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IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NOS. 970069 and 970071

GEORGE ATKISSON, *et al.*,

Appellants/Cross-Appellees,

v.

WEXFORD ASSOCIATES, INC. *et al.*,

Appellees/Cross-Appellants.

**CONSOLIDATED JOINT APPENDIX
VOLUME III**

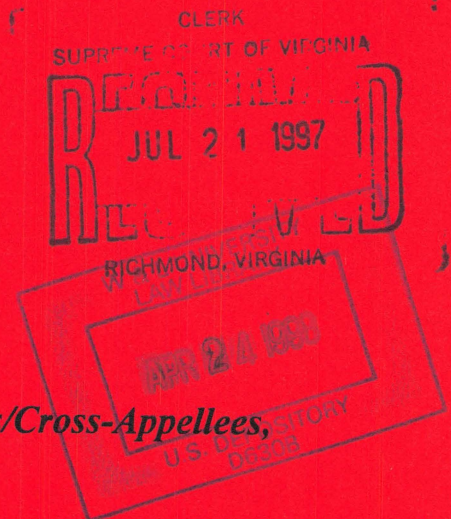
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970071
VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - - X

GEORGE ATKISSON

Plaintiff,

-vs-

WEXFORD ASSOCIATES, et al.

Defendants.

- - - - - X

IN CHANCERY NO. 97823

CLERK
SUPREME COURT OF VIRGINIA

RECEIVED
JAN 14 1997
RICHMOND, VIRGINIA

Courtroom 4B
Fairfax County Judicial Center
Fairfax, Virginia

Wednesday, September 18, 1996

The above-entitled matter came on to be heard
before the HONORABLE JANE M. ROUSH, Judge, in and for the
Circuit Court of Fairfax County, in the Courthouse, 4110
Chain Bridge Road, Fairfax, Virginia, beginning at 10:05
o'clock a.m.

APPEARANCES:

On Behalf of the Plaintiff:

SCOTT E. SNYDER, ESQUIRE

On Behalf of the Defendant:

BERNARD E. GOODMAN, ESQUIRE
NANCY DIMAURO, ATTORNEY-AT-LAW
DAVID J. GOGAL, ESQUIRE

P A R T I A L T R A N S C R I P T

(The court reporter was sworn.)

THE COURT: Mr. Snyder, did you want to make a closing argument?

MR. SNYDER: Yes; If I could have AAA and ZZZ?

(Whereupon, the bailiff handed counsel the exhibits.)

Your Honor, let me just start with what I think might be a more accurate depiction --

(Whereupon, Mr. Snyder began writing on easel.)

THE COURT: Let me give you a magic marker that -- because I can't read what you put up there.

(The court handed counsel an item for his use.)

MR. SNYDER: I'm going to read it out loud anyway, Your Honor.

THE COURT: All right.

MR. SNYDER: My handwriting is so bad it wouldn't matter whether or not I was writing --

(Whereupon, Mr. Snyder continued writing on the easel.)

Mr. Gogal earlier mentioned, I believe, in the motion to strike, compare what we have as far as evidence concerning the location of the cemetery. And I think under

1 the column marked, 'us,' we could summarize the basic
2 evidence that's gone in from the Plaintiff concerning the
3 area where the cemetery is actually located.

4 We can look at the testimony from Mr. Atkisson,
5 the area that was maintained as a cemetery, the route that
6 was used in relation to ZZZ to access the 15-acre parcel
7 and the cemetery, the area that was plowed, and,
8 conversely, the area that was not plowed, the location of
9 the cedar stump, the location of the standing cedar with
10 the barbed wire; and I think we can also look at the survey
11 that includes Outlot A.

12 Now, as I understand the Defendants' case, they
13 basically are relying upon the description of the burial
14 lot in the deeds, which is one-quarter acre in the
15 southeastern corner, and upon the location of the graves.
16 And I think one of the best pieces of evidence as to where
17 the cemetery is, is exhibit 11-D of the Defendants where
18 they had the surveyor and the archeologist work together to
19 locate the headstones and footstones.

20 Now, it wasn't identified for us, I do not
21 believe, which stones were headstones, which were
22 footstones. But, we have the stones marked. If you look
23 at the stone that is closest to the dividing line between

1 partition lot 2 and the 15-acre parcel -- my understanding
2 is that that drawing was made to scale. I measured it with
3 a ruler and it showed that the nearest stone is one point
4 -- well, one foot, three inches. The next closest one is
5 two feet, six inches. And the third one is approximately
6 the same distance.

7 And if you look at what Defendants have already
8 argued and was not accepted into evidence -- but, as Your
9 Honor mentioned, it probably makes for argument, and it was
10 argued. If you drew the quarter acre in, starting at the
11 dividing line between the lots at point G, and extend it as
12 far back as Outlot A, and then extend it, I guess, to the
13 west to make a quarter acre, then you would have a cemetery
14 that has the nearest burial plot one foot, three inches, on
15 the one side, and approximately 70 feet from the nearest
16 burial stone on the other side.

17 If you look at Outlot A, which is also drawn to
18 scale, you'll see that there is a border of approximately
19 30 feet on either side from the nearest burial stone.

20 Now, the other portion of 11-D that's included
21 in that diagram is the rectangular box. And the
22 archeologist said that that box represented topographically
23 -- measured from the top of the swale this area surrounding

1 the cemetery -- I'm sorry, surrounding where the grave
2 stones are.

3 I think it is a very logical, clear, and
4 necessary implication to make that where he has put this
5 line (indicating), you can see the rectangular box line
6 runs exactly on top of the dividing line between the lots.
7 And as Your Honor was out there --

8 THE COURT: I'm sorry, would you repeat that
9 last sentence? I just missed it. You could see what?

10 MR. SNYDER: On 11-D --

11 THE COURT: Yes, I'm with you. I just missed
12 the absolute last thing you just said.

13 MR. SNYDER: The dividing line, the one side of
14 this box, the side that's closest to the stones, runs
15 exactly on top of the dividing line.

16 THE COURT: Between what was --

17 MR. SNYDER: Between the 15-acre parcel and
18 partition lot 2.

19 THE COURT: All right.

20 MR. SNYDER: Now, as anybody who's been out
21 there on the property I do not think anybody can say that
22 it was possible to see such a clearly defined rectangular
23 space. And to say that this is a little self-serving to

1 have the top of the rise exactly within less than any
2 measurable distance that the surveyor could do, with
3 actually having it right on top of the line, is stretching
4 the imagination quite a lot.

5 And I think, as Mr. Atkisson testified, that
6 the area maintained around the cemetery is from the swale.
7 And if you were to locate the cemetery in the area within
8 the area of that rectangular box, and to do, I guess, then
9 the logical thing to say, well, then the quarter acre has
10 to -- if it can't extend into the 15-acre parcel, well,
11 then the quarter acre must extend out into the partition
12 lot 2. Then you have all of the bodies concentrated in one
13 tiny portion, almost a corner of the burial lot. There's
14 no reason to believe that that's the case.

15 If measured from the bottom of the swale, or
16 even at the mid-point of the swale, we're clearly within
17 the 15-acre parcel. And at the bottom of the swale we are
18 even more into the 15-acre parcel.

19 The other evidence that they have as to the
20 location is the deeds. And I do not contest the fact that
21 there is no mention of a cemetery in the 15-acre parcel,
22 and there is a mention of the cemetery in partition lot 2.
23 But, it is impossible to find the location of the cemetery

1 based upon that description.

2 As Mr. Simpson said, it could be one yard by a
3 thousand yards in order to arrive at the one-quarter acre
4 designation. And then you don't really know where it's
5 going to lay. To arbitrarily draw a line that comes within
6 one foot and three inches on one side, and 70 feet on the
7 other side, I think flies in the face of how people
8 normally create and maintain cemeteries.

9 The other thing that needs to be taken into
10 account as far as the monuments that were testified to, the
11 testimony concerning the area that was maintained at the
12 cemetery, was all presented by one witness, Mr. Atkisson.
13 The Defendants chose not to cross-examine him. The
14 Defendants did not call him as a witness.

15 The only possible source of attempting to
16 impeach his testimony, as I followed it, was that when he
17 made the statement on cross that Nicholas was by point G,
18 it was read from the deposition that you don't know where
19 any of these bodies are. He said, "That's correct. I only
20 know what other people told me," which he was told he can't
21 testify to.

22 So, all he knows -- obviously he wasn't there
23 when the burials took place. But, if you ask him what's at

1 point G, it's his understanding that it's Nicholas. But,
2 again, he can't testify to that because he was told that by
3 somebody else.

4 THE COURT: Well, I thought he said in his
5 direct testimony that he thought that Nicholas was buried
6 close to point G. But, I don't believe he said on what
7 side of point G he was buried.

8 MR. SNYDER: Well, when he was referencing it,
9 the idea -- but, I believe he was referencing it in context
10 of, when you came in on the easement off of point G, you
11 were very close to Nicholas. And that's what he -- I had
12 him describe the area of the box. He said that that box
13 would have been on top of Nicholas. That's how that
14 testimony came out.

15 THE COURT: On top of Nicholas?

16 MR. SNYDER: Or very near him.

17 THE COURT: Well, that's a fair distance then
18 from -- just roughly looking at the corner of the box
19 closest to point G, it's probably 20 feet away from point
20 G, if you look at that 40 foot measurement there that the
21 surveyor has platted from G to the box.

22 MR. SNYDER: Well, that's where the stone is.
23 He's saying -- I mean, Mr. Atkisson never knew where the

1 stones were. He's never testified to that. But, it was
2 his understanding of where Nicholas was buried.

3 I mean, it's not -- from looking at these
4 stones I'm not even sure which way the bodies were supposed
5 to be lined, because if there's headstones and footstones,
6 most of them don't match up with anything. And it was
7 never testified as to which is which. So, I'm not sure how
8 we're supposed to interpret that evidence.

9 But, he wasn't referencing --

10 THE COURT: Well, the archeologist detected
11 rows of bodies buried there with an east-west orientation
12 of the bodies, I think he said.

13 MR. SNYDER: Right, with headstones and
14 footstones. We've got three that are to the left and above
15 the modern gravestone. And obviously -- they seem to be --
16 we don't know which way the bodies are lying because they
17 wouldn't be lying in the end across those three marks.
18 They should be lying above or below them.

19 And the same with the stone to the bottom right
20 of the marker, the one that's near the 15-acre parcel. We
21 don't know whether that's a headstone or a footstone, or
22 where the other would lie.

23 And I think it's logical to argue that if you

1 have stones as close as they are to that property line
2 you're going to maintain an area that would be wider than a
3 foot and three inches to ensure that people aren't walking
4 across that particular grave site.

5 The other arguments --

6 THE COURT: Well, why would none of the deeds
7 to the 15-acre parcel then have referred to the family
8 cemetery in the southwest corner?

9 MR. SNYDER: Well, which deed are you referring
10 to?

11 THE COURT: Well, in the various property
12 descriptions on the 15-acre parcel there's no reference at
13 all to the cemetery.

14 MR. SNYDER: Well, I think it's because, first
15 of all, it was my understanding that the area that
16 contained partition lot 2, the 15-acre parcel, were
17 originally owned by the Saunders family. And Nicholas
18 Saunders is who George Atkisson had said he understood to
19 be buried near the point G.

20 Well, at some point we know that there's the
21 partition where they generally locate the family cemetery
22 in partition lot 2. But, it's clear it wasn't surveyed,
23 otherwise it would have given dimensions on it. They gave

1 dimensions, metes and bounds, or the angles for everything
2 else, but they didn't do that for this.

3 But, the next thing that happened -- well,
4 actually the first thing that happened is Thomas Adams
5 receives the 15-acre parcel. And then out of a partition
6 suit he receives lot 2. Now, he owns both sides of that
7 cemetery. It wouldn't be necessary for him, from his point
8 of view, to either survey the cemetery, or to locate it
9 more specifically. He owns the land on both sides of it.

10 So, now he has a cemetery. And to locate it
11 with more specificity would be of no importance to Thomas
12 Adams. I mean, that's why, I think, it's not referenced.
13 And that's why, also, it's not until all of these lots are
14 put together and are sold, and you except it out, that
15 cemetery, then for the first time there's a need to survey.
16 And that was done, as by Outlot A, in the 1978 plat.

17 I mean, again, if you look at Outlot A, Outlot
18 A has approximately 30 feet on either side of where these
19 bodies are buried.

20 THE COURT: Now, Outlot A was created by the
21 1978 dedication of Hunter Forest; is that right?

22 MR. SNYDER: Hunter Mill Forest.

23 THE COURT: Hunter Mill Forest?

1 MR. SNYDER: That's correct.

2 MR. GOGAL: Objection; '79, Your Honor.

3 THE COURT: '79?

4 MR. SNYDER: '79.

5 THE COURT: Now, at that point who owns what's
6 now Wendover?

7 MR. SNYDER: In '79 it may have been the
8 Hawthorne's.

9 THE PLAINTIFF: The Hawthorne's are on the left
10 and Trotter and Pritchard are on the right.

11 MR. SNYDER: And I think actually the documents
12 that are before this court would show that the Hawthorne's
13 own the area below the 15-acre parcel, and the Trotter's
14 owned it -- no, that's backward.

15 THE PLAINTIFF: Lot one in partition
16 (inaudible) would have been Trotter and --

17 MR. GOODMAN: Your Honor, Wendover III was
18 owned by Charles Hawthorne and his wife. And the property
19 to the left on the other side of 880-foot line was owned by
20 Ed Pritchard and Amy Trotter as trustees. And that became
21 Wendover II.

22 THE COURT: All right.

23 MR. SNYDER: And that brings me to another

1 point. Apparently their argument -- we have in evidence
2 exhibit number 16 of the Defendants, which I assume was
3 introduced, or it certainly the argument made when I
4 objected to it, was that this was evidence of unclean
5 hands.

6 And it's also supposed to be evidence, and this
7 is a note that I made at the time that it was stated, that
8 exhibit 16 would show that Fairfax County owned the area of
9 Outlot A and that they don't want the easement.

10 THE COURT: Are we talking about exhibit 18
11 now, is that right?

12 MR. SNYDER: Is it 18?

13 THE COURT: I'm sorry, I just --

14 MS. DIMAURO: Your Honor, I believe that's
15 correct.

16 MR. GOGAL: It was exhibit 18.

17 MR. SNYDER: I'm sorry, you're right.

18 Actually, I got ahead of myself on that. Let me refer to
19 16 at this point.

20 THE COURT: All right.

21 MR. SNYDER: Sixteen --

22 THE COURT: Sixteen is the preliminary plan for
23 Hunter Mill Forest.

1 MR. SNYDER: Right; which the evidence is it
2 was not approved.

3 THE COURT: Right.

4 MR. SNYDER: It was never built. My
5 understanding, the reason -- the argument that will be
6 based upon that exhibit is that it shows that they could
7 have built a road through Hunter Mill Forest that would
8 have gone directly to the cemetery.

9 And if you look at exhibit 18, one of the
10 reasons that that particular proposal was not approved was
11 the county required that the property where this road that
12 goes by the cemetery -- you can see on exhibit 16, it says
13 it's owned by E.A. Pritchard and Amy S. Trotter as
14 trustees. That's in exhibit 16.

15 And exhibit 18, there's a letter from the
16 Trotter's saying the property is not for sale.

17 THE COURT: Not the Trotter's; Pritchard and
18 Trotter are attorneys who made a killing in land in Fairfax
19 County when there was a killing to be made. I know, I used
20 to work for both of them 15 years ago.

21 MR. SNYDER: Well, you can see from exhibit 18
22 that that parcel in order for Fairfax County to approve
23 that plan and that road, they felt that it was necessary

1 that that property be acquired. And there's a letter
2 from --

3 THE COURT: Which letter is that?

4 MR. SNYDER: I believe it's in the upper right-
5 hand corner. It's addressed to Harold O. Miller.

6 THE COURT: From Mr. Trotter?

7 MR. SNYDER: From somebody Trotter; Amy?

8 THE COURT: Amy; so, Mr. Trotter says the
9 property is not for sale.

10 MR. SNYDER: That's correct.

11 THE COURT: And where does it say that the
12 county was requiring group development of the property? Or
13 is that the testimony of Mr. Atkisson?

14 MR. SNYDER: That was the testimony of Mr.
15 Atkisson. If you can -- it's actually referenced in the
16 letter from Harold Miller about -- in a letter dated July
17 24, 1978, to Leonard Horton --

18 THE COURT: Can I take a look at that?

19 (Mr. Snyder handed the court a document for her
20 examination.)

21 MR. SNYDER: It's paragraph D that talks about
22 the swale and the need for a road through the property.

23 THE COURT: All right. I think it's not

1 disputed that -- obviously it's not disputed that the
2 preliminary plan representing the Defendants in exhibit 16
3 never came to fruition for one reason or another.

4 MR. SNYDER: I mean, again, I mean, if that's
5 the -- I don't understand why it's admitted. I assume it's
6 admitted on the representation that it is evidence of
7 unclean hands.

8 THE COURT: Well, I think it's also -- and
9 maybe I'm reading between the lines, and we'll have to wait
10 until closing argument of the Defendants to find out
11 exactly why it's admitted, but to show, also, Mr.
12 Atkisson's involvement in the development of the property.

13 To a certain extent it's saying that he was
14 involved in developing what's now Hunter Mill Forest, and
15 that under the Defendants' view the access easement, if any
16 to the cemetery, was over old partition lot 2, which is now
17 in part Hunter Mill Forest; and to the extent that the
18 cemetery is now landlocked and part of it is his own doing.

19 Is that reading your minds there?

20 MR. GOGAL: Yes, Your Honor, that is it.

21 THE COURT: All right.

22 MR. SNYDER: I mean, again, I don't think
23 that's supported by the evidence. Because, number one,

1 there is no evidence as to what his involvement was in the
2 development of this property, whether or not he had any
3 input in the layout of the streets.

4 In fact, there's no evidence as to his degree
5 of control over the development even to have allowed it.
6 And the one piece of evidence, 16, that shows the road
7 going to the cemetery appears to have required by the
8 county the acquisition of that property which the property
9 owner said it's not for sale.

10 So, if anything, I would think that it would
11 show that an attempt was made, but it was not able to be
12 accomplished because it would not be approved by the county
13 as it was proposed.

14 And, again, when we look at the totality of the
15 evidence that's presented, from my looking at the prior
16 proceeding in this matter before Judge Fortkort, and the
17 evidence that was presented by the Defendants in this
18 matter, the only piece of additional evidence is the
19 location of the stones in the burial plot. And if
20 anything, I think that evidence supports our argument of
21 where to locate the cemetery.

22 Now, I would want to reference three cases to
23 the court's attention. It may not be relevant in terms of

1 you really haven't heard arguments on this.

2 Cushman Corporation versus Barnes, 204 Virginia
3 245, page 253, talks of when you divide a dominant estate
4 the easement appurtenant to it is going to go to both
5 sections even if you convey -- and I'll just read the
6 language, "When a portion of the dominant estate is
7 conveyed away without accepting the right-of-the-way, the
8 owner of such portion has the right in connection with the
9 reasonable use of his land to make use of the easement if
10 his land was accessible thereto."

11 And in this particular --

12 THE COURT: So, at this point you're talking
13 about the deed in 1978 from Florence Atkisson and the other
14 Atkisson heirs to Harold Miller --

15 MR. SNYDER: Right.

16 THE COURT: -- when they transferred the 15-
17 acre parcel?

18 MR. SNYDER: When they transferred the 15-acre
19 parcel counsel has argued that they also included the
20 easement. Well --

21 THE COURT: Well, they did.

22 MR. SNYDER: They did, but all that was was
23 restating the law. When they conveyed the 15-acre parcel

1 the easement went with it, whether it was in the deed or
2 not. And that's what this case is saying, that it doesn't
3 matter, you can include it or not include it, it goes. And
4 that any portion of the dominant estate, therefore, can
5 still use that easement.

6 So, the fact that it's in there does not speak
7 to intent. All it does is show -- it reiterates what would
8 happen legally even if they haven't included that language.

9 In the case of Wagoner versus Coal Corporation,
10 199 Virginia 741, there's been no argument on this point.
11 I'm not sure if it's really in controversy. This is
12 referencing the fact that the 880 feet is not what's
13 represented on ZZZ. That's 830 feet.

14 THE COURT: What case is that you're referring
15 to?

16 MR. SNYDER: Wagoner versus Coal Corporation,
17 199 Virginia 741.

18 THE COURT: All right.

19 MR. SNYDER: And it's actually a case that's
20 cited in the Supreme Court opinion in this matter.

21 On page 746, the Supreme Court of Virginia
22 says, "Even where there has been a definite location of an
23 easement it may be changed with the express or implied

1 consent of the persons interested. Such consent may be
2 implied from the acts and acquiescence of the parties, and
3 an estoppel to claim a former location to be the true one
4 arises from acquiescence in the change."

5 And I would say that from the evidence, again,
6 unimpeached, unrebutted, of the route taken along ZZZ, that
7 that is the route. And it has been from the witness that
8 we have, with the oldest memory of it, to a date back to --
9 from when he was born in 1920 and into the thirties when he
10 was using it.

11 Then the last case I would draw your attention
12 to is the case of Lindsey versus Clark, 193 Virginia 522,
13 which just sets out -- again, I don't know if this is going
14 to be argued. If it is, I would just like the court to be
15 aware of it.

16 THE COURT: You'll have the opportunity for
17 rebuttal argument.

18 MR. SNYDER: I know. I would like the court to
19 be aware of this.

20 THE COURT: All right.

21 MR. SNYDER: If abandonment of this easement is
22 argued, either because of a change in location or because
23 of non-use, the standards set for proving abandonment --

1 this is on page 525 of Lindsey versus Clark -- "The burden
2 of proof to show the abandonment of an easement is upon the
3 party claiming such an abandonment and it must be
4 established by clear and unequivocal evidence."

5 And it also says that, "A mere non-user, no
6 matter for a period how long, shall not constitute
7 abandonment." There would have to be acts associated with
8 that.

9 So, as far as the Plaintiff's case we have the
10 testimony of Mr. Simpson through the evidence of ZZZ;
11 largely, I believe, we concede the shaded portions of ZZZ
12 and the view taken by the court; the testimony concerning
13 ZZZ from Mr. Atkisson. And I believe that if you look at
14 all of the evidence concerning where the cemetery is
15 located, and you make the logical implications from where
16 they've located these graves, there is no doubt that this
17 cemetery has to be located on both sides of the dividing
18 line between partition lot 2 and the 15-acre parcel.

19 THE COURT: All right, thank you.

20 Mr. Gogal?

21 MR. GOGAL: Your Honor, I'd like to start with
22 just a couple of quick housekeeping matters.

23 THE COURT: All right.

1 MR. GOGAL: I have a memorandum I prepared on
2 the issue of location, which I would prefer not to argue at
3 this time because I believe, and I hope the court will
4 agree with me, I hope, after my argument that the court
5 will declare there is no easement for Mr. Atkisson. And I
6 would like to preserve the argument by filing this
7 memorandum.

8 THE COURT: All right; you can hand it up.

9 (Whereupon, Mr. Gogal handed the court a
10 document for her examination.)

11 Did you give a copy to Mr. Snyder?

12 MR. GOGAL: I'll do that right now, Your Honor.

13 (Whereupon, Mr. Gogal handed counsel a document
14 for his examination.)

15 THE COURT: All right.

16 MR. GOGAL: It's a very short memo.

17 THE COURT: My favorite kind.

18 MR. GOGAL: Which I believe you will agree
19 with, in any event.

20 In addition, Your Honor, I wanted to correct
21 something in my trial memorandum. I cited -- there's a
22 third theory of the easement by necessity. The Russakoff
23 versus Scruggs case is a case that discusses all different

1 types of easements. And essentially there are two.

2 I believe there is a distinction between an
3 easement by implication for pre-existing use and one for a
4 necessity. If I could, I'd like to hand up a copy of the
5 Russakoff case, and the case that I do think would be on
6 point, which is the Middleton v. Johnson case. And that is
7 the case that Russakoff cites for the elements of an
8 easement by necessity.

9 (Whereupon, Mr. Gogal handed the court
10 documents for her examination.)

11 THE COURT: All right; so what have you averred
12 in your memorandum now, the easement by necessity and the
13 easement by prior use?

14 MR. GOGAL: They're very similar. They have
15 some common elements. That's a critical distinction -- is
16 that easement by prior use they would have to prove that
17 there was actual active use of the property. They still
18 have to prove a common grantor. But, what they wouldn't
19 have to prove is necessity. And here they're making an
20 argument, this is an easement by necessity.

21 And I could just very quickly run down the
22 elements. For an easement by necessity you have to have --
23 basically that the property is entirely surrounded. When

1 you create a landlocked parcel, you either completely
2 surround it, or you surround it and then maybe it borders a
3 stranger, so that you have created a situation where it's a
4 landlocked parcel. There's no evidence of that in this
5 case.

6 And, also, you'd have to show that, "A way of
7 necessity will not be established if there's another way of
8 access." And clearly the undisputed evidence is there was
9 a partition access for the cemetery.

10 So, the easement by necessity is not -- there
11 is absolutely no way that can be established in this case.
12 And this is really the correct authority for that
13 proposition. I did want to point that out to the court.

14 THE COURT: All right.

15 MR. GOGAL: Your Honor, Mr. Snyder made
16 reference to the fact there's not much difference from the
17 trial before and the trial now. And, Your Honor, I wasn't
18 at that trial, but I can tell the court I read the entire
19 trial transcript. And this case they put on today is
20 radically different in many respects.

21 In this trial, Your Honor, we have some pretty
22 precise stipulations. And we provided the court with a
23 clear reference of what the land records are and what they

1 mean. We have a stipulation that the partition easement
2 served the burial lot. We have a stipulation as to what
3 these critical deeds are.

4 In the last trial everything they had, one by
5 one, over the course of many hours through a --

6 THE COURT: Well, years, really. I mean, the
7 trial stretched out over a year and a half.

8 MR. GOGAL: These (indicating) that we put all
9 in this trial exhibit one, almost virtually all of which
10 had nothing to do -- most of them don't have much to do
11 with the case other than historical. We put in separate
12 deeds, those that really are the critical deeds. And I
13 think we've done a pretty good job of highlighting the
14 pertinent deeds in this case.

15 THE COURT: Well, I do want to give my
16 compliments to all counsel for streamlining the
17 presentation of this case. The stipulations went a long
18 way to really narrowing the issues.

19 Really, very few of the facts are in dispute.

20 MR. GOGAL: Your Honor, from my perspective it
21 could have been decided on summary judgment just based on
22 the stipulations. But, I think certainly the court has a
23 full picture of some of the facts, whether they're relevant

1 or not.

2 But, I would note that at the previous trial
3 it's interesting that Mr. Frey who tried the case before
4 Mr. Snyder -- well, Mr. Snyder was there but Mr. Snyder
5 took over the case in some aspect.

6 But, Mr. Frey said that, "At this trial the
7 only evidence as to where the location of the cemetery is
8 is Mr. Atkisson's testimony, which he says the cemetery
9 existed on both sides of point G, and that point coming up
10 to the road. Both sides have curiously argued that the
11 surveyor could have gone out there, gotten to point G and
12 told us where those monuments were; all to the right or all
13 to the left of point G."

14 And that's precisely what we've done in this
15 trial, Your Honor. We have located those with the
16 archeologist. We've located the actual cemetery, what was
17 actually used for the graves. And we've also gotten a
18 surveyor to show where that is in relation to partition lot
19 2 and the 15 acres.

20 Also, Your Honor, the last time Mr. --

21 THE COURT: Well, did Mr. Atkisson testify at
22 the last trial that the graves were located on both lots?

23 MR. GOGAL: He implied that in his testimony,

1 that the cemetery is on both sides of the road.

2 THE COURT: Did he do it by other than what
3 I've heard today in terms of where they plowed and where
4 they maintained it?

5 MR. GOGAL: No; see, we never got into what he
6 meant by that. So, the impression that Judge Fortkort had
7 is, I don't know where any graves are, but I have this
8 witness telling me there's a cemetery on both sides of this
9 road.

10 And the necessary implication was there's
11 graves on both sides of the road. And here the admission
12 by counsel that we don't know because nobody went out there
13 and surveyed, so all we have is George Atkisson's
14 testimony, and nobody surveyed where these graves are. So,
15 we've got to accept the fact that it is on both sides of
16 the road. And Judge Fortkort did that.

17 Your Honor, you can't do that because we now
18 know where the graves are. And, also, Your Honor, this is
19 another significant difference, you've got the admission of
20 Mr. Atkisson this time. There is no one buried on the 15-
21 acre parcel.

22 We also have the deposition of Carlotta
23 Atkisson. That really deals with the issue of any sort of

1 a prescriptive easement where she talks about how, over the
2 years, of how they got to the property was through the
3 railroad outlet, either by -- they went by train, or bus.
4 They never drove this road to get to the property. There's
5 no evidence that anyone ever drove on this road.

6 THE COURT: That was quite a deal they had
7 getting the railroad to stop for them every time they
8 showed up.

9 MR. GOGAL: Right; their own private train
10 stop. Not only did he get a road, he also got a private
11 train stop.

12 Judge, I think it's real important to keep in
13 mind what this case --

14 THE COURT: Those are the good old days. Now,
15 you go running for a bus and the bus driver sees you and he
16 steps on the gas (laughter).

17 MR. GOGAL: I think it's important at this
18 juncture to sort of focus on what this -- maybe what this
19 case is not about so we can talk about what it really is
20 about.

21 This case is not about locating where on the
22 partition lot 2 -- how this thing is actually drawn. I
23 mean, this court is not asked to, or required to decide

1 where that quarter acre is on partition lot 2. The court
2 is also not charged, or this case is not about the court
3 finding somewhere access for the cemetery.

4 The only issue in this case is whether Mr.
5 Atkisson, as one of, perhaps, hundreds of heirs -- because
6 he's the grandson of one of 16 parties for the partition
7 decree -- whether Mr. Atkisson, as one of all of those
8 heirs, can re-establish an easement that was intended for
9 the 15-acre parcel to serve a cemetery that the land
10 records clearly reveal is on partition lot 2. That is the
11 issue in this case, Your Honor.

12 I think the evidence is overwhelming that he
13 cannot do that, and the law will not allow him to do it.
14 The Walton case we've cited, Your Honor.

15 Mr. Atkisson does not own Outlot A. All he
16 owns, Your Honor -- and I guess we have to go back to the
17 -- perhaps I could -- I'll do my own chart.

18 (Whereupon, Mr. Gogal demonstrated on chart.)

19 You have the 1892 --

20 THE COURT: Let me give you a magic marker.

21 (Whereupon, the court handed counsel an item
22 for his use.)

23 MR. GOGAL: Thank you, Your Honor.

1 1892 -- it's undisputed, it's stipulated in the
2 land records -- is the deed that created this 15-acre
3 parcel and the 15-acre parcel easement. And as the court
4 has noted, and Mr. Snyder has conceded, there's no mention
5 of a cemetery.

6 In 1896, Your Honor, we have not just a deed,
7 we have the Commissioner's report, we have the survey, and,
8 very significantly, we have a decree of the court of the
9 Fairfax Circuit Court, a binding decree. It says -- it
10 tells us where that cemetery is.

11 It's a one-quarter acre cemetery in the
12 southeast corner of partition lot 2. And that decree
13 provides the access to partition -- between lots three,
14 four, five, and six; the partition easement.

15 We would argue the only other relevant deed,
16 Your Honor, is 1978. Because this is the deed in which Mr.
17 Atkisson claims he, along with his heirs, have excepted out
18 the cemetery. The land records reveal that in 1978 there
19 is no Outlot A. They didn't except out Outlot A, they
20 excepted existing cemetery.

21 And the existing cemetery --

22 THE COURT: Outlot A was not created until
23 1979; right?

1 MR. GOGAL: That's right, Your Honor, by a
2 developer who was trying to locate the property he did not
3 even own.

4 Your Honor, the heirs that were party in the
5 1978 deed, and you might want to look at exhibit five -- I
6 think it's five. No? Sorry, Your Honor, it's exhibit six.

7 On the very last page there's an affidavit.
8 And the affidavit makes it clear, for the record, that the
9 only heirs in 1978 were the heirs who owned partition lot
10 2. And those are the heirs of Thomas Adams.

11 THE COURT: Well, just a minute while I catch
12 up with you.

13 MR. GOGAL: Okay; I'm sorry, Your Honor.

14 THE COURT: No, that's all right.

15 (Pause.)

16 I'm trying my darndest to keep this file in
17 some semblance of shape. I want to put everything back in
18 its place before we move onto another exhibit.

19 All right; the last page of exhibit six is the
20 affidavit. I'm with you.

21 Now, tell me again what you want me to look at?

22 MR. GOGAL: Well, in 1978 Thomas Adams' heirs,
23 who own partition lot 2 -- now, they didn't own the

1 cemetery. What they had is an interest, like all the other
2 relatives, in a quarter-acre -- in partition lot 2. They
3 had an interest along with the other heirs of the other 15
4 parties. So, we're talking about probably hundreds of
5 people who have an interest preserved in 1896 by court
6 order.

7 So, when they sold that property to the
8 developer, they had to, they were required to, except out
9 the one-quarter easement in partition lot 2 because they
10 didn't own that exclusively. They had no right to convey
11 that away to anybody.

12 So, what we see in 1978 is a conveyance of the
13 15 acres and partition lot 2. And we see that they except
14 out the cemetery, as they were required to, because they
15 didn't own it on their own. And they affirmatively --

16 THE COURT: They were all the owners of
17 partition lot 2 and the 15 acre lot.

18 MR. GOGAL: But, they didn't own it. They
19 didn't own exclusively the quarter-acre cemetery.

20 THE COURT: Because they own that in common
21 with all of the other heirs --

22 MR. GOGAL: That's right.

23 THE COURT: -- of all of the other parties to

1 the 1896 partition decree.

2 MR. GOGAL: Exactly. So, they had no right to
3 even -- I mean, even if they wanted to create Outlot A,
4 this is all bound by the 1896 order. I mean, they're
5 trying here in '78 to say, look, we're giving you partition
6 lot 2, but you don't have the cemetery because that is --
7 it's reserved for our entire family.

8 And they specifically conveyed the 15-acre
9 easement, further evidence of their intent, that that's not
10 their access. I mean, if they just gave the land, as Mr.
11 Snyder argued, that it's appurtenant to it so it runs with
12 it. But, they further convey it. There's no intention to
13 keep that easement.

14 And that's what we have in the motion to
15 strike, basically. This was the testimony -- well, we also
16 had -- I mean, we heard Mr. Simpson. But, Your Honor, I
17 would have to say that his testimony really belongs on this
18 side (indicating). Because all that Mr. Simpson told us is
19 when he surveyed Outlot A he confirmed that the 15-acre
20 easement -- in relying on the land records he confirmed
21 that the 15-acre easement went to the 15-acre parcel.

22 THE COURT: Fifteen-foot easement.

23 MR. GOGAL: Fifteen-foot outlet, 15-acre parcel

1 easement. The 15-acre parcel easement goes with the 15-
2 acre parcel. According to the land records the cemetery is
3 located on partition lot 2. He confirmed that as well.
4 And he confirmed that if -- that with that in mind, this
5 access, this easement, did not serve the cemetery.

6 The only thing he said is, "That I thought
7 there was something about a description where the road went
8 to the cemetery." And, Your Honor, there was absolutely no
9 evidence of that. So, that was his only caveat. Yeah, I
10 agree with you, but I think there was something. We have
11 no evidence of that; indeed there is no evidence in the
12 land records, Your Honor.

13 So, Mr. Simpson actually -- no, Mr. Simpson
14 went further. And I asked him, I said, "Mr. Simpson, do
15 you know of any basis in the land records for Outlot A?"
16 And he says, "No, I do not." So, he confirmed that Outlot
17 A, which Plaintiff likes to put on over here (indicating)
18 as an attempt to say that's evidence of a cemetery, has no
19 basis in the land records, conceded by the Plaintiff's
20 side.

21 In fact, Outlot A contradicts the court decree
22 in 1896. Outlot A, at least we know, George Atkisson
23 testified he has no idea how they did it. In an attempt to

1 distance himself from the decision and from being the
2 developer, which he's conceded elsewhere that he is, he
3 provided us with no evidence and no basis for Outlot A. He
4 didn't meet with the surveyors. He didn't show them any
5 monuments or anything. So, we have an absent expert here
6 whose opinion is worth absolutely -- you know, no
7 consideration by the court.

8 He could have called Mr. Johnson or any other
9 surveyor who did Outlot A. He didn't choose to call him
10 because there's no basis for Outlot A other than to service
11 the developer's interest in providing access somewhere
12 other than through the Hunter Mill subdivision.

13 And, Your Honor, further I would point out that
14 all that Outlot A is -- Outlot A was never conveyed
15 anywhere. It's merely an attempt by the developer to
16 locate the cemetery. Outlot A is an attempt by the
17 developer to locate land they don't own.

18 Remember, the cemetery is excepted from the
19 conveyance. They don't own Outlot A. They don't own the
20 cemetery. They have absolutely no authority to change its
21 location in contravention to this (indicating) court
22 decree.

23 THE COURT: Well, they own it, they just don't

1 own it exclusively.

2 MR. GOGAL: No, no, the developer does not own
3 the cemetery.

4 THE COURT: Well, Harold Miller, the trustee.

5 MR. GOGAL: I'm sorry, Your Honor.

6 THE COURT: I thought you were talking about
7 the Atkisson family.

8 MR. GOGAL: Well, yes, that's right. The
9 Atkisson family owns it in common with others. But, I'm
10 saying the person that created Outlot A was the developer,
11 not the Atkisson family.

12 THE COURT: All right.

13 MR. GOGAL: And that developer is not here
14 today to testify about what they did. But what we know is
15 that they had no authority. Because they didn't own the
16 land to locate it anywhere other than where it was located
17 in 1896 by court order.

18 Now, all we heard in the direct of Mr.
19 Atkisson, Your Honor, was mention of a stump that wasn't
20 clearly -- we didn't really understand fully what that was
21 about. He couldn't locate that where it was. But, all he
22 said was, "I went out there once in the process of
23 maintaining the cemetery and I cut a tree."

1 And, judge, -- I mean, first of all,
2 (inaudible) this is so clear, the fact that it's on
3 partition lot 2, this wouldn't be admissible to vary its
4 location. The fact that he cut a tree near where the
5 graves are doesn't make the 15-acre parcel part of the
6 cemetery.

7 Now, that was the motion to strike. Now, Your
8 Honor, we have some overwhelming evidence. We have Mr.
9 Sacchi, Mr. Courson, not to mention Mr. Albanese. We also
10 have the admissions we put into evidence of Mr. Atkisson,
11 there's no one buried on the 15-acre parcel. Which, Your
12 Honor, I don't concede is really significant.

13 I mean, whether a grave happens to be located
14 on the 15-acre parcel I don't think would be sufficient
15 anyway. But, for purposes of this case, there isn't even
16 evidence of that.

17 Of course, Mr. Sacchi, Your Honor, he's located
18 the graves. Now we know where the graves are. And he's
19 also described to you how that is a natural cemetery on top
20 of a hill and that those boundaries that were drawn
21 accurately reflect where the cemetery was, the actual used
22 cemetery.

23 Now, Mr. Snyder wants to make a big argument

1 about the fact that the graves go right up to the boundary.
2 And that makes no sense. But, what he fails to recognize
3 is this is not a quarter-acre cemetery in the sense of a
4 quarter-acre of graves. 1896, and if you look at the
5 language from the decree and the Commissioner's report --

6 THE COURT: Which exhibit is that?

7 MR. GOGAL: And I'll find it, Your Honor, "The
8 burial lot of one-fourth of an acre" --

9 THE COURT: That's five?

10 MR. GOGAL: And this is on page 358 -- this is
11 in the Commissioner's report.

12 MS. DIMAURO: Exhibit five, Your Honor.

13 MR. GOGAL: I'm sorry, Your Honor, exhibit
14 five.

15 THE COURT: I'm there.

16 MR. GOGAL: "The burial lot of one-quarter of
17 an acre in the southeast corner of lot number two is
18 reserved as a family burial lot." Reserved, there's a
19 quarter-acre of land reserved to bury people. All they do
20 is they start at the end, as if they're going to be moving
21 this grave over. They start at the boundary and they start
22 burying people. That's completely illogical thing to have
23 done.

1 They didn't say there's a quarter-acre burial
2 lot with graves located in the middle, which is what Mr.
3 Snyder wants to say has to have been the case. This is
4 consistent, this is reserving land to bury people.

5 Another point, Your Honor, I want to make is
6 that -- and this has to do with the easement by necessity,
7 but it also has to do with laches. But, in addition, Your
8 Honor, you got to keep in mind what Mr. Snyder's client is
9 trying to do --

10 THE COURT: I thought you weren't arguing
11 laches.

12 MR. GOGAL: No laches; unclean hands. I'm
13 sorry.

14 THE COURT: Okay.

15 MR. GOGAL: But, what he's trying to do is
16 obliterate what is these hundreds of heirs' actual access
17 by court decree. In 1896 this court ordered that there is
18 an outlet road to serve this cemetery. And clearly -- in
19 what the survey, the Commissioner's report, and the decree,
20 there is reserved -- and I'll just mention the language
21 from the decree. And this is on page 363 of exhibit five.

22 "That the outlet roads designated in said plat
23 survey and report are established and shall remain

1 appurtenant to the lots for whose convenient use they are
2 designated; that the burial ground designated therein, with
3 ingress thereto and egress thereto, shall remain for the
4 permanent use of the families of all the aforesaid
5 parties."

6 Now, we've stipulated that this decree created
7 a partition easement for the cemetery. That is the access
8 for the cemetery, Your Honor. And any attempt to change
9 that access would violate this court decree.

10 Mr. Atkisson is an heir of Thomas Adams.
11 Thomas Adams was a party to the partition decree and he is
12 bound by that order. That's the express easement issue,
13 Your Honor.

14 I would like to move on to the prescriptive
15 easement. I don't think we've heard any argument on that.
16 I will just point out, Your Honor, that they did own the
17 15-acre until '78. So, there's no basis for making a
18 prescriptive claim until after that.

19 In addition to that, Your Honor, there's the
20 evidence that Mr. Atkisson was born in '23, went to war in
21 '42. That's only 19 years. Even if you were to count the
22 toddler years where he hardly -- he testified that he used
23 this road prescriptively for the cemetery. I mean, there's

1 really no evidence that anybody used this road just for the
2 cemetery.

3 And, in fact, if you look at Mr. Atkisson's
4 exhibit, Simpson's plat of the Outlot A, you can see, Your
5 Honor, that the road comes up and veers towards the house.
6 It doesn't veer towards the graves or the cemetery. It's
7 continuing on this path. Clearly, there's no evidence that
8 this road did anything other than serve the 15-acre parcel
9 where the house was.

10 Mr. Atkisson went to war in '42. That's only a
11 19-year period. He moved back in '47. He was there for a
12 couple of years. In 1950 he moved to Oakton. There's no
13 evidence he ever moved back. In '68 they rented the house
14 out. I mean, there's no evidence of 20 years of
15 continuous, open, adverse use of the easement through my
16 client's property for the purpose of getting to the
17 cemetery.

18 As we've said before, they used it until '78 as
19 a matter of right. They had a right to use it to get to
20 the 15-acre parcel. It was only in '78, when the 15-acre
21 parcel was sold, that any adverse use could exist, that any
22 adverse use could be claimed for the purpose of the
23 cemetery. And those periods are insufficient because by

1 1983 and '84 the Wendover subdivision was built.

2 Well, we also have Carlotta Atkisson's
3 deposition which talks about how they actually did get to
4 the property. And Your Honor had a chance to review that.
5 They used the train, they used the railroad, the outlet
6 road. Mrs. Atkisson very honestly admits that they never
7 used this particular -- other than the times she went out
8 to pick holly, they didn't use the 15-acre parcel easement.

9 And finally the easement by necessity claim --
10 they didn't even argue that, so maybe I'll just pass that.
11 But, I mean, there can't be a necessity when the court has
12 provided by decree where the easement is.

13 THE COURT: How about now, in light of
14 subsequent events, that if I accept your view that we have
15 a landlocked cemetery today, then, in 1996, does he then
16 get an easement by necessity?

17 MR. GOGAL: Your Honor, I think what it has is
18 it has an obstructed easement. I mean, it has an expressed
19 easement. If you want to say there's an easement by
20 necessity it would have been created by the fact that the
21 Hunter Mill subdivision obliterated that easement.

22 So, I think that's another day, other parties.
23 It's not my clients. It has to do with the Hunter Mill

1 subdivision which is not an issue in this case.

2 And that goes back to my initial point, you
3 don't need to worry about where this access is going to be.
4 The evidence is overwhelming that there is no access for
5 the cemetery through my client's property.

6 And I would just point out that the standard is
7 clear and convincing evidence for both the prescriptive
8 easement and the easement by necessity. Estoppel by deed,
9 we made the argument based on the 1978 conveyance of the
10 15-acre parcel easement.

11 I would add, in addition to that, because
12 that's the argument I make in the brief, the estoppel by
13 virtue of the 1896 decree. George Atkisson is estopped to
14 locate this cemetery anywhere other than in the quarter-
15 acre southeast portion of partition lot 2, because that is
16 where the court ordered it when his grandfather was a
17 party. His only interest is through his grandfather.

18 On unclean hands, Your Honor, I think there's
19 lots of evidence of unclean hands. And that's an
20 affirmative defense. I don't even think we have to get
21 there. I mean, I think the case -- there is no easement.
22 But, the unclean evidence, I think there is sufficient
23 evidence of his involvement. And that plat, that

1 subdivision plat that we would show the plan, just to
2 clarify, we're not trying to say he tried to provide access
3 and then couldn't because of Mr. Trotter. I mean, that's
4 what he'd like to say now.

5 But, what we've showed in that plat is here
6 they draw a road going right next to the cemetery and they
7 still try to landlock it. They don't make any effort --
8 you know it's five feet away, Mr. Courson said. What would
9 it have taken to put a curb cut in there?

10 So, I think that is significant evidence of
11 unclean hands. But, like I said, I'm not sure -- that's an
12 affirmative defense. We don't have to prove that to
13 prevail in this case.

14 And it's interesting to also note, when we put
15 that in, we got something very revealing. Mr. Atkisson had
16 took the stand to explain it as the developer. He
17 explained that wasn't something we could do, further
18 evidencing his involvement in the subdivision.

19 Well, I think I've touched on everything.
20 Thank you, Your Honor.

21 THE COURT: All right; thank you.

22 Mr. Goodman.

23 MR. GOODMAN: Does the court have exhibit two?

1 That's our overlay.

2 THE COURT: Yes, I do.

3 MR. GOODMAN: May I have it, please?

4 THE COURT: Yes, sir -- although it appears
5 that the shelf is not working there.

6 MR. GOODMAN: The shelf?

7 (Whereupon, the court handed counsel the
8 document.)

9 (Whereupon, the bailiff repaired the shelf on
10 the easel.)

11 MR. GOODMAN: Your Honor, if I may, I want to
12 emphasize that this is a new trial with respect to Mr. and
13 Mrs. O'Brien, who Mr. Gogal very articulately argues on
14 behalf of, who own lot number three, and Mr. and Mrs. Hall
15 who own lot number one.

16 I will adopt Mr. Gogal's argument and do my
17 best not to try the court's patience and repeat it.

18 With respect to Wexford and the individual
19 Defendants, the only issue that they can argue is location
20 of the easement. I would respectfully request that the
21 court allow me to reserve that argument to make later after
22 a ruling with respect to the new trial issues.

23 THE COURT: I'm not sure I understand what you

1 mean.

2 MR. GOODMAN: Well, if there's no easement as
3 to lots one and lots three, my argument with respect to
4 location changes somewhat. And I'd like to hear the
5 court's ruling with respect to Hall and O'Brien before
6 making that argument. It may save the court some time.

7 THE COURT: Your other clients were lots --

8 MR. GOODMAN: Two --

9 THE COURT: -- one --

10 MR. GOODMAN: No, one is the new party.

11 THE COURT: One is Hall, that's right. And
12 three are the O'Brien's.

13 MR. GOODMAN: Yes; it would be lot two, and
14 then lots four through seven.

15 THE COURT: Right; and they're bound by the law
16 of the case to the holdings of the Supreme Court that there
17 is an express easement here. And all that needs to be done
18 is locate it and have them remove the obstructions, if any.

19 MR. GOODMAN: Correct.

20 THE COURT: All right.

21 MR. GOODMAN: I agree.

22 THE COURT: Okay; all right, if you want to
23 reserve your argument for later on that.

1 MR. GOODMAN: The court has asked a couple of
2 interesting questions, and I would just like to start with
3 those because I'm not sure they were fully answered.

4 If there is a landlocked parcel, this Outlot A,
5 is there an easement by necessity?

6 If the court looks at this exhibit 2-D, which
7 is the Hunter Mill subdivision plat -- and the whole plat
8 is in evidence. It's number 9 as reported -- the court
9 will see that there is park land that surrounds this Outlot
10 A.

11 So, any member of the public, including Mr.
12 Atkisson and his fellow heirs, can enter from Hillington
13 Court and walk right over here (indicating) to the back of
14 this park land, turn left, walk up the hill, and then be at
15 Outlot A.

16 THE COURT: I was wondering what that blank was
17 there in Hunter Mill Forest subdivision.

18 Is that park land as well?

19 MR. GOODMAN: Yes; this is park land
20 (indicating). And these parcels back here on either side
21 of Outlot A is park land.

22 THE COURT: All right; I didn't know that that
23 was the case. I know that all of the land in Wendover that

1 is not a subdivided lot is either a public street or a park
2 land. But, I didn't realize that was similar for Hunter
3 Mill Forest as well.

4 MR. GOODMAN: It is, Your Honor.

5 THE COURT: Okay.

6 MR. GOODMAN: In fact, this is one of the first
7 proffered subdivisions in Fairfax County. There's lots of
8 park land in there.

9 THE COURT: Now, Mr. Atkisson still lives on
10 lot 22 of Hunter Mill Forest; is that correct?

11 MR. GOODMAN: Yes, Your Honor, right down here
12 (indicating). And you heard testimony from Mr. Courson,
13 the surveyor, who said it was about 900 feet down the
14 street to where he'd be able to walk back a couple of
15 hundred feet to the cemetery.

16 THE COURT: All right.

17 MR. GOODMAN: And also if you were to go back
18 here and look at these partition lots that became Hunter
19 Mill Forest, then you can see where the partition easement
20 was. And this, of course, is on exhibit 2-C which shows
21 the partition easement. And if the court would look up
22 here today (indicating) with exhibit 2-F, where we have
23 everything platted, and you recall the testimony of Mr.

1 Albanese when we look at the 1961, 1970, tax maps, and even
2 the 1995, this partition easement still shows. Although,
3 because half of it was removed, it used to be 15-feet wide,
4 and now it shows only seven and a half feet now.

5 Your Honor, this is a new trial for Mr. and
6 Mrs. Hall. As Mr. Gogal explained, there is no
7 justification in the land records for Outlot A. In fact,
8 we have a stipulation to that effect. If you look at
9 exhibit AAA, which was prepared by Mr. Simpson -- I mean,
10 he shows clearly how Outlot A was mostly on the partition
11 lot, and then partly on the 15-acre parcel.

12 Further, we had an archaeologist go out there
13 and locate the cemetery. He located the cemetery. He
14 located the graves. He testified, this is the cemetery.
15 This is where the graves are. He found a pattern, an east-
16 west and a north-south pattern. And that's the evidence in
17 this case. I mean, there's nothing that contradicts it.

18 Mr. Atkisson talked about the tree stump.
19 He talked about a tree with some barbed wire. But, that's
20 not evidence that that's part of the cemetery. I mean, we
21 know from the 1896 court decree, and from the survey of the
22 partition lots and the entire partition suit, that the
23 cemetery is in the southeast corner of partition lot 2.

1 Now, the court asked an interesting question
2 earlier with respect to why was there no reference to a
3 burial lot in the 1892 deed or any other deed? Why does it
4 first come up in 1896?

5 Let me answer that question. Mary Saunders
6 owned a 15-acre parcel, and she also owned all the property
7 that was partitioned into seven lots. In 1892, she
8 conveyed the 15-acre parcel to Thomas Adams. And she gave
9 Thomas Adams an easement.

10 She owned what became partition lot 2 and the
11 other partition lots. That's where the burial lot was.
12 And those that she wanted to have access to it, still had
13 access to it. When the Commissioners partitioned -- and
14 this court signed the decree in 1896 dividing her property
15 into seven parcels, suddenly there were lots of people who
16 may not have access to the burial lot.

17 In fact, it was highly likely that they
18 probably wouldn't. There were several parties named Adams,
19 and the style of the case was Adams versus Adams, dividing
20 up Mary Saunders' property. This family probably wasn't
21 talking to each other.

22 So, access was provided for all of them to the
23 burial plot. And it's right over here (indicating), that

1 partition easement, which has been stipulated to and which
2 is still on the tax map records today.

3 That exhibit two, I believe, clearly explains
4 all the relevant transactions that take place in the land
5 records. We did bind up those deeds in our exhibit one and
6 we put them in the order of the change of title. I mean,
7 one of the remnants from the last trial is that used to be
8 our Wexford 27. And our paralegals typed all of that
9 information so everybody could make sense of it.

10 Mr. Courson testified about how he surveyed the
11 burial lot. And he testified that he drew a quarter acre,
12 where a quarter acre might be. And that wasn't allowed
13 into evidence. That is exhibits 11-A and B.

14 But, all that was, was an arithmetic fact, or a
15 surveyor's fact, as to where a quarter acre might be. And
16 that's consistent with his reading the deeds. Because the
17 partition decree and the partition deed shows that quarter
18 acre in the southeast corner.

19 May I have exhibits 14 through 17, please?

20 (The bailiff handed counsel the exhibits.)

21 Now, Mr. Courson also testified about the
22 Hunter Mill subdivision plats that are a matter of record
23 in Fairfax County. And they're really talking about the

1 ease with which the developer could have provided access to
2 the burial lot when Hunter Mill was developed.

3 I mean, we have plenty of testimony and plenty
4 of argument about how they obliterated the partition
5 easement. But, exhibit 14 clearly shows the road network
6 that went around the burial lot and out to the partition
7 easement. So, certainly it was in use.

8 Exhibit 15, which is the grading plan --

9 THE COURT: I'm sorry, tell me again what 14
10 signifies. I know it's the erosion and siltation plan for
11 Hunter Mill Forest and it has sketched on it the roads that
12 were topographical facts at that point.

13 MR. GOODMAN: Yes, Your Honor.

14 THE COURT: All right; and it shows --

15 MR. GOODMAN: And if you look at the cemetery,
16 it shows a road there, and a few roads around it, and they
17 wind out to the partition easement up near the top and go
18 out towards Piney Branch.

19 THE COURT: Yes; all right.

20 MR. GOODMAN: So, clearly that partition
21 easement was in use before Hunter Mill was developed. And
22 if the court looks at exhibit 15, which is the grading
23 plan, Mr. Courson's testimony was very clear that you could

1 come down the driveway of lot 44, which is a long pipestem,
2 and you could go over just a few feet -- I mean, maybe, I
3 believe that's about a hundred feet or less -- and the
4 topographical area is flat. So, it would be very easy to
5 get into the cemetery from there. I mean, that's just
6 another thing that the developer could have done.

7 Furthermore, there's a Fairfax County water
8 easement that comes right back to Outlot A from Hillington
9 Court. And it would have been very easy to put an easement
10 there. Exhibit 16 was just put in to show you where Mr.
11 Atkisson lives on lot 22 with respect to where the cemetery
12 is.

13 And it's very clear from Mr. Atkisson's
14 rebuttal case that he knew all about this development, I
15 mean, this alternate B, which I believe was exhibit 16 -- I
16 mean, the purpose of exhibit 16 was merely to show that
17 when the county was interested in using the Trotter and
18 Pritchard property and having it developed together, and
19 there was a road that went by the cemetery or Outlot A,
20 they didn't even allow a curb cut so one could have access
21 there.

22 And I might add that when this road was on the
23 drawing boards certainly I don't think Mr. Atkisson put a

1 road over where the cemetery was, because I don't think he
2 would allow people to drive over his ancestors' graves.

3 THE COURT: Well, in addition to that, he was
4 not the sole owner of the cemetery. All of the heirs owned
5 the cemetery.

6 MR. GOODMAN: That's correct, Your Honor.

7 And Mr. Courson further testified --

8 THE COURT: And he was not an heir at that
9 point either. His mother was still alive.

10 MR. GOODMAN: Correct; Mr. Courson further
11 testified --

12 THE COURT: Well, I suppose I could go back to
13 Professor Bergen's little red book and figure out what his
14 interest was at that point. But, I have not cracked that
15 book on future interests since law school, and I don't
16 intend to start now. But, it's sitting on my shelf.

17 MR. GOODMAN: Well, it's a topic that most
18 lawyers in Virginia don't understand, Your Honor, including
19 myself.

20 THE COURT: I'd have to put a few judges in
21 that category as well.

22 MR. GOODMAN: Unless there be any doubt about
23 the quarter-acre cemetery in partition lot 2, Mr. Courson

1 testified that he measured the cemetery and it came out at
2 either 27.9 acres or 28.4 acres. So, clearly Thomas Adams
3 got twenty-seven-and-a-half acres, plus the quarter-acre
4 burial plot which was on his property.

5 THE COURT: The quarter-acre would have been in
6 addition to that, or including that?

7 MR. GOODMAN: No; it would have been in
8 addition to the twenty-seven and a half. It would have
9 been included in the 27.9 acres or the 28.4 acres.

10 THE COURT: All right.

11 MR. GOODMAN: Your Honor, I specifically adopt
12 Mr. Gogal's arguments with respect to the elements of
13 express easement, and prescriptive easement, and easement
14 by necessity. And I thank the court for its time.

15 THE COURT: All right; thank you.

16 Let's take a 15-minute recess now and we'll
17 come back with the rebuttal argument.

18 (Whereupon, the court stood in recess.)

19 (Brief recess.)

20 (Whereupon, the court was reconvened.)

21 THE COURT: Mr. Snyder, do you want to argue in
22 rebuttal?

23 MR. SNYDER: Yes, I would, Your Honor. I want

1 to take it point by point according to my notes, Your
2 Honor.

3 First of all, in regard to the stipulations, I
4 would submit to the court that the stipulations were never
5 at issue in the first trial. And I don't believe that
6 Judge Fortkort was confused at all by the big difference
7 that we have in this trial now, and that's of the
8 submission of the deeds. Essentially we all relied upon
9 the same deeds.

10 There are two that are outside of my chain of
11 title. I have four that are outside of theirs. But,
12 they're not really relevant to the findings of that court
13 and of this court.

14 In going back to what the archeologist found,
15 and I believe a lot of what this argument is concerning
16 what has been called the cemetery, from their evidence and
17 their argument, they're talking about location of graves.
18 We talked about location of cemetery or a burial plot.
19 There's a big difference. To say that --

20 THE COURT: Well, I imagine at the time of the
21 1896 deed it was not anticipated that the last family
22 member had been buried in this spot. So there would be
23 room for future expansion of the actual burial area.

1 MR. SNYDER: But, if you were to -- we're
2 looking at where lot two begins, where it abuts the 15-acre
3 parcel. To say that you would put a body -- to say that
4 you would put a body a foot and three inches from your
5 border flies in the face of any sort of common sense.

6 I don't think anybody contemplated that the
7 people were going to be packed in there so tightly that you
8 would have to start your cemetery a foot and three inches
9 from the end of the cemetery. I don't think that's --

10 THE COURT: Well, there's a lot of speculating
11 here about how one would likely -- what pattern or density
12 one would likely to bury one's relatives, or even in what
13 topographical features one is most likely to bury one's
14 relatives. And I'm not sure if that makes any difference
15 really.

16 MR. SNYDER: Well, I think if you look at all
17 of the evidence. For instance --

18 THE COURT: Again, declining the invitation to
19 speculate about how one buries people in these family
20 cemeteries.

21 MR. SNYDER: Well, I don't think that we're
22 talking about speculation. We're really talking more about
23 a reasonable inference where you look at where the existing

1 roadbed and where point G exists, that they don't line up
2 right on top of each other.

3 Well, the reason for that, and I believe,
4 again, it's a reasonable inference, if it lined up right on
5 that you'd be walking right into the cemetery. That's why
6 it is moved to the area that it is.

7 Now, as far as Mr. Simpson making the statement
8 that he thought there was something in the land records
9 about the easement of the cemetery, I don't know what he's
10 referring to. Curiously, Mr. Courson said the same thing
11 when he was asked the question. He wasn't able to identify
12 it either.

13 But, he thought there was some connection
14 between the 15-foot right-of-way and the cemetery. So they
15 attempted to clarify that. And, again, I don't know where
16 that was coming from either. But, that statement was made
17 by both sides of this case.

18 THE COURT: Well, presumably the attorneys who
19 have lived and breathed this case for a period ranging from
20 two years to ten years are more familiar with the record
21 than the experts.

22 Is that --

23 MR. SNYDER: Well, I mean, the only reason I'm

1 bringing it out is that this is shown as some sort of fault
2 of Mr. Simpson. I'm just saying that that fault existed at
3 all on both sides of the case.

4 THE COURT: Well, nobody pointed it out to me
5 what they generally might be referring to. I don't recall
6 Mr. Courson referring to it. But, assuming he did, nobody
7 has pointed it out to me what he's thinking of.

8 MR. SNYDER: I don't know either. The argument
9 that Mr. Gogal made concerning the creation of Outlot A,
10 how the evidence was that -- first of all, the statement
11 was that he had not met with anybody to tell them of the
12 cemetery.

13 Again, that's contrary to the evidence. He
14 said he did meet with the person in charge of the surveyors
15 and told them of the existence of the cemetery. He did not
16 locate it for them. Now, he's testified that Outlot A to
17 him appears to be a close approximation of the area that
18 was maintained as a cemetery. That's evidence that's not
19 rebutted.

20 Secondly, if Mr. Atkisson had testified that,
21 yes, Outlot A was created because he went out there with a
22 surveyor and helped them mark it out, then we would have
23 heard the argument, well now he's unduly influenced them.

1 The whole thing is corrupt. This is more of what I believe
2 was said in their trial brief of the shenanigans of Mr.
3 Atkisson. Which also, I believe, goes to their exhibits 14
4 through 16, the various proposals on the Hunter Mill
5 subdivision.

6 If you look at each one of those you'll see an
7 area that is marked out as a cemetery, and you'll see an
8 area that is indicated as a road that leads to the cemetery
9 across the other property. And I believe it's the property
10 of the Hawthorne's. Now, because at the time, in terms of
11 the chronology of these events, Wendover had not been
12 proposed to be subdivided, none of that had happened yet.

13 So, at that time, if we're talking about the
14 intention of the parties at the time that they're proposing
15 the subdivision, they're showing the cemetery that's on
16 both sides of point G and they're showing the road that
17 leads directly to it.

18 If we're to draw the inference that Mr.
19 Atkisson has unclean hands because he did not provide
20 another road to it, I think that flies in the face of the
21 evidence that they submitted. There was a road proposed to
22 it and it was the 15-foot easement.

23 Why would he have to provide another road in

1 order to avoid the idea of unclean hands? Unless the
2 argument is being made, or the inference is attempted to be
3 drawn, that back in the seventies when these were drawn he
4 was anticipating that we would be here today trying to get
5 this road through the Wendover. But, again, at that time
6 the evidence is that Wendover wasn't even proposed at that
7 time. There's no evidence that contradicts that.

8 And as Mr. Gogal said, he doesn't believe the
9 fact that there are no bodies on the 15-acre parcel is that
10 important. I would agree with him. When you go to a
11 cemetery, the cemetery doesn't begin when you hit the first
12 grave stone. The cemetery is the area that includes where
13 people are buried.

14 And, again, if you look at their own evidence
15 they've got burial markers within a foot and three inches
16 of the boundary.

17 THE COURT: Well, is it possible that that's
18 how the Commissioners in the partition suit suggested that
19 the boundaries be drawn in order to divide the property,
20 and they drew the line there to encompass within one parcel
21 all of the bodies?

22 MR. SNYDER: Well, there's no indication of
23 that. I mean, actually I would think that if the

1 examination had been that close, that what they would have
2 done is they would have surveyed the area. And they didn't
3 do it. And they obviously -- if they had just gone out and
4 had done -- looking at the burial site, why would they have
5 reserved a quarter-acre as opposed to an eighth of acre
6 which would have been much more accurate in terms of the
7 area?

8 The area that's proposed by the Defendants
9 would be much closer to an eighth of an acre than an
10 quarter of an acre.

11 THE COURT: Because they were anticipating
12 people would continue to be buried there.

13 MR. SNYDER: There still would be a lot of room
14 left, if that was the intention. But, I think obviously
15 they wanted to -- obviously they wanted to include the area
16 around where these bodies had been buried.

17 As far as accessing Outlot A through county
18 property it doesn't address -- and I'm not even sure how we
19 get into it, on what issue that is really relevant, but --

20 THE COURT: It's the easement by necessity
21 issue.

22 MR. SNYDER: Well, the fact of the matter is, I
23 think you can take judicial notice that Fairfax County Park

1 Authority will not allow you to drive a motor vehicle over
2 their property. And I think that's pretty clear from the
3 prior proceedings in this matter.

4 THE COURT: Well, if you have an easement by
5 necessity -- you are arguing that there's an easement by
6 necessity here --

7 MR. SNYDER: That's correct.

8 THE COURT: -- over the 15-foot easement, is
9 that right? The easement that goes behind the lots in
10 Wendover.

11 MR. SNYDER: That's correct.

12 THE COURT: But an easement by necessity, as I
13 understand it, is implied by law.

14 MR. SNYDER: That's correct.

15 THE COURT: And, therefore, it wouldn't
16 necessarily be an easement that required people to fill in
17 their swimming pools. I mean, you would need to circumvent
18 obstructions to the extent possible to make the least
19 impact.

20 MR. SNYDER: Our evidence doesn't show -- we're
21 suggesting the easement by necessity would not transverse
22 the area of the swimming pool. It would go around it.

23 THE COURT: All right.

1 MR. SNYDER: It would go -- I mean, as you've
2 terminated it it would go around all obstacles until you
3 got to Bird Drive.

4 THE COURT: Doesn't your ZZZ go right to the
5 swimming pool or am I mistaken?

6 MR. SNYDER: No; that's -- let's see --

7 THE COURT: Well, you're not arguing then that
8 your easement by necessity is --

9 MR. SNYDER: If you look at Defendants' exhibit
10 12, this would show -- if you look at exhibit number 12,
11 and then you look at ZZZ, you can see these points are
12 matched identically. ZZZ picks it up after it crosses into
13 lot three and brings it around down to lot two, and then to
14 Bird Road. And it never touches lot one. Which, again, is
15 why we said we did not think lot one should be a party to
16 this action.

17 The other point I'd like to make is --

18 THE COURT: Well, ZZZ doesn't locate the
19 swimming pool, not that that's a huge issue. But, your
20 review of ZZZ is that area shown on lot three would
21 circumvent the swimming pool?

22 MR. SNYDER: That's correct. If you were to
23 overlay 12 -- I'm not sure if they were made to the same

1 dimensions of ZZZ and number 12. But, we would agree with
2 the depiction. It would run in between the pool and the
3 house.

4 THE COURT: All right.

5 MR. SNYDER: There has also been a lot of talk
6 concerning this easement (indicating) -- that this is the
7 easement that should have been used. It's been blocked off
8 by the development project that Mr. Atkisson was involved
9 in.

10 But, again, Your Honor, I'd point out to you
11 actually two things. First of all, just from looking at it
12 and reading the description, all this easement does is
13 provide you access to lot two. It does not provide you
14 access to the cemetery. You have to transverse the entire
15 length of lot two, or the width of it -- the length of it,
16 in order to get to the cemetery.

17 And we don't know -- and surely Thomas Adams,
18 who was given that, was not going to allow the owners of
19 five, six, seven, three, and four, and one, to come
20 wandering across on six different paths to the cemetery.

21 MR. GOGAL: Your Honor, I don't like to object
22 to someone's closing argument but we have a stipulation
23 that does say, and I just want to point out to the court,

1 that this partition easement is reserved for access to
2 partition lot 2, and the burial lot, within the partition
3 decree.

4 MR. SNYDER: That comes out of the partition
5 decree. But to say that this provides an access that was
6 blocked off by George Atkisson is not accurately stating
7 the facts. Because that did not provide a means across lot
8 two. It was reserved for that purpose.

9 And, in fact, in part of the Carlotta Atkisson
10 deposition, which is before this court, on page 38, she was
11 asked about that path; "Where does it go? She says it
12 doesn't go anywhere. It goes to the woods.

13 THE COURT: I'm sorry, her deposition was
14 exhibit 30?

15 MS. DIMAURO: It's exhibit 28, Your Honor.

16 THE COURT: Twenty-eight; thank you.
17 Page what are you directing me to?

18 MR. SNYDER: Thirty-eight.

19 THE COURT: All right.

20 MR. SNYDER: And her answer is the very last
21 three lines on that page.

22 THE COURT: Well, then you have to read the
23 rest of her answer on page 39.

1 MR. GOGAL: That's right, Your Honor. I'll
2 just point that out.

3 MR. SNYDER: She says, "As far as I know it
4 doesn't go to Piney Branch," which is what they're
5 indicating it does.

6 MR. GOGAL: At the top she says, "I don't know.
7 I didn't go that far," Your Honor.

8 THE COURT: All right.

9 MR. SNYDER: Well, there is no evidence that
10 that was ever used by anybody. The only evidence, you
11 know, is that -- and as far as her testimony concerning her
12 use of the 15-foot easement, what she testifies to is her
13 and -- when her and her husband, George Atkisson, went to
14 the house on Thomas Adams' property, that they generally
15 didn't use that.

16 The question was never asked of her, "Well, how
17 did George Atkisson go when you weren't there, at different
18 times, with other people, when he went with his other
19 relatives to the cemetery?" That's not asked. And that
20 was asked of Mr. Atkisson on his direct examination. We
21 have those answers.

22 And, lastly, I would just point out -- I
23 believe Defendants' exhibit 25 was put into evidence?

1 THE COURT: Yes, sir, it was.

2 MR. SNYDER: I would just refer you back to
3 that. If you can locate point G --

4 THE COURT: Yes.

5 MR. SNYDER: -- which it appears to me to
6 indicate a cemetery. It seems to be marked on both sides
7 of point G. And there is also a route which I would say if
8 you were to compare that to ZZZ, it is virtually identical.

9 Again, Your Honor, I think Mr. Gogal's case
10 rests entirely on the proposition that the cemetery, not
11 the graves, but the cemetery itself is located solely
12 within partition lot 2. And in order to arrive at that
13 conclusion we would have to ignore the uncontradicted,
14 unimpeached, testimony of Mr. Atkisson, and we would have
15 to ignore what we saw when we were on the property.

16 THE COURT: All right; thank you.

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21 E N D O F P A R T I A L

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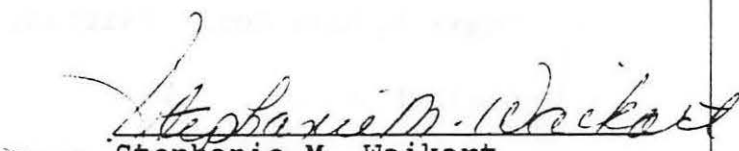
1 (Whereupon, at approximately 12:40 o'clock
2 p.m., the hearing in the above-entitled case was
3 concluded.)

4 * * * * *

5 **CERTIFICATE OF REPORTER**

6 I, Stephanie M. Waikart, the Verbatim Reporter
7 who was duly sworn to well and truly report the foregoing
8 proceedings, do hereby certify that they are true and
9 correct to the best of my knowledge and ability; and that I
10 have no interest in said proceedings, financial or
11 otherwise, nor through relationship with any of the parties
12 in interest or their counsel.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 18th day of November, 1996.

15
16 
17 Stephanie M. Waikart
18 Court Reporter
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filed
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JMR/dmr

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V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 14 1997
RICHMOND, VIRGINIA

GEORGE ATKISSON

Plaintiff,

-vs-

WEXFORD ASSOCIATES, et al.

Defendants.

IN CHANCERY NO. 97823

Courtroom 4B
Fairfax County Judicial Center
Fairfax, Virginia

The above-entitled matter came on to be heard
before the HONORABLE JANE M. ROUSH, Judge, in and for the
Circuit Court of Fairfax County, in the Courthouse, 4110
Chain Bridge Road, Fairfax, Virginia, beginning at 10:05
o'clock a.m.

APPEARANCES:

On Behalf of the Plaintiff:

SCOTT E. SNYDER, ESQUIRE

On Behalf of the Defendant:

BERNARD E. GOODMAN, ESQUIRE
NANCY DIMAURO, ATTORNEY-AT-LAW
DAVID J. GOGAL, ESQUIRE

P A R T I A L T R A N S C R I P T

(The court reporter was sworn.)

*

*

*

THE COURT: All right; on this matter I'm prepared to rule on many, if not all, of the issues here today.

This matter comes on the fourth amended Bill of Complaint of George and Carlotta Atkisson versus Wexford Associates. And certain of the lot owners in Wendover III, and also some of the heirs of Thomas Adams, were joined in this as necessary parties in order to try to resolve this long-running dispute once and for all by joining all of the parties that might be necessary or desirable for the resolution of the issue.

I have to say that I've been very frustrated, and I know you have, about the procedural posture that this case comes to me in. I know that many of the homeowners are lawyers, from what I understand. And there are a lot of lawyers involved in this case. And it is the procedural posture of this case that reminds me of one of the law school final exam in civil procedure, and real property, if

1 you took a joint class. It's something of a nightmare.

2 But, as I understand the proceedings in this
3 case before I became involved in 1995, that very originally
4 it started out in 1986 with Mr. Atkisson first filing suit.
5 Judge Hancock sustained a demurrer to the original Bill of
6 Complaint. And that decision was reversed by the Supreme
7 Court and remanded for trial.

8 And that a trial was held on the issues in this
9 case and somewhat unusually, I guess I should say is the
10 right word, the trial stretched over a five day period over
11 a year and a half. And I know it was separated on various
12 issues. But, the trial was held on July 30, July 31, 1991,
13 August 20, 1991. Then some more testimony was taken on
14 February 27, 1992. And finally, I believe, the view was
15 held on January 27, 1993.

16 And then Judge Fortkort wrote an opinion letter
17 on February 9, 1993, that was embodied in an order of March
18 10, 1993. And that was the final order in this case. And
19 that was the order that the Fairfax County Park Authority
20 appealed to the Virginia Supreme Court.

21 And as I understand it, the Atkissons appealed
22 that order as well; however, they did not pursue the appeal
23 and that appeal was dismissed for their failing to assign

1 errors.

2 So, the only party that appealed that case was
3 the Park Authority. Neither Wexford, or any of the
4 individual lot owners, appealed that decision of Judge
5 Fortkort.

6 And so as to those lot owners, and I've
7 previously ruled that were involved in that case and
8 represented in that case, that they are bound by those
9 prior holdings of the court as affirmed by the Virginia
10 Supreme Court. And the only issue remaining to those lot
11 owners are the location of the easement.

12 Now, I think that I earlier ruled that the
13 easement terminated, as a matter of law, at Bird Road. And
14 I think that that issue was a matter of the location of the
15 easement that all of the parties could litigate.

16 But, the remaining parties in the case after
17 yesterday's ruling, are the owners of lot one, the Hall's,
18 who are not in the first suit; lot two, the Henry's, who
19 were in the first suit; lot three, the O'Brien's, the
20 intervenors who were not in the first suit; lot four, owned
21 by Mr. Eckman and Ms. Datoff; lot five, owned by the
22 Andrew's; lot six, owned by the the McVays; and lot seven,
23 owned by the Wilkenfelds.

1 And so for everyone other than lot one and
2 lot three, those remaining lots are bound by those prior
3 decisions.

4 Now, the Virginia Supreme Court said in its
5 opinion that Judge Fortkort had located the easement in
6 accordance with the 1892 deed. And I have to say here on
7 the record that I don't lightly disagree with the Virginia
8 Supreme Court on this. However, I combed the record and I
9 cannot find any evidence that he, in fact, located the
10 easement.

11 And I previously ruled that in this case; that
12 I think he determined generally that the easement that
13 existed as set forth in the 1892 deed was an express
14 easement. He also ruled that it was a prescriptive
15 easement, which is something of a contradiction in terms.
16 But, that, in any event, that it was binding on these
17 landowners.

18 But, he then said that Fairfax County Park
19 Authority was to provide an alternative easement. And that
20 is, of course, a decision that went up on appeal. And that
21 was a decision that was reversed on appeal.

22 However, I find, as a matter of fact, that
23 Judge Fortkort never located the easement in the sense that

1 it was surveyed to determine where the record description
2 from the 1892 deed actually fell, vis-a-vis the lots and
3 the structures that are presently on the property. So, for
4 that reason a new trial was granted to the lot owners on
5 the issue of the location of the easement.

6 Now, then, of course, the O'Brien's have
7 intervened in the case. And I previously ruled that they
8 took lot three without notice of the litigation, either
9 actual or constructive. And I granted a new trial to them
10 as to all issues.

11 Now, the Hall's, also, as lot one, they were
12 not parties to the first suit because it was not believed
13 -- well, even if they were parties, but, they were non-
14 suited on the first day of the trial, is what happened with
15 the Hall's. But, it was believed that the easement did not
16 cross their land and they were non-suited. So, they did
17 not participate in the trial, and I don't believe that they
18 are bound. I think they're in the same situation as the
19 O'Brien's. They were free, and they have, litigated all
20 issues in this case.

21 All right; now, let's take up where -- Mr.
22 Goodman reserved issue in terms of the location of the
23 easement, so, let's take up the issue of the O'Brien's and

1 the Hall's, in terms of the easements, based on the
2 somewhat unusual procedural posture of the case.

3 I believe that I am entitled to take a fresh
4 look at all the issues in the case. And it's my ruling
5 that the 15 foot easement that's platted on Defendant's
6 exhibit 12, the easement from the 1892 deed, does not, and
7 was never intended to serve the cemetery; that that
8 easement, I believe, as a matter of the land records, was
9 created to provide ingress and egress from the 15 acre
10 parcel to the county road.

11 I think it's instructive, but there was no
12 mention of the cemetery lot at all on the 1892 deed, or the
13 existence of a cemetery. Now, the first mention of a
14 cemetery lot is in the 1896 partition deed. I believe the
15 matter of records that the cemetery lot was -- the land
16 records, the cemetery lot was located exclusively in
17 partition lot two, and that no part of the cemetery lot was
18 in the 15 acre parcel.

19 Now, I've studied the Virginia Supreme Court's
20 opinion in this matter. It's rarely -- trial judges always
21 complain they have no guidance from the Virginia Supreme
22 Court. I shouldn't say that. In many cases, they have no
23 guidance from the Virginia Supreme Court.

1 In this case it's very unusual because this
2 very case been to the Virginia Supreme Court and the
3 Virginia Supreme Court wrote a very informative opinion.
4 They said that Judge Fortkort -- and I quote here -- "Made
5 a factual finding that a portion of the cemetery was
6 located in the 15 acre parcel" closed quote. And that that
7 was supported by the testimony of the surveyor who was able
8 to locate certain monuments in the 1892 deed.

9 I am not making the same factual finding here.
10 I don't believe I'm hearing the same testimony that Judge
11 Fortkort heard as to the O'Brien's and the Hall's. In this
12 trial I'm finding no credible evidence that any part of the
13 cemetery was located in the 15 acre parcel that was served
14 by the 15 foot easement.

15 Indeed, the testimony in this case is to the
16 contrary. Mr. Simpson, the Plaintiff's surveyor, said that
17 there was no need to mention the cemetery in the 1892 deed
18 because the cemetery wasn't on the 15 acre parcel. And Mr.
19 Atkisson said that nobody is buried in parcel 15.

20 In this case we also have the benefit of the
21 archeologist who went out and did what nobody had done
22 before, which was actually to plat the location of the
23 actual graves that he could locate. And it struck me that

1 he was generous in his platting of the graves and
2 interpreted some flat rocks in the ground as possible
3 graves. And that he generously platted what he thought
4 were possibly graves on here. None of the graves that he
5 found was located on parcel 15.

6 Now, I fully agree with the Plaintiff's
7 position that the location of actual graves is not
8 necessarily co-extensive with the location of the cemetery.
9 However, I think the physical evidence seen, and that I saw
10 on my view, and that the archeologist found, supports the
11 land records view, that the cemetery was only located on
12 parcel 2.

13 So, I'm finding that there is no -- as to the
14 O'Brien's and the Hall's, there is no express easement on
15 their property that provides access to the cemetery. It's
16 clear, certainly, that the easement that was created by the
17 1892 deed certainly did run up to the cemetery, maybe even
18 abutted the cemetery. But, I agree with the Defendant's
19 contention that simply the proximity of that does not
20 entitle the users of the easement to overburden the
21 easement by including adjacent parcels.

22 And, of course, I note that the partition lot
23 two was provided in the 1896 partition deed, and the decree

1 of the court with its own access easement, ingress/egress
2 easement, located between all of the partition lots to
3 enable the what apparently was then the warring family
4 members of the Adams family access to the common family
5 burial lot.

6 As far as the prescriptive easement, I'm not
7 finding any prescriptive easement here. I do think that
8 Judge Fortkort's ruling, which oddly enough becomes a law
9 of this case as to the other parties, is contradictory to
10 itself to say that there is both an express easement and a
11 prescriptive easement in the same area. It's either got to
12 be one or the other.

13 And in this case there have not been adverse
14 exclusive, open, and continuous, use for 20 years of the
15 easement. Certainly not when this litigation was started
16 in 1986. Because up until Mr. Atkisson's mother and the
17 other heirs of Thomas Adams conveyed out the property, the
18 15 acre parcel and the access easement serving the 15 acre
19 parcel did have a right to use it. So, by definition, it
20 could not have been adverse until at least 1978. And just
21 doing rough math, it hasn't been 20 years since 1978. So,
22 I'm not finding any prescriptive easement here.

23 In terms of the applied easement by necessity,

1 or the easement by necessity, I've reviewed the briefs of
2 the parties, and the arguments of the parties, and I've
3 read several of the cases of the Virginia Supreme Court,
4 and I'm not finding an implied easements over the land of
5 the parties that are here.

6 Now, of course, I think the law does ? a
7 landlocked parcels. And there may well be an implied
8 easement by necessity over the land that is now Hunter Mill
9 Forest subdivision, or perhaps the park land. Those
10 parties really are not before me. Now, none of the lot
11 owners of Hunter Mill are parties in this case.

12 But, certainly not, as to the Wendover
13 properties, those parties who are before me, there's no
14 implied easement. For one thing, this is not the common
15 parcel. A law of easements by necessity is when you carve
16 off a portion of a parcel, that there might be an easement
17 by necessity over the remainder of the parcel.

18 In that case, given my earlier findings that
19 the cemetery was always on partition lot two, any easement
20 by necessity I think would be across the remaining portion
21 of partition lot two.

22 Also, and I'm not sure it's necessary to rule
23 on this, but I am persuaded by the Estoppel by Deed

1 argument, that in 1978, Florence Atkisson and all of the
2 then heirs of Thomas Adams, conveyed the 15 acre parcel in
3 the easement to Harold Miller, trustee.

4 And I find it a somewhat tortured
5 interpretation of that to say that that parcel, and the
6 access parcel, was conveyed away because they knew they had
7 the easement by operation of law. I think that is evidence
8 that they did not need that easement and an acknowledgement
9 that the easement was not intended or used for the
10 cemetery.

11 Now, in terms of what evidence I have heard,
12 I'm simply not convinced by a preponderance of the
13 evidence, or any more stringent standards than that, that
14 whatever maintenance chores that Mr. Atkisson and his
15 family did in the area of the graves -- that included the
16 15 acre parcel -- is evidence that, in fact, the cemetery
17 was located on that parcel.

18 And so for that reason, I'm finding that lots
19 one -- there is no easement on lots one or lot three for
20 access by Mr. Atkisson to a cemetery of any kind.

21 All right; now, Mr. Goodman, did you want to
22 argue the location of the easement as to your other
23 clients?

1 MR. GOODMAN: Yes, Your Honor.

2 If I could have exhibit 12, please? I believe
3 it's on the board right there.

4 (Pause.)

5 THE COURT: I have my copy of exhibit 12. It's
6 not mounted.

7 Would you like to use that?

8 MR. GOODMAN: No. I think we have another copy
9 of it. As long as you have a copy, I've got one here.

10 If it please the Court, I share the Court's
11 frustration with the procedural posture that this case is
12 in now. We had argued earlier that the earlier verdict
13 should be set aside because of failure to join
14 indispensable parties.

15 The Court allowed us to brief those issues and
16 we --

17 THE COURT: One of the reasons to do that is so
18 you won't have inconsistent rulings like we now have.

19 MR. GOODMAN: Yes, Your Honor, exactly, I
20 mean, this is exactly what I anticipated might happen.

21 So, I would renew that motion to set aside the
22 earlier verdict because of these inconsistent results.

23 Because the fact is, is with the way the Court has ruled,

1 Plaintiff has no easement.

2 THE COURT: Well, he has an easement, but
3 there's some gaps in it.

4 MR. GOODMAN: Well, some pretty significant
5 gaps. I mean --

6 THE COURT: It makes it presently unusable.

7 MR. GOODMAN: Yes, Your Honor.

8 THE COURT: But, he could at some time later
9 acquire an easement on lot three and lot one, could he
10 not -- fill in the gaps?

11 MR. GOODMAN: Your Honor, anything is possible.
12 That's why it's an impermissible question. Yes, that's
13 possible. I don't believe it's very likely, but it's
14 possible.

15 So, I renew our motion to have the earlier
16 verdict stricken because of indispensable parties. I'd be
17 pleased to argue it at some time in the future, if the
18 Court would like to do that.

19 Putting that aside; looking at exhibit number
20 12, this is really the only evidence we have of where the
21 easement is. And with respect to lots seven through four,
22 it goes 880 feet down the line. It's on the very back of
23 the property (indicating). It would have to stop at lot

1 number three.

2 And then with respect to lot number two, it
3 would go from Bird Road -- well, almost from Bird Road. We
4 know that it starts at that property line, pretty close to
5 that iron pipe between lot one and lot two. And the 320
6 feet goes almost to Bird Road.

7 There's no evidence to the contrary. If you
8 look at Plaintiff's ZZZ, the portion of the easement that
9 they're certain of stops before lot three. They don't know
10 where it is on lot two. I mean, that's the difference
11 between the shaded and the unshaded portion.

12 There's law in Virginia --

13 THE COURT: That's because they moved that line
14 back from 880 feet to 830 feet on ZZZ.

15 MR. GOODMAN: Well, Your Honor, I heard that
16 argument from Mr. Simpson. I mean, I thought he said that
17 there was some error there and it should be 830 feet, and
18 it's not 880 feet. I mean, other than his speculation that
19 there was some error there, I don't see any factual basis
20 for it.

21 I mean, in the 15 acre deed, I mean, the
22 language of the easement is pretty clear. It says 880
23 feet. So, I mean, I don't follow the logic of a witness

1 saying, well, that was an error. It's 830 feet.

2 But, nevertheless, it still would end at lot
3 number three. There's not a significant difference on lot
4 number four if you go straight across the back, or if you
5 curve in just a little bit, where this says, 'existing
6 roadbed'.

7 Lindsey against Clark, which was cited by Mr.
8 Snyder for Equitable Propositions, stands for several
9 propositions; one of which is that he who seeks equity must
10 do equity. I can offer the Court a copy of that case.

11 (Mr. Goodman handed the Court a document for
12 her examination.)

13 THE COURT: Well, that's a fairly well accepted
14 proposition.

15 Does that specifically have to do with facts
16 similar to this case?

17 MR. GOODMAN: It has to do with the location of
18 an easement, Your Honor. And the court has said that if an
19 easement was obtained and go across some property, and if
20 it can go across property without doing any destruction to
21 the property, and not disadvantage the --

22 THE COURT: I thought you were handing me up a
23 case for the proposition that, 'he who seeks equity must do

1 equity.'

2 MR. GOODMAN: No, no.

3 THE COURT: I'll read your case about an
4 easement.

5 (Pause.)

6 MR. SNYDER: Which case is being handed up?

7 MR. GOODMAN: Lindsey versus Clark, which you
8 cited earlier.

9 THE COURT: I see you've highlighted the
10 headnote for me.

11 MR. GOODMAN: Well --

12 THE COURT: I don't know if I expressed my
13 views on headnotes?

14 MR. GOODMAN: -- I found my highlighted case.
15 And I realized that that was the court's copy, so I
16 stopped.

17 THE COURT: Okay; what does this case stand
18 for?

19 MR. GOODMAN: Well, there was a right-of-way in
20 the deed, Your Honor. And there was a little confusion as
21 to where it actually went across a piece of property. And
22 the court ended up ruling that if a plaintiff is not
23 disadvantaged in any way, or the party seeking to enforce

1 their easement, the servient estate owner is entitled to
2 have that easement across their property where it will do
3 the least damage.

4 And I suggest to the court that the least
5 invasive way to have this easement is down the back of lot
6 four, further down the back of the property line where the
7 880 feet is. There's no useful purpose served by the party
8 at 830 feet or anywhere else. In fact, the court probably
9 recalls from its view across the back of the property there
10 there was something of a trail, and it was far away from
11 the houses.

12 With respect to lot number one, Mr. Courson
13 testified that if you go over -- pardon me, lot number
14 two -- if you go over the back of lot number two to the
15 street, as opposed to the front of lot number two, very
16 near the house on lot number two to the street, the
17 difference in grade is two to three percent. So, it is
18 much easier to go over the back of the property.

19 This easement terminates at Bird Road; or,
20 stated another way, it starts at Bird Road. It would seem
21 that to get across the Henry property to the O'Brien
22 property line of lot three, just across that lot, that it
23 would make the most sense, and it would be the most

1 equitable to go across the back of the property which cause
2 the least destruction, and, frankly, be the most helpful to
3 the Plaintiff if he was to choose to cross Mr. Henry's lot.

4 I would also ask the court to consider the case
5 of Conrad versus Strickler, which is 211 SE 2nd 248. I'll
6 give the court a copy that is unmarked.

7 (Mr. Goodman handed the court a document for
8 her examination.)

9 THE COURT: I don't mind highlighting, just
10 don't highlight the headnotes. Headnotes were written by
11 somebody who didn't pass the bar or couldn't get a job.

12 MR. GOODMAN: This is a 1975 case, Your Honor.
13 The court allowed re-routing of an easement to avoid
14 destruction of structures here. And, again, it posed no
15 additional burden for the plaintiff.

16 THE COURT: Well, what are we talking about on
17 lot two? It's landscaping, isn't it?

18 MR. GOODMAN: Yes -- well --

19 THE COURT: If I followed Defendant's exhibit
20 12, the metes and bounds description as platted by Mr.
21 Courson, it would not hug the back property line of lot
22 two.

23 MR. GOODMAN: Well, it would be pretty close.

1 I mean, it wouldn't hug the back property line, it would be
2 pretty close to it.

3 If you'd look at --

4 THE COURT: Well, no, I mean, if I ruled that
5 the easement were just that path that's he platted out and
6 not move it back or rotate it at all, it would be going
7 through an area of heavy landscaping, is that right, that
8 hill?

9 MR. GOODMAN: I believe so. I believe --
10 that's pretty heavy brush. But, you see, if you were to
11 follow ZZZ it would go very close to --

12 THE COURT: Well, ZZZ wanders up to the house,
13 does it not?

14 MR. GOODMAN: It wanders up to the house, which
15 serves no useful purpose, Your Honor. And I would ask that
16 the court not route it near the house.

17 THE COURT: All right; but, as between the --
18 do you have a preference in the area?

19 I thought you were asking me to take
20 Defendant's exhibit 12 and rotate that back to be right
21 along the back property line?

22 MR. GOODMAN: Well, I would ask that the court
23 do that, but I would also ask for the liberty to place that

1 15 feet along the back at the least invasive place to the
2 property. And I think that there are a couple of very
3 large trees that are right on the property line. But, that
4 doesn't show on our survey. And I don't think that the
5 Plaintiff would profit at all by knocking down some big
6 trees that aren't necessary.

7 THE COURT: All right.

8 MR. GOODMAN: Thank you.

9 THE COURT: Mr. Gogal, you have nothing further
10 to say at this point; is that right?

11 MR. GOGAL: Your Honor's found there is no
12 easement of lot three, so I probably don't have a bone in
13 this fight.

14 THE COURT: Mr. Snyder?

15 MR. SNYDER: Your Honor, let me go ahead and
16 pass up a copy of Wagoner versus Jack's Creek Coal
17 Corporation.

18 (Mr. Snyder handed the court a document for her
19 examination.)

20 THE COURT: This is on the location of the
21 easement?

22 MR. SNYDER: That's correct. I refer you to
23 the last page of the opinion. And, again, this is a case

1 that was cited by the Supreme Court. Frankly, I don't
2 recall why the Supreme Court of Virginia cited it in this
3 case.

4 THE COURT: All right.

5 MR. SNYDER: Before you make your ruling on
6 this I think you need to keep one thing in mind about a
7 finding that, again, was not appealed and that Mr.
8 Goodman's parties are subject to.

9 There is a reason why the shaded area stops
10 here and we can't see it going from lot two to the road.
11 It's because, as Judge Fortkort found, that Wexford
12 intentionally deprived Mr. Atkisson from his easement and
13 assessed punitive damages against them.

14 Now to say that, well, we can't locate the
15 easement because it's gone is going to allow them to
16 further profit from --

17 THE COURT: It wasn't Wexford that took down
18 Mrs. Saunders barn, was it, or Mrs. Saunders gate posts?

19 MR. SNYDER: I don't know; they built a house
20 on it. I mean, the easement, the pathway, existed. And,
21 again, if we're talking about -- and I'll refer you -- I'm
22 giving you the case of Wagoner versus Coal Corporation
23 solely for the purpose of what I believe is showing what

1 the law is concerning the difference between the 830 and
2 the 850.

3 I still say that ZZZ is the best evidence of
4 what the easement actually -- how the easement actually
5 exists immediately prior to its being obstructed. And
6 according to, if you look at the exhibit --

7 THE COURT: What happened to the 50 feet
8 between 830 and 880?

9 Am I supposed to accept Mr. Simpson's
10 speculation that that was some kind of scrivener's error?

11 MR. SNYDER: No. I think what you do is you
12 look at, "That even when there's been a definite location
13 of an easement it may be changed with express or implied
14 consent of the persons interested."

15 And I'd say there was implied consent. If you
16 look at exhibit 25 you can see it exists as it does here
17 (indicating). And the testimony from Mr. Simpson was those
18 Fairfax aerial map, exhibit 25, is one of those things that
19 can be relied upon in creating this.

20 In fact, I believe that is drawn to scale; that
21 you could also measure out 830 feet on exhibit 25, also.

22 THE COURT: Let me take a look at that?

23 (Pause.)

1 All right; I see what you're saying.

2 MR. SNYDER: So, my point being, to allow
3 somebody to profit further, I think, is -- you know, it
4 talks about if you're asking for equity you have to clean
5 hands. So, far the only finding on equity, I would say, is
6 going against his client in this matter.

7 THE COURT: Well, what possible interest does
8 Mr. Atkisson have in the location of lot two of Defendant's
9 12 versus his ZZZ, other than ZZZ, meanders closer to the
10 house?

11 MR. SNYDER: I think as far as lots three and
12 all the lots after Bird Road, the bottom line is, this is
13 his road.

14 THE COURT: Well, let's talk about lot two,
15 which is really the issue that they have here.

16 MR. SNYDER: Right.

17 THE COURT: Lot two, and maybe lot four, I
18 guess. Lot four, you want it to curve up in accordance
19 with the existing roadbed. You want them to move that 880
20 foot line down to 830.

21 MR. SNYDER: Right.

22 THE COURT: And then when the easement picks up
23 again on lot two, you come closer to the house.

1 What difference does it make to Mr. Atkisson?

2 MR. SNYDER: Because he owns that, that's his
3 road. I think that's it. I mean, he has a ownership
4 interest in it and he has a right to enforce it. There is
5 no evidence from any other source as to what the actual
6 easement is. And I would say ZZZ is very good evidence as
7 far as -- if there's a variation from the metes and bounds
8 description that there was implied consent. Because we
9 know, at least from looking at exhibit 25 -- I think that's
10 72 -- for over 20 years it existed like that, we've had no
11 evidence that any interested party disagreed with how it
12 ran.

13 We're going back to the finding of the Supreme
14 Court of Virginia, which is, the court doesn't have any
15 authority to just move an easement. If that's our
16 easement, if that's our right-of-way, then we're entitled
17 to have that. And, frankly, I mean, I believe we're
18 entitled to have it all the way to the outlet road.

19 And the fact that somebody who was found to
20 have been in error by this court built on top of it, should
21 not mean that he should now have a re-route in his path. I
22 think the obligation of this court if it's going to re-
23 establish any portion of the easement as to any of the

1 parties, it should be where his roadway belongs.

2 And I think Wagoner versus Coal Corporation,
3 and Atkisson versus Wexford, stands for that proposition.

4 THE COURT: All right; as far as the location
5 of the easement, let me say again, I do think that -- I
6 know the Plaintiffs maintain that Judge Fortkort located
7 the easement in accordance with ZZZ. I'm not finding that
8 to be the case.

9 And one of the main reasons why I'm finding
10 that not to be the case is because each of the witnesses
11 agreed that there was a metes and bounds description of the
12 easement, but that after you went down the line 880 feet,
13 and then it turned at a certain angle for 320 feet, I
14 believe, is the call.

15 And then after that it was sheer -- I don't
16 want to say sheer speculation, it was a guess, perhaps an
17 educated guess in some part, but, it was a guess, an
18 estimate, of where the easement was located. And some of
19 that is based on physical evidence and ZZZ does indicate
20 where there's some physical evidence of the path.

21 But, it was one of those old-fashioned land
22 descriptions after the 320 foot mark. And they were sort
23 of landmarks which are no longer in existence. I didn't

1 hear any evidence that those landmarks are no longer in
2 existence because of the actions of Wexford necessarily,
3 but that the gateposts that are referred to, and the barn
4 they've referred to, just simply are not there anymore and
5 cannot be located with any certainty. For example, there's
6 no foundation found, or remnants of a foundation, which
7 might have been the foundation of the barn.

8 But, what I think is undisputed is the location
9 of the easement in accordance with the land records. And
10 that's where I'm locating the easement. I'm finding as a
11 matter of fact, that the easement is located in accordance
12 with Defendant's exhibit 12 and that path that was platted
13 out by Mr. Courson identified as the 15 foot right-of-way,
14 in accordance with Deed Book, page P5, page 361. And he
15 runs the easement down from point G to a point of 880 feet.
16 And then it turns, and then goes for another 320 feet.

17 Now, at this point the easement stops. And by
18 my very rough estimate, I haven't gone out and measured,
19 it's maybe 10 or 15 feet from Bird Road, and I'm ruling
20 that the easement continues on in a straight line and along
21 the line of the 320 foot line until it intersects Bird
22 Road. And that is where I am locating the express easement
23 that Judge Fortkort found.

1 And I'm not persuaded at all, and I'm not
2 persuaded by my view either, that these tree lines and
3 paths that were pointed out to me can be determined to be
4 with any reasonable degree of certainty, or even a
5 preponderance of the evidence, as to the actual path of the
6 easement. The area has been heavily changed, obviously,
7 since the 1896 and 1892 by the construction of the
8 subdivision.

9 And I remember at one point someone pointed out
10 to me a path, or a tree line, and it looked to me as much
11 as it could have been a path created by the builders in
12 order to get to the back of the house, a typical path you
13 sometimes see, and width of a path you sometimes see, for
14 builders to get back to a house, or builders get back to
15 construct a pool, for example, on the O'Brien's property.

16 So, I am locating the easement in accordance
17 with Defendant's exhibit 12, extending that on until it
18 reaches Bird Road.

19 Now, let me say, in terms of -- I'm sure this
20 case will be appealed. I hoped you all would settle it.
21 and I know that Judge Klein met with you in the hopes of
22 settling it. I don't know if you can now take these
23 rulings, and maybe everyone is a little bit equally

1 unhappy, and sit down and settle the case.

2 But, if you don't, I hope I've made these
3 rulings in such that if the Supreme Court disagrees with
4 anything I've done, that this case won't have to be re-
5 tried again. And let me say specifically what my thinking
6 is.

7 If the Supreme Court thinks I'm wrong about the
8 easement not serving the cemetery, then I've located the
9 easement, and the 15 foot easement as has been platted out
10 on Defendant's exhibit G could then be the easement, and
11 then could apply to lot two and lot one equally as I've
12 applied it to the remaining lots.

13 If the Supreme Court thinks I've erred by not
14 ordering the O'Brien's and the Hall's to move obstacles
15 from the easement, or to have the easement located on their
16 property, then I have located the easement where it would
17 run, if they were governed by these rulings, which I'm
18 holding now that they're not.

19 And if the Supreme Court thinks I'm wrong for
20 not voiding the prior judgments as to the remaining
21 parties, Mr. Goodman's motion that he's renewed today, then
22 the rulings I've made as to the O'Brien's lots and the
23 Hall's lots can apply equally well to the other lot owners

1 if they believe that all the prior rulings in the case
2 should have been voided. At least I'm denying the motion
3 that's been renewed. I'm leaving the case as I found it
4 and in accordance with the prior rulings.

5 I do believe the other lot owners fully
6 participated in the prior litigation and did not appeal
7 those decisions. And they are, therefore, bound by those
8 decisions as the law of the case.

9 Now, I think the only remaining issue is, in
10 terms of removing obstacles from the easement, now, given
11 that the easement, at least until the Supreme Court orders
12 otherwise, is practically unusable by Mr. Atkisson.

13 Mr. Snyder, did you want to be heard on that?
14 Do you want me to have the owners of lot two go in and cut
15 down those trees and whatnot?

16 MR. GOGAL: Your Honor, if I may just
17 briefly --

18 THE COURT: Yes.

19 MR. GOGAL: -- because of the way you ruled
20 that, I just want to note an exception to the record.
21 Because I did file a brief on location, which I've
22 reserved. And since the court has made it clear that on
23 appeal that your ruling would apply to the O'Brien's, I

1 would just note that we would, of course, as set forth in
2 our brief, that we would believe the existing roadbed that
3 Mr. Courson also platted on exhibit 12, that since that was
4 what was actually used in the past, that would govern over
5 the metes and bounds, and, therefore, would miss the
6 swimming pool.

7 But, I just wanted to preserve that objection
8 for the record even though I know the court has ruled
9 there's no easement of lot three. But, in case the Supreme
10 Court would consider us on appeal, I would like to note our
11 exception to that ruling.

12 THE COURT: All right; well, my ruling is that
13 the only certain thing in this case is the metes and bounds
14 description. And, perhaps, just by coincidence, it ends
15 just a couple of feet away from Bird Road. So, I'm
16 extending it on the same line to Bird Road.

17 I think after that the remainder of exhibit ZZZ
18 is highly speculative.

19 MR. GOODMAN: If I could have a point of
20 clarification?

21 I thought you said that the easement is located
22 and platted as Bird, Defendant's G?

23 THE COURT: I'm sorry. If I said that I meant

1 Defendant's exhibit 12.

2 MR. GOODMAN: All right; I thought I heard you
3 say G. I just wanted to make sure.

4 THE COURT: I could very well have, but that
5 was a mistake.

6 MR. SNYDER: Do you want me to address who I
7 believe should be responsible for the --

8 THE COURT: Well, just in terms of timing for
9 those lot owners that are bound by the prior rulings of the
10 court, and bound by the Supreme Court's decision, which
11 would be lot two, four, five, six, and seven.

12 I'm questioning whether I should order those
13 obstacles removed now. Although I said the obstacles are
14 minor, it looks like based on Mr. Courson's drawing that it
15 misses a shed on lot five; a batting cage, I think; and,
16 perhaps, some trees might be threatened. I hope there's
17 not a budding Cal Ripken living in the house that has a
18 batting cage.

19 But, no, let's say there are large trees on lot
20 two in the path of this easement --

21 MR. SNYDER: Your Honor , I would happy to
22 consider whatever length of time they think they need to
23 get those obstacles removed. * * *

Issued with policy No.

442-405971

POLICY CREDIT INFORMATION

Liability Cr \$

Premium Cr \$

Policy No

POLICY OF TITLE INSURANCE



Commonwealth.
Land Title Insurance Company

POLICY NUMBER

115-601100

SCHEDULE A

Amount of Insurance: \$ 620,000.00

File No. O'Brien

Premium: \$2,110.00 + \$650.00 M/L COVERAGE

Date of Policy: June 16, 1992

at 3:14 P.M.

1. Name of Insured:

DAVID D. O'BRIEN and JANE B. O'BRIEN, husband and wife

2. The estate or interest in the land described herein and which is covered by this policy is

Fee Simple

and is at Date of Policy vested in

David D. O'Brien and Jane B. O'Brien, husband and wife, by Deed from John Kowalczyk and Katherine A. Kowalczyk, husband and wife, dated June 15, 1992 and recorded June 16, 1992 in Deed Book 8160 at Page 277 in the Clerk's office of the Circuit Court of Fairfax County, Virginia.

3. The land referred to in this policy is described in the said instrument, is situated in the County of

Fairfax

State of

Virginia

and is identified as

follows:

Lot 3, Section 3, Wendover, as the same appears duly dedicated, platted and recorded in Deed Book 6050, at page 1636, among the land records of Fairfax County, Virginia.

NATIONAL INVESTORS TITLE SERVICE, INC.

Countersigned:

[Signature]

Authorized Officer or Agent

PA 10

American Land Title Association Owner's Policy - 1970 - Form 8 (Rev. 10-17-70 and 10-17-84)
Form 1005-6 Schedule A

CLT COPY

Intervenor's
PLN-DET-EX. # 1
DATE 8-3-95
JUDGE JMR
CASE # C97823

873

001544

☒ COMMONWEALTH LAND TITLE INSURANCE COMPANY☐ TRANSAMERICA TITLE INSURANCE COMPANY**HIGH LIABILITY / UNDERWRITING APPROVAL**Agent Number 51-51140File No. O'BrienAgent NATIONAL INVESTORS TITLE SERVICE, INC.City HERNDONState VIRGINIARequested By: MARK HEACOCKCommitment/Policy No. (Owner) 115-601100Liability \$ 620,000.00Policy No. (Loan) 442-405971Liability \$ 496,000.00

Proposed:

Insured (Owner) O'BRIEN, DAVID D. & JANE B.(Lender) CHASE MANHATTAN FINANCIAL SERVICES, INC.

County/State _____

Comments: MECHANICS' LIEN COVERAGE ON OWNERS POLICY

Approval for issuance of the above Commitment/Policy is hereby granted subject to the following conditions:

Date: June 16, 1992Approved By: 

Employee No.

3	2	1	5	5
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Form 3189-5

Policy No. 115-601100

SCHEDULE B

File No. O'Brien

This policy does not insure against loss or damage by reason of the following:

1. Rights or claims of parties other than Insured in actual possession of any or all of the property.
 - ~~2. Time and expense of the purchaser's title insurance policy, including the cost of the title insurance policy and the cost of the title insurance policy.~~
 - ~~3. Time and expense of the purchaser's title insurance policy, including the cost of the title insurance policy and the cost of the title insurance policy.~~
 4. Real property taxes subsequent to June 30, 1992.
 5. Terms, provisions, restrictions, conditions, easements and reservations contained in Deed Book 5756 at page 485, incorporated by reference and amended in Deed Book 6050 at page 1636, among the land records of Fairfax County, Virginia.
 6. Easement granted to Virginia Electric and Power Company by instrument recorded in Deed Book 6107 at Page 1115, among the aforesaid land records.
 7. Easement granted to The Chesapeake and Potomac Telephone Company of Virginia by instrument recorded in Deed Book 6103 at page 1652, among the aforesaid land records.
 8. Easement granted to Media General Cable of Fairfax County, Inc. by instrument recorded in Deed Book 6315 at page 287, among the aforesaid land records.
- Note: The following matters are reported for informational purposes only:
- Law #114868 - styled Continental Federal Savings Bank v. John and Katherine Kowalczyk, dated May 6, 1992 - File unavailable.
- Chancery #122114 - styled Kowalczyk v. Kowalczyk - in Chambers.
9. Encroachment upon property adjoining on the northerly boundary line by the fence appurtenant to the insured premises as shown on plat of survey by Edward W. Dove, C.L.S., dated May 28, 1992.
 10. Rights, if any, of the property owner adjoining on the southerly boundary line in and to that portion of the insured premises lying between the southerly boundary line and the fence inside said line as shown on plat of survey by Edward W. Dove, C.L.S., dated May 28, 1992.
 11. Deed of Trust from David D. O'Brien and Jane B. O'Brien, husband and wife, to C. Christopher Giragosian and Robert S. Rausch, Trustees, dated June 15, 1992 and recorded June 16, 1992 in Deed Book 8160 at Page 280 in the Clerk's office of the Circuit Court of Fairfax County, Virginia. Securing: Chase Manhattan Financial Services, Inc. in the original principal sum of \$496,000.00.

RESIDENTIAL INFLATION ENDORSEMENT

Attached to Policy No. 115-601100

Issued by



COMMONWEALTH
LAND TITLE INSURANCE COMPANY
A Reliance Group Holdings Company

The Company, recognizing the current effect of inflation on real property valuation and intending to provide additional monetary protection to the Insured Owner named in said Policy, hereby modifies said Policy, as follows:

1. Notwithstanding anything contained in said Policy to the contrary, the amount of insurance provided by said Policy, as stated in Schedule A thereof, is subject to cumulative annual upward adjustments in the manner and to the extent hereinafter specified.
2. "Adjustment Date" is defined, for the purpose of this Endorsement, to be 12:01 a.m. on the first January 1 which occurs more than six months after the Date of Policy, as shown in Schedule A of the Policy to which this Endorsement is attached, and on each succeeding January 1.
3. An upward adjustment will be made on each of the Adjustment Dates, as defined above, by increasing the maximum amount of insurance provided by said Policy (as said amount may have been increased theretofore under the terms of this Endorsement) by the same percentage, if any, by which the United States Department of Commerce Composite Construction Cost Index (base period 1967) for the month of September immediately preceding exceeds such Index for the month of September one year earlier; provided, however, that the maximum amount of insurance in force shall never exceed 150% of the amount of insurance stated in Schedule A of said Policy, less the amount of any claim paid under said Policy which, under the terms of the Conditions and Stipulations, reduces the amount of insurance in force. There shall be no annual adjustment in the amount of insurance for years in which there is no increase in said Construction Cost Index.
4. In the settlement of any claim against the Company under said Policy, the amount of insurance in force shall be deemed to be the amount which is in force as of the date on which the insured claimant first learned of the assertion or possible assertion of such claim, or as of the date of receipt by the Company of the first notice of such claim, whichever shall first occur.
5. The coverage provided by this endorsement shall be effective only if one of the following conditions exists at Date of Policy:
 - a. The land described in this policy is a parcel on which there is only a one-to-four family residential structure, including all improvements on the land related to residential use, in which the Insured Owner resides or intends to reside; or,
 - b. The land consists of a residential condominium unit, together with the common elements appurtenant thereto and related to residential use thereof, in which the Insured Owner resides or intends to reside.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Nothing herein contained shall be construed as extending the effective date of said policy, unless otherwise expressly stated.

Dated: June 16, 1992

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Countersigned: NATIONAL INVESTORS
TITLE SERVICE, INC.

By [Signature]
Authorized Officer or Agent



By [Signature]
President

Attest: [Signature]
Secretary

Form 2097
Residential Inflation Endorsement

NOTE: In connection with a future application for title insurance covering said land, reissue credit on premium charges (if applicable at all) will be allowed only upon the original face amount of insurance as stated in Schedule A of said Policy.

CLT COPY

GOODMAN GARY & LICKSTEIN, P.C.

ATTORNEYS AND COUNSELLORS AT LAW

8500 LEESBURG PIKE

SUITE 7000

VIENNA, VIRGINIA 22182

FACSIMILE (703) 893-9276

(703) 848-2828

February 24, 1995

David D. & Jane O'Brien
2024 Spring Branch Road
Vienna, Virginia 22181

Re: George Atkisson, et al. v.
Wexford Associates, Inc., et al.
Chancery No. 97823
Fairfax County Circuit Court

Dear Mr. & Mrs. O'Brien:

As I discussed with Mrs. O'Brien today, there is presently pending in the Fairfax County Circuit Court a case which concerns 15' foot wide easement route running through the rear area of your lot at 2024 Spring Branch Drive described in an 1892 deed. A copy of the deed is enclosed. The case was brought by George and Carlotta Atkisson to obtain the right to use the easement and remove any obstructions. We have not represented you in this case. We expect that the Atkissons' will soon be asking the Fairfax County Circuit Court to order that the express easement be made available for their use pursuant to the "directions" contained in an opinion of the Virginia Supreme Court dated June 10, 1994. A copy of the opinion is enclosed for your review.

Neither court has ever made a determination of the location of the route of the express easement. The Atkissons' apparently wish to employ the route indicated on their surveyor's sketch a copy of which is enclosed. This route purportedly followed old roads found in Wendover Subdivision (not necessarily the route described by the 1892 deed). Our surveyor plotted the easement route as described in the 1892 deed on a copy of the sketch made by the Atkisson's surveyor. A copy of our surveyor's sketch is enclosed with the route of the express easement, so far as it was described by angles and distance, indicated by yellow highlight. The express easement follows a straight line stating at the bottom of the "existing cemetery" that descends the west side of the subdivision and then turns 320 50' to the east as it descends the west side of lot 4. The line then continues 320 feet to a point near the edge of Bird Road. Our surveyor's sketch was put into evidence on February 27, 1992, in order to demonstrate the invalidity of the route shown by the Atkisson's surveyor.

877

Intervenor
PLF-DEF EX. # 2
DATE 8-3-95
JUDGE JMR
CASE # C97823

Page 2

February 24, 1995

The exact location of the route became irrelevant when the judge of the Fairfax County Circuit Court decided not to remove obstructions and to relocate the easement route entirely on Park Authority property. Now that the Virginia Supreme Court has directed that obstructions that interfere with the Atkisson's use of the express easement be removed, the exact route of the express easement is of acute importance. This is particularly so because it appears that the route shown by our surveyor crosses some of the lots at places that would seem to have much less impact on usage by some of the current owners.

The enclosed sketch of the express easement route by our surveyor was not based on a field survey. We feel that it is now essential to have the express easement route shown on a subdivision plat based on an actual survey so that we can put the best available and most unobjectionable evidence before the Court. We therefore plan to send a team of surveyors from Springfield Engineering Corporation to survey the express easement route on lots two through seven. This will in all likelihood occur next week (February 27 - March 3). Please contact us as soon as possible if you have any objection to this procedure or have any questions.

Very truly yours,

GOODMAN GARY & LICKSTEIN, P.C.

By: 
Bernard E. Goodman

BEG/drb

enclosure

cc: First American Title Insurance Company



NOTES

1. COMPUTED DISTANCE BETWEEN POINTS "T" AND "O"
A. 1979 SURVEY PLAT = 623.88 FEET
B. 1971 FIELD SURVEY = 623.94 FEET
2. ANGLE MEASUREMENTS

	1876 PLAT	1979 PLAT
POINT "O"	171°12'	171°12'
POINT "D"	211°32'	211°32'
POINT "T"	101°29'	101°29'
3. DISTANCE MEASUREMENTS

	1876 PLAT	1979 PLAT
POINT "C" TO "O"	190.4 FEET	188.40 FEET
POINT "O" TO "T"	174.5 FEET	174.60 FEET
POINT "T" TO "P"	1,497.4 FEET	1,497.40 FEET
4. DOTTED IRON PIPE FOUND
5. + DENOTES FIELD TRAVERSE STATION



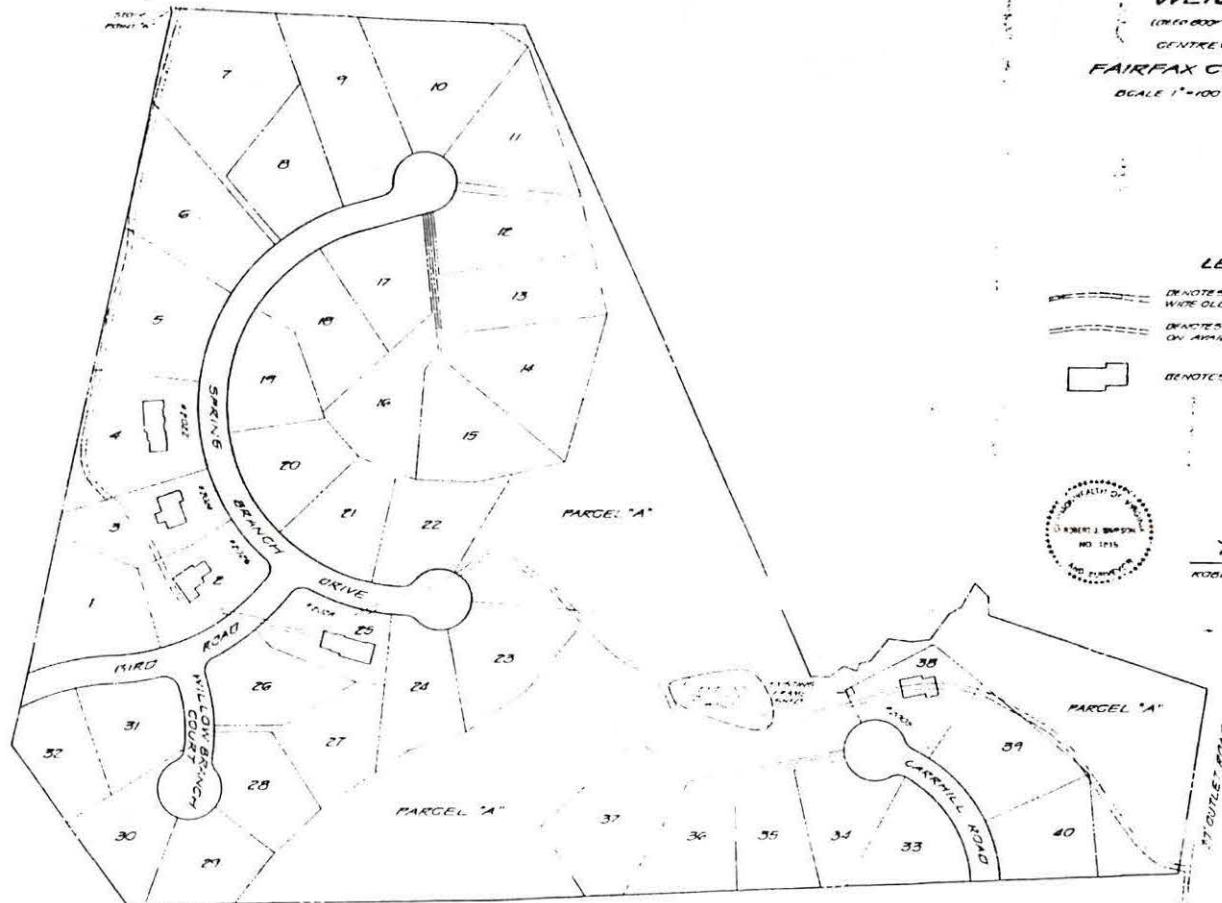
CERTIFIED CORRECT

Robert J. Simpson
ROBERT J. SIMPSON, LICENSED SURVEYOR

PLAT
SHOWING OUTLOT "A"
HUNTER MILL FOREST
(AS RECORDED IN DEED BOOK 5248 AT PAGE 714)
CENTREVILLE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE 1" = 30' AUGUST 14, 1979

ALEXANDRIA SURVEYS, INC.
6343 SOUTH KINGS HIGHWAY
ALEXANDRIA, VIRGINIA 22306

680



PLAT
SHOWING SECTION THREE OF
WENDOVER
(ORIGINALLY 8000 ACRES, MORE OR LESS)
GENTREVILLE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE 1"=100' DECEMBER 10, 1991

LEGEND

- DENOTES LOCATION OF REMAINS OF 10 FOOT WIDE OLD ROAD BED, BASED ON FIELD SURVEY
- DENOTES LOCATION OF OLD ROAD BED, BASED ON AVAILABLE RECORDS
- DENOTES EXISTING DWELLING

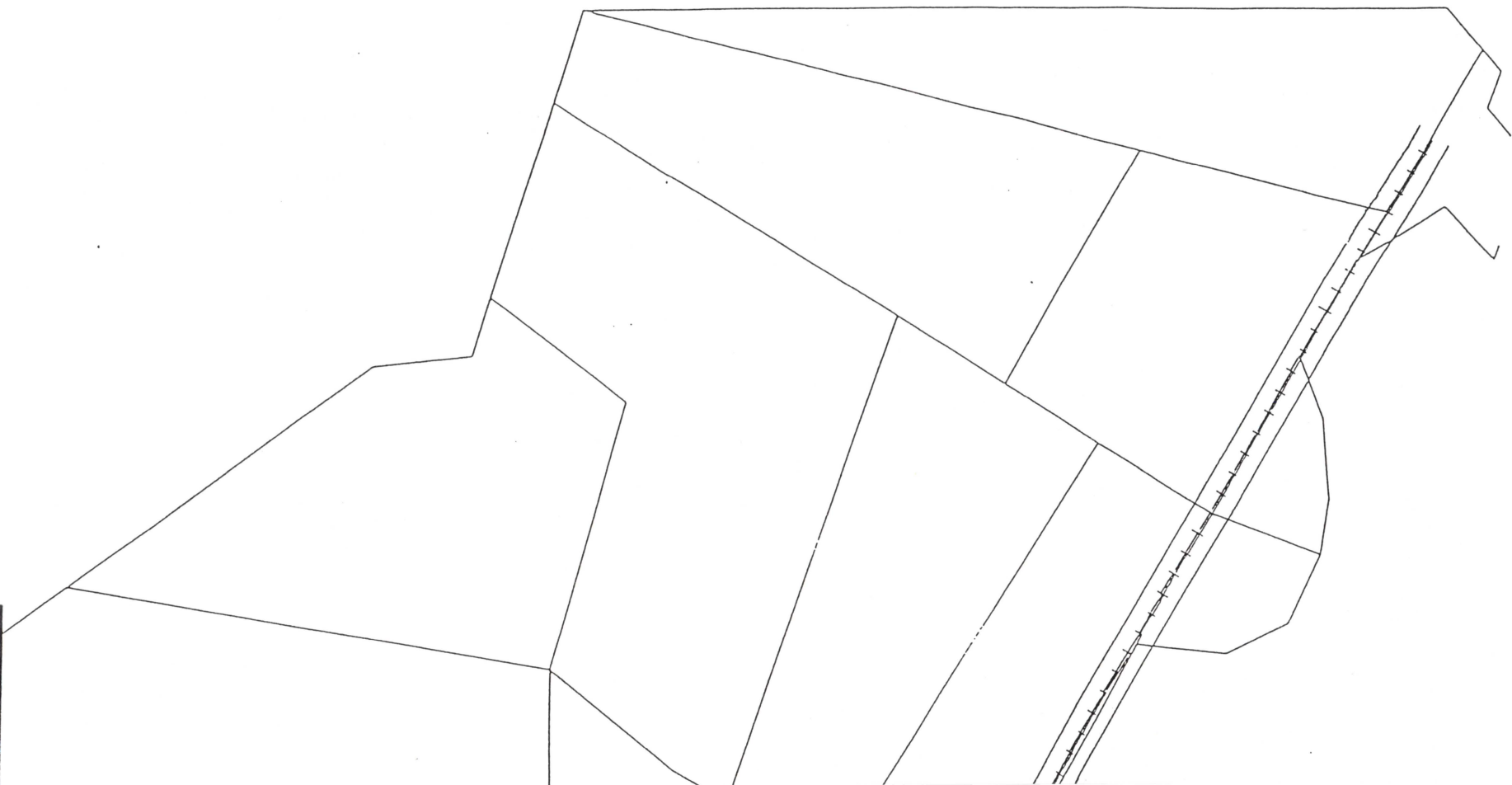


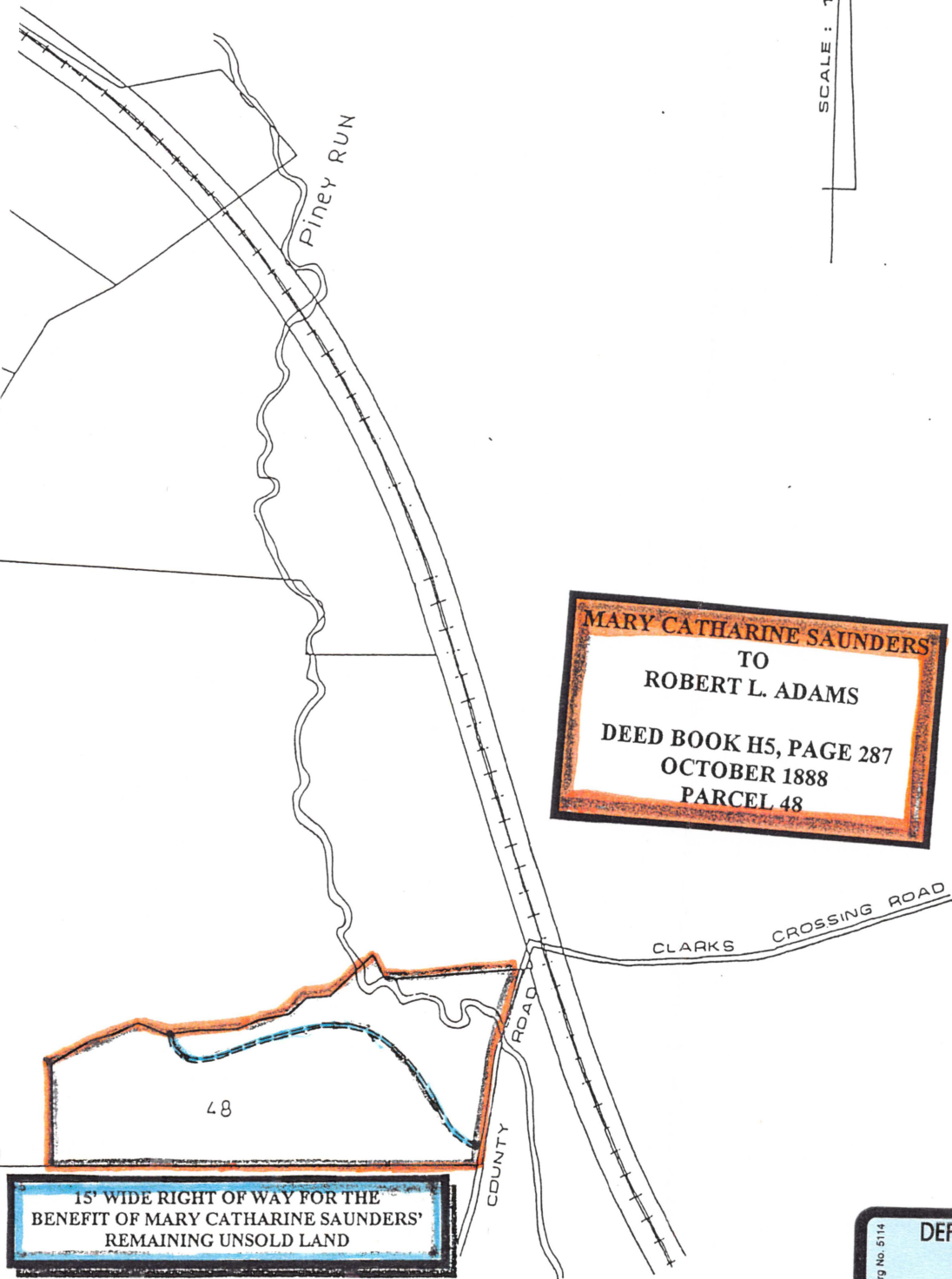
CERTIFIED CORRECT

Robert J. Simpson
ROBERT J. SIMPSON, PROFESSIONAL LAND SURVEYOR

PREPARED BY:
ALEXANDRIA SURVEYS, INC.
6945 SOUTHWIND HIGHWAY
ALEXANDRIA, VIRGINIA 22306

Complete Location
of Easement
not shown in lan
records





SCALE: 1" : 200'

MARY CATHARINE SAUNDERS
TO
ROBERT L. ADAMS
DEED BOOK H5, PAGE 287
OCTOBER 1888
PARCEL 48

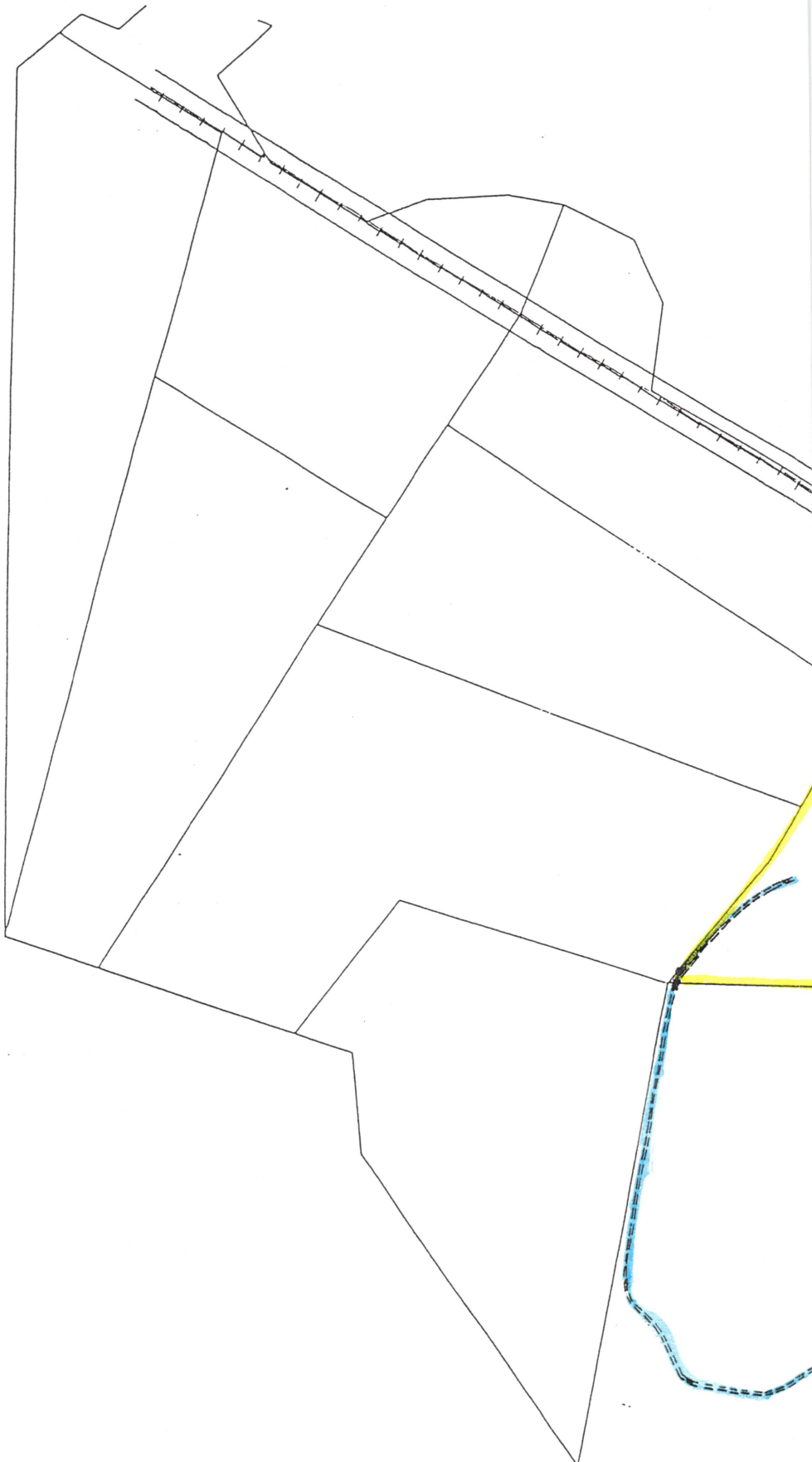
15' WIDE RIGHT OF WAY FOR THE
BENEFIT OF MARY CATHARINE SAUNDERS'
REMAINING UNSOLD LAND

Blumberg No. 5114

DEFENDANT'S
EXHIBIT

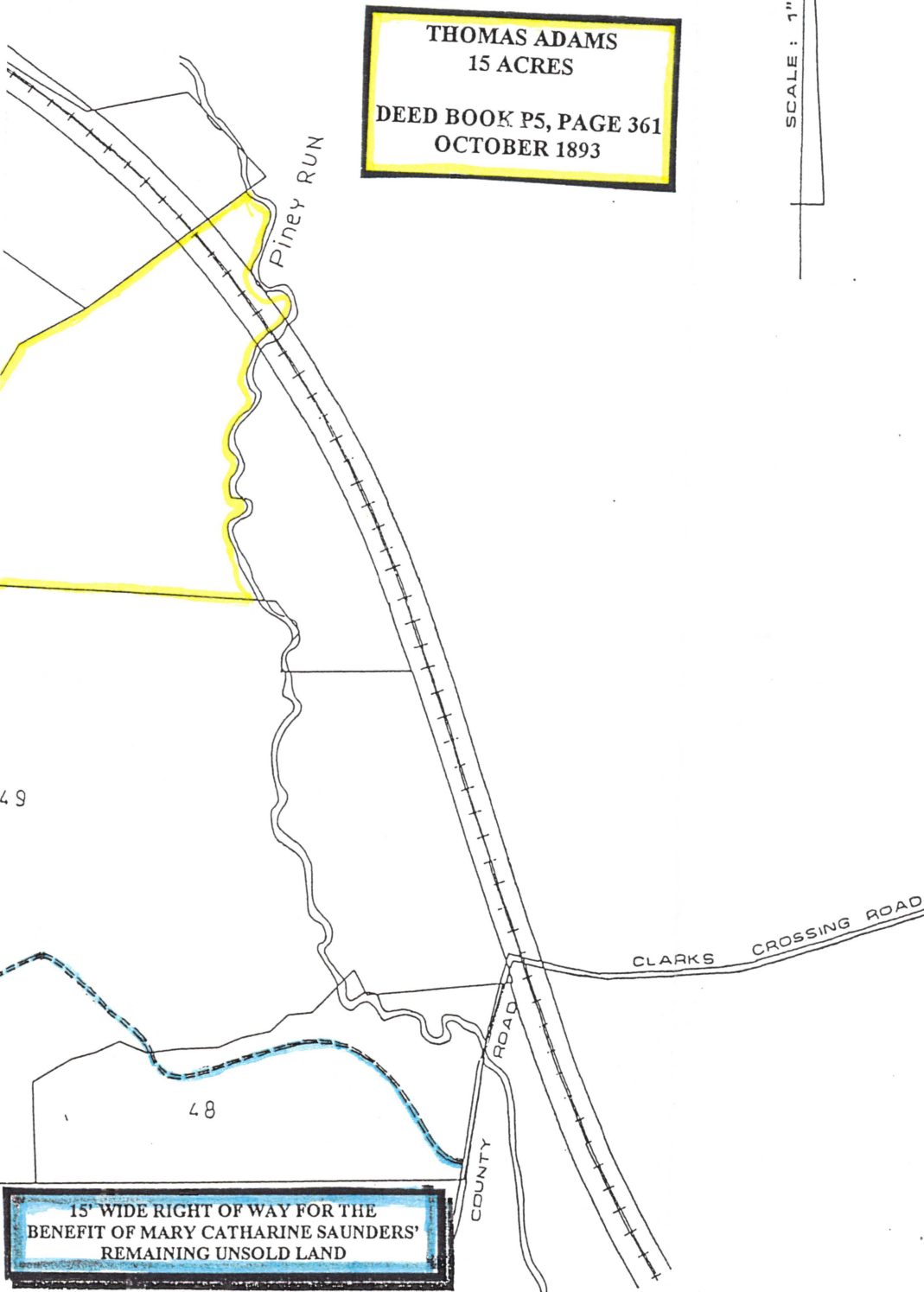
A

881



15' RIGHT OF WAY FOR THE
BENEFIT OF THOMAS ADAMS'
PARCEL ACROSS THE LANDS OF
MARY CATHARINE SAUNDERS
AND ROBERT L. ADAMS TO
THE OLD COUNTY ROAD

Complete Location
of Easement
not shown in land
records



SCALE: 1" = 200'

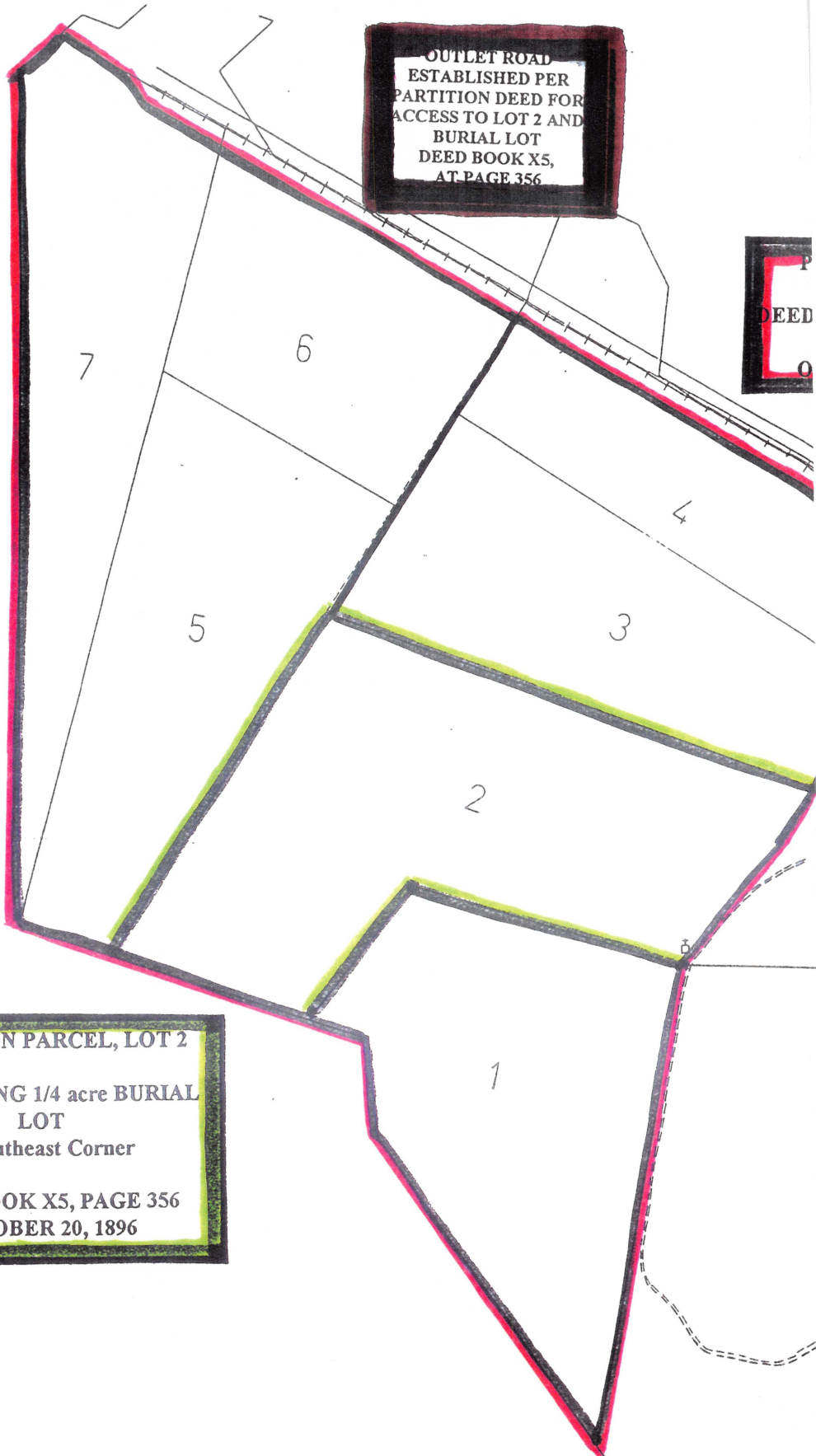
3

B

881-A

OUTLET ROAD
ESTABLISHED PER
PARTITION DEED FOR
ACCESS TO LOT 2 AND
BURIAL LOT
DEED BOOK X5,
AT PAGE 356

P
DEED
0



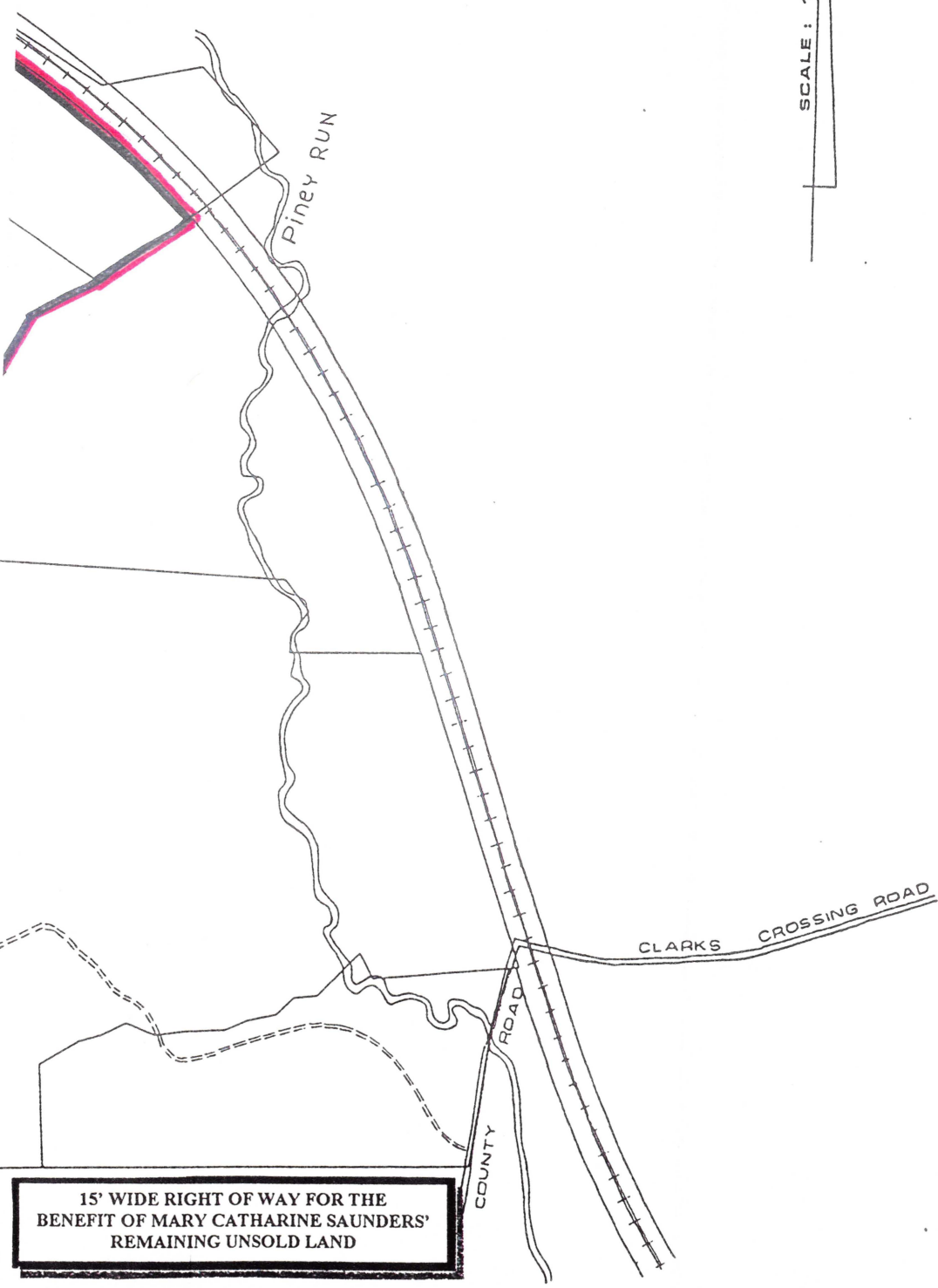
PARTITION PARCEL, LOT 2
CONTAINING 1/4 acre BURIAL
LOT
in Southeast Corner
DEED BOOK X5, PAGE 356
OCTOBER 20, 1896

15' RIGHT OF WAY FOR THE
BENEFIT OF THOMAS ADAMS'
PARCEL ACROSS THE LANDS OF
MARY CATHARINE SAUNDERS
AND ROBERT L. ADAMS TO
THE OLD COUNTY ROAD

Complete Location
of Easement
not shown in land
records

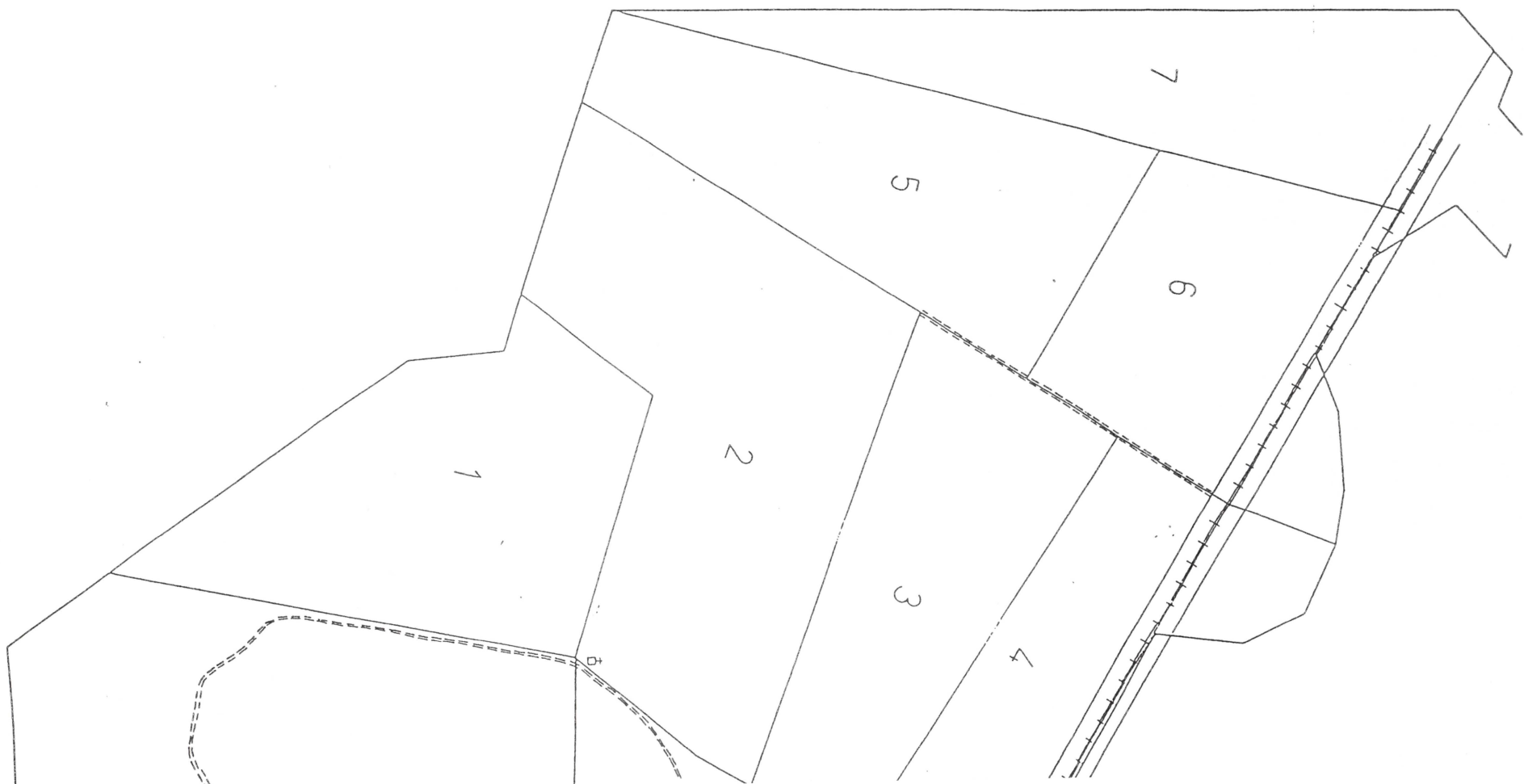
ARTITION DEED
BOOK X5, PAGE 35
OCTOBER 20, 1896

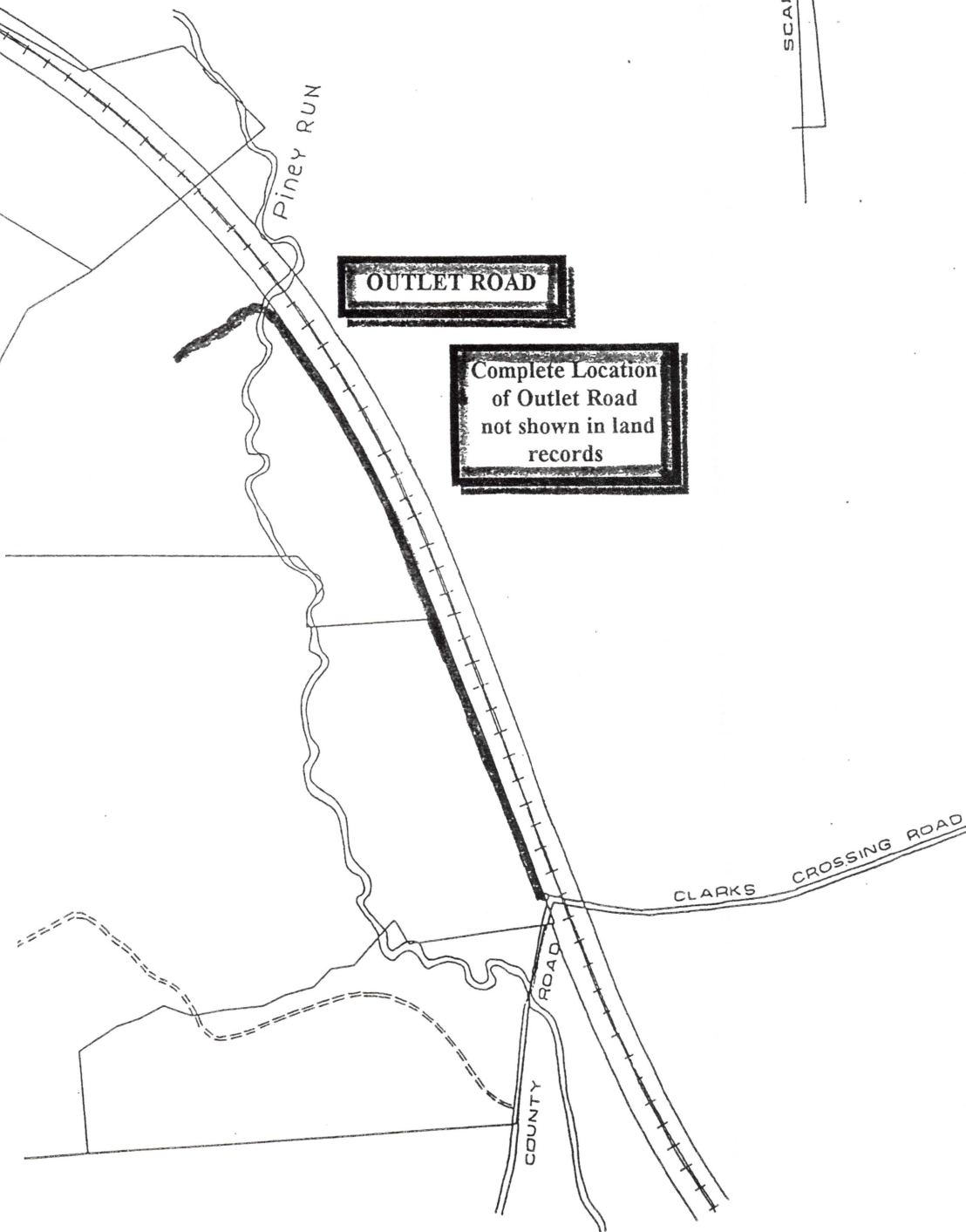
SCALE: 1" = 200'



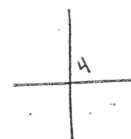
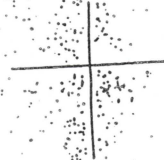
4

C 881-B





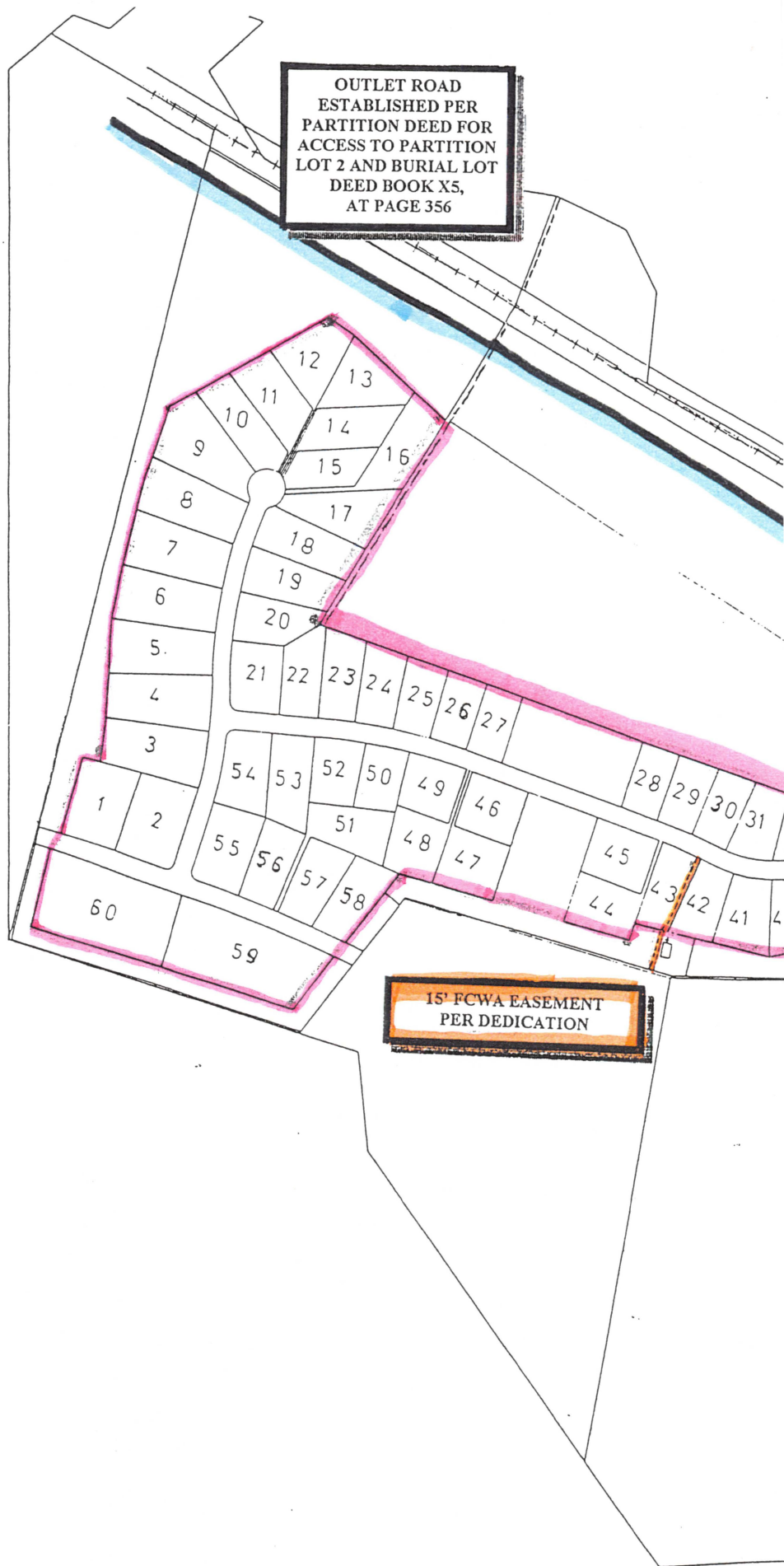
SCALE : 1" : 200'



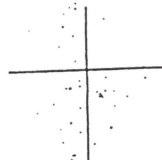
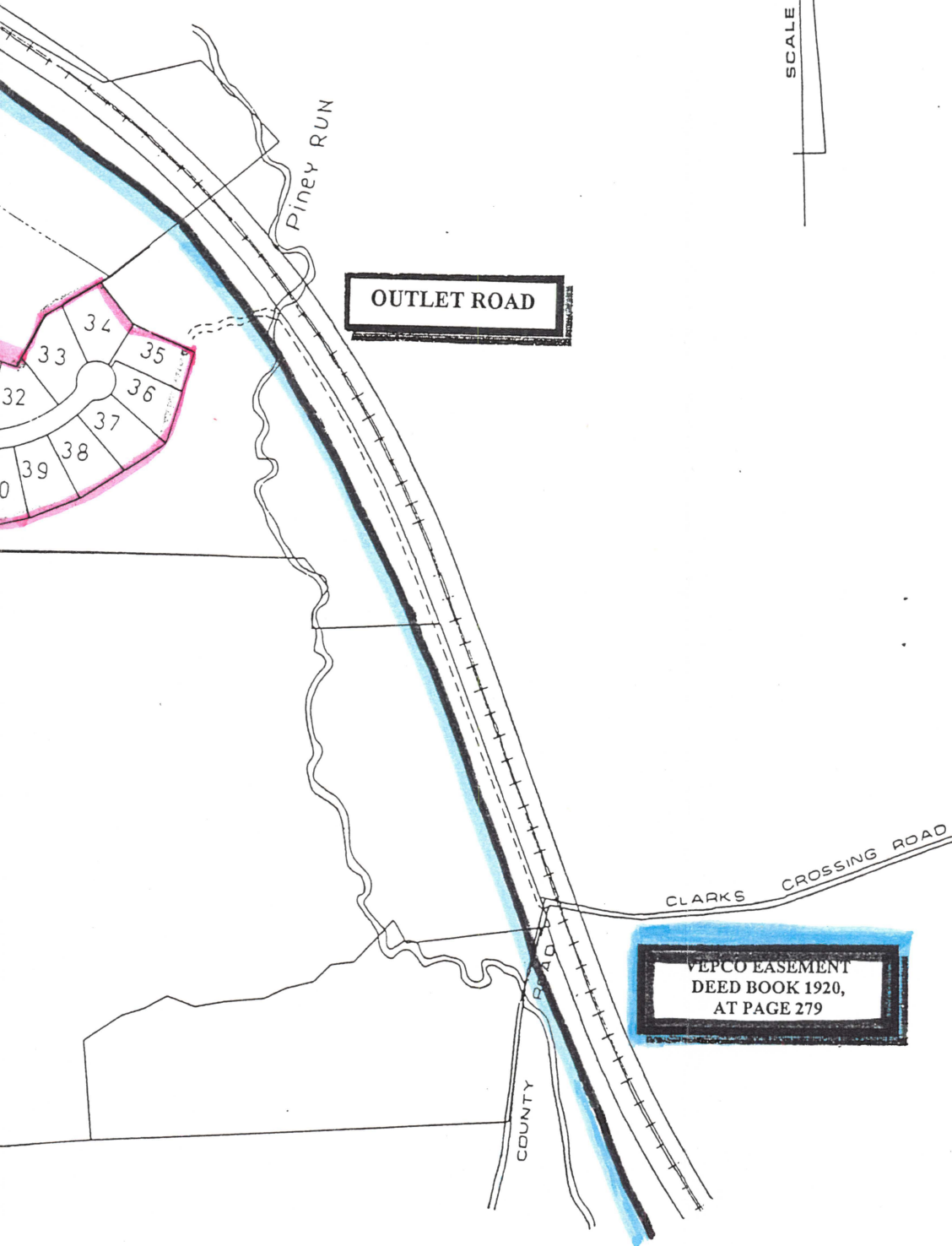
C-1 581-C

HUNTER MILL FOREST SUBD.
DEDICATION AT
DEED BOOK 5244, AT PAGE 744
JULY 27, 1979

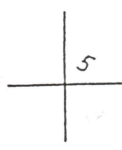
OUTLET ROAD
ESTABLISHED PER
PARTITION DEED FOR
ACCESS TO PARTITION
LOT 2 AND BURIAL LOT
DEED BOOK X5,
AT PAGE 356



15' FCWA EASEMENT
PER DEDICATION



SCALE: 1" : 200'



D 881-D

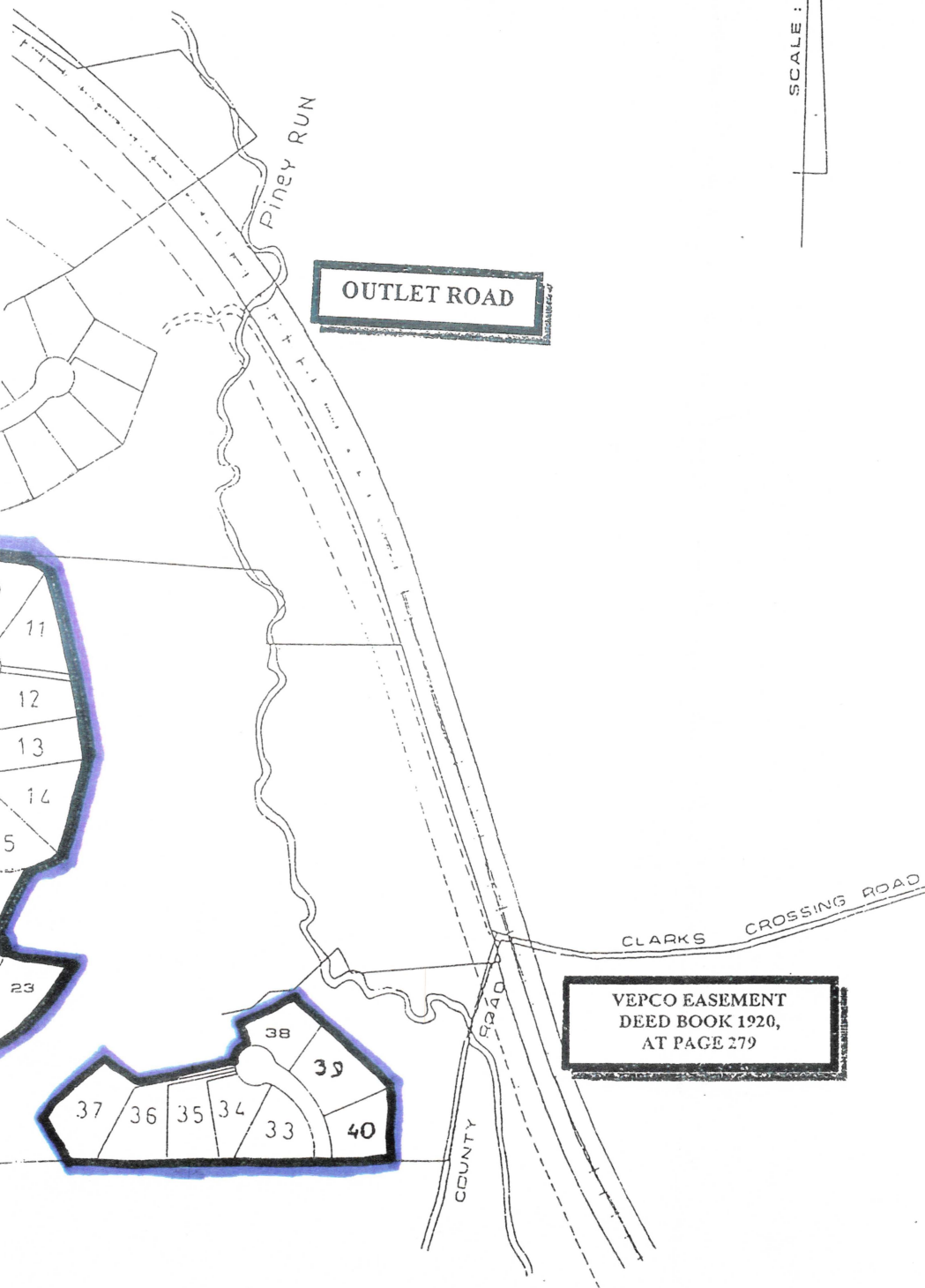
OUTLET ROAD
ESTABLISHED PER
PARTITION DEED FOR
ACCESS TO PARTITION
LOT 2 AND BURIAL LOT
DEED BOOK X5,
AT PAGE 356

WENDOVER SUBDIVISION
SECTION 3

DEDICATION AT
DEED BOOK 6050, PAGE 1636

OCTOBER 25, 1984





E 881-E

HUNTER MILL FOREST SUBD.

DEDICATION AT
DEED BOOK 5244, AT PAGE 744

JULY 27, 1979

OUTLET ROAD
ESTABLISHED PER
PARTITION DEED FOR
ACCESS TO PARTITION
LOT 2 AND BURIAL LOT
DEED BOOK X5,
AT PAGE 356

PARTITION
DEED BOOK
OCTOBER 20, 1896

PARTITION PARCEL, LOT 2

CONTAINING 1/4 acre BURIAL
LOT
in Southeast Corner

DEED BOOK X5, PAGE 356
OCTOBER 20, 1896

15' FCWA EASEMENT
PER DEDICATION

WENDOVER SUBDIVISION
SECTION 3

DEDICATION AT
DEED BOOK 6050, PAGE 1636

OCTOBER 25, 1984

15' RIGHT OF WAY FOR THE
BENEFIT OF THOMAS ADAMS'
PARCEL ACROSS THE LANDS OF
MARY CATHARINE SAUNDERS
AND ROBERT L. ADAMS TO
THE OLD COUNTY ROAD

ION DEED
K X5, PAGE 356
ER 20, 1896

THOMAS ADAMS
15 ACRES
DEED BOOK P5, PAGE 361
OCTOBER 1893

OUTLET ROAD

MARY CATHARINE SAUNDERS
TO
ROBERT L. ADAMS
DEED BOOK H5, PAGE 287
OCTOBER 1888
PARCEL 48

VEPCO EASEMENT
DEED BOOK 1920,
AT PAGE 279

15' WIDE RIGHT OF WAY FOR THE
BENEFIT OF MARY CATHARINE SAUNDERS'
REMAINING UNSOLD LAND

SCALE: 1" = 200'

F 881-F



This Indenture, made this, the 23rd day of July, A.D. 1887, by and between Miss Mary Catharine Saunders, of Fairfax County, State of Virginia, of the first part, and Robert L. Adams, of the same County and State, of the second part, Witnesseth, That the said party of the first part, for and in consideration of the sum of One hundred and five 62/100 Dollars, current money and the further additional sun of One hundred and five 8/100 Dollars, current money, to her in hand paid by the said party of the second part; at and before the sealing, and delivery of these presents, the receipt whereof is hereby acknowledged, does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns forever, the following described parcels of land situate in Providence Township, Fairfax County, State of Virginia, to wit;

Lot No: 1. Beginning at A, a cedar stake on the west side of the County Road, S. 41° W. 12 links from a Walnut tree, and in or near the line of Hunts' estate; thence with said line, N. 87° W. 6 chains and 40 links to B. a marked Pine tree, thence N. 0° 18' W. 6 chains and 63 links to C. a point in the middle of the Spring branch, 5 links beyond a marked Maple tree, thence (with the middle of the Spring branch to the middle of Piney Branch, and, with the middle of Piney) S. 75 3/4° E. 7 chains and 74 links to the County Road, thence with the west side of the County Road, S. 14° W. 5 chains and 9 links to the beginning, containing 4 Acres 7 Rood and 19 Perches (Surveyed Aug: 19th, 1885) at \$25 per acre, after deducting 23 perches for road.

And Lot No: 2. Beginning at B. a marked Pine tree, a corner to Lot No. 1, in the line of Hunt, thence with said line, N. 87° 24' W. 11 ch. and 76 links to E., a stone 13 links southerly from a marked Chestnut (Back sight-N. 88° 41' E) thence N. 1° 30' W. 4 chains and 15 links passing through, and 14 links beyond a marked poplar to a point (H) in the middle of the Spring Branch,

(LIBER H5, PAGE 237 CONTINUED)

thence with the middle of the Spring Branch, and the meanders thereof, to
C. a point in the middle of the Spring Branch, a corner to Lot No: 1, 5 links,
N. 25° W. from a marked Maple, thence with a line of Lot No: 1, S. 0° 25'
E. 6 chains and 63 links to the beginning, containing 6 Acres, 1 Rood, and 17

(END OF PAGE 237)

(BEGINNING OF PAGE 238, LIBER H5)

Perches, (surveyed June 11, 1887) at \$17 per acre, after deducting 28 Perches for road.
Nevertheless, the party of the first part reserves forever, the right of way through the
above described parcels of land to the County Road, by the road now used, and
15 feet wide for the benefit of her remaining unsold land.

And further, the said party of the first part covenants that she has the right to
convey the said tracts of land, that she has done no act to encumber the same,
and that she will execute such other and further assurances, for the more com-
plete conveyance of them as may be required. Given under my hand and seal,
the day and year last before written.

her

Mary Catharine X Saunders

mark

(LIBER H5, PAGE 238. CONTINUED)

Fairfax County, to-wit;

This 23rd day of July, 1887, personally came befor me, Samual C. Westcott, a Justice of said County; Mary Catharine Saunders, the person named in the forgoing writing, and acknowledged that she executed the same, and does not wish to retract it.

Dated this 23, day of July, 1887.

Samuel C. Westcott, J.P.

In the Clerk's Office, Fairfax County Court, Oct: 24, 1888.

This Deed was received, duly authenticated, and admitted to record.

Teste,

F.W. Richardson, Clk.

(END OF PAGE 238, LIBER H5)

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This Indenture, made _____ day of _____ A.D. 1892, by and between Miss Mary C. Sanders, party of the first part, and Thos. S. Adams, party of the second part, both of Fairfax, County, Va: Witnesseth, that the said party of the first part, for and in consideration of the sum of Three hundred dollars cash, unto her in hand paid by the said party of the second party, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said party of the second part, a certain tract of land, situated in Providence District, Fairfax Co., Va., and described in Joseph Berry's survey, dated May 14th, 1892, as follows: Plat attached. Beginning at A, a point in the middle of Piney Branch, and on the South-west boundary of the W.O. & W. R. R., thence with said boundary, N. 33° 15' W. 361 3/10 ft. to B, a stake in the line of Mrs. Adaline Adams, thence with the line of Mrs. Adams, South 59° 14' W. (bearing taken from the middle of th R. R. tract), passing through a White Oak tree on the R. R. cut, 323 8/10 ft. to C., a Black Oak tree, S. 66° 50' W. 185 6/10 ft. to D, a White Oak tree; S. 33° 56' W. 326 2/10 ft. to E, a planted stone; S. 45° 52' W. 429 4/10 ft. to F, a Cherry tree; S. 21° W. 40 ft. to G, a stone; thence S. 83° 05' E, passing through a stone on the West bank of Piney Branch at 1131 4/10 ft.; 1151 4/10 ft. to H, a point in the middle of the Branch; thence with the meanders of said Branch, to the beginning, containing 15 Acres.

Also, the right of way from the above land by a road 15 ft. wide from G, the South-west corner of the above land, 880 feet along the line of Mrs. Adams, to near a pair of bars and thence across Mrs. Mary C. Sanders' land, S. 32° 50' E. 320 ft. to a point near a pair of bars at her stable; thence passing near her house and with the present outlet used by her through through her land and through R.L. Adams to the County Road, but nevertheless the said party of the first part reserves to herself the right to erect as many gates across the land hereby granted, for a right way from the South-west corner of the land hereby sold to Thos. S. Adams to the County Road, as she may deem necessary. And the said



party of the first part hereby covenants, that she has the right to convey the said land, that she has done no act to encumber the same, and that she will execute such other assurances for the more complete conveyance as may be required.

In Testimony Whereof, the said party of the first part has hereunto set her hand and seal, the day & year first hereinbefore written.

Test:	her
	Mary C. X Sanders
F.M. Smith	mark

County of Fairfax
State of Virginia

Mary C. Sanders, party to the foregoing Deed, personally appeared before me, F.M. Smith, a Justice of said County, and acknowledged the foregoing Deed to be her act and deed, this 21st day of July, 1892.

F.M. Smith, J.P.

Fairfax County Court, Oct. Court, 1893.
This Deed was received, duly authenticated, and ordered to be recorded.

Teste:
F.W. Richardson, Clk.

1944 Nov. 1 -
Wash. D.C. to N.Y.
1944 Dec. 1 -

Received of the
 County of Santa Clara
 the sum of \$100.00
 for the year 1911

By order of the
 Board of Supervisors
 of Santa Clara County
 J. J. Patterson

For the County Clerk
 The Due was received duly authorized
 J. J. Patterson

Attest that the 17th day of October 1911
 J. J. Patterson

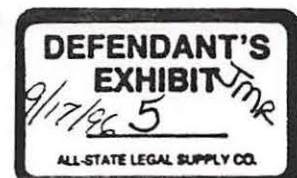
Received of the
 County of Santa Clara
 the sum of \$100.00
 for the year 1911

In the vacation of the Circuit Court of Fairfax County
Virginia, May 27th 1896:

Adams (and others)
vs. In Chancery
Adams (and others)

This cause is now heard in the vacation of
the said Court before the Judge of said Court upon the bill
and exhibits therewith filed, the answer of C. Vernon Ford
guardian ad litem of the infant defendants, the return
of process as to the defendant, Mary C. Saunders, who ac-
cepted service of said process, and by consent of all the
complainants in this cause and of said Mary C. Saunders
who are represented by Moore & Keith, Attorneys, and by
like consent of said Ford guardian, ad litem as afore-
said, and argument of counsel: upon consideration whereof
the Judge of said Court doth, adjudge, order and decree
that Alfred Leigh, Lewis E. Oliver, William Day, Cornelius
Money and Frank Williams, who are hereby appointed
commissioners for that purpose, any three of whom
may act, those acting to be sworn before entering
upon a discharge of their duties, do go upon the
real estate mentioned in the bill in this case, to wit; the
tracts of 37 acres (except two parcels of one acre each, which
were sold off) 19 acres and and 50 acres lying together and
constituting but a single tract and if it can be con-
veniently done make partition thereof, having
regard to quantity and quality, and allot and set off to
Belle Smith 1/8 share or part thereof, to R.L. Adams a
like share or part; to Lewis Adams a like share or part,
to Rose McDaniel a like share or part, to the children
of America Powell, deceased, namely, Carrie Powell and
Effie Powell together a like share or part, to the children of
Oscar Adams, deceased, namely, Olivia Adams, Adelbert
Adams, Harmonia Adams, Irene Adams, Edna Adams,
Sidney Adams, Truman Adams, Oscar Adams and Russell
Adams, together, a like share or part, and to Thomas S.
Adams a 2/8 share or part thereof.

And the said Commissioners are further directed to go
upon the tract mentioned in the bill as containing
9 1/2 acres and report whether the same should be par-
titioned in kind among those entitled or whether it would be
best to sell the same and divide the proceeds of such sale
In the execution of this decree the said Commissioners



are authorized to employ the services of a competent surveyor.

The Clerk of the Circuit Court of Fairfax County, Virginia, is directed to spread this decree upon the chancery Order Book of his said Court.

Given under my hand this 27th day of May 1896.

C. E. Nicol,

Judge

Fairfax Co. Va. 1896.

To The Hon Judge of the Circuit Ct. of Fairfax Co. Va.,
We the undersigned commissioners appointed by decree of your Hon Court in vacation of the Court, May 27, 1896, in the suit of Adams and others, versus Adams and others to make partition of the real estate mentioned in said decree respectfully report:-That we met upon the said land and having been first sworn to properly discharge the duties imposed by said decree, examined the land embraced in the 37, 19 and 50 acres named in decree, having before us a plat of the same, ascertained by present survey to contain 136 11/100 acres, and made the following partition.

To R.L. Adams, we assigned 20 acres, designated on attached plat as Lot No. 1, as being equivalent in value to one-eighth of the value of the entire 136 11/100

~~To Thomas Adams, we assigned 27 1/2 acres embracing the house, designated on plat as Lot No. 2, (included in the description of Lot No. 2 is a burial lot of 1/2 acre)~~
as being equivalent in value to two-eighths of the value of the entire 136 11/100 acres.

To the children of America Powell, viz:-Carrie & Effie Powell, together we assigned 16 3/4 acres, designated on the plat attached as Lot No. 3, as being equivalent in value of one eighth of the value of the entire 136 11/100 acres.

To Mrs. Belle Smith, we assigned 16 3/4 acres made up of three separate parcels, the largest part south of the R.R. land, the other parts North of the R.R. land, and between it and Piney Branch all together designated on attached plat as lot No. 4, as being equivalent in value to one eighth of the value of the entire 136 11/100 acres.

To the children of Oscar Adams we assigned 18 43/100 acres, designed on attached plat as Lot No. 5, as being equivalent in

in value to one eighth of the value of the entire 136 11/100 acres.

To Mrs. Rose McDaniel we assigned 18 43/100 acres, made up of three separate parcels the largest part south of the R. R. land the other two parts North of the R. R. land and between it and Piney Branch and Difficult Run together designated on plat as Lot No. 6, as being equivalent in value to one eighth of the value of the entire 136 11/100 acres.

To Lewis Adams, we assigned 18 acres, designated on plat as Lot No. 7, as being equivalent in value to 1/8 of the value of the entire 136 11/100 acres.

A plat and full description of the above several lots is hereunto attached in report of J. Owens Berry & Co. Surveyors.

✓ (X) A burial lot of one fourth of an acre in the South east corner of Lot No. 2 is reserved as a family burial lot.

We respectfully recommend that the 9 1/2 acres mentioned in the decree be sold and the proceeds of sale divided as it is not in our opinion susceptible of division.

Alfred Leigh

L. E. Oliver

W. B. Day

Survey ending June 17th 1896, to divide land in the suit Adams and others versus Adams and others.

Decree in Vacation May 27th 1896.

Description of the entire tract, except 9 acres.

Beginning a A, three maple trees marked on Piney Branch a corner to Miss Mary Saunders; thence with her line S 63° 39' W. 270 5/10 feet to B, a white oak in the line of Thos. Adams; thence with the line of Thos. Adams, S 58° 23' W. bearing reversed 285 ft. to C, a Black oak tree, S 67° 13' W. 186 4/10 feet to D, a white Oak, S. 34° 06' W. 326 1/10 feet to E, S. 46° W. 430 6/10 feet to F, a cherry tree, S. 37° W. 40 feet to G, a stake near Thos. Adams' old corner, a corner to Miss Mary Saunders; thence with a line of Miss Mary Saunders, S. 16° W. 1353 9/10 feet to H, a stake corner to Miss Saunders, in the line of Trammell; thence with the lines of Trammell N. 31° 10' W. 1070 5/10 ft. to I, a stake, N. 1° 27' E. 261 1/10 feet to J, a cedar tree N. 67° 23' W. 1062 6/10 feet to K, a stake, a corner to Lewis Adams, thence with his line N. 2° E. 2454 feet to L, a clump of maples on the South side of Difficult Run; thence N. 46° E. Crossing Difficult Run 156 feet to M, a point

Transcript made

7.358 not in

cluded

D.46 P.364

894

on the R.R. Tract; N. 54° 02' E. 146 feet to fig. 1, a stake in the bed of the old Run, S. 65° E. 110 3/10 feet to fig. 2, a stake in the bed of the old Run; thence the same line continued to the middle of Difficult Run; thence down the Run and binding therewith to Piney Branch, and up Piney Branch and binding therewith to the beginning, containing 135 86/100 acres, exclusive of Rail Road land and burying lot, a part of Lot No. 2, Thos. Adams' containing one fourth of an acre

Description of Lot No. 1, allotted to R.L. Adams

Beginning at H, a stake, a corner to Miss M. Saunders in the line of Trammell; thence with the lines of Trammell N. 31° 10' W. 1070 5/10 feet to I, a stake, N. 1° 27' E. 261 1/10 feet to J, a cedar tree, N. 67° 23' W. 183 feet to R. a stake a corner to Lot 2; thence with lines of Lot 2, N. 44° 05' E. 483 1/10 feet to S, a stake, S. 67° 45' E. 808 9/10 feet to G, a stake near Thos. Adams old corner, and a corner to Miss M. Saunders, thence with her line S. 16° W. 1353 9/10 feet to the beginning, containing 20 acres.

Description of Lot No. 2, allotted to Thos. Adams, on which lot stands the dwelling house.

Beginning at G, a stake a corner to Lot No. 1, a corner to Miss M. Saunders, and near Thos. Adams' old corner; thence with lines of Lot No. 1, N. 69° W. 808 9/10 feet to S, a stake, S. 46° 03' W. 483 1/10 feet to R, a stake in the line of Trammell, thence with the line of Trammell N. 68° 37' W. 602 3/10 feet to Q, a stake, a corner to Lot No. 5, thence with a line of Lot No. 5, N. 37° 14' E. bearing reversed 1150 feet to P, a stake a corner to Lot 3; thence with a line of Lot 3, S. 66° 50' E. 1497 4/10 feet to T, a stake in the line of Thos. Adams; thence with his lines, S. 35° 09' W. 157 5/10 feet to E, S. 46° W. 430 6/10 feet to F. a cherry tree, S. 37° W. 40 feet to the beginning, containing, exclusive of burial lot, which is one fourth of an acre and in the South east corner of this lot, 27 1/2 acres, an outlet road 15 feet wide between lots 3 and 4 and Lots 5 and 6 to Piney Branch, is reserved for this lot.

Description of Lot No. 3, allotted to Carrie Powell and Effice Powell, together.

Beginning at T, a stake in the line of Thos. Adams, a corner to Lot No. 2, thence with a line of Lot 2, N. 66° W. 1497 4/10 feet to P, a stake, a point in the middle of an outlet road, thence with the middle of the road and with Lots 5 and 6 N. 37° 14' E. 663 6/10 feet to O, a stake, a

a corner to Lot 4; thence with a line of Lot 4, S 48° 34' E. 1536 feet to C a Black oak tree, a corner to Thos. Adams, thence with Thos. Adams' lines S. 67° 13' W, 186 4/10 feet to D, a white oak tree, S. 34° 06' W. 174 6/10 feet to the beginning, containing 16 3/4 acres; there is reserved 7 1/2 feet along the west side of this lot from P. to O. for an outlet Road for the use of the several lots.

Description of Lot No. 4, allotted to Mrs. Belle Smith Beginning at A, three maple trees on the South side of Piney Branch, a corner to Miss M. Saunders; thence with her line S. 63° 39" W. to the R. R. track and continuing the same line with Thos. Adams 270 5/10 feet to B, a white oak tree; thence S. 58° 23' W. bearing reversed, 285 feet to C, a Black oak tree, a corner to Thos. Adams and Lot No. 3, thence with a line of Lot No. 3, N. 50° 43' W. 1536 feet to O, a stake in the middle of an outlet Road; thence with the middle of the outlet and with lines of Lot 6 N. 42° 47' E. 376 4/10 to M, a point in the middle of the R. R. track, N. 25° E. 335 feet to fig. 10 a point midway between two poplar trees on the South bank of Piney Branch; thence to and with the middle of Piney Branch and binding therewith to the beginning, containing exclusive of R. R. land 16 3/4 acres. There is reserved along the West side of this tract 7 1/2 feet for an outlet road for the use of the several lots.

Description of Lot No. 5, allotted to Oscar Adams' children.

Beginning at K, a stake in the line of Trammell, a corner to Lot No. 7; thence with a line of lot 7, N. 17° 54' E. 1607 feet to V, a stake, a corner to Lot No. 6; thence with a line of Lot N. 6 S. 57° 33' E. 775 7/10 feet to W. a stake in the middle of the outlet road and with Lot 3, S 40° W. to Lot 2, and continuing the same line with Lot 2, 1500 5/10 feet to Q, a stake in the line of Trammell thence with the line of Trammell N. 70° 13' W. bearing reversed 277 3/10 feet to the beginning, containing 18 43/100 acres. There is reserved along the east line of this lot from W to P, 7 1/2 feet for an outlet for the use of the several lots.

Description of Lot No. 6, allotted to Mrs Rose McDaniel.

Beginning at fig. 10 a point midway between two poplar trees on the South side of Piney Branch, in the middle

of an outlet Road, a corner to lot No. 4; thence with the middle of the outlet road, and with the lines of lots 4 and 3 S. 25° W. 335 feet to N, a point in the middle of the R.R. track, S. 39° 17' W. 689 5/10 feet to W, a stake, a corner to lot No. 5, thence with Lot 5, N. 548 W. 775 7/10 feet to V, a stake in the line of Lot No. 7, thence with a line of Lot 7, N. 18° 04' E. 710 1/10 feet to fig. 19, a point in the middle of the R.R. track; thence with the middle of the R.R. Track N. 58° 25' W. 570 8/10 feet to M, thence N. 54° 02' E. 146 feet to fig. 1, a point in the old bed of Difficult Run; thence S. 65° E. 110 3/10 feet to fig. 2, a point in the old bed of Difficult; thence continuing the same line to the middle of the Run and down the middle of Difficult and binding therewith to Piney Branch and up the middle of Piney Branch and binding therewith to the beginning.

Containing exclusive of R.R. Land 18 43/100 acres.
There is reserved on the east side of this lot from W. to fig. 10, 7 1/2 feet for an outlet road, for the use of the several lots.

⊛ Description of Lot No. 7, allotted to Lewis Adams.

Beginning at K, a stake in the line of Trammell, a corner to Lot No. 5 and a corner to Lewis Adams', thence with a line of Lewis Adams, N. 2° E. 2454 feet to L, a clump of maples on South side of Difficult Run; thence N. 66° 46' E. crossing the Run 94 9/10 feet to fig. 20, a point on the South boundary of the R.R. land; thence with the South boundary of the R.R. land, 618 7/10 feet to W., thence deflecting to the right interior angle 104° 23' and with the lines of Lots 6 and 5, 2265 6/10 feet to the beginning, containing 18 acres.

Note; There is reserved an outlet road 15 feet wide, beginning at the Northwest corner of Lot 2, the middle line of the outlet road being the dividing line between Lots 3 & 4, on the east and lots 5 and 6 on the west to Piney Branch.

Plat attached,

J. Owens Berry & Co.

Surveyors.

(Plat over)

In the Circuit Court of Fairfax County, Virginia,
Adams October Term 1896.
vs. In Chancery
Adams

This cause is now heard upon the papers formerly read, the decree rendered in vacation, the report of Commissioner Leigh Oliver and Day, to which there are no exceptions, and argument of Counsel; upon consideration whereof, the Court doth adjudge, order and decree that said report be confirmed; that the parties do take and hold in fee simple, according to the said report, the lots assigned them, that is to say R.L. Adams, Lot No. 1, containing 20 acres, Thos. S. Adams, Lot No. 2, containing 27 $\frac{1}{2}$ acres, the children of the late America Powell, Lot No. 3 containing 16 $\frac{3}{4}$ acres, Belle Smith Lot No. 4, containing 16 $\frac{3}{4}$ acres, the children of the late Oscar Adams Lot No. 5, containing 18.43 acres, Rose McDaniel Lot No. 6, containing 18.43 acres, and Lewis Adams, Lot No. 7, containing 18 acres all of which lots are accurately described, in the plat and survey of J.O. Berry & Co. attached to said report; that the outlet roads, designated in said plat survey and report are established and shall remain appurtenant to the lots for whose convenient use they are designated; that the burial ground designated therein with ingress thereto and egress therefrom shall remain for the permanent use of the families of all the aforesaid parties; that the clerk of this Court shall certify the aforesaid decree this decree and the said report, plat and survey to the clerk of the County Court of this County for record in his office; that said Lot No. 2, be charged with the payment of $\frac{2}{8}$ of all the costs of suit, expenses of partition and recording and a fee of \$50.00 to Moore and Keith, solicitors; that each of the others said lots be charged with the payment of $\frac{1}{8}$ of such costs, expenses and fee, and that T.R. Keith, who is appointed a commissioner for that purpose, but who before acting shall enter into a bond before the Clerk with approved personal security conditioned in the penalty of \$200.00 as the law directs, shall make sale of the lot of land containing 9 $\frac{1}{2}$ acres described in the proceedings either privately subject to the Courts approval, or publicly at auction after notice by weekly publications for four consecutive weeks in some newspaper pub-

lished in this County, and upon the following terms; One fourth cash and the balance in three equal payments of six, twelve and eighteen months from the day of sale bearing interest, the title to be retained until the last payment is made the deferred payments to be evidenced by the purchasers notes, with such personal security, as the Commissioner may think proper to require.

Copy Test

Costs of suit: \$130.65

W.E. Graham, Clerk

In the clerk's office of Fairfax County Court Oct. 20, 1896.

This paper was this day filed for and admitted to record.

Teste,

F.W. Richardson Clk.

either legal or equitable, shall not in me except as
before and unless unless because the purchase money
gathered provided

Witness my hand and seal this 3 day of May A.D. 1897

at Washington, D.C.
Oswine Charles Fick

S.C. Mills
Formerly recorded Occupation Clerk
Employer Money Order and Address P.O. Dept.

District of Columbia
County of Washington

I, Samuel C. Mills a Notary Public
in and for the County aforesaid, do hereby certify
that Charles Fick party to a certain lease bearing
date on the 3rd day of May A.D. 1897, and
has appeared personally appeared before me in
said County and that said Charles Fick being
personally well known to me to be the per-
son who executed the said deed and acknowl-
edged the same to be his act and deed
Given under my hand and notarial seal this
third day of May 1897

Samuel C. Mills
Notary Public

In the Clerk's Office of Fairfax County Court V:
May 5th 1897 This case was received, duly
authenticated & admitted to record

Wm. F. Richardson, clk.

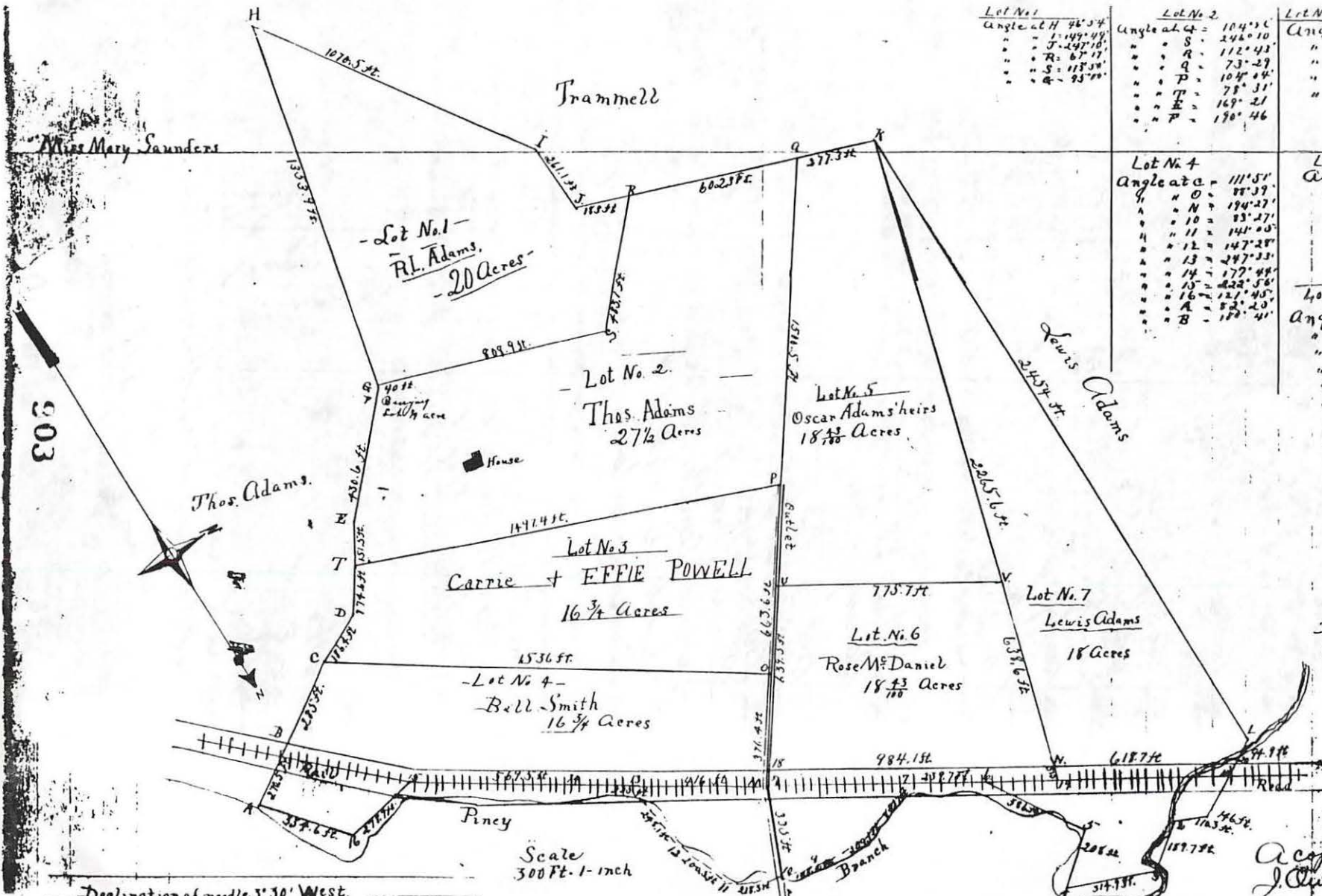
45 50
This deed made this 3rd day of May 1897 between
Mary C. Saunders, part of the first part, and
Belle Smith, R. C. Adams, Charles Adams, Rose
Adams, Daniel Adams, (all of said Adams
deceased) the living children
of Cesar Adams deceased and the living children
of America Powell deceased (the said Cesar and
America having been children of the said
C. H. Adams deceased) parties of the second
part, who state that the above is a true and correct copy of the original

affection and upon the condition hereinafter expressed, which is to be performed before the estate hereby conveyed shall vest in the parties of the second part, or any of them, the party of the first part does grant, bargain, sell convey and do the parties of the second part (the said Belle Lynch, R. A. Adams, Lewis Adams and Rose M. Daniel to have each one-eighth, the said Thomas Adams to have two eighths the said children of Oscar Adams to have one eighth & the said children of America Parcel to have one eighth of the land hereby conveyed) the following described tracts of land located in Fairfax County Virginia

1st A tract containing about 50 acres which R. A. Dulany conveyed to Mary Q. Saunders by deed dated January 8th 1860 and recorded Libr B No 4 p 404 of the deed book of said County

2nd A tract containing about 19 acres which Lewis Johnson wife conveyed to the said Mary Q. Saunders by deed dated April 4th 1873 and recorded Libr X No 4 p 52 of the said deed book

This conveyance is made & is to take effect only upon condition that prior to March 1st 1897 the parties of the second part or some of them shall procure to be made under the direction of and confirmed by a decree of the Circuit Court of said County a partition among those entitled of the two aforesaid tracts of land and the tract of land containing about 50 acres in which the widow of the said R. A. Adams died seized and which she conveyed to the said Mary Q. Saunders by deed dated April 4th 1873 and which said partition is to be a complete final partition of the said three tracts of land and all of the same constituted by the said parties of the second part so that prior to March 1st 1897 the said land shall be allotted to & held by the said Belle Lynch, R. A. Adams, Lewis Adams and Rose M. Daniel each a full one eighth of the said land & of the right or claim of the said other or others by the said Thomas Adams 301 full two eighths of



Lot No. 1 Angle at H = 96° 54' " " J = 149° 49' " " R = 67° 17' " " S = 118° 38' " " Q = 93° 10'	Lot No. 2 Angle at G = 104° 36' " " S = 246° 10' " " Q = 112° 43' " " P = 73° 29' " " T = 104° 44' " " E = 78° 31' " " P = 169° 21'	Lot No. 3 Angle at G = 91° 56' " " O = 91° 21' " " C = 57° 21' " " D = 211° 52'
Lot No. 4 Angle at G = 111° 51' " " O = 88° 39' " " N = 194° 27' " " 10 = 83° 27' " " 11 = 141° 05' " " 12 = 147° 28' " " 13 = 247° 33' " " 14 = 177° 48' " " 15 = 222° 56' " " 16 = 121° 45' " " A = 52° 25' " " B = 128° 41'	Lot No. 5 Angle at K = 91° 53' " " V = 75° 37' " " U = 85° 59' " " S = 106° 31'	Lot No. 6 Angle at U = 94° 01' " " V = 104° 23' " " 19 = 235° 37' " " M = 67° 40' " " 1 = 119° 57' " " 2 = 241° 37' " " 3 = 120° 24' " " 4 = 60° 40' " " 5 = 261° 19' " " 6 = 208° 23' " " 7 = 228° 10' " " 8 = 163° 43' " " 9 = 169° 35' " " 10 = 78° 59' " " 18 = 165° 33'
Lot No. 7 Angle at K = 13° 34' " " L = 114° 36' " " 20 = 125° 06' " " W = 104° 23'	Lot No. 7 Angle at K = 13° 34' " " L = 114° 36' " " 20 = 125° 06' " " W = 104° 23'	

Scale 300 Ft. 1-inch
 Declination of needle 3° 30' West.
 A copy for record
 J. Alvord Perry & Co. Surveyors
 June 17th 1896

27388

THIS DEED, made this 31st day of March, 1978,
by and between BEULAH A. YOUNG, divorced and presently unmarried,
CLARA A. HONEY, widowed and presently unmarried, AGNES K. ADAMS,
widowed and presently unmarried, FLORENCE A. ATKISSON, widowed
and presently unmarried, OSCAR E. KROMBHOLZ and LOIS A. KROMBHOLZ,
his wife, Co-Executors under the Will of ALICE A. HALLOY, DEWILTON
A. ADAMS, widowed and presently unmarried, ETHEL V. ADAMS, unmar-
ried, CHARLES P. ADAMS and JEANETTE K. ADAMS, his wife, STANHOPE
P. ADAMS, unmarried, THOMAS E. ADAMS, JR., and MARY E. ADAMS, his
wife, BERT K. ADAMS and BETTY K. ADAMS, his wife, DONALD C. BAKER
and AGNES ELIZABETH A. BAKER, his wife, ROBERT L. ADAMS and KARHA
C. ADAMS, his wife, NORMAN GRESHAM and ANN A. GRESHAM, his wife,
WILLIAM M. VIPPERMAN and JOAN V. VIPPERMAN, his wife, JOHN ADAMS
and MONA ADAMS, his wife, all heirs under the Estate of THOMAS S.
ADAMS, parties of the first part, and HAROLD O. MILLER, Trustee,
empowered to sell, convey, encumber, contract to sell, execute
deeds, easements or any other instruments or documents necessary
to the use, enjoyment and sale of the subject property, party of
the second part;

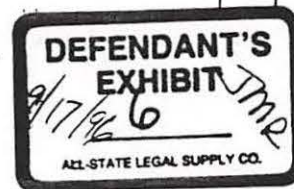
Ret. To:
Harold Miller, Esq.

W I T N E S S E T H :

THAT, for and in consideration of the sum of Ten Dollars
(\$10.00), the receipt of which is hereby acknowledged, the said
parties of the first part do hereby grant, bargain, sell and
convey unto the party of the second part, in fee simple and with
except as to existing cemetery,
General Warranty of Title, all of that certain lot or parcel of
land, with its improvements and appurtenances thereunto belong-
ing, located in the County of Fairfax, Commonwealth of Virginia,
and more particularly described in Attachment A attached hereto
and made a part hereof.

Also conveyed by this deed is a right of way from the land
herein conveyed and described in the Deed to Thomas S. Adams

904



C97823

4865 14



which was recorded in Deed Book F6 at Page 116 among the land records of Fairfax County, Virginia, as follows:

"A road fifteen feet wide from G, the southwest corner of the land 880 feet along the line of Mrs. Adams to near a pair of bars and across Mrs. Mary C. Sanders land S. 32° E. 320 feet to a point near a pair of bars at her stable; thence, passing near her house and with the present outlet used by her through her land and through R. L. Adams to the county road, but, nevertheless, the same parties of the first part reserve to themselves the right to erect as many gates across the land hereby granted for a right of way from the southwest corner of the land hereby conveyed to Thomas S. Adams to the county road as may be deemed necessary."

Said property herein conveyed is the same property transferred by inheritance to the parties of the first part listed

above as heirs under the Estate of Thomas S. Adams (SEE AFFIDAVIT ATTACHED HERETO AND MADE A PART HEREOF).

This conveyance is made subject to any and all easements, restrictions and rights of way of record, and existing cemetery.

The parties of the first part covenant that they have the right to convey the said land to the party of the second part; that they have done no act to encumber the same and that the party of the second part shall have quiet and peaceable possession thereof; and further that they, the parties of the first part, will execute such further assurances to and of the said land as may be deemed requisite.

WITNESS the following signatures and seals:

Beulah A. Young (SEAL)
BEULAH A. YOUNG
Clara A. Money (SEAL)
CLARA A. MONEY
Agnes K. Adams (SEAL)
AGNES K. ADAMS
Florence A. Atkisson (SEAL)
FLORENCE A. ATKISSON
Oscar E. Kromholz (SEAL)
OSCAR E. KROMHOLZ
Lois A. Kromholz (SEAL)
LOIS A. KROMHOLZ

Wilton A. Adams (SEAL)
WILTON A. ADAMS

Ethel V. Adams (SEAL)
ETHEL V. ADAMS

Charles P. Adams (SEAL)
CHARLES P. ADAMS

Jeanette K. Adams (SEAL)
JEANETTE K. ADAMS

Stanhope B. Adams (SEAL)
STANHOPE B. ADAMS

Thomas E. Adams, Jr. (SEAL)
THOMAS E. ADAMS, JR.

Mary E. Adams (SEAL)
MARY E. ADAMS

Bert K. Adams (SEAL)
BERT K. ADAMS

Betty K. Adams (SEAL)
BETTY K. ADAMS

Donald C. Baker (SEAL)
DONALD C. BAKER

Agnes Elizabeth A. Baker (SEAL)
AGNES ELIZABETH A. BAKER

Robert L. Adams (SEAL)
ROBERT L. ADAMS

Karma C. Adams (SEAL)
KARMA C. ADAMS

Norman Gresham (SEAL)
NORMAN GRESHAM

Anna G. Gresham (SEAL)
ANNA G. GRESHAM

William H. Vipperman (SEAL)
WILLIAM H. VIPPERMAN

Joan A. Vipperman (SEAL)
JOAN A. VIPPERMAN

John Adams (SEAL)
JOHN ADAMS

Hona Adams (SEAL)
HONA ADAMS

Tax Paid
Sec 58-54 600.75
Sec 58-55.1 400.75
Sec 58-54.1 400.75
Consideration 400.915 60

4865 PAGE 16

DIST OF COL
STATE OF DEWILTON A. ADAMS
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this
30 day of MARCH, 1978, by DEWILTON A. ADAMS.

[Signature]
Notary Public

My Commission expires: My Commission Expires Jan 31 1980

DIST OF COL
STATE OF ETHEL V. ADAMS
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this
30 day of MARCH, 1978, by ETHEL V. ADAMS.

[Signature]
Notary Public

My Commission expires: My Commission Expires Jan 31 1980

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

The foregoing instrument was acknowledged before me this
01 day of MARCH, 1978, by CHARLES P. ADAMS and
JEANETTE K. ADAMS.

[Signature]
Notary Public

My Commission expires: MAY 6, 1978

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

The foregoing instrument was acknowledged before me this
15 day of APRIL, 1978, by STANHOPE P. ADAMS.

[Signature]
Notary Public

My Commission expires: 12-14-80

CITY
STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

30 The foregoing instrument was acknowledged before me this
day of APRIL, 1978, by THOMAS E. ADAMS, JR.,
and MARY E. ADAMS.

[Signature]
Notary Public

My Commission expires: July 9, 1978

STATE OF Virginia
COUNTY OF Fulton, to-wit:

The foregoing instrument was acknowledged before me this
5 day of April, 1978, by BERT K. ADAMS and BETTY
K. ADAMS.

John B. Johnson
Notary Public

My Commission expires: 1-29-80



STATE OF Virginia
COUNTY OF Fulton, to-wit:

The foregoing instrument was acknowledged before me this
20 day of June, 1978, by DONALD C. BAKER and
AGNES ELIZABETH A. BAKER.

John B. Johnson
Notary Public

My Commission expires: 6-2-80



STATE OF Virginia
COUNTY OF Fulton, to-wit:

The foregoing instrument was acknowledged before me this
1st day of April, 1978, by ROBERT L. ADAMS and
KARMA C. ADAMS.

P. D. Bailey
Notary Public

My Commission expires: 3/14/81



STATE OF Virginia
COUNTY OF Fulton, to-wit:

The foregoing instrument was acknowledged before me this
2nd day of April, 1978, by NORMAN GRESHAM and
AIMEA GRESHAM.

P. D. Bailey
Notary Public

My Commission expires: 6-25-80



STATE OF Virginia
COUNTY OF Fulton, to-wit:

The foregoing instrument was acknowledged before me this
1st day of April, 1978, by WILLIAM M. VIPPER-
MAN and JOAN M. VIPPERMAN.

P. D. Bailey
Notary Public

My Commission expires: 3/14/81

4885 18

STATE OF Virginia
COUNTY OF Fairfax, to-wit:

The foregoing instrument was acknowledged before me this
31st day of March, 1978, by BEULAH A. YOUNG

John B. Hensley
Notary Public

My Commission expires: My Commission Expires January 24, 1982.

STATE OF Virginia
COUNTY OF Fairfax, to-wit:

The foregoing instrument was acknowledged before me this
17 day of April, 1978, by CLARA A. MONEY.

John B. Hensley
Notary Public

My Commission expires: _____

STATE OF Virginia
COUNTY OF Fairfax, to-wit:

The foregoing instrument was acknowledged before me this
13th day of April, 1978, by AGNES K. ADAMS.

G. J. Briley
Notary Public

My Commission expires: 3/14/81

STATE OF Virginia
COUNTY OF Fairfax, to-wit:

The foregoing instrument was acknowledged before me this
15th day of April, 1978, by FLORENCE A. ATKISSON.

W. H. Holt
Notary Public

My Commission expires: 12-14-80

STATE OF Virginia
COUNTY OF Fairfax, to-wit:

The foregoing instrument was acknowledged before me this
13 day of April, 1978, by OSCAR E. KROMBOLZ and
LOIS A. KROMBOLZ.

Walter A. Kromholz III
Notary Public

My Commission expires: My Commission Expires August 14, 1980

STATE OF LOUISIANA,
 PARISH OF LAFAYETTE, to-wit:

The foregoing instrument was acknowledged before me this
 11th day of April, 1978, by JOHN ADAMS and MONA
 ADAMS.



John F. Morton
 Notary Public

Commission expires: at death

ATTACHMENT A
LEGAL DESCRIPTION

Property of
THOMAS S. ADAMS
Centreville District
Fairfax County, Virginia

Beginning at an iron pipe found in the southeast corner of the property of Keystone Financial & Service Corporation, Incorporated, (Proposed Cedar Run Subdivision) in the northerly line of Bird, said point of beginning being $S73^{\circ}34'21"E$ 685.05 ft and $S73^{\circ}04'46"E$ 1096.40 ft from a point in the easterly right-of-way line on Hunter Mill Road and running with the line common to Keystone Financial & Service Corporation, Inc. and the lands of Kitchen and Bird; thence continuing from the point of beginning and running with the easterly line of Keystone Financial & Service Corporation, Inc. (Proposed Cedar Run Subdivision) $N15^{\circ}54'37"E$ 1604.45 ft to an iron pipe found marking the southwest corner of Francis A. Young; thence leaving the line of Keystone Financial & Service Corporation, Inc. and running with the southerly line of Young $S59^{\circ}47'38"E$ 775.54 ft to a point in the westerly line of the land of Fairfax County Park Authority; thence leaving the line of Young and running with the westerly, southerly and easterly lines of the Fairfax County Park Authority the following courses and distances: $S14^{\circ}23'59"W$ 351.03 ft to an iron pipe found, $S69^{\circ}43'38"E$ 1497.40 ft to an iron pipe set, $N31^{\circ}45'22"E$ 174.60 ft to an iron pipe found, $N63^{\circ}37'22"E$ 186.40 ft to an iron pipe found and $N54^{\circ}49'22"E$ 555.50 ft to a point in the middle of Piney Branch (passing through the southerly and northerly lines of the VEPCO right-of-way at 321.14 ft and 422.28 ft respectively and passing through an iron pipe set on the westerly bank of Piney Branch at 531.25 ft); thence continuing with the line of the Fairfax County Park Authority along Piney Branch $S16^{\circ}04'38"E$ 319.43 ft to a point in the northerly right-of-way line of VEPCO; thence running through the VEPCO right-of-way $S23^{\circ}38'01"W$ 114.71 ft to a point in the southerly line of the right-of-way; thence continuing with the

westerly lines of the Fairfax County Park Authority along a mean of the meanders of Piney Branch the following courses and distances: S27°58'54"W 67.83 ft to an iron pipe found in the center of Piney Branch, S09°23'54"E 57.52 ft, S57°07'22"E 24.66 ft, S34°42'42"W 143.91 ft, S27°55'43"E 83.27 ft, S16°43'34"W 91.12 ft, S87°55'13"E 54.21 ft, S36°52'00"W 126.69 ft, S39°09'06"E 95.80 ft and S42°31'21"E 121.19 ft to a point in the northerly line of Hawthorne; thence leaving the line of the Fairfax County Park Authority and running with the line of Hawthorne N87°27'49"W 1199.95 ft (passing through an iron pipe at 68.91 ft on the west bank of Piney Branch) to a stone found marking the northeast corner of the property of Prichard and Trotter; thence with the northerly and westerly lines of Prichard and Trotter N73°18'51"W 807.47 ft to an iron pipe found and S40°38'21"W 482.09 ft to an iron pipe found in the northerly line of Bird; thence leaving the line of Prichard and Trotter and running with the northerly line of Bird N71°52'37"W 878.86 ft to the point of beginning and containing 62.3669 acres.

LESS AND EXCEPT: a portion of the VEPCO right-of-way running through the northeasterly section of the above described property more particularly described as follows:

Beginning at a point in the northerly line of the VEPCO right-of-way, said point being S16°04'38"E 319.43 ft from a point in the center of Piney Branch in the westerly line of the Fairfax County Park Authority; thence continuing from the point of beginning and running through the VEPCO right-of-way S23°38'01"W 114.71 ft to a point in the southerly line of the right-of-way; thence through the land of Adams along the arc of a curve to the left (R=2782.72 ft) 362.89 ft to a point marking a corner common to the Fairfax County Park Authority; thence through the right-of-way to a point in the northerly line of the right-of-way marking another corner common to Adams and the Fairfax County Park Authority; thence through the land of Adams along the arc of a curve to the right (R=2882.72 ft) 303.08 ft to the point of beginning and containing 0.7645 acres.

Charles R. Johnson, L.S.

4865 MAY 22

AFFIDAVIT

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to wit

I, Stanhope Adams, residing at 9515 Clark Crossing Road, Vienna, Virginia, being first duly sworn depose and say that my father, Thomas S. Adams, the former owner of the tract of land designated on the Tax Plats of the County of Fairfax, as 62 acres more or less, died intestate on July 7, 1941, survived by his widow, Ida Adams, who died on July 11, 1971, and the following nine children as his only heirs at law: Beulah Young; Clara Money; Thomas E. Adams; Florence Atkisson; Alice Malloy; DeWilton Adams, Ethel V. Adams; Charles P. Adams and Stanhope Adams. The said Alice Malloy died testate on May 24, 1969, her will having been filed and admitted to probate in Fairfax County, Virginia. The said Thomas E. Adams died intestate on March 24, 1975, survived by his spouse, Agnes Adams and the following seven children as his only heirs at law: Thomas E. Adams, Jr.; Bert K. Adams; Agnes Elizabeth Baker; Robert L. Adams; Anne Gresham; Joan Vipperman and John Adams.

That there are no other children or children of any deceased children of the said Thomas S. Adams or the said Thomas E. Adams, other than those stated above. All of the above parties being over the age of twenty-one years and sui juris.

Subscribed and sworn to before me this

Twenty-second day of April 1978

Stanhope Adams
Stanhope Adams

Eleonora C. Rind
Notary Public

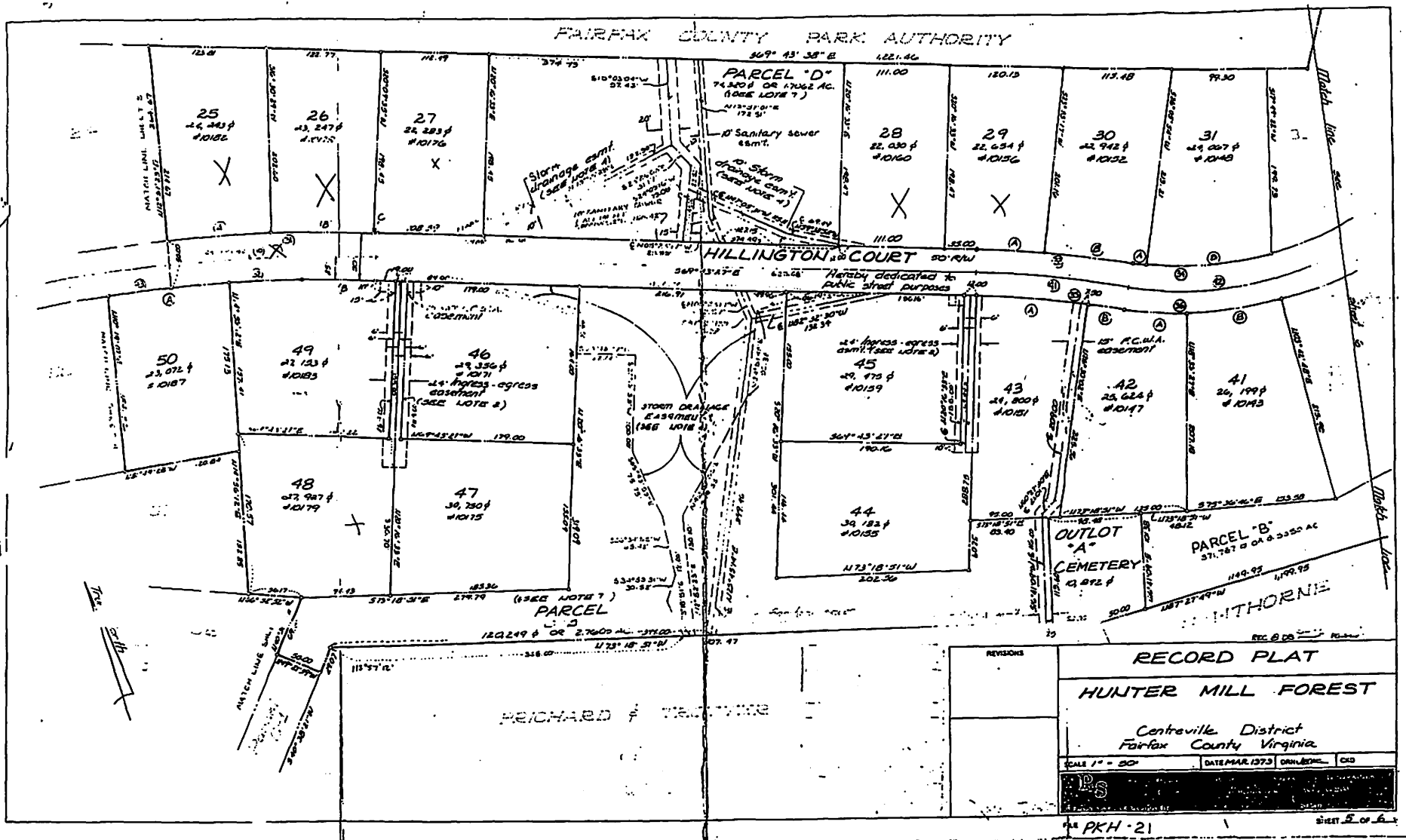
My Commission Expires May 31, 1978

This instrument with certificate annexed, admitted to record-Office of Circuit Court Fairfax County, Va. MAY 5 878 at 12:30 p.m.

Tester:

James A. [Signature] Clerk

FAIRFAX COUNTY PARK AUTHORITY



DEFENDANT'S
EXHIBIT
9

297823

LOT NO. 2
1896 PARTITION
DB. X-5, PAGE 359
THOS. ADAMS

PARCEL "C"

SECTION 2
MEADOWS SUB.
STONE "G"

LOT 43

OUTLOT "A"
DB. 5244,
PAGE 744

42" POPLAR

MODERN GRAVESTONE

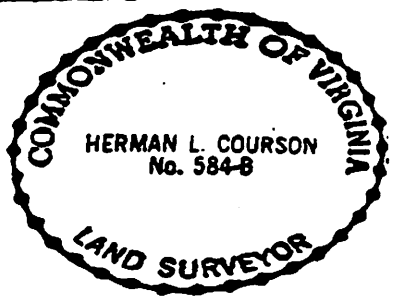
15 ACRE PARCEL
DB. P-5,
PAGE 361

LOT 42

HUNTER HILL FOREST SUBDIVISION

PARCEL "B"

• DENOTES GRAVESTONE LOCATIONS



SPRINGFIELD ENGINEERING ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS

1346 OLD BRIDGE ROAD
WOODBRIDGE, VIRGINIA 22192
(703) 690-7534 (FAX) 703-690-4126

DRAWN BY RES.	DATE AUG. 29, 1996	SCALE 1" = 20'
CHECKED BY	DATE	REVISED
FIELD BOOK	HARD COPIES	JOB NUMBER 993.001

C97823

LOT NO. 2
1896 PARTITION
DB. X-5, PAGE 359
THOS. ADAMS

PARCEL "C"

OUTLOT "A"

DB. 5244,
PAGE 744

SECTION 2
WENDOVER SUB.
STONE "G"

15' R/W

15 ACRE PARCEL
DB. P-5,
PAGE 361

MODERN GRAVESTONE

GRAVESTONES
LOCATED ARE
CONFINED TO 30'
BY 45' (1350 S.F.)
AREA

PARCEL "B"

LOT 13

LOT 12

WILLIAMSON SUBDIVISION

■ DENOTES GRAVESTONE LOCATIONS

SPRINGFIELD ENGINEERING ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS

SPRINGFIELD

1346 OLD BRIDGE ROAD
WOODBIDGE, VIRGINIA 22192
(703) 690-7554 (FAX) 703-690-4126



DRAWN BY R.E.S.

DATE AUG. 29, 1996

SCALE 1" = 20'

CHECKED BY

DATE

REVISED

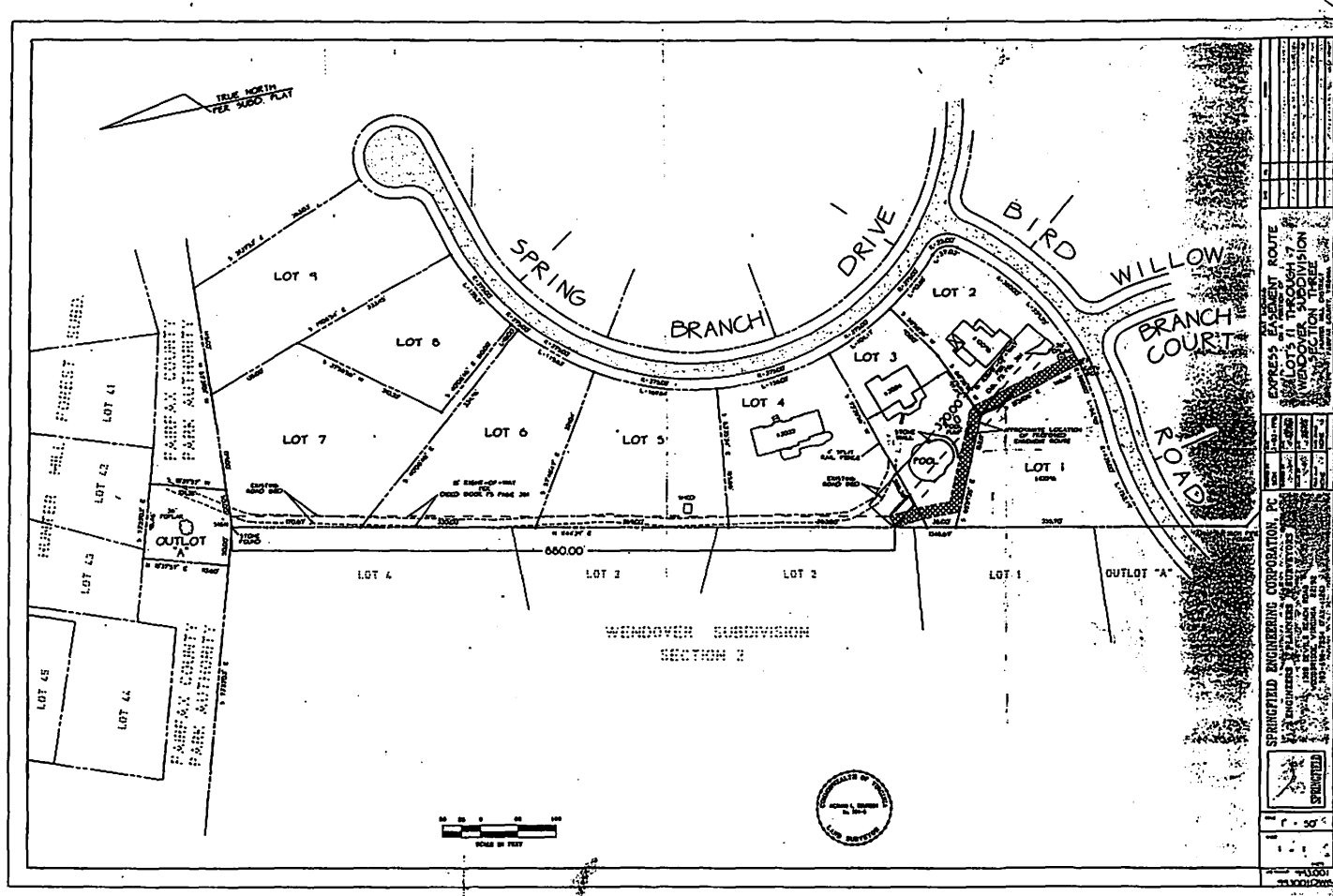
FIELD BOOK

HARD COPIES

JOB NUMBER

916

993.001



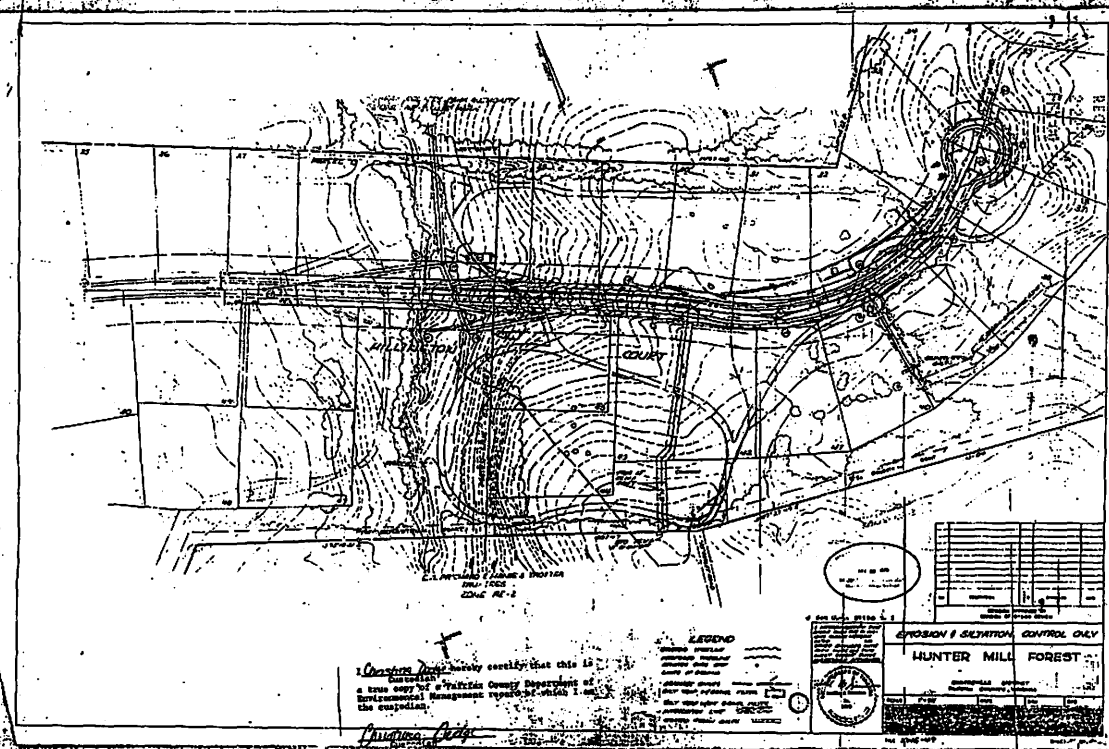


EXHIBIT 14

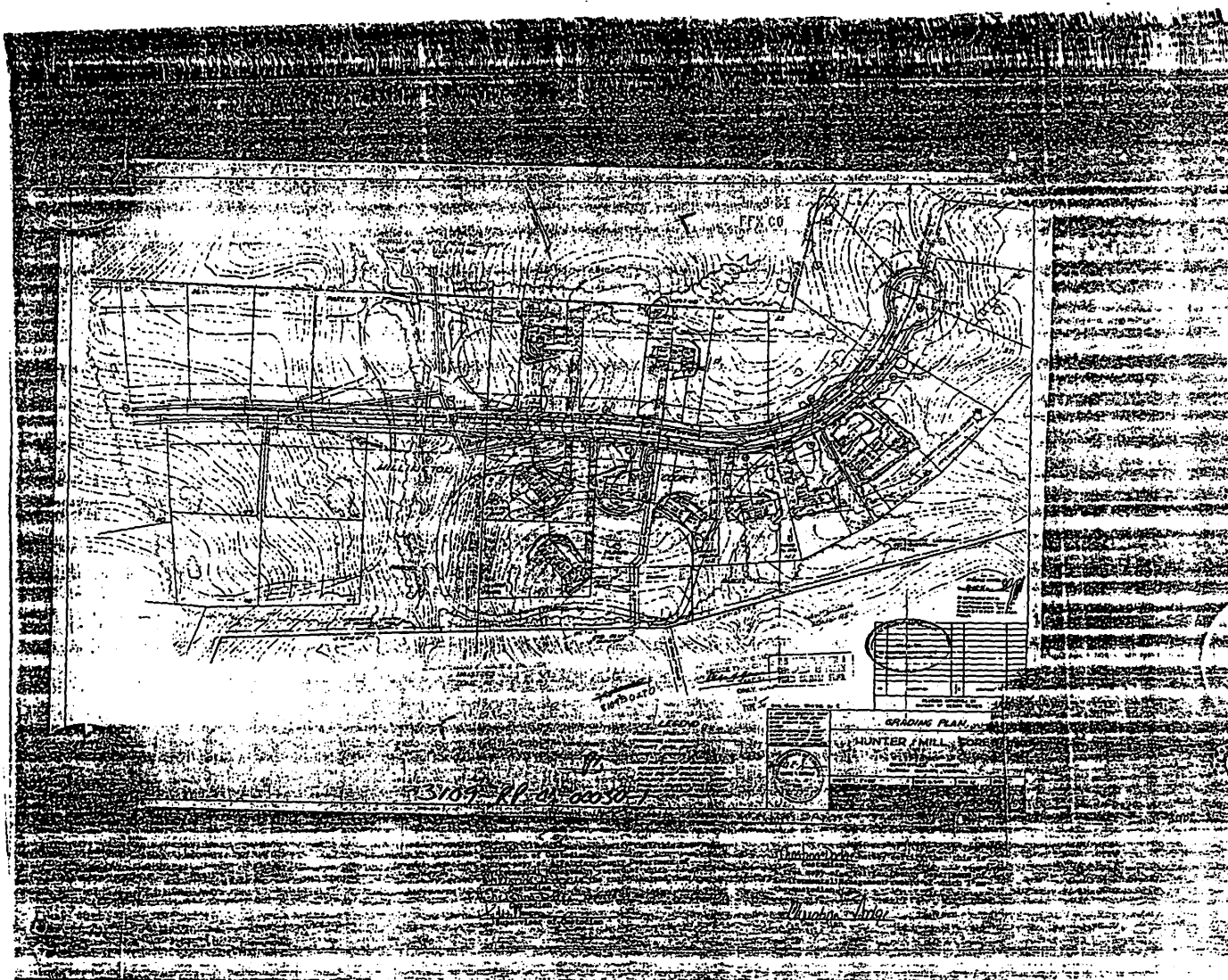


EXHIBIT 15

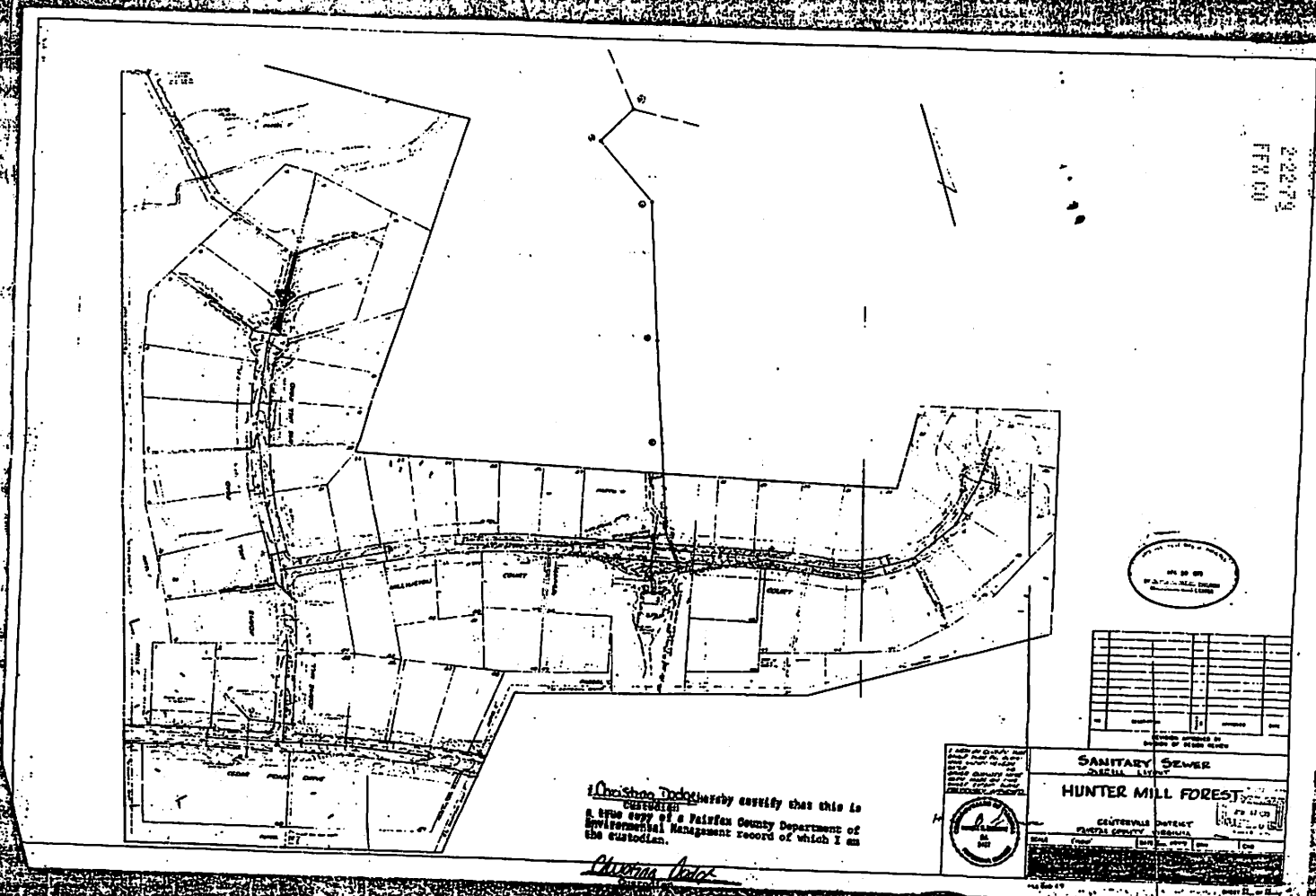


EXHIBIT 17

FAIRFAX COUNTY, VIRGINIA

SEP 11 1978

ROBERTA BURNETT & DORRIS
2000 UNIVERSITY AVENUE
SUITE 200
ARLINGTON, VIRGINIA 22202
(703) 261-1111

SEP 11 1978

SEP 11 1978

September 11, 1978

Chief Engineer
Fairfax County
1100 Page Road
Falls Church, Virginia 22044

Re: Application for Preliminary Plan for Former Ardening Application

Application 71-0-000 was approved for M-1 from M-2
of the subject property. The application was approved
on the condition that the applicant should file a
preliminary plan for the subject property. The
applicant has now filed the preliminary plan for the
subject property. The preliminary plan is being
reviewed by the Planning Commission. The Planning
Commission will meet on September 11, 1978, at 10:00
a.m. in the Board Room of the Planning Commission.
The applicant is requested to be present at the
meeting. The applicant is requested to bring a
copy of the preliminary plan to the meeting. The
applicant is requested to bring a copy of the
preliminary plan to the meeting. The applicant is
requested to bring a copy of the preliminary plan
to the meeting. The applicant is requested to bring
a copy of the preliminary plan to the meeting.

O. 10/18



By the Board of Supervisors, Fairfax County, Virginia

September 11, 1978

For Application
1100 Page Road
Falls Church, Virginia 22044

Re: M-1 from M-2

1. Modification:

One of the purposes of this letter is to make you aware of a few items
relating to the preliminary plan for the subject property. The
applicant has now filed the preliminary plan for the subject
property. The preliminary plan is being reviewed by the
Planning Commission. The Planning Commission will meet on
September 11, 1978, at 10:00 a.m. in the Board Room of the
Planning Commission. The applicant is requested to be present
at the meeting. The applicant is requested to bring a copy of
the preliminary plan to the meeting. The applicant is requested
to bring a copy of the preliminary plan to the meeting. The
applicant is requested to bring a copy of the preliminary plan
to the meeting. The applicant is requested to bring a copy of
the preliminary plan to the meeting. The applicant is requested
to bring a copy of the preliminary plan to the meeting.

Only present:

ATLANTIC CO., INC.
1100 Page Road
Falls Church, Virginia 22044

1. Modification:

1. Modification:
September 11, 1978

For Application
1100 Page Road
Falls Church, Virginia 22044

1. Modification:

One of the purposes of this letter is to make you aware of a few items
relating to the preliminary plan for the subject property. The
applicant has now filed the preliminary plan for the subject
property. The preliminary plan is being reviewed by the
Planning Commission. The Planning Commission will meet on
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the preliminary plan to the meeting. The applicant is requested
to bring a copy of the preliminary plan to the meeting.

only present:

ATLANTIC CO., INC.
1100 Page Road
Falls Church, Virginia 22044

only present:

Chief Engineer
Fairfax County
1100 Page Road
Falls Church, Virginia 22044

September 11, 1978

For Application
1100 Page Road
Falls Church, Virginia 22044

1. Modification:
September 11, 1978

1. Modification:

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relating to the preliminary plan for the subject property. The
applicant has now filed the preliminary plan for the subject
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applicant is requested to bring a copy of the preliminary plan
to the meeting. The applicant is requested to bring a copy of
the preliminary plan to the meeting. The applicant is requested
to bring a copy of the preliminary plan to the meeting.

1. Modification:

1. Modification:

1. Modification:
September 11, 1978

SEP 12 1978

I, Christina Dale, hereby certify that this is
a true copy of a Fairfax County Department of
Environmental Management record of which
Christina Dale is the custodian and that
Christina Dale reports to me.
Supervisor of Custodian

Christina Dale hereby certify that this is
a true copy of a Fairfax County Department of
Environmental Management record of which I am
the custodian.

Christina Dale

Mr. Phillip Gump
Fairfax County
Farming Building
Falls Church, Virginia 22040

Dear Mr. Gump:

I have conferred with Mr. Merrill Thompson of the Fairfax County Planning Board regarding the proposed subdivision of the property.

As previously stated, the Board of Supervisors approved your zoning and subdivision application. However, the Board of Supervisors has certain concerns regarding the proposed subdivision. These concerns are as follows:

1. The site plan shows a proposed subdivision of the property into two lots. The Board of Supervisors is concerned that the proposed subdivision is not in the public interest.

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FAX



Fairfax County, Virginia

MEMORANDUM

To: Chief, Planning Engineering Branch - 201
From: Larry Gandy, Assistant Supervisor - 4
Subject: Hunter Mill Road - 201
Date: 10/10/78

The Fairfax County Park Authority staff has reviewed the preliminary site plan for the proposed subdivision of the property. The staff has identified several concerns regarding the proposed subdivision. These concerns are as follows:

1. The site plan shows a proposed subdivision of the property into two lots. The Board of Supervisors is concerned that the proposed subdivision is not in the public interest.

cc: 11

Mr. Phillip Gump
Fairfax County
Farming Building
Falls Church, Virginia 22040

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cc: 11



Fairfax County, Virginia

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To: Chief, Planning Engineering Branch - 201
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cc: 11

SUPERSEDED, SEE MEMO OF 9-26-78

Mr. Phillip Gump
Fairfax County
Farming Building
Falls Church, Virginia 22040

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cc: 11

FAIRFAX COUNTY, VIRGINIA

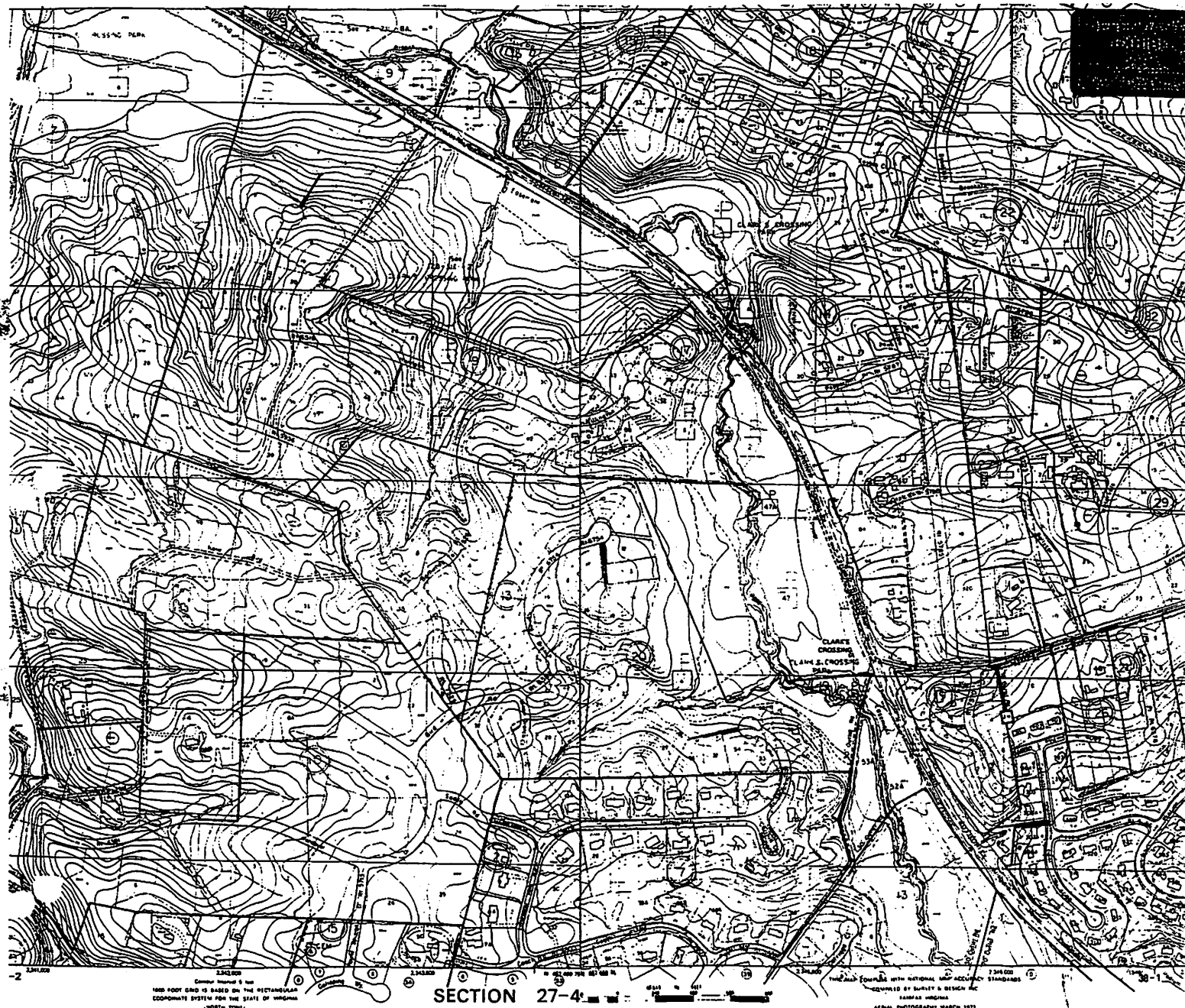
MEMORANDUM

To: Chief, Planning Engineering Branch - 201
From: Larry Gandy, Assistant Supervisor - 4
Subject: Hunter Mill Road - 201
Date: 10/10/78

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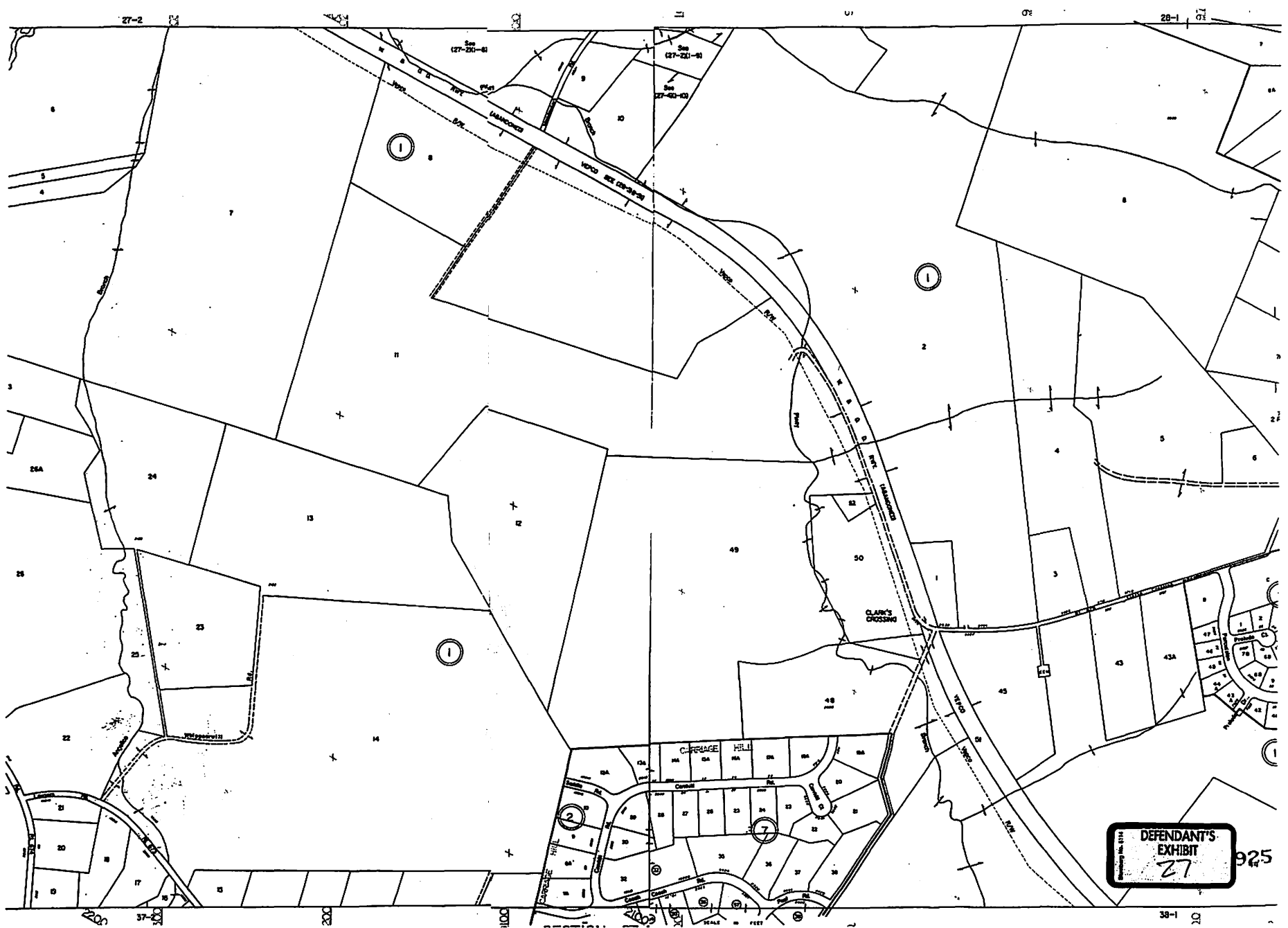
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cc: 11





DEFENDANT'S
EXHIBIT
76



COPY

1

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----- X
GEORGE ATKISSON, :
AND :
CARLOTTA T. ATKISSON, :
 :
Plaintiffs, : IN CH. NO. 97823
v. :
WEXFORD ASSOCIATES, INC., et al., :
 :
Defendants. :
----- X

Fairfax, Virginia

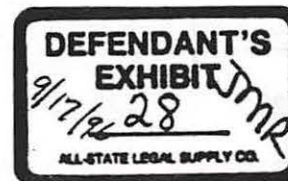
Monday, December 11, 1995

Deposition of

CARLOTTA T. ATKISSON

called for examination by counsel for the intervenors,
pursuant to notice, in the office of Anderson and Corrie,
12600 Fair Lakes Circle, Suite 220, Fairfax, Virginia,
22033, commencing at 1:18 o'clock, p.m., before
Hal G. Mann, court reporter and Notary Public for the
Commonwealth of Virginia, when were present on behalf of
the respective parties:

Reported by: Hal G. Mann



C97823

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1 A. In 1945.

2 Q. Was that here in Virginia or --

3 A. No, in Fort Wayne, Indiana. He was in
4 the service. That's where I lived at that time.

5 Q. That would have been while he was
6 getting training, basic training, or he was --

7 A. No. He was -- just before the war
8 ended. He was on his own.

9 Q. Right. 1945.

10 A. Yes.

11 Q. I'm sorry. Gosh. When did you first
12 visit the Adams property with Thomas Adams?

13 A. I would say -- I don't really remember
14 for sure, but I would think maybe around the
15 summer of 1947. I'm not certain of that date.

16 Q. Okay. That's your best recollection is
17 around that time.

18 A. Yes. See, we were married in 1946.
19 Probably the spring of 1947, I would think. But
20 I don't really recall.

21 Q. And did you -- did you live there for a
22 period of time on the Adams --

23 A. At one point we did.

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1 Q. In the late 1940's.

2 A. Yes.

3 Q. Do you recall what the property was
4 like back then, what it was used for?

5 A. They raised cattle. Not -- not really
6 cattle, steer, I think and, you know, had the
7 gardens and so forth.

8 Q. And Thomas Adams and Ida Adams lived
9 there at that time?

10 A. No.

11 Q. No.

12 A. Just Ida.

13 Q. Just Ida.

14 A. I mean --

15 Q. Oh, that's right. I'm sorry.

16 A. She --

17 Q. Mr. Adams passed away in 1941.

18 A. Mr. Adams died.

19 Q. Right. Do you ever recall the -- any
20 cemeteries back then?

21 A. Oh, yes.

22 Q. What did -- what cemeteries do you
23 recall back in -- late 1940's when you lived

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1 mother was buried there.

2 Q. What was her name? Do you recall?

3 A. She was a Saunders.

4 Q. Was it -- do you recall ever going to
5 any funerals at the -- at the cemetery?

6 A. No.

7 Q. No.

8 A. I did not.

9 Q. So you yourself really never visited
10 the cemetery because none of your relatives are
11 buried there.

12 A. No. Only went up there -- and it was
13 pointed out to me, you know, by the children and
14 by the aunts and so forth, but I would have no
15 reason to go up there, if I weren't going on over
16 further. It was all very close. I mean, you --

17 Q. Right.

18 A. -- could see it from the house.

19 Q. Right.

20 A. It was just on up there.

21 Q. It was just on the other side of the --
22 of the road that led up to the house.

23 A. Uh-huh.

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1 Q. I'm not going to waste your time going
2 through these names.

3 A. No.

4 Q. But there are a lot of names here that
5 -- not knowing that you were originally from
6 Ohio. I was born in Ohio myself.

7 A. Oh.

8 Q. So I -- that wouldn't do either one of
9 us any good to try and get through that effort.
10 When you lived on that property back in the time
11 of this Atkisson property back in the late
12 1940's, did you ever use the easement road?

13 A. I've been on the easement road, yes.

14 Q. Was that back in the -- back in the
15 late 1940's?

16 A. Yes, but I've -- I've walked it more
17 than -- mostly walked it. Because I remember
18 being -- going from Clark's Crossing Road -- on
19 that road to get holly and up through the woods.
20 And, of course, I've been on this end going back
21 towards this old Bears House.

22 Q. Right.

23 A. So I've been on it. But I could not

1 any more tell you, except for where it starts and
2 where it ends, where it went.

3 Q. Right. Do you --

4 A. It is all grown up.

5 Q. What was -- what was the road you
6 normally took when you were living there back in
7 the 1940's to get to the house when you stayed
8 there?

9 A. Well, we usually used the train,
10 because, you see, that -- we were --

11 Q. You were working downtown.

12 A. Yes. And the train was right down at
13 the bottom of the hill. So you just walked down
14 and got the train in the morning and drove it --
15 and came out at night. And then if the weather
16 was real bad, sometimes we walked in, sometimes
17 we parked at Aunt Beulah's who lived at Clark's
18 Crossing Road.

19 Q. So when you were living there back in
20 the 1940's --

21 A. Right.

22 Q. -- you would normally, the way you
23 normally took transportation was to take the

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1 train.

2 A. Yes, or else leave your car over at --

3 Q. Was there a train station very close
4 by?

5 A. Yes, right there.

6 Q. Was it on -- was it right along where
7 the -- sort of the north end of the property,
8 then?

9 A. It was -- there was a regular train
10 station with a little house --

11 Q. Right.

12 A. -- at Clark's Crossing.

13 Q. Oh, okay.

14 A. But then on up, right on the Adams
15 property, because George's uncle, or I mean
16 his -- his grandfather had some pull with
17 somebody. And they made a stop --

18 Q. Wow.

19 A. -- right at the Adams place, right
20 before you got to Difficult Bridge -- I mean, to
21 Piney Branch. In other words, you came down --
22 just down the hill. You could run down the hill
23 and catch it right there.

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1 Q. You had your own private train stop.

2 A. That was it.

3 Q. That's incredible. That's really
4 great. Was there a road leading to the train
5 stop?

6 A. Yes.

7 Q. That road --

8 A. Well, a path.

9 Q. A path that you walked on.

10 A. Yes.

11 Q. Was there -- how were -- if you were to
12 go away on the weekend, or take your car -- did
13 you have a car back then in the late 1940's?

14 A. We didn't have one at first.

15 Q. Okay.

16 A. And then later -- his aunt lived right
17 at Clark's Crossing. And, you know, you could
18 park there. She had a home there.

19 Q. So you -- so you could walk --

20 A. Just so the weather was --

21 Q. -- you could walk from the Adams house
22 to Clark's Crossing and then you're --

23 A. On the railroad track, you could walk

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1 on the railroad track.

2 Q. On the railroad track, down to Clark's
3 Crossing.

4 A. Yes.

5 Q. And then there you could park the car
6 if you wanted to. And that was easier than
7 taking the other road, is what you're saying?

8 A. Yes, it -- yes.

9 Q. Because the other road wasn't that well
10 paved, or anything.

11 A. No.

12 Q. It was just a -- it was dirt road,
13 pretty much. Did -- was -- were there cars
14 parked normally on the 15 acre parcel, I mean, on
15 the Thomas Adams -- near the house, did he park
16 cars up there normally?

17 A. I don't remember.

18 Q. You don't remember.

19 A. I mean, I don't know what -- I'm sure
20 at some point they did.

21 Q. When -- did you -- did you all ever
22 come back for the holidays and visit the house,
23 do you recall, over the years, from after you

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1 lived there in the 1940's, then you had your own
2 house in the 1950's. Would you go up there very
3 often to visit --

4 A. Not very often --

5 Q. -- the grandmother.

6 A. -- because my mother -- that was my
7 great-grandmother or -- his great-grandmother --

8 Q. Right.

9 A. -- his grandmother. But out mother-in-
10 law lived in town, you know.

11 Q. So --

12 A. The family --

13 Q. Right, the family --

14 A. The Atkisson family lived in town.

15 Q. -- lived in D.C. And that's where you
16 lived in the 1950's.

17 A. Yes.

18 Q. Did you -- you lived in D.C.?

19 A. We lived there for a while.

20 Q. So it was actually going out to visit
21 the grandmother out on the family farm.

22 A.. Yes.

23 Q. When you went out to visit there, how

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1 would you get there?

2 A. We took the bus to Beulah Road, and
3 walked up Beulah Road, or walked -- sometimes we
4 took it to -- to the railroad -- the tracks in
5 Vienna, in the middle of Vienna and walked up.

6 Q. Wow.

7 A. Sometime --

8 Q. That's quite a hike.

9 A. I mean, but we didn't think much of it
10 actually in those days. Sometimes someone would
11 come along, maybe, and give us a ride, but -- we
12 hated the city so badly, we did go out there, you
13 know, on the weekends. But that's the way we got
14 there, was by bus.

15 Q. Was there -- other than that, was there
16 other roads leading to the property other than
17 that easement road that goes -- the one that you
18 just described as sort of an easement that's the
19 issue in this case, that kind of goes south from
20 the property? Was there any --

21 A. I don't know.

22 Q. -- any roads going north at all, that
23 you recall?

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1 A. I don't recall.

2 Q. Do you have an interest in the Adams
3 family cemetery, which is the subject of this
4 suit?

5 A. Only through my husband. If -- if
6 something happened to him, I guess I would have.

7 Q. So through inheritance is the only way
8 you would have an interest. But you don't
9 have --

10 A. I really don't know.

11 Q. Okay.

12 A. I don't -- I really don't know.

13 Q. Yes. I'm not trying to trick you. I'm
14 just trying to understand if you -- if you -- if
15 you understand or have an opinion as to how you
16 think you may have an interest in this case, as
17 far --

18 A. I guess just as the wife of George.

19 Q. Okay. I just want to show -- I'm not
20 going to make this an exhibit. It's too big.
21 It's the only copy I have.

22 This would be what -- I'm showing
23 you -- it's called plat showing lot A, Hunter

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1 Mill Forest, as recorded in deed book 5244, at
2 page 774. It's prepared by Alexandria Surveys,
3 Inc., dated August 14, 1991.

4 And it's been introduced. Oh, that's
5 great. Okay. Maybe we will make it an exhibit.
6 I don't know.

7 We'll just -- I'm going to show you a
8 plat and try to ask you to see if can recall
9 where some of things might have been.

10 This is a -- this is a plat of the
11 area. This would be -- the house would have --
12 the house would have been somewhere in this
13 direction here located on the 15 acres.

14 This would have been the 15 acre
15 portion. And this is what we call partition lot
16 number two. And it's depicted here as lot number
17 two on the plat.

18 This would have been the easement road
19 coming up this way. Now, I think the house would
20 have been somewhere over here.

21 MR. SNYDER: What's the question?

22 BY MR. GOGAL:

23 Q. Now, the question is: Could you

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1 describe what was -- what was located on this
2 side of the cemetery? This is the -- this would
3 have been the sort of the western -- the western
4 portion of lot number two, west of the cemetery.
5 That's the area that you would have gone to, I
6 believe.

7 A. Yes.

8 Q. What was -- what was located over
9 there?

10 A. It was just a field and a cemetery.

11 Q. Okay.

12 A. And the old road, you know, came -- I
13 guess, down through there.

14 Q. Do you recall any other landmarks back
15 then? Was there -- do you recall the large
16 poplar tree?

17 A. Oh, no. I -- I really don't.

18 Q. You don't.

19 A. I wouldn't know any of that stuff.

20 Q. Okay.

21 A. No. All I remember about trees, there
22 was a -- a big pine tree on this side. I would
23 say it was up in here somewhere (indicating), the

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1 A. I'll I know is the cemetery was up
2 there. There was a place over here where there
3 was a little slope that I used to walk up to.
4 And there was a corn crib, and a chicken house,
5 and -- and the house.

6 Q. Right.

7 A. And they were all quite close. I mean,
8 the garden, I suppose, was right in here.

9 (Indicating)

10 Q. Okay.

11 A. Although maybe not. Maybe it was
12 closer.

13 Q. All right.

14 A. Well, but I really --

15 Q. That was a long time ago.

16 A. That was a long time ago.

17 Q. Right.

18 A. And I had -- I had no reason, I mean,
19 all I did was stay there at night and go to work
20 in the morning. And -- I really don't know
21 anything about that.

22 Q. All right. Let me ask you: How often
23 over the -- over the years would you and George

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1 go visit the property? I mean, after you lived
2 there in the 1940's and there was a period when
3 you used to go there on the weekends because you
4 wanted to get out of the city. Let's say, in the
5 1960's and 1970's and 1980's, how often would you
6 say?

7 A. Oh, when we -- when we -- well, we --
8 we didn't live in there so long. Not every
9 weekend we didn't go, but after we lived there --
10 and -- you mean after we --

11 Q. After you --

12 A. -- moved to our home --

13 Q. Yes.

14 A. -- in Oakton?

15 Q. Right. When was that that you move
16 to the home in Oakton?

17 A. In 1950.

18 Q. In the -- in 1950.

19 A. Yes.

20 Q. And how often would you, in the 1950's,
21 how often would you go up there?

22 A. Well, not that often. Sometimes we'd
23 take his mother over to -- to Aunt Beulah's, you

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1 know, and she would walk up.

2 Q. She would walk up.

3 A. Walk up.

4 Q. From Clark Crossing.

5 A. On the railroad.

6 Q. So you never really used that easement
7 road to get up there.

8 A. I didn't.

9 Q. All right. It was just easier to park
10 at Clark Crossing and walk up.

11 A. Oh, well -- we were -- when we used the
12 train. Yes, that was --

13 Q. What about when you drove there, like
14 in the 1960's and 1970's? Would you have driven
15 there instead of using the train?

16 A. We didn't have a car.

17 Q. Okay.

18 A. Oh, you mean later on?

19 Q. Later on.

20 A. No, we took them -- took them to -- we
21 usually went over to Aunt Beulah's on -- at
22 Clark's Crossing.

23 Q. And that would have been in the 1960's

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1 and 1970's, you would have probably driven to
2 Clark's Crossing and then walked up.

3 A. If we went. We didn't really go that
4 often.

5 MR. GOGAL: I don't think I have any
6 more questions. I'm going to turn it over to
7 you, Barney, if you have any questions.

8 MR. GOODMAN: Yes, I've got a few.

9 EXAMINATION BY COUNSEL FOR THE DEFENDANT
10 BY MR. GOODMAN:

11 Q. Ms. Atkisson, my name is Barney
12 Goodman. And I represent Wexford and the other
13 individuals defendants, the homeowners.

14 A. Yes.

15 Q. And I -- I just want to ask you a few
16 questions. But before I ask you, I will tell you
17 that I grew up in Ohio, also, in Trumbull County.

18 A. Yes.

19 (To Mr. Gogal) Where are you from?

20 MR. GOGAL: Actually, I was born at
21 Wright-Patterson Air Force Base.

22 THE WITNESS: Oh, we have friends
23 there.

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1 MR. ATKISSON: I'm going to check that
2 out.

3 THE WITNESS: But I don't know where
4 Trumbull is.

5 MR. GOODMAN: It's in northeastern
6 Ohio. Warren is -- Warren is the city I was born
7 in.

8 THE WITNESS: Oh, I see. I'm in
9 northwest.

10 MR. GOODMAN: Oh.

11 MR. ATKISSON: Well, I'm -- I'm going
12 to object if you go home and tell your -- tell
13 everybody, including you, that they all have a
14 complexion like that. You know it isn't true,
15 right?

16 THE WITNESS: Right.

17 BY MR. GOODMAN:

18 Q. Ms. Atkisson, since you've been married
19 to your husband and you've lived in the area,
20 have there been any funerals at this family
21 burial plot that you're aware of? I know you
22 said you didn't attend any.

23 A. No. I'm not aware of any.

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1 Q. I want to show you a map. Let me come
2 around so you can see it. This is the a
3 partition map of 1896. And I'll show it to you
4 like that.

5 This is what we call the 15 acre
6 parcel. This is where Thomas Adams had his land.
7 And this partition lot two. And this is where
8 the burial plot is. That's what that says.

9 A. Yes.

10 Q. Now, you talked about going down by the
11 train tracks --

12 A. Yes.

13 Q. -- and catching the train. There are
14 some train tracks here, where it says Piney
15 Branch.

16 A. Yes.

17 Q. Are those the tracks that you would
18 walk down to?

19 A. Well, yes, we did. But I don't know
20 where -- I can't tell where -- those are the
21 tracks, yes.

22 Q. Okay. Well, here -- this is the Thomas
23 Adams property, the 15 acre parcel. And here's

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1 the burial plot.

2 A. Where's the house?

3 Q. I believe it's over here on the 15 acre
4 parcel. (Indicating.)

5 A. But what is that house there?

6 Q. Well, that -- that was a house in 1896,
7 but I don't -- I believe that --

8 MR. SNYDER: Gee, I think that's a house
9 that's -- I don't -- I don't think that shows
10 where Thomas Adams' house is.

11 MR. GOGAL: It -- it does not show.

12 MS. DIMAURO: It doesn't --

13 MR. GOGAL: It didn't exist then.

14 MR. SNYDER: Yes, I don't think it
15 existed at that time.

16 MR. GOGAL: Right.

17 THE WITNESS: Oh, sure, it wouldn't.

18 MR. SNYDER: Right.

19 BY MR. GOODMAN:

20 Q. Well, do you know when -- do know when
21 Thomas Adams built that house -- that house on
22 the 15 --

23 A. No, I don't have any idea. I wouldn't

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1 know. All I know is where the house is you just
2 went down to the barn and down the hill and
3 around and then curved back around. It was right
4 before the curve in the railroad because -- well,
5 anyway, I know -- I know where the track -- where
6 we got the train. We got the train right before
7 Piney Branch viaduct or bridge.

8 Q. I see. Can you tell whether or not
9 that Piney Branch Bridge shows on this map? Let
10 me turn --

11 A. No.

12 Q. Let me turn it around.

13 MS. DIMAURO: Barney, this one would
14 actually be more useful, since there's more.

15 BY MR. GOODMAN:

16 Q. Here's -- here's a map, ma'am, that
17 says partition deed. And this is Hunter Mill
18 Forest. And I believe you said you lived on
19 Killington Court. You probably live --

20 A. Yes.

21 Q. -- about down here. (Indicating.)

22 A. Yes.

23 Q. And this would have been the 15 acre

1 parcel over here. (Indicating.)

2
3 A. Well, see, here's Piney coming -- well,
4 I guess that's -- is that coming from Vienna?

5 Q. Well, this is Clark's Crossing.
6 Vienna's back here. (Indicating.)

7 A. Probably the bridge is right along in
8 there -- I image, right there. (Indicating.)

9 Q. I see.

10 A. But we came down this hill to -- to
11 Piney Branch and caught the train.

12 Q. Were you aware of a path that was over
13 here between lot three and four and what is now
14 these houses on Adams Mill Road?

15 A. You mean the lane?

16 Q. Yes.

17 A. Yes, I've walked back that way to the
18 woods.

19 Q. And where did that -- did that lane go
20 down to the train tracks?

21 A. I don't know whether it did or -- no,
22 that lane didn't. No. It just went -- it went
23 from the barnyard to the woods.

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1 In other words, I don't know -- it
2 might, after -- after it got in the woods, it
3 might have wound around and done down further.
4 But I used to walk from -- sometimes and walk
5 that lane into the woods. There was like a knoll
6 there. I guess the lane went onto fields
7 further, but I -- as far as I know, it didn't go
8 to Piney Branch.

9 Q. Okay. But there was -- you know there
10 was a lane along the western edge of lots three
11 and four.

12 A. Oh, there. No, I don't know that. No.

13 Q. Well, where's the lane, then?

14 A. The lane was -- well, if -- if I could
15 be sure where the --

16 Q. I believe --

17 A. Wherever the barn is, it was -- it was
18 from the barn to the woods. I -- I don't have
19 any idea about --

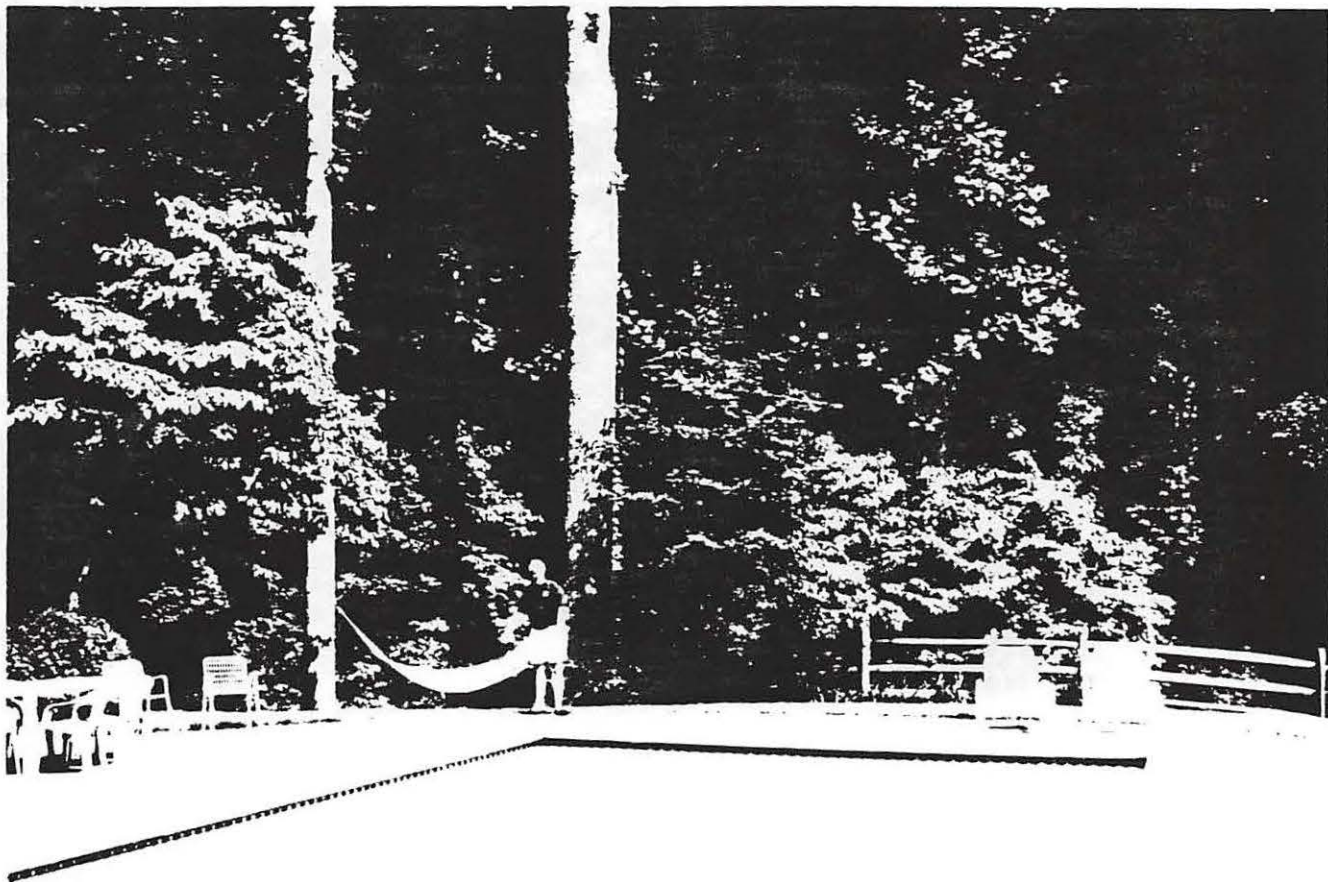
20 Q. Where was it with respect to the burial
21 plot, the family burial plot?

22 A. Well, the burial plot was --

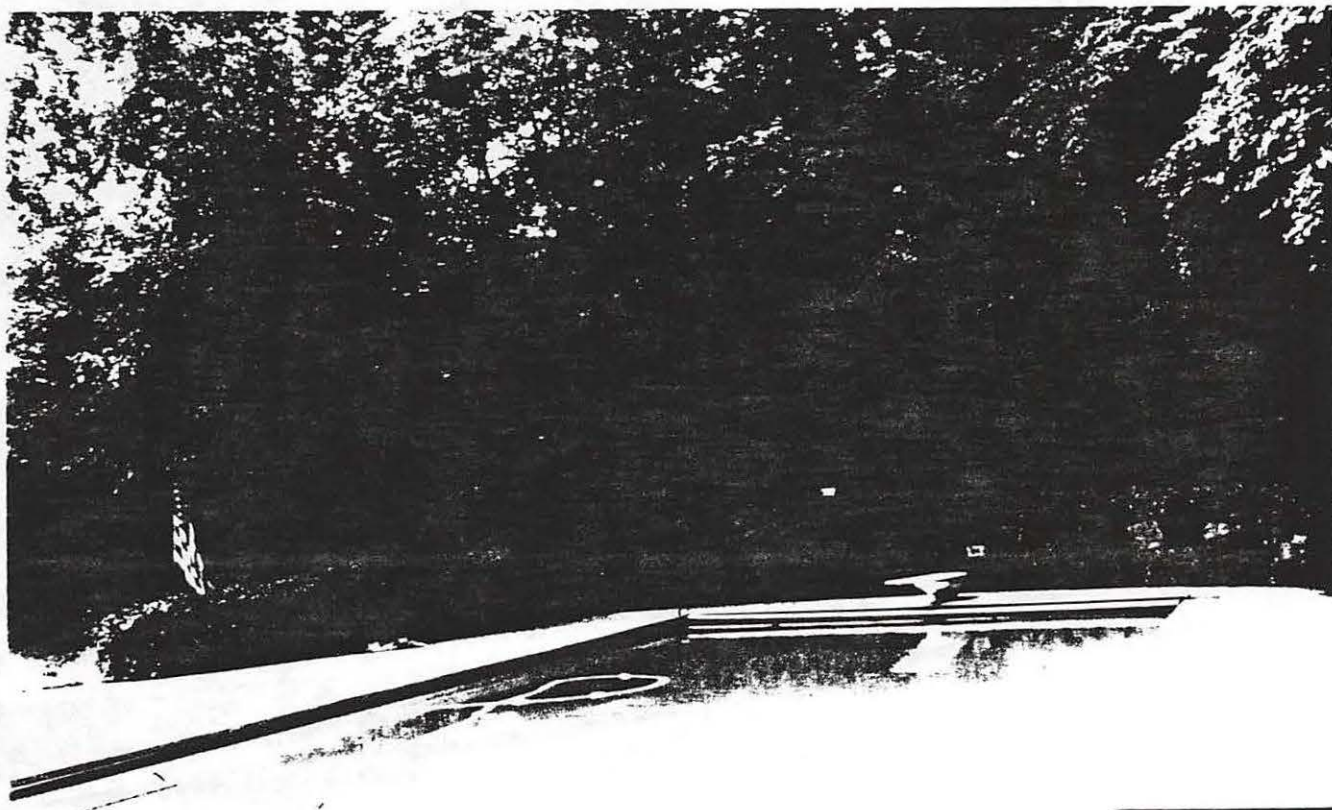
23 Q. Which is right here on this map.

LASER REPORTING
(703) 471-7603
46441 Springwood Court, Sterling, Virginia 20165

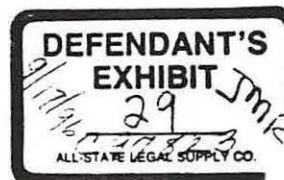
A



B



930



C



D



V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - - x

GEORGE ATKISSON, et al., :

Plaintiff, : In Chancery

vs. : No.: 97823

WEXFORD ASSOCIATES, INC., et al., :

Defendants. :

- - - - - x

Fairfax, Virginia

Monday, December 4, 1995

Deposition of GEORGE B. ATKISSON, a
witness, called for examination by counsel for the
Defendants, pursuant to notice, taken in the Law
Offices of Blankingship & Keith, 4020 University
Drive, Suite 312, Fairfax, Virginia, before Randy T.
Sandefer, a stenographic reporter and a Notary Public
in and for the State of Virginia at Large, commencing
at 12:17 p.m., when there were present on behalf of
the respective parties:



952

297823

* * *

1 house waiting for you to sign.

2 MR. GOGAL: I'm sorry, I didn't mean to --

3 THE WITNESS: I thought these looked
4 familiar --

5 MR. SNYDER: If you don't have a signature
6 page, let me know and we will send you a new set of
7 that so that you can look at that.

8 You don't need to look at it right now.

9 BY MR. GOGAL:

10 Q As far as going back to that Outlot A
11 question; what instructions did you give your
12 surveyors and engineers in terms of dealing with
13 locating the cemetery?

14 A Absolutely nothing, never even discussed
15 it. He and Harold did -- as a matter of fact, he is a
16 gentleman; but he is one of these guys that you don't
17 tell how to do something. I knew that.

18 We get along all right, but I never told
19 him anything.

20 Q What was his name?

21 A Charles Johnson.

22 Q So, he didn't ask your advice as to where
23 the quarter acre should be drawn up or --

1 Q My question is if it was described in the
2 land records as a quarter acre in the southeast
3 portion of Lot 2, why did the surveyor draw it so that
4 it encroaches on the 15 acres?

5 Do you know of any reason why the surveyor
6 drew it that way?

7 A A country boy that he was, they are at home
8 outside where you guys are at home in the city.

9 I tell you, it's defined there. That's the
10 only thing that I could suppose.

11 I didn't tell him to do it.

12 Q So, you don't know? That's the answer, no?

13 A I don't know at all.

14 MR. GOGAL: Okay, thank you, that's it. I
15 have no further questions.

16 EXAMINATION

17 MR. SNYDER:

18 Q George, does this (indicating) accurately
19 reflect where the cemetery is?

20 A Yes.

21 MR. SNYDER: I don't have anything further.

22 MR. GOGAL: You can't just do that, Scott.

23 MR. SNYDER: Why? That's my question.

1 it didn't make any difference, and he also said that
2 it's obvious when the old man lived there with mother,
3 they knew when she died that they would probably
4 partition the land. He was working that, that he
5 would get Lot 2. That's why he bought this piece over
6 here to join it up.

7 It's just --

8 Q You don't know of anybody specifically
9 being buried over here on the 15 acres because you
10 weren't around then?

11 A No, there is nobody buried there.

12 MR. GOGAL: Okay; I don't have any further
13 questions, that's it.

14 MR. GOODMAN: I just have one question,
15 Mr. Atkisson.

16 EXAMINATION

17 BY MR. GOODMAN:

18 Q You said that Thomas Adams, your
19 grandfather, lived with his mother?

20 A Yes.

21 Q What was his mother's name?

22 A Adeline.

23 Q Adeline Adams?

ASSIGNMENTS OF ERROR
RECORD NO. 970069

1. THE TRIAL COURT ERRED IN GRANTING A NEW TRIAL ON ALL ISSUES AS CONTRARY TO THE MANDATE OF THE SUPREME COURT OF VIRGINIA.
2. THE TRIAL COURT ERRED IN LOCATING THE EXPRESS EASEMENT AS CONTRARY TO THE MARCH 7, 1995 ORDER, WHICH WAS ISSUED PURSUANT TO THE MANDATE OF THE SUPREME COURT OF VIRGINIA.
3. THE TRIAL COURT ERRED IN TERMINATING THE EASEMENT AT BIRD ROAD AS CONTRARY TO BOTH THE MANDATE OF THE SUPREME COURT OF VIRGINIA AND THE ORDER OF MARCH 7, 1995 OF THE HONORABLE THOMAS A. FORTKORT.
3. THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST PLAINTIFFS AND IN FAVOR OF DEFENDANTS DONALD HALL AND JOAN HALL, AND INTERVENORS DAVID O'BRIEN AND JANE O'BRIEN ON THE GROUNDS THAT THERE IS NO EXPRESS EASEMENT AS CONTRARY TO THE MANDATE OF THE SUPREME COURT OF VIRGINIA.

ASSIGNMENTS OF ERROR
RECORD NO. 970071

1. THE TRIAL COURT ERRED, WHEN AFTER FINDING THAT CERTAIN NECESSARY PARTIES WERE NOT PARTIES TO THE FIRST TRIAL, IT RULED, IN VIOLATION OF THE NECESSARY PARTIES DOCTRINE THAT:

A. THE RULINGS OF THE FIRST TRIAL WERE BINDING ON WEXFORD AND THE INDIVIDUAL DEFENDANTS; AND

B. THE INTERESTS OF THE NECESSARY PARTIES WERE SEPARABLE FROM THOSE OF WEXFORD AND THE INDIVIDUAL DEFENDANTS WHEN THE ALLEGED EASEMENT CROSSED THE PROPERTY OF ALL PARTIES.

2. THE TRIAL COURT ERRED IN UPHOLDING THE EXPRESS EASEMENT AS IT CANNOT CROSS O'BRIEN'S LOT 3 AND HALLS LOT 1 AND, THEREFORE, IS OF NO USE AND IS EXTINGUISHED AS A MATTER OF LAW.