. Wright, that two cars can come in and out of
19 this --

20 MR. POULSON: Objection until Mr. Wright
21 tells us the width of an automobile.

22 THE COURT: Overrule the objection.
23 Now, come on. I can -- two cars can come in. It's
24 problematical. Two tractor-trailers probably couldn't. A
25 tractor-trailer and a Ford Expedition, if they squeeze. I

1 mean, that's --

2 MR. MCFARLAND: Well, I understand, Your
3 Honor.

4 THE COURT: We all know where we're
5 going.

6 MR. MCFARLAND: I know we know where
7 we're going, but I need to present certain evidence, and I
8 want --

9 THE COURT: I understand. I'm going to
10 take it that two cars can go out and one can go in.

11 MR. MCFARLAND: Okay. Thank you.

12 THE COURT: Depending on the size of the
13 car, some easier than others.

14 MR. POULSON: Is that assuming with
15 mirrors, Your Honor, or not?

16 THE COURT: Anything further?

17 MR. LePAGE: No, Your Honor.

18 MR. MORRIS: No, Your Honor.

19 THE COURT: Believe it or not, I have a
20 couple of questions. I need to ask a couple of questions
21 just for points of clarification.

22

23 EXAMINATION

24 BY THE COURT:

25 Q. You indicated that you had measured the

1 width of the pavement on Route 622?

2 A. Yes, sir.

3 Q. And I think you testified that it was
4 approximately fifteen feet?

5 A. Just before you get to the entrance in
6 question, it's a fourteen-foot pavement.

7 Q. What is the actual width of the
8 right-of-way of Route 622?

9 A. Thirty feet. That's total.

10 Q. So theoretically, if the state or county
11 chose to do so, they could widen the pavement to thirty
12 feet, I suppose?

13 A. I'd have to get approval for it, but it
14 could be done.

15 Q. And as I understand your testimony, and
16 I think I understood from all of these gentlemen's
17 questions, but as I understood your testimony, the way or
18 the reason that there is twenty-four feet where the
19 entrance butts up to the pavement is because of the fact
20 that it's on a curve; is that right?

21 A. That's the way I would look at it, yes,
22 sir.

23 Q. So, in other words, but for the fact
24 that there is a curve there, it wouldn't be fifteen feet?

25 A. That's the way I approach it.

1 Q. And if it had not happened to have come
2 out on a curve, I take it from your testimony, you would
3 not have approved it?

4 A. Being a layperson and not a graduate
5 engineer, I feel like that if it's on a tangent section,
6 it would not work.

7 Q. And just following up on a couple of
8 questions I think Mr. Poulson asked, and some of the
9 others likewise followed up on, you testified, I think,
10 that if an entrance were approved for a private
11 subdivision, which is what you have here, and then
12 hypothetically you were asked, Well, what do you do if a
13 private subdivision is changed, and then at some point in
14 time it becomes commercial, and you indicated that they
15 would be required to upgrade?

16 A. Yes, sir.

17 Q. And what would happen if it were
18 impossible to be upgraded?

19 A. Someone other than myself would approach
20 the county and tell them of our concerns, and tell them
21 that we need to monitor the use of the entrance, and if
22 there were any problems adhere, legal actions could have
23 to be taken, or that type thing to make sure things stayed
24 safe.

25 In other words, with the county's

1 help, we'd probably --

2 Q. Shut it down?

3 A. That could be an ultimate end, but I
4 would have my doubts whether that would be done. And then
5 if it proved to be directly a safety hazard, yes, but I'm
6 sure it would be some type of accommodations made.

7 I've never been in that situation yet.

8 THE COURT: All right. Any questions in
9 light of the Court's questions?

10 MR. POULSON: I'm not sure I understood
11 his answer on that, Judge.

12 I could ask a question, unless the Court
13 could give me what he understood to be his answer.

14 THE COURT: Well, I think what he said
15 was, in effect, I don't know what would happen. That's
16 what it boils down to.

17 MR. POULSON: And it's predicated on,
18 say, something else going in there?

19 THE COURT: That was the concern.

20 All right. Anything else?

21 MR. LePAGE: No, Your Honor.

22 MR. MORRIS: No, Your Honor.

23 THE COURT: All right. Thank you, sir.

24 You may step down.

25 We'll take about ten minutes,

1 Mr. Poulson.

2 MR. POULSON: All right.

3 (Brief recess.)

4 THE COURT: All right. Who do we have
5 next, Mr. Poulson?

6 MR. POULSON: I'd like to call
7 Mr. Cumming. I'd like to call Mr. Cumming as an adverse
8 witness.

9
10 WILLIAM D. CUMMING, JR., called as a
11 witness by and on behalf of the Plaintiffs, being first
12 duly sworn, testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. POULSON:

16 Q. Mr. Cumming, state your name, please,
17 sir.

18 A. William Dwayne Cumming, Jr. There's no
19 "S" on Cumming.

20 Q. Your residence?

21 A. 3 College Avenue in Hancock.

22 Q. And your occupation?

23 A. I'm a resident engineer for the Virginia
24 Department of Transportation.

25 Q. And how long have you held that

1 particular position?

2 A. Over sixteen years.

3 Q. And what is your education, sir?

4 A. I have a BS in civil engineering from
5 VMI.

6 Q. And what are your duties as resident
7 engineer?

8 A. I'm responsible for all of the roadways
9 on the Eastern Shore of Virginia as far as maintenance,
10 construction permits, most anything to do with any of the
11 roadways here on the Eastern Shore.

12 Q. And as a part of your duties, do I
13 understand that you're delegated the authority on behalf
14 of the Commonwealth Transportation Board and the
15 Commissioner to issue entrance permits?

16 A. That's my understanding, yes, sir.

17 Q. And that covers what we refer to as the
18 Eastern Shore residency, or Accomac, or Northampton
19 County?

20 A. Yes, sir.

21 Q. Now, relative to entrance permits, are
22 there regulations governing the issuance of such permits?

23 A. Yes, sir, there are.

24 Q. And in the interest of time, are those
25 the regulations that are contained in the book, Minimum

1 Standards, that we've talked so often about?

2 A. Some of them are in there; some are in
3 the Land Use Permit Manual. They all come under various
4 code sections in the Code of Virginia.

5 Q. Okay. Now, entrance requirements from
6 VDOT for any subdivision, whether exempt or not under
7 county ordinance, is still regulated by VDOT, correct?

8 A. That's correct.

9 Q. During your tenure on the Eastern Shore,
10 have you requested from county officials, and have they
11 provided you from time to time copies of plats as to
12 subdivisions?

13 MR. MCFARLAND: Your Honor, I would ask
14 that the question be phrased in a time frame because I
15 think it makes a difference as to what time frame he asked
16 for.

17 THE COURT: Why don't we just say within
18 the past five years. Ago ahead.

19 BY MR. POULSON:

20 Q. In the past five years, have county
21 officials from time to time provided you subdivisions for
22 you to review?

23 A. Yes, sir.

24 Q. Okay. And this would include private
25 subdivisions from time to time?

1 A. Yes, sir.

2 Q. Okay. And have there been times that
3 you have not been able to get them, receive them, or
4 whatever?

5 A. There have been times when we were not
6 aware of them. Recently, I've become aware of some
7 subdivisions that were allowed by the county that we were
8 not aware of. No one ever gave us a copy of the plats, or
9 notified us that they were going on.

10 Q. So to get to my question, you have asked
11 for them; you just haven't always gotten them?

12 A. That's correct.

13 Q. Okay. Now, in early January 2000, did
14 you become aware of the situation involving the Shooting
15 Point subdivision in Northampton County?

16 A. Yes, sir.

17 Q. And essentially what was the problem?

18 A. I became aware of a subdivision that had
19 been allowed by the county that didn't have a -- we didn't
20 know anything about the connection, the entrance, you
21 know, the connection to the state road.

22 Q. And was it your understanding that it
23 was exempt under the county ordinance?

24 A. Yes. It's my understanding it was
25 exempt from their ordinance, but not from the Code of

1 Virginia.

2 Q. All right. At what point is one
3 supposed to secure an entrance permit, by the way?

4 A. Before they gain access to the property.
5 In most cases, the subdivider will provide us plans ahead
6 of time to make sure that we agree with them, and there's
7 not problems, and then they don't need to apply for the
8 permit, if I've looked it over, until such time as they're
9 actually getting ready to actually go on the property.

10 Q. And as a practical matter, when one puts
11 a plat to record, does that trigger your procedure, so to
12 speak?

13 A. By code, as I understand it, my
14 understanding of the Code of Virginia is before they start
15 going on or off that property, they need to get a permit
16 from us.

17 Q. Okay.

18 A. There may be subdivisions that are
19 platted that we couldn't issue a connection for for
20 various reasons.

21 Q. Once it's platted, does that determine
22 its use as far as the Highway Department is concerned?

23 A. Once it goes to plat, once it's platted,
24 then if it's a subdivision, and generally under the
25 agricultural zoning in Northampton County, which most of

1 them come under, then that's mostly what it can be used
2 for unless they get special use permits for other various
3 uses.

4 Q. Okay. Now, relative to Shooting Point,
5 did you know who the principals were in Shooting Point?

6 A. Not immediately. I learned not too long
7 afterwards, but I didn't know immediately.

8 Q. And who was that when you did learn,
9 sir?

10 A. The Crees.

11 Q. Now, insofar as the issuance of entrance
12 permits, what is the normal or routine procedure that you
13 folks go through when somebody applies?

14 A. When somebody applies, a lot of times
15 before they ever apply, they will talk to us about what
16 they want and where they want it, and then we'll try to
17 come to an agreement of what will work, or what won't
18 work.

19 And a lot of times we'll meet with the
20 engineer, if they have an engineer, and work out something
21 that is acceptable to make sure it meets our criteria, and
22 it will function in a safe manner.

23 And then they apply, you know -- when
24 they're getting ready to go on the property, they make
25 application, and we require a fee and a bond, a surety

1 bond in case they fail to complete it as its drawn, or as
2 described, and then we issue that permit to them and
3 within a time limit to get it constructed.

4 Q. Okay. And are you and Mr. Wright
5 normally able to handle these things?

6 A. Most of them, yes. Most of them we
7 handle ourselves. A lot of times we will get advice from
8 the district, the various sections in the district, either
9 traffic engineering, or drainage.

10 Q. And when you say "district," that's the
11 old Suffolk district?

12 A. The Hampton Roads District office in
13 Suffolk.

14 Q. Now, directing your attention to on or
15 about, or the period, let's say, February 21st and
16 February 22nd. In your capacity as resident engineer, did
17 you have occasion to engage in a conversation with one
18 Julie Brown in the Richmond VDOT headquarters relative to
19 the entrance permit for Shooting Point?

20 A. The dates -- I don't know what year
21 you're talking about, and no matter which year it is --

22 Q. 2000.

23 A. -- I don't know what dates. I know that
24 I did have a conversation with Julie Brown about the
25 connection.

1 Q. Okay. And I'm going to show you, if I
2 may, please, Plaintiff's 33 and 34.

3 MR. MCFARLAND: Your Honor, I recognize,
4 again, we don't have a jury, and I'm willing to take it
5 step by step. 33 is not authored by Mr. Cumming; it's
6 from Julie Brown to him. And unless Ms. Brown is going to
7 testify, I've got some real problems about the hearsay
8 nature of this document.

9 MR. POULSON: Number one, Ms. Brown is
10 an employee of the Highway Department, and there is a
11 response to this memo from Mr. Cumming.

12 THE COURT: I overrule the objection.

13 What number is that?

14 MR. POULSON: This is 33, sir.

15 (Letter was marked Plaintiff's Exhibit
16 33 for identification.)

17 THE COURT: Go ahead.

18 BY MR. POULSON:

19 Q. Read that, if you will, Mr. Cumming.

20 A. Do you want me to read it out loud?

21 Q. No, sir, read it to yourself.

22 Now, you, of course, were copied that
23 memo?

24 A. Yes.

25 Q. All right. And what information was

1 conveyed to you, Mr. Cumming, in your capacity as resident
2 engineer about this potential entrance permit?

3 MR. MCFARLAND: In terms of the memo?
4 Really, it's an E-mail. What this is is it's a printout
5 of an electronic mail message.

6 THE COURT: Okay.

7 MR. MCFARLAND: The E-mail message
8 speaks for itself, Your Honor, but since he is not the
9 author of it, to ask what does it convey, other than
10 what's written, I have a real problem with. I can't
11 cross-examine Ms. Brown.

12 THE COURT: You may want to rephrase the
13 question.

14 MR. LePAGE: I agree with that.

15 BY MR. POULSON:

16 Q. Tell us what it says then, Mr. Cumming.

17 A. Would you like for me to read it to you?

18 Q. Yes, go ahead and read it to me.

19 A. "You will likely get a call Tuesday
20 morning from Ramona Sam on behalf of John Cogbill. John
21 originally called Jim about the requirement for a
22 commercial entrance for a private street subdivision."

23 "We informed John this was standard
24 requirement to ensure the safe access to and from the
25 subdivision. Will is familiar with the issues, and you

1 may want to touch base with him."

2 "The problem is the subdivision,
3 eighteen lot, private, only has a fifteen-foot easement
4 for access through property where the owners appear
5 opposed to the subdivision, not willing to provide
6 additional right-of-way" -- that's in parenthesis -- "and
7 do not have the property to construct an entrance that
8 meets our standards."

9 "Ramona called today and asked if they
10 could find out what the minimum entrance standards were in
11 1974 when the easement was supposedly platted. I told her
12 she would need to call one of you to get this information
13 that may exist about the history of our private entrance
14 standards."

15 "I did inform her that while you were
16 the experts, I thought that the standard at the time was a
17 moot point since all entrances for new or changed use are
18 evaluated on a current criteria even if an entrance
19 existed."

20 "Will did indicate that some developer
21 has received correspondence regarding minimum entrance
22 standards for private road subdivisions; however, he is
23 telling this potential lawyer that he was totally
24 surprised by this requirement. Just a heads up."

25 Q. And you said the developer, or some

1 developer?

2 A. This same developer.

3 Q. Same developer?

4 A. This same developer. I'm sorry. I
5 misread it.

6 Q. And did you respond to that particular
7 memo?

8 A. I don't remember if I did or not.

9 Q. Look to your right, please.

10 A. Yes, sir, it appears that I did.

11 Q. And what did you do, and what did you
12 send?

13 A. I sent, "Attach is a copy of a 1992
14 letter to Mr. Lemoine B. Cree, developer of Shooting
15 Point, requiring him to get an entrance permit for a
16 private road. If there are any questions, please advise."

17 Q. Now, tell me this, sir --

18 MR. MCFARLAND: Your Honor, I'm going to
19 object to this. I've been asking for a copy of the '92
20 letter because I think it has absolutely nothing to do
21 with this case. They are totally different situations.

22 And here we have Mr. Poulson has
23 attached a cover letter and implied to this Court that
24 it's the same type of situation that this Court is faced
25 with now. In fact, I think the evidence will be they're

1 totally dissimilar.

2 And no one has provided me a copy of the
3 actual letter. And I recognize that you're sitting here
4 without a jury, but at the same time, the basic
5 evidentiary foundations have to apply.

6 We've got a hearsay E-mail message from
7 somebody who is never going to step foot in this
8 courtroom, and now we've got a reference to a letter that
9 supposedly discusses a similar situation, and yet, the
10 letter is nowhere to be found.

11 MR. POULSON: Number one, I don't have a
12 copy. I thought I had a copy, and I've gone through
13 everything, and I don't have a copy, though Mr. Cumming
14 indicated at one point that he did, but I don't have a
15 copy.

16 MR. LePAGE: Well, Your Honor, I've
17 asked for Mr. Cumming to try to find this letter, too, so
18 everybody could have it. The truth is, and Mr. Cumming
19 can answer this, but I believe that nobody at the
20 department can find it.

21 THE COURT: Okay.

22 MR. MCFARLAND: I just think this is
23 totally irrelevant. As Mr. Poulson said, we are here
24 about this entrance. Whatever happened in 1992 has
25 nothing to do with this case.

1 THE COURT: Well, I think -- well, it's
2 probably not very relevant, I don't think, Mr. Poulson. I
3 suspect that for the purposes of what you're trying to
4 establish, perhaps it has some inkling of relevance.

5 But at any rate, let's try to move
6 along.

7 MR. POULSON: As the Court has been
8 aware, there's been all kinds of contingencies --

9 THE COURT: I understand what you're
10 trying to show.

11 MR. POULSON: Yes, sir.

12 BY MR. POULSON:

13 Q. Mr. Cumming, there is a reference in
14 that letter to one John Cogbill. Who is John Cogbill,
15 sir?

16 A. I believe he either was or is on the
17 Commonwealth Transportation Board, but he does not
18 represent this district. I mean, he's somewhere else, but
19 I'm not sure.

20 Q. So at that time, he either was or had
21 been a member of the Commonwealth Transportation Board?

22 A. I believe.

23 Q. Okay.

24 MR. MCFARLAND: For the record, Your
25 Honor, John Cogbill is my partner. So, I mean, I'm a

1 little concerned. We may start to get into an
2 attorney-client situation here.

3 THE COURT: He wasn't with the
4 Commonwealth Transportation Board, was he?

5 MR. LePAGE: Your Honor, I can answer
6 that question. He was. I don't think he was at this
7 point.

8 MR. MCFARLAND: He wasn't at this point
9 in time. I know that, Your Honor.

10 THE COURT: Okay. Go ahead.

11 BY MR. POULSON:

12 Q. Prior to March the 23rd, 2000, had any
13 application been submitted by Shooting Point for an
14 entrance?

15 A. March 23rd of 2000?

16 Q. March 23rd of 2000, sir.

17 A. No, sir.

18 Q. Now, did you have occasion during that
19 period prior to March 23rd, 2000, to observe the property,
20 and the right-of-way, and the entrance there at State
21 Route 622?

22 A. Before March 23rd of 2000, yes, I went
23 out and looked at the easement where it connects to Route
24 622.

25 Q. And did you appear in this very Circuit

1 Court, Mr. Cumming, on March 23rd and testify in that
2 proceeding before this Court relative to that entrance,
3 and the fifteen-foot right-of-way?

4 A. Yes, sir, I did.

5 Q. Okay. Now, if you'll bear with me,
6 please. And I'm going to read you some questions and
7 answers, and I'm going through them all in the interest of
8 time, and then simply ask you a question, Did you make
9 these statements, sir. Understood?

10 MR. MCFARLAND: Does the Court need a
11 copy of the --

12 THE COURT: No.

13 BY MR. POULSON:

14 Q. Starting here, Mr. Cumming, at page 47,
15 line 5, of the trial transcript.

16 You start off with an answer that says,
17 Yes. Yes, on page 29 it shows that the minimum standards
18 for private, or, quote, private subdivision road, street
19 entrance. And, of course, we're referring to the minimum
20 standards.

21 And the question -- then a question that
22 says, "That applies to Shooting Point?"

23 Answer: "Yes, it does."

24 Question: "Now, Mr. Cumming, if you
25 would, please, if you would, show that to the Court, and

1 relate to the Court what the width of that has to be, and
2 where that width begins at."

3 Answer: "The pavement width shown here,
4 the minimum pavement width is twenty-four feet, and it
5 shows shoulders to give thirty feet, which is a three-foot
6 shoulder on either side, and room for drainage outside of
7 there."

8 Did you make that statement at that
9 time, sir?

10 A. I believe I did, yes, sir.

11 Q. On page 48, beginning at line 23,
12 question: "Now, assuming that there is only a
13 fifteen-foot right-of-way for Shooting Point subdivision
14 as it comes into the state highway, is there sufficient
15 room for such an entrance, sir?"

16 Answer: "No, there is not."

17 Did you make that statement, sir?

18 A. I believe I did.

19 Q. At page 51, beginning at line 20:

20 "Mr. Cumming, what are the purpose of
21 these as stated, the purpose of these entrance
22 requirements?"

23 Answer: "The purpose of the entrance
24 requirements are to make sure that connections to state
25 roads are safe for the traveling public using the road, as

1 well as those coming in and out of the commercial
2 establishment, or subdivision, or whatever."

3 Question: "Have you seen this
4 particular entrance?"

5 Answer: "Yes, I have."

6 Question: "Is this entrance hazardous,
7 or dangerous if there were residential subdivisions down
8 there, some eighteen or nineteen lots, with people
9 entering onto highways along with agricultural use?"

10 Answer: "My review of it indicated that
11 if a vehicle was coming out, there is not room for a
12 vehicle to get in off the roadway until the vehicle has
13 been able to exit at that location today."

14 "Essentially, if you had a larger
15 vehicle, if either one of them is large in any way, one
16 would have to stay out on the highway and be subject to
17 being hit from the rear from somebody coming down the
18 road."

19 Did you make these statements, sir?

20 A. I believe I did.

21 Q. And moving to page 55, and beginning at
22 line 7:

23 Question: "Has VDOT done a safety study
24 as to traffic conditions at Route 622 and the
25 entranceway?"

1 Your answer was: "I have been out
2 taking a look at it, as I do normally when we have
3 situations like this, and determined that there is not a
4 way to make a safe connection there without more than the
5 fifteen feet behind it to make the connection there."

6 Did you make that statement, sir?

7 A. You're reading from the transcript. I'm
8 assuming I did. I don't remember specifically, but I'm
9 assuming that I did. I believe I said something like
10 that.

11 Q. Would you like to read what you said,
12 sir, or are you willing to rely that it is the transcript?

13 A. As long as you're reading correctly, I'm
14 happy.

15 Q. Somebody will say, I'm sure, if I'm not.

16 At page 56, at line 5:

17 Question: "Okay. So one has to assume,
18 just as one assumes that people obey red lights" -- this
19 is from Mr. McFarland -- "that a vehicle coming behind a
20 vehicle stopped on Route 622, waiting the turn, is going
21 to stop for that vehicle, correct?"

22 And your answer was: "I would not,
23 based on the accidents I have seen around, I'm not real
24 sure I want to assume that. That's the reason we have
25 standards is to make sure that people can safely get in

1 and out, and not expose somebody unnecessarily to
2 traffic."

3 Did you make that statement, sir, in
4 response to that question?

5 A. I believe I did.

6 Q. Beginning also on page 56, at line 14,
7 and these are questions from Mr. McFarland:

8 "The condition presently existing at 622
9 at that entranceway has existed for many years, sir?"

10 Answer: "I don't know. It looks like
11 it's been there a long time."

12 Question: "So in the past, it's been
13 the case that if there was a vehicle coming out of the
14 easement area, and one coming in from 622, someone was
15 going to have to wait, correct?"

16 Your answer was: "That's true."

17 Question: "There has been an ongoing
18 condition, nothing new has occurred" -- and then there's
19 an objection.

20 And then the question repeats: "Hasn't
21 that been a long-standing condition, sir?"

22 Your answer: "The subdivision changes
23 that, because the volume of traffic using that easement
24 will potentially increase from maybe one or two today for
25 a farming operation to ten per lot for each lot that's in

1 there."

2 "So the number of potential accidents,
3 or incidents, or problems will increase dramatically if
4 the subdivision goes in there."

5 .Was that your testimony on March the
6 23rd, sir?

7 A. I believe.

8 Q. At page 29 -- I'm sorry -- page 59, By
9 Mr. McFarland. We're taking about a retirement -- let me
10 set the scene. We're talking about a retirement community
11 here, trips per day sort of thing.

12 "In fact, that's not true, is it? In a
13 retirement community, there are far less trips by the
14 residents of a retirement community, or a vacation
15 community than there are in a typical subdivision in a
16 neighborhood, suburban, residential subdivision; isn't
17 that correct?"

18 And your answer: "There had been some
19 studies that showed some differences, but I don't know
20 that your language of it is a great difference is
21 correct."

22 "I do not have the numbers in front of
23 me, but there are some studies that show that there are
24 some differences between them, but I don't know that there
25 is a great, large difference."

1 Question: "So you don't know what the
2 difference would be for the type of community that my
3 clients intend to build, and the community that you're
4 referencing in Prince William County in Northern Virginia,
5 which you referenced earlier?"

6 Answer: "Anytime anybody gives us a
7 study that says what they want to do, they have
8 substantial evidence that the standard VDOT numbers are
9 not appropriate."

10 "Then we take that study, we look at it,
11 and we see if it's appropriate; otherwise, we use the
12 standard VDOT number of ten per lot."

13 And was that your series of testimony as
14 to that particular issue, sir?

15 A. I believe it was.

16 Q. Now, Mr. Cumming, tell me who some
17 people are. Who is Jim Kline?

18 A. He is assistant maintenance engineer for
19 the state, I believe.

20 Q. And where is he out of, if you pardon my
21 English?

22 A. He works in Richmond.

23 Q. And who is James S. Givens?

24 A. He is the state secondary roads
25 engineer.

1 Q. And Julie Brown?

2 A. She is the assistant state secondary
3 roads engineer.

4 Q. And who was Andrew V. Bailey?

5 A. He is assistant commissioner for
6 operations.

7 Q. And where is he out of?

8 A. Richmond.

9 Q. And James C. Cleveland?

10 A. He is the district administrator for the
11 Hampton Roads District in Suffolk.

12 Q. Okay. Now, all of these people, did
13 they not discuss this particular permit application with
14 you?

15 A. I'm not sure if Mr. Cleveland and I did.
16 We have, you know, but I'm not real sure that we did
17 before.

18 Q. But all of the other people have; is
19 that correct?

20 A. Yes, sir.

21 Q. Okay. And basically, prior to this
22 permit being issued, you were in contact with them?

23 A. I talked to all of them except for
24 possibly Mr. Cleveland prior to.

25 Q. And as far as these Richmond people,

1 that's not normal --

2 MR. MCFARLAND: For the record, one of
3 them is a Suffolk person.

4 MR. POULSON: Other than Mr. Cleveland.
5 He's in Suffolk.

6 THE COURT: Go ahead.

7 BY MR. POULSON:

8 Q. Other than perhaps Mr. Cleveland, it
9 wasn't normal for these people to be involved in an
10 application on a little subdivision entrance on a little
11 Eastern Shore road, was it?

12 A. Not a normal one, no, sir.

13 Q. In fact, sir, Andy -- is it Andrew
14 Bailey, or Andy Bailey?

15 A. I think the proper name is Andrew, but
16 we call him Andy.

17 Q. And he is an assistant commissioner?

18 A. Yes, sir.

19 Q. Not knowing your hierarchy, may I assume
20 that he's next to the commissioner in the administrative
21 line?

22 A. I don't know if he's next to him, or
23 under the deputy. There's a commissioner and deputy
24 commissioner, and I think he comes under the deputy, but
25 I'm not sure.

1 Q. Is it a fair to say there's not a whole
2 lot of people that are much higher in the hierarchy of
3 VDOT to Mr. Bailey?

4 A. Not a lot.

5 Q. Not a lot. Did Mr. Bailey come over
6 here and meet with you on this permit?

7 A. Mr. Bailey came over and met with me
8 about this issue and some other issues.

9 Q. And had Mr. Bailey ever been over here
10 before?

11 A. I --

12 Q. You can't ever recall him ever being
13 over here, can you, Mr. Cumming?

14 A. He may have been here in some of his
15 previous jobs. I don't think he's been here since he's
16 been the assistant commissioner.

17 Q. How long has he been the assistant
18 commissioner? Some years?

19 A. A few years. Not a long time.

20 MR. POULSON: Exhibit 35. 35 and 36.

21 THE COURT: We have 35 here. All right,
22 sir.

23 MR. POULSON: And here is 36.

24 THE COURT: 36.

25 (Plaintiff's Exhibits 35 and 36 were

1 marked for identification.)

2 THE COURT: Go ahead.

3 BY MR. POULSON:

4 Q. Now, Mr. Cumming, I show you Plaintiff's
5 Exhibit 35. And if you can't read it, it's your fault
6 because apparently it's your telephone messages.

7 Can you read them for us, the dates and
8 what the messages are?

9 A. This one appears to be it came in at
10 3:04. I can't see the date very well up here in the top
11 the way the copy came out. It's from Lemoine Cree,

12 Let's see. The message to me -- and
13 this is a message of a call coming in to me. "She would
14 like to pick up the permit, not have it delivered."

15 And my message -- it looks like my note
16 is, "Let her know when this is ready."

17 Q. How about the one below it?

18 A. The one below it is from Jim Givens,
19 secondary roads. Again, I can't make out the date. It
20 came in at 2:20 p.m. "Where are we on entrance permit?"
21 Something about "for his info."

22 And the one at the top is another one
23 from Jim Givens, secondary roads. That came in at 7:25.
24 I called 7:25, and he wasn't in, and I called at 7:26 and
25 left a message.

1 Q. And Jim Givens, what's his title?

2 A. He's secondary roads engineer.

3 Q. In Richmond?

4 A. Yes.

5 Q. Is he the head of secondary roads,
6 engineering department?

7 A. Yes.

8 Q. Why is Jim Givens calling over here to
9 you to find out about this little entrance permit on 622?

10 MR. MCFARLAND: I'm going to object,
11 Your Honor. Foundation and hearsay.

12 THE COURT: If he knows of his own
13 knowledge.

14 THE WITNESS: I believe someone had
15 asked him, and he was trying to get back to that person.

16 BY MR. POULSON:

17 Q. Does Mr. Givens normally call you on
18 such mundane things as entrance permits on secondary
19 roads, sir?

20 A. Mr. Givens has called me on a lot of
21 different things on secondary roads.

22 Q. But entrance permits that normally go
23 through Suffolk, if there's a question?

24 A. Generally, they would not get involved
25 in entrance permits.

1 Q. But they were in this one?

2 A. That's where some of the first contacts
3 were made, as I understand it.

4 Q. And, apparently, you faxed -- looking at
5 Exhibit 36, apparently you faxed -- and I don't have
6 everything that went with it. Apparently you faxed to
7 Mr. Givens information in April of 2000?

8 A. This is the cover for a fax sheet. We
9 sent him something.

10 MR. MCFARLAND: Objection. It doesn't
11 say -- I mean, so far this witness hasn't said what he
12 sent Mr. Givens. It may be that he sent him something
13 that has nothing to do with this case.

14 THE COURT: Well, it could be. Do you
15 recall what was sent?

16 THE WITNESS: No, sir, I don't recall
17 what was sent. We sent five pages, and we sent it on
18 4-17, and this was in the file, so generally because this
19 was in the file, then when discovery came in for all of
20 the material, we ran a copy of everything that was in our
21 file, and sent it back out again.

22 THE COURT: So it was relevant to
23 Shooting Point?

24 MR. POULSON: There was communication.

25 MR. LePAGE: Your Honor, I'd object to

1 that characterization. He doesn't know what --

2 THE COURT: What file was it in when you
3 said it was in the file?

4 THE WITNESS: It was in either the
5 entrance permit file, or the Shooting Point file that we
6 had been working on. We keep files on various subjects,
7 and it was in one of those files.

8 MR. POULSON: I was provided it in
9 discovery asking for the Shooting Point file.

10 MR. MCFARLAND: But let me say, Your
11 Honor, in the deposition it was found that there were
12 documents in the Shooting Point file that had nothing to
13 do with Shooting Point. There were some other entrance
14 documents.

15 So I have a real problem with using a
16 cover page that nothing is attached to, and supposedly it
17 has to do with this. If there was something attached to
18 it, or if he could remember, yes, I remember sending
19 Mr. Givens a fax on April 17th, and it had to do with
20 Shooting Point, I'd have no objection.

21 But there were other documents in the
22 Shooting Point file that had nothing to do with Shooting
23 Point. And Mr. LePage removed them at the deposition.

24 MR. LePAGE: That's correct, Your Honor.
25 Their filing system is not flawless.

1 MR. POULSON: This was produced to me in
2 discovery as being part of the Shooting Point file.

3 THE COURT: I overrule the objection.
4 It goes to weight.

5 BY MR. POULSON:

6 Q. Now, Mr. Cumming, on or about the 28th
7 day of March, sir, 2000, did you have occasion to advise
8 Mr. Wescoat's attorney that Jack Hodge and John Cogbill --

9 MR. LePAGE: Your Honor, I'm going to
10 object to that. Mr. Wescoat's attorney is Mr. Poulson.
11 He can't come in the back door that way.

12 MR. POULSON: I'm not going to testify.
13 I can certainly ask the question, though, I submit.

14 MR. MCFARLAND: I don't think so, Your
15 Honor. He's got an independent witness who can --

16 MR. LePAGE: This is a hearsay
17 conversation with the attorney.

18 MR. POULSON: It's not a hearsay
19 conversation.

20 THE COURT: He can ask it in a different
21 way. He can simply say, do you ever recall making the
22 following statement to whomever. Go ahead.

23 BY MR. POULSON:

24 Q. Mr. Cumming, do you recall making the
25 statement on or about March 28th, 2000, that Jack Hodge

1 and John Cogbill were lobbying Jim Givens to force you to
2 approve a permit for Shooting Point, and at that time
3 giving Jim Givens' phone number as 804-786-2746? Do you
4 recall that?

5 A. I don't recall the conversation in
6 particular. I may have said that, but I don't recall it
7 in particular.

8 Q. Is that Mr. Givens' phone number, by the
9 way?

10 A. I don't know, sir. I'm pretty good with
11 phone numbers, but I don't call his often enough to have
12 it memorized.

13 Q. Now, Jack Hodge was involved with this
14 permit application; is that correct?

15 A. Yes, sir.

16 Q. Who was Jack Hodge, sir?

17 A. He is a consultant engineer who retired
18 from VDOT as its chief engineer.

19 Q. And when did he retire from VDOT?

20 A. I don't remember if he went in 1995 or
21 1990. We had two early outs. He left in one of those. I
22 think '95 is when he left, but I'm not sure.

23 Q. And as to his position, how high was he
24 in VDOT when he retired?

25 A. He was the chief engineer. The chief

1 engineer, and you have the commissioner, and then -- the
2 way they position themselves, generally you had the deputy
3 commissioner and the chief engineer in the past were the
4 same level. I think the deputy commissioner now is a tad
5 higher than him, but up there.

6 Q. Okay. So any way we cut it, second or
7 third in command when he retired?

8 A. To the commissioner, yes, sir.

9 Q. Okay. Now, Mr. Hodge had been where
10 before he went to Richmond?

11 A. Mr. Hodge had been the district
12 administrator for the then Suffolk district, or the
13 district engineer, they used to be called, for the Suffolk
14 district. Now they've changed the name to Hampton Roads
15 District.

16 Q. Okay. Now, during his years, was Jim
17 Givens employed by VDOT?

18 A. I don't know Jim Givens' history. I
19 believe he may have been, but I really didn't know Jim
20 Givens. I knew of his name. Until he got to be secondary
21 roads engineer is when I really got to know him. I really
22 wasn't familiar. I'm not familiar with everybody that
23 works with VDOT.

24 Q. Do you know when he became secondary
25 roads engineer?

1 A. I don't remember the exact date. He's
2 been at that job for a while. He became that when the --
3 I can't think of the previous man's name left it, and he
4 was promoted to that job.

5 Q. Do you know the approximate time?

6 A. It probably had been eight, ten years.

7 Q. Eight or ten years?

8 A. Something like that. I don't know
9 exact.

10 Q. And is it Jim Kline?

11 A. Yes, sir.

12 Q. How long has Mr. Kline been with VDOT?

13 A. I think a right good while.

14 Q. And Mr. Bailey?

15 A. He has not been around as long as the
16 other ones you're talking about, I don't believe.

17 Q. Was he there when Mr. Hodge was chief
18 engineer?

19 A. He was working for VDOT, yes, he was.

20 Q. All right. And Julie Brown?

21 A. Julie was around when he was chief
22 engineer.

23 Q. And Mr. Cleveland, the current district
24 administrator?

25 A. Yes, Mr. Cleveland was around.

1 Q. And Mr. Corey, the traffic engineer?

2 A. He wasn't around when -- I don't believe
3 he was working for VDOT. I think he was working for New
4 York at the time when Jeff Hodge was chief engineer
5 because he hadn't been here that long.

6 Q. So other than Mr. Corey, at a point in
7 time that Jack Hodge retired, every one of these people
8 had been in the chain of command below him, sir?

9 A. Not necessarily below him, because he
10 didn't have everybody under him. Different people
11 reported to different jobs depending on -- as I said,
12 where the chief engineer fit in the chain of command has
13 changed a couple of times.

14 Most recently, those of us in the field
15 come under the assistant commissioner of operations, not
16 the chief engineer. At one time, the chief engineer was
17 over all of us, but it has changed back and forth.
18 Different commissioners change how that works.

19 Q. But he was second or third in command in
20 Richmond, former Suffolk head engineer, and a lot of these
21 people have worked for him, or under him, or know him; is
22 that correct, Mr. Cumming?

23 A. That's correct.

24 MR. LePAGE: Your Honor, I think this
25 has been asked and established. I mean, I will concede

1 that Jack Hodge is the chief engineer.

2 THE COURT: All right. Go ahead.

3 BY MR. POULSON:

4 Q. Did you meet with Jack Hodge on or about
5 August the 3rd over here?

6 A. I met with him sometime last summer. I
7 don't remember the exact date.

8 Q. I show you Plaintiff's Exhibit 37.

9 THE COURT: Number 37.

10 (Plaintiff's Exhibit 37 was marked for
11 identification.)

12 MR. MCFARLAND: Did the Court admit --
13 I apologize, Your Honor. I must have lost track. But did
14 the Court admit 35 and 36?

15 THE COURT: Yes.

16 BY MR. POULSON:

17 Q. Mr. Cumming, at a point when you met
18 with Jack Hodge, was this the letter that came from
19 Baldwin and Gregg?

20 A. I believe it is, yes, sir.

21 Q. And in this letter, Baldwin and Gregg
22 calls to your attention that Mr. Hodge served as the VDOT
23 chief engineer before he retired; is that correct?

24 A. Yes, sir.

25 Q. Of course, you already knew that, didn't

1 you? You didn't need that introduction, did you?

2 A. No, sir.

3 Q. Now, Mr. Cumming, you are familiar with
4 permits, are you not?

5 A. Fairly familiar, yes, sir.

6 Q. And in the interest of time, you are
7 aware of how the calculation was done to secure the
8 twenty-four-foot width? I call it on the skew, other
9 people call it on the tangent.

10 A. The measurement was made parallel to the
11 edge of pavement.

12 Q. Of course, the regulation doesn't say
13 parallel to the edge of pavement, does it?

14 A. I would like to look before I answer
15 that question.

16 Q. Okay.

17 A. No, sir, it does not.

18 Q. Okay. Would you agree that the primary
19 purpose of the regulations is to ensure an adequate width
20 for the entrances?

21 A. Would you repeat that?

22 Q. Would you agree that one of the primary
23 considerations of the minimum standards, including the one
24 on page 29, is to ensure an adequate width for an
25 entrance?

1 A. One of them, yes, sir.

2 Q. Okay. Did Mr. Hodge come up with this
3 method to do this calculation?

4 A. To measure the twenty-four feet?

5 Q. Yes, on the skew?

6 MR. LePAGE: Your Honor, I'm going to
7 object to the characterization of how it's been measured.
8 It's purely Mr. Poulson's term.

9 MR. POULSON: Well, we can call it skew,
10 we can call it tangent, or whatever.

11 MR. LePAGE: You can call it parallel to
12 the edge of pavement, but it's Mr. Poulson's term.

13 THE COURT: Whatever, go ahead.
14 Parallel to the edge of the pavement. Let's use that
15 term.

16 THE WITNESS: Mr. Hodge did come up with
17 measuring the twenty-four feet parallel to the edge of
18 pavement. Yes, sir.

19 BY MR. POULSON:

20 Q. On that curve like that?

21 A. Yes, sir.

22 Q. This is not something that you came up
23 with?

24 A. I didn't think of the idea initially.

25 Q. And you've never thought of the idea in

1 fourteen years, have you, Mr. Cumming?

2 A. I have measured some, many widths
3 parallel to the pavement like that.

4 Q. But have you ever done anything where
5 you were able to get twenty-four out of fifteen?

6 MR. MCFARLAND: I'm going to object to
7 that characterization.

8 MR. POULSON: Or similar?

9 THE COURT: Overruled.

10 THE WITNESS: I don't recall ever
11 doing --

12 BY MR. POULSON:

13 Q. Ever doing anything like that, do you,
14 Mr. Cumming?

15 A. (No response.)

16 Q. Thank you.

17 Now, when Jack Hodge was over here
18 meeting with you, you were resisting the permit, were you
19 not, sir?

20 And let me complete my question.

21 And didn't Mr. Hodge tell you that he
22 would elevate over you?

23 A. I told Mr. Hodge, as I remember
24 correctly, that I had asked traffic engineering to take a
25 look at it, and I was waiting their response. Traffic

1 engineering meaning traffic engineering in Suffolk.

2 Mr. Hodge is a pretty intense person.
3 Whether he said he would elevate it or not, I'm not -- I
4 don't remember particularly.

5 Q. You wouldn't remember something like
6 that?

7 A. I don't remember exactly what he said,
8 if he said he would elevate it or not. He very much
9 wanted me to make a decision the day we were out there,
10 and I told him that I would not.

11 Q. If Mr. Hodge had said that he told you
12 he was going to elevate over you, would you have any
13 reason to disbelieve that?

14 MR. MCFARLAND: I would object to the
15 speculation.

16 MR. POULSON: Speculation? He's
17 testified to it in depositions.

18 MR. MCFARLAND: That's an inaccurate
19 statement, Mr. Poulson, and I'm going to object to it.

20 MR. POULSON: No, it's not.

21 MR. MCFARLAND: If he remembers what
22 Mr. Hodge said, I have no problem with the question. But
23 he said he didn't remember what Mr. Hodge said.

24 THE COURT: Overrule the objection. Go
25 ahead.

1 THE WITNESS: Could you repeat the
2 question, please?

3 BY MR. POULSON:

4 Q. If Mr. Hodge has previously testified in
5 depositions that he said that he was going to elevate over
6 you, if necessary, you wouldn't have any reason to dispute
7 that, would you?

8 A. No, sir.

9 Q. And after you signed off on the permit,
10 you reported back to Jim Kline in Richmond, did you not,
11 sir?

12 A. I may have. I don't know.

13 BY MR. POULSON:

14 Q. Now, you were down there to the entrance
15 site recently, correct?

16 A. Yes, sir.

17 Q. You've looked at it again?

18 A. Yes, sir.

19 Q. Is the easement road any wider now than
20 what it was on March 23rd, 2000?

21 A. The easement is still a fifteen-foot
22 easement.

23 Q. Still fifteen foot.

24 Now, Mr. Cumming, what I refer to as the
25 Tavi permit, Exhibit Number 31. You have a familiarity

1 with that, do you not?

2 A. Yes, sir.

3 Q. That was in Northampton County?

4 A. Yes, sir.

5 Q. Okay. Was that supposed to comply with
6 the minimum standards on page 29?

7 A. Yes, sir.

8 Q. Okay. Was Baldwin and Gregg involved
9 with that application?

10 A. Yes, sir.

11 Q. Was Jack Hodge involved with that
12 application?

13 A. Yes, sir.

14 Q. Were the Crees involved with that
15 situation as agents for Tavi?

16 A. Not to my knowledge.

17 Q. Have there been any permit applications
18 on the Eastern Shore in the past two years that Jack Hodge
19 has been involved with other than Tavi and Shooting Point?

20 A. Not that I'm aware of.

21 Q. Okay. Now, directing your attention to
22 on or about August the 17th, 2000, permit is issued August
23 the 14th, according to the department. Did you have
24 occasion to call Mrs. Wescoat about the permit, and other
25 matters?

1 A. I believe I did, yes, sir.

2 Q. Okay. And at that time, did you advise
3 her the permit had been issued?

4 A. I believe I did, yes, sir.

5 Q. Now, on or about August 21st, some four
6 days later, did you have occasion to be present at a toll
7 committee meeting, or whatever, a public meeting at the
8 Accomac Planning District office?

9 A. I may have. I don't have my calendar.
10 I don't remember.

11 Q. On or about that time, did you have
12 occasion to call Mrs. Wescoat aside for a word with her?

13 A. I may have. Again, I don't remember.
14 She's a supervisor, and when I have issues to talk with
15 her about, then I do that, and I know I have done that on
16 several occasions. Whether I did at the time you're
17 talking about or not, I don't recall specifically.

18 Q. Well, let's look to a conversation. At
19 a point after the permit was issued, Mr. Cumming, did you
20 speak with Mrs. Wescoat and apologize to her that the
21 permit got issued?

22 Did you indicate that they had gone over
23 your head, and that you wanted to keep your job, sir?

24 A. I don't remember using those words
25 specifically.

1 Q. Do you deny making that statement?

2 A. I wouldn't deny it. I just don't
3 remember. I'm sorry.

4 Q. On November 17th, 2000, did you have a
5 conversation with one Leonard Spady who is the adjacent
6 landowner to Mr. Tavi relative to the Tavi development?

7 A. I may have. I don't remember.

8 Q. You don't remember?

9 A. I don't remember.

10 Q. Well, let me ask you specifically at any
11 point did you make the following comments --

12 MR. MCFARLAND: I'm going to object,
13 Your Honor. Number one, he doesn't remember if he had a
14 conversation with Spady. Number two, it is absolutely
15 irrelevant to this case.

16 MR. POULSON: It's not irrelevant.

17 MR. MCFARLAND: Can I finish with the
18 objection, Mr. Poulson, please?

19 We're trying the case of the Shooting
20 Point entrance. Nobody here knows what the circumstances
21 of the Tavi entrance are, and it's not relevant to this
22 Court what the circumstances of the Tavi entrance are.

23 And if Mr. Cumming spoke with Mr. Spady,
24 a neighbor of Mr. Tavi, it has nothing to do with this
25 case whatsoever. It is hearsay. It is irrelevant.

1 MR. POULSON: It's not hearsay. It's
2 his conversation, what he said, and it connects up the
3 Tavi application and permit, the Shooting Point
4 application and permit, and it indicates that both of them
5 with Jack Hodge being the common denominator, the evidence
6 before the Court is was the only two he did over here.

7 At that point in time the evidence will
8 be that Mr. Cumming indicated that the permits did not
9 comply with the drawings in the book.

10 And, again, they had gone over his head.
11 The ex-chief engineer got involved, and he apologized for
12 what had happened. I think it's entirely --

13 THE COURT: Let's here from Mr. LePage.

14 MR. LePAGE: I'm going to object to
15 Mr. Poulson testifying. Mr. Cumming indicated he doesn't
16 remember any conversation with Mr. Spady, and then
17 Mr. Poulson -- and I realize there's not a jury here, but
18 he then recites the entire alleged conversation.

19 THE COURT: Well, to the extent that he
20 recited, I'm not going to accept that at all, but he is
21 entitled to ask him if he remembers making that statement.

22 I do think it's relevant. If he doesn't
23 remember, he doesn't remember, and I'll disregard it.

24

25 BY MR. POULSON:

1 Q. Mr. Cumming, let me give you some
2 details, and see if it refreshes your recollection
3 somewhat.

4 Do you recall Mr. Spady calling you
5 about the situation with Tavi?

6 A. Yes, sir, I do recall him calling me
7 about that.

8 Q. All right. And at that time, did you
9 not tell him, number one, that Northampton County had not
10 been sending you the plats?

11 A. I may have. I don't recall. I remember
12 having a conversation. I don't remember what was said.

13 Q. And then you got into the situation with
14 permits, and said it didn't stop with me, that they went
15 over your head, and they issued a permit, and that you
16 issued a permit in response.

17 That there were two permits issued, the
18 Tavi permit being one, and Shooting Point being another,
19 or referencing the Shooting Point that were not in
20 compliance with the requirements of the drawing.

21 That VDOT didn't used to be like this,
22 but the ex-chief engineer got involved, that John
23 Humphreys worked on the other side of the situation, and
24 that you would send him a copy of the permit, which you
25 proceeded to do.

1 Does that refresh your memory as to what
2 that conversation was, sir?

3 A. I remember sending him a copy of the
4 permit, him asking about that.

5 Q. That's the only thing you remember from
6 that conversation?

7 A. I remember talking to him about John
8 Humphrey. I don't remember the specific details beyond
9 that that you're reciting. I mean, you're reciting some
10 details there I just don't remember.

11 Q. You don't remember any of that about
12 indicating the chief engineer got involved?

13 A. You've asked some pretty detailed
14 things. I don't remember the details of my conversation.
15 I had a conversation with him. He is an acquaintance, and
16 I had a conversation with him. I don't write down all of
17 my conversations, and I don't try to remember every word I
18 say to every person. I remember some --

19 THE COURT: All right. He says he
20 doesn't remember, Mr. Poulson. Mr. Spady is going to
21 testify?

22 MR. POULSON: Yes, sir, he is.

23 THE COURT: The recitation of the
24 conversation by Mr. Poulson will be stricken from the
25 record at this time. I guess we'll come back to it at

1 some point.

2 BY MR. POULSON:

3 Q. You would agree, sir, that a topic of
4 this nature would be fairly significant, do you not?

5 A. Significant how?

6 Q. For example, to say that an ex-chief
7 highway engineer got involved in something, and people
8 went over your head?

9 A. Because he's an ex-chief engineer, as
10 far as I am concerned, he is a consultant engineer now. I
11 know him, and I've worked around him for many years, but
12 my decisions have been my decisions on this matter, and
13 not his.

14 Q. And, so, it is totally your decision is
15 what you're telling this Court?

16 A. The decisions that I made with regard to
17 the Shooting Point entrance, and the other entrance were
18 my decisions. Yes, sir.

19 Q. Okay. And this came about as a change,
20 obviously, after March 23rd, 2000?

21 A. Yes, sir.

22 MR. POULSON: All right, Mr. Cumming,
23 thank you.

24 THE COURT: Any other questions?

25 MR. LePAGE: Yes, sir.

CROSS-EXAMINATION

BY MR. LePAGE:

Q. Mr. Cumming, how did you first become aware of the Shooting Point subdivision? Who brought it to your attention?

A. Mrs. Wescoat called me and made me aware of it.

Q. And why did you look into it because of Mrs. Wescoat made you aware of it?

A. I looked at it because anybody who calls me and says that there is a problem, I always look into it. But she called me, and we checked into what the situation was just like we would for most anybody.

Q. And Mrs. Wescoat is a member of the board of supervisors for Northampton County; is that not correct?

A. That's correct.

Q. And you worked with her on a regular basis because she's a member of the board of supervisors?

MR. POULSON: I don't know what the materiality is because he just answered that he would do the same thing for anybody.

THE COURT: Overrule the objection. Go ahead.

THE WITNESS: Yes, sir. I do work with

1 her on numerous matters.

2 BY MR. LePAGE:

3 Q. And you try to accommodate members of
4 the board of supervisors for Accomac and Northampton
5 County if they request something from you?

6 MR. POULSON: Judge, I had him as an
7 adverse. I'm not sure that counsel can --

8 THE COURT: Well, go ahead.

9 THE WITNESS: I do try to work with the
10 board of supervisors to see how I can deal with their
11 concerns.

12 BY MR. LePAGE:

13 Q. And you testified that you changed your
14 mind about issuing the permit for the entrance between
15 March 23rd, 2000 when you testified and when you granted
16 the permit in August of 2000; is that correct?

17 A. August of 2000?

18 Q. August of 2000.

19 A. Yes, sir.

20 Q. Why did you change your mind?

21 MR. POULSON: He's going outside the
22 scope of my examination.

23 THE COURT: Overruled.

24 MR. LePAGE: It's highly relevant, Your
25 Honor, and responsive to --

1 THE COURT: I overrule the objection.
2 Go ahead.

3 You may like the answer, Mr. Poulson.

4 THE WITNESS: I had gotten traffic
5 engineering to take a look at it, and gotten their answer
6 back that they believed that it could function safely.

7 I had discussed it with other people
8 within VDOT, some of my counter-parts around the state in
9 the time frame in-between about their thoughts on
10 something like that, and as I looked at it, and considered
11 what I had learned, I believed that a safe connection
12 could be made there for that particular subdivision and
13 the connection with Route 622.

14 BY MR. LePAGE:

15 Q. And can you tell the Court what factors
16 went into your determination that a safe connection could
17 be made at that intersection?

18 A. I looked at the traffic count on Route
19 622. The count we had in 1999, and in the 1999
20 publication for Northampton County showed, as I recall,
21 thirty vehicles a day.

22 According to Jerry Pauley, assistant
23 traffic engineer, assistant district traffic engineer in
24 Suffolk, the count for 2000 was twenty-eight. At ten
25 vehicles per day, per lot, that's a hundred and eighty

1 vehicles. Added to the thirty, you've got two hundred and
2 ten, if my math is correct.

3 And according to traffic engineering, we
4 look at the highest hour, and it's eleven percent of the
5 total --

6 MR. POULSON: I don't know how much of
7 this is hearsay. I'm trying not to over object, but --

8 THE COURT: Overruled.

9 THE WITNESS: You come up with around
10 twenty-two, twenty-three vehicles an hour going in there.
11 And I believe that two automobiles, if they're in the
12 right position, can get by each other in that easement.

13 Two tractor-trailers could not. The
14 likelihood -- or two trucks of any kind could not, if they
15 are full-size trucks. If they're full-size trucks, the
16 legal width without mirrors is ninety-six inches, unless
17 they're one of the oversized, which go to a hundred and
18 two, but the oversized are only allowed on certain roads
19 by code, and most delivery vehicles are ninety-six inches
20 wide. That is, again, without mirrors.

21 But a car and a truck, depending on the
22 types of vehicles, I figure the likelihood of them getting
23 there at the same time would be very small, and that
24 entrance could function safely.

25 Q. And you changed your mind about whether

1 or not there would be a problem with cars rear-ending if
2 somebody had to stop and let somebody clear on the
3 entrance; is that correct?

4 A. There's plenty of sight distance there,
5 and looking at some of the other situations that exist,
6 and going back and checking some accident history, or lack
7 of accident histories at those, I felt like this would
8 function safely.

9 Q. Did you have any reason to be concerned
10 that there was no easement for the applicant directly onto
11 Route 622?

12 Well, let me rephrase the question. Did
13 you believe that there was an easement that accessed
14 directly to 622 at the point of the application?

15 A. I believe there was. I learned that in
16 this courtroom, in this very courtroom early on that there
17 was an easement, and it connected, and everybody seemed to
18 agree with that at the injunction hearing that we had
19 here.

20 And, you know, there wasn't any question
21 that there was an easement that connected there, and it
22 had been shown on the plat that we had seen, so I believe
23 there was an easement, and where it came in was as shown
24 by the engineer on the drawing.

25 Q. Well, let me ask you about that. When

1 VDOT gets an application with a drawing, what does VDOT do
2 to verify that the access point is exactly as shown on the
3 drawing?

4 A. If we get an application from an
5 engineer and we issue the permit, that permit is issued,
6 you know. The applicant signs that he is the owner, and
7 that that's how he is going to build. I mean, the drawing
8 is what is going to be, and not what is -- generally, they
9 show property lines, and easement lines, and that kind of
10 thing is shown, and we have to depend on -- we don't do
11 title searches on every application that we get about
12 where these things are. We depend on other people
13 submitting them to make sure it's right.

14 If they cannot legally build that the
15 way it is shown on that application, then they would need
16 to come to us to get a modification of the permit in order
17 to build it.

18 Q. Do you do any sort of survey?

19 A. Other than a site visit by Kenny. Kenny
20 generally does all of the site visits. Unless it's
21 something that is unusual, then we don't do a survey other
22 than that.

23 Q. Have you had occasion to measure the
24 width of the pavement on Route 622 at the point that
25 easement intersects with it?

1 A. Yes, I have.

2 Q. And how wide is it?

3 A. The pavement is fourteen feet as you
4 approach, it's fifteen feet right in the center of the
5 entrance, it's sixteen feet just beyond, and then it goes
6 back to fourteen feet as you go towards the Wescoats.

7 A portion of that pavement I had to kick
8 some dirt off to find the pavement because a portion of it
9 was covered up by dirt that had encroached in on the
10 edges. But I measured the pavement itself as I could find
11 the edge best I could.

12 Q. How wide are the shoulders through
13 there, and what's their condition?

14 A. The shoulders vary from not a lot to
15 maybe three feet in some places. They are earth shoulders
16 with grass growing up on them. They're not paved
17 shoulders. They're just earth shoulders. For a road of
18 that nature, it's probably about average for roads of that
19 type.

20 Q. Are there drainage ditches on either
21 side of the shoulders?

22 A. Yes, there are. In some places, and in
23 some places the drainage ditches are not very good. But
24 for the most part, there are some ditches throughout.

25 Q. Were you concerned about any drainage

1 problems that would be created if the entrance itself was
2 paved?

3 A. Looking at it, it looked like we would
4 not be ponding -- the developer would not be ponding any
5 water on anybody if he paved the entrance as he drew it
6 up. And I'm not talking about the easement; I'm just
7 talking about the entrance itself.

8 Q. Sure, and I'm asking about the entrance
9 itself.

10 A lot has been made about Jack Hodge and
11 Jim Givens in this case. Can you tell the Court about
12 what kind of approach you've experienced Jim Givens to, to
13 his job as secondary roads engineer?

14 A. If someone contacts Jim Givens with a
15 concern, generally he will call the -- most of the time,
16 he'll call the residency and ask what's going on, and
17 what's happening and so forth to try to check into things
18 to see what's going on. And generally, he'll make these
19 calls pretty quick.

20 Q. Is that unusual for him to do that?

21 A. No. He's done it on numerous matters
22 over the years.

23 Q. Did anybody from the Department of
24 Transportation, or anyone else tell you that you had to
25 grant the permit in this case?

1 A. No, they did not.

2 Q. Did anyone from the Department of
3 Transportation, or anyone else tell you that if you wanted
4 to keep your job, you would have to grant the permit in
5 this case?

6 A. No, they did not.

7 Q. Did you deviate from standard Department
8 of Transportation practices in granting the permit in this
9 case?

10 A. From standard practices? I don't
11 believe we did, because we looked at it, and although it
12 doesn't exactly match page 29, we looked at it to see if
13 we believed it would function safely, and we believed that
14 it would function safely, and then we issued the permit.

15 Q. What is the underlying purpose of the
16 minimum standards for entrances to state highways, and the
17 Land Use Permit Manual, and all of the other documents
18 incorporated therein?

19 A. They are to give us standards to go by,
20 to show us how safe connections should be made to roads.

21 Q. So what is the overriding purpose of the
22 manual?

23 A. To show how safe connections should be
24 made to the roadway.

25 Q. And do you believe or not that this

1 entrance will function safely under the existing
2 conditions out there?

3 A. I believe that if built in accordance
4 with the permit, it will function safely.

5 MR. LePAGE: Thank you. I have no
6 further questions.

7 THE COURT: Anybody else have anything
8 else of this witness?

9 MR. MCFARLAND: I do, Your Honor. I
10 don't think I will be super long, but I am going to be a
11 few minutes.

12 MR. POULSON: And I'm going to be a few
13 minutes after Mr. McFarland.

14 THE COURT: You've got some more also?

15 MR. POULSON: Yes, sir.

16 THE COURT: All right. Mr. Cumming, it
17 looks like you're still on. We'll see you Monday morning.

18 You-all can go ahead. We'll consider
19 that we're in recess. I'm going to sit here a few minutes
20 to get these things together, but feel free to move
21 around.

22 (Court recessed to reconvene on Monday,

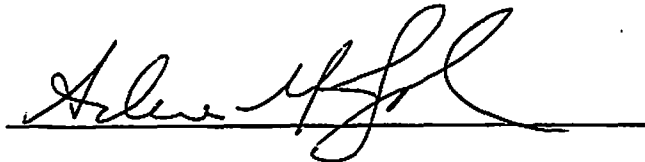
23 June 4, 2001, at 10:00 a.m.)
24
25

CERTIFICATE OF REPORTER

I, Arlene Martin-Johnson, RPR, do hereby certify that I reported verbatim the proceedings in the Circuit Court of Northampton County, in the matter of Margaret Wescoat and John W. Wescoat versus Shooting Point Property Owners Association, Inc., et als, heard by The Honorable Frederick B. Lowe, Judge of said Court.

I further certify that the foregoing is a true, accurate transcription of said proceedings.

Given under my hand this 8th day of June, 2001 at Norfolk, Virginia.

A handwritten signature in cursive script, appearing to read 'Arlene Martin-Johnson', is written over a horizontal line.

Arlene Martin-Johnson, RPR