

1 Q THE SURVEY THAT YOU REFERRED TO AS HAVING  
2 COMMISSIONED PRIOR TO SELLING THE PROPERTY TO  
3 MS. SENEZ.

4 A UH-HUH (AFFIRMATIVE RESPONSE).

5 Q DO YOU RECALL THE NAME OF THE SURVEYOR?

6 A NO.

7 Q DID THE SURVEY OR SURVEYOR POINT OUT TO YOU ANY  
8 PROBLEMS WITH THE PROPERTY IN TERMS OF ITS  
9 BOUNDARY LINES OR ANYTHING HAVING TO DO WITH  
10 THE LOCATION OF IMPROVEMENTS?

11 A YEAH, HE TOLD ME THAT THE LINE SHOWED THAT  
12 THERE WAS ABOUT A FOOT DIFFERENCE BETWEEN THE  
13 WALL AND WHERE HE PUT A MARKER. I ASSUME HE  
14 PUT A MARKER THERE.

15 Q ABOUT A FOOT DIFFERENCE BETWEEN THE WALL AND A  
16 MARKER. YOU THINK HE PUT THE MARKER THERE.  
17 ARE YOU SAYING THAT THE WALL WAS A FOOT ONTO  
18 YOUR PROPERTY?

19 A NO.

20 Q OR IT WAS A FOOT BACK FROM THE PROPERTY LINE  
21 ONTO 339?

22 A YEAH.

23 Q HAD YOU BEEN MAINTAINING THE LAND THAT YOU  
24 OCCUPIED UP TO THE WALL UNTIL THE TIME THAT THE  
25 SURVEYOR NOTIFIED YOU OF THIS DISCREPANCY?

1 A YES.

2 Q THAT WAS DONE OPENLY. THAT WAS NOT ANYTHING  
3 THAT YOU TRIED TO HIDE FROM MR. AND MRS. COOK,  
4 IS THAT CORRECT?

5 A THAT'S TRUE. YES.

6 Q YOU DID THAT FOR THE ENTIRE TWENTY YEAR PERIOD  
7 OF YOUR OWNERSHIP THERE?

8 A YES.

9 Q DID THEY EVER OBJECT TO YOU MAINTAINING THE  
10 PROPERTY RIGHT UP TO THE EDGE OF THE WALL FOR  
11 ANY REASON?

12 A NO.

13 Q DID THEY EVER OBJECT TO ANY OF YOUR MAINTENANCE  
14 OF WHAT YOU CONSIDER TO BE YOUR PROPERTY UP TO  
15 THE EDGE OF THE WALL TRAVERSING ITS ENTIRE  
16 LENGTH?

17 A NO.

18 Q WHEN YOU WERE MADE AWARE OF THIS SITUATION BY  
19 YOUR SURVEYOR, WHAT IF ANYTHING DID YOU DO AT  
20 THAT TIME?

21 A BASICALLY, I PUT IT IN THE SALES THING.

22 Q TELL ME WHAT YOU MEAN.

23 A BASICALLY, I SHOWED IT TO THE PROSPECTIVE  
24 BUYER.

25 Q AS BEING --- LET ME BE CLEAR FOR THE RECORD.

1 WHAT DID YOU SHOW TO YOUR PROSPECTIVE BUYERS?

2 A THE SURVEY.

3 Q AND SPECIFICALLY, YOU POINTED OUT TO THE  
4 PROSPECTIVE BUYERS THAT THE WALL WAS ABOUT A  
5 FOOT INSIDE THE PROPERTY LINE OF 339?

6 A DID I EVER POINT THAT OUT TO YOU?

7 MS. SENEZ: (NO RESPONSE).

8 MR. LANZI: OBJECTION.

9 Q LET ME REPHRASE THE QUESTION. WHAT DID YOU  
10 POINT OUT TO YOUR PROSPECTIVE BUYERS  
11 SPECIFICALLY?

12 A THAT HERE'S THE PLOT AND THIS IS THE PROPERTY.  
13 I WAS NOT INTERESTED IN THAT PRIMARILY, I WAS  
14 INTERESTED IN THE FACT THAT THE FENCE WAS  
15 LEGAL. THAT WAS MY INTEREST.

16 MR. LANZI: I'M GOING TO HAVE TO OBJECT  
17 FOR THE RECORD, THE DEFENDANT IS  
18 CONTINUOUSLY DURING THIS DEPOSITION  
19 NODDING HER HEAD AND SHAKING HER HEAD.  
20 THE WITNESS MAY OR MAY NOT SEE IT, BUT  
21 FOR THE RECORD I'M GOING TO OBJECT AND  
22 THAT HAS TO STOP.

23 MR. CARNEY: I WILL INSTRUCT HER NOT TO  
24 DO IT, BUT I WILL SAY FOR THE RECORD I  
25 HAVEN'T SEEN HER DO IT AND I'M LOOKING

1 RIGHT ACROSS THE TABLE AT HER.

2 MR. CARNEY: SO AM I. WE'RE NOT GOING  
3 TO DEBATE IT, WE'LL JUST ---

4 MS. SENEZ: THAT WAS THE FIRST TIME,  
5 WHEN HE SAID THAT.

6 MR. CARNEY: LET'S MOVE FORWARD. GO  
7 AHEAD. MR. LANZI'S OBJECTION IS NOTED  
8 FOR THE RECORD.

9 Q YOU WERE CONCERNED ABOUT THE LEGALITY OF THE  
10 FENCE?

11 A YES.

12 Q I'M USING YOUR WORDS.

13 A YES.

14 Q WHAT CONCERNS YOU, SIR?

15 A THE DISTANCE FROM THE PROPERTY LINE?

16 Q THAT IT WAS INSIDE OF 339'S PROPERTY LINE?

17 A NO, NO, NO. I THINK THAT I'M ADDING THINGS  
18 HERE THAT ARE CONFUSING A LOT OF THINGS. ALL  
19 RIGHT, LET'S JUST SAY THAT I HAD THE PLACE  
20 SURVEYED TO SELL IT AND ANYBODY WHO WAS BUYING  
21 IT COULD LOOK AT THAT SURVEY AND FIGURE IT FOR  
22 THEMSELVES WHAT THEY WANTED TO DO WITH IT.

23 Q ALL RIGHT.

24 A LET'S JUST LEAVE AT THAT. BECAUSE I'M NOT  
25 TALKING ABOUT THAT SIDE. I'M TALKING ABOUT THE

1 OTHER SIDE OF THE PROPERTY.

2 Q YOUR SIDE.

3 A YES.

4 Q I UNDERSTAND.

5 A I MEAN, NOT --- NO, NO, NO --- THE OTHER SIDE,  
6 THE SOUTH SIDE OF THE PROPERTY WHERE I BUILT A  
7 FENCE. A WOODEN FENCE.

8 Q SHOW ME ON THIS PLAT WHERE YOU SAY THE SOUTH  
9 SIDE OF THE PROPERTY, WHAT DO YOU MEAN BY THE  
10 SOUTH SIDE OF THE PROPERTY HERE. OKAY, THAT IS  
11 WHAT YOUR CONCERN WAS?

12 A YES.

13 Q AND YOUR CONCERN BEING THAT YOU WANTED TO MAKE  
14 SURE THAT YOUR FENCE WAS LOCATED ON YOUR  
15 PROPERTY?

16 A LEGAL, YEAH.

17 Q THAT YOU WEREN'T ENCROACHING ON YOUR NEXT DOOR  
18 NEIGHBORS.

19 A EXACTLY.

20 Q WAS IT EVER BROUGHT TO YOUR ATTENTION BY ANYONE  
21 THAT THAT FENCE WAS AN ENCROACHMENT ONTO YOUR  
22 NEXT DOOR NEIGHBORS PROPERTY?

23 A NO, NO ONE EVER BOTHERED ABOUT IT, EXCEPT THAT  
24 I WAS GOING TO BUILD IT. IF I'M GOING TO SPEND  
25 THE MONEY TO BUILD IT, I WANTED TO KNOW THAT IT

1 WAS LEGAL, SO I HAD IT SURVEYED.

2 Q AND, DID YOU INDEED BUILD THAT FENCE?

3 A YES.

4 Q YOU NEVER HAD ANY COMPLAINTS OR PROBLEMS ABOUT  
5 THAT FENCE?

6 A NONE AT ALL.

7 Q WHEN YOU SOLD THE PROPERTY TO MS. SENEZ, DID  
8 YOU ATTEND SETTLEMENT OR DID YOU DO IT BY MAIL?

9 A ATTENDED SETTLEMENT?

10 Q YOU ACTUALLY SHOWED UP IN A ROOM AND SIGNED ALL  
11 THE DOCUMENTS?

12 A YEAH.

13 Q OKAY. GOT YOUR CHECK AND SIGNED THE DEED.

14 A AND WALKED OUT THE DOOR.

15 Q AND YOUR WIFE WAS THERE WITH YOU?

16 A YES.

17 Q WERE ANY TITLE PROBLEMS BROUGHT TO YOUR  
18 ATTENTION AT THAT TIME BY THE ATTORNEY OR THE  
19 TITLE COMPANY THAT CONDUCTED THE SETTLEMENT?

20 A NO.

21 Q WAS THERE ANY DISCUSSION AT THE TIME ABOUT WHAT  
22 THE SURVEY REVEALED?

23 A NO.

24 Q WERE YOU AWARE OF WHETHER OR NOT THE TITLE  
25 COMPANY TOOK EXCEPTION TO ANYTHING SHOWN ON THE

1 SURVEY THAT YOU HAD COMMISSIONED?

2 A NO.

3 Q WAS THERE ANY NEGOTIATION ARE RENEGOTIATION OF  
4 PURCHASE PRICE OR CONSIDERATION IN ANY FASHION  
5 BETWEEN YOU AND MS. SENEZ ONCE THE SURVEY WAS  
6 BROUGHT TO HER ATTENTION?

7 A NO.

8 Q WAS IT YOUR UNDERSTANDING MR. MEYERS THAT THE  
9 ONLY, AND THIS IS A WORD IN QUOTES, "MY WORD",  
10 NOT, DOESN'T MEAN NECESSARILY A PROBLEM, BUT  
11 THE ONLY PROBLEM THAT YOU WERE MADE AWARE OF BY  
12 THAT SURVEY THAT YOU COMMISSIONED WAS THE AREA  
13 THAT YOU'VE INDICATED DOWN TOWARD THE WATER  
14 WHERE THE FENCE WAS FURTHER INTO THE PROPERTY  
15 ON 339 THAN YOU THOUGHT IT WAS.

16 A YEAH.

17 Q ALL THE WAY UP TOWARD THE SHED, DID YOU THINK  
18 THE WALL WAS ON 339'S PROPERTY.

19 A I DIDN'T KNOW ANYTHING. I KNEW NOTHING ABOUT  
20 THAT. THE ONLY THING THAT I LOOKED AT WAS  
21 THAT.

22 Q THE CEMENT LAUNCH RAMP, FOR LACK OF A BETTER  
23 WORD, THAT WAS PUT IN BY YOU?

24 A YES.

25 Q WAS IT USED BY YOU?

1 A YES.

2 Q WAS IT USED BY YOU FOR THE ENTIRE PERIOD OF  
3 OWNERSHIP --- YOUR ENTIRE PERIOD OF OWNERSHIP  
4 OF THE LAND?

5 A YES.

6 Q THAT WOULD BE TWENTY YEARS?

7 A YES.

8 Q WERE THERE EVER ANY COMPLAINTS BY ANYONE ABOUT  
9 THAT BOAT RAMP ENCROACHING ONTO 339'S PROPERTY?

10 A NO.

11 Q DID YOU, IN FACT, LAUNCH BOATS FROM THERE?

12 A YES.

13 Q WHAT TYPE OF BOATS ARE WE TALKING ABOUT?

14 A TWENTY-EIGHT FOOT PONTOON BOAT, FOR ONE.  
15 TWENTY-FOUR FOOT PONTOON BOAT. NEIGHBORS USED  
16 IT.

17 Q PERMISSIVELY.

18 A YES. WITH PERMISSION, SURE.

19 Q DID YOUR NEIGHBORS AT 339 USE IT, WITH IT YOUR  
20 PERMISSION?

21 A SURE.

22 Q OTHER THAN THE TIME THAT YOU FIRST PUT IT IN,  
23 DID YOU HAVE OCCASION TO WIDEN IT OR DO  
24 ANYTHING TO IT OTHER THAN WHAT YOU DID WHEN YOU  
25 PUT IT IN?

1 A NO, NOT REALLY.

2 Q DID YOU HAVE ANY MAINTENANCE PROBLEMS THAT YOU  
3 HAD TO ADDRESS WITH THE LAUNCHING RAMP?

4 A LOSS OF NUMBER TWO STONE UNDER WATER, IF YOU  
5 CALL THAT A PROBLEM. I FOUND MY GRANDSON  
6 THROWING THEM ACROSS THE RIVER, BUT ASIDE FROM  
7 THAT, NO.

8 Q WAS THE RAMP EVER WIDENED PAST ITS ORIGINAL  
9 WIDTH?

10 A NO.

11 Q DURING YOUR PERIOD OF OWNERSHIP?

12 A NO.

13 Q THE BOATHOUSE DURING YOUR PERIOD OF OWNERSHIP.  
14 WE TALKED ABOUT WHEN YOU FIRST BOUGHT THE  
15 PROPERTY AND YOU MADE IMPROVEMENTS, BUT DURING  
16 THE TWENTY YEARS THAT YOU LIVED THERE, WAS THE  
17 BOATHOUSE EVER WIDENED?

18 A NOT BEYOND THOSE PILES THAT WERE DRIVEN WHEN WE  
19 FIRST ---

20 Q WAS IT EVER RAISED? DID YOU EVER RAISE THE  
21 ROOF AND MAKE IT HIGHER TO ACCOMMODATE POSSIBLY  
22 A LARGER BOAT?

23 A NO.

24 Q DURING YOUR TWENTY YEAR PERIOD OF OWNERSHIP,  
25 OTHER THAN PUT THE PILINGS IN AS YOU DESCRIBED

1 ALREADY, YOU REALLY DID NOTHING TO CHANGE THE  
2 CONFIGURATION OF THE BOAT HOUSE?

3 A NO.

4 Q ON THE SIDE OF THE PROPERTY ACROSS FROM THE  
5 CEMENT WALL THAT WE'VE BEEN DISCUSSING, WAS  
6 THERE ANY TYPE OF RETAINING WALL IN THIS AREA  
7 OF THE HOUSE? OR WAS IT PART OF THE  
8 FOUNDATION?

9 A WELL, THE FOUNDATION CAME OUT TO THE END AND  
10 THEN IT WAS A RAILROAD TIE WALL IN THERE.

11 Q IT WAS RAILROAD TIES?

12 A YES.

13 Q WERE THOSE RAILROAD TIES IN EXISTENCE WHEN YOU  
14 PURCHASED THE PROPERTY OR DID YOU HAVE THEM  
15 INSTALLED?

16 A I INSTALLED THEM.

17 Q THAT WAS PART OF THE IMPROVEMENTS THAT YOU MADE  
18 INITIALLY?

19 A YES.

20 Q WOULD THAT HAVE BEEN ON OR SOMEWHERE IN 1980  
21 WHEN YOU FIRST BOUGHT THE PROPERTY,  
22 THEREABOUTS?

23 A OH, YEAH, OVER A PERIOD OF TIME WHILE I WAS  
24 BUILDING IT. I MEAN, THIS IS A THING THAT GOES  
25 ON FOR AT LEAST A YEAR.

1 Q THE CONSTRUCTION PERIOD TOOK ABOUT A YEAR?

2 A SURE, YEAH, AT LEAST.

3 Q THIS WALL THAT WE'RE REFERRING TO MADE OUT OF  
4 RAILROAD TIES, WERE THE RAILROAD TIES THAT WERE  
5 ON TOP OF ONE ANOTHER OR WAS SOME SORT OF  
6 ADHESIVE BETWEEN EACH TIE?

7 A RAILROAD TIES ON TOP OF EACH OTHER, SPIKED.

8 Q SPIKED FROM THE TOP DOWN?

9 A UH-HUH (AFFIRMATIVE RESPONSE).

10 Q INTO THE GROUND?

11 A THE INITIAL RAIL, YES, BUT THEN YOU SPIKE ONE  
12 TO THE OTHER AFTER THAT.

13 Q WAS THERE ANY TYPE OF CEMENT FOOTER UNDERNEATH  
14 OF THE FIRST ---

15 A NO.

16 Q --- RAILROAD TIE?

17 A HUH-UH (NEGATIVE RESPONSE).

18 Q SO IT WAS POSITIONED ON THE GROUND ITSELF?

19 A YES.

20 Q AND FASTENED TO THE GROUND WITH SPIKES  
21 VERTICALLY?

22 A RIGHT. AND TIE BACKS.

23 Q AND TIE BACKS TO THE HOUSE.

24 A TO THE LAWN.

25 Q TO THE LAWN. OKAY. HOW HIGH WAS THAT RAILROAD

1 TIE WALL?

2 A FIVE, FIVE AND A HALF FEET.

3 Q HOW WAS IT CAPPED OFF AT THE TOP?

4 A RAILROAD TIES.

5 Q WAS ANYTHING PLACED ON TOP OF IT  
6 PERPENDICULARLY?

7 A NO.

8 Q JOISTS OF ANY KIND? DECKING OF ANY KIND?

9 A NO.

10 Q WHAT DID THE WALL BUTT UP AGAINST?

11 A LAWN.

12 Q WHAT WAS DIRECTLY BEHIND THE WALL?

13 A LAWN.

14 Q JUST LAWN?

15 A YES.

16 Q WHAT WAS THE PURPOSE OF THE WALL?

17 A THE PURPOSE OF THE WALL WAS TO KEEP THE HILL  
18 FROM FLOWING --- BASICALLY WASHING AWAY,  
19 BECAUSE OF THE WATER THAT CAME DOWN THE DRIVE  
20 WHEN WE FIRST GOT IN THERE, IT WAS WASHING ---  
21 IT WAS UNDERMINING THE HILL.

22 Q WHEN YOU SAY THE HILL, WOULD YOU LOCATE THE  
23 HILL ON THIS AND DESCRIBE WHERE YOU'RE POINTING  
24 FOR THE RECORD?

25 A I'M ASSUMING THIS IS THE SAME PERIPHERY AS WHAT

1 WAS THERE. I KNOW WHAT I'M LOOKING AT. I'M  
2 LOOKING A PATIO HERE. THIS WAS GRASS PLANTED  
3 AND A WALKWAY TO ME.

4 Q YOUR HOUSE IS HERE?

5 A YES.

6 Q AND YOU HAD ON THE PORCH ON THE FRONT, CORRECT?

7 A RIGHT. THE WALL BEGAN FROM THE HOUSE OUT.

8 Q IT WAS NOT JUST SOMETHING THAT YOU PUT THERE  
9 FOR ESTHETIC REASONS, IT WAS THERE FOR  
10 FUNCTIONAL REASONS?

11 A FUNCTIONAL. YES.

12 Q TO MAINTAIN THE PROPERTY FROM EROSION?

13 A MAINTAIN. YES.

14 Q DID YOU EVER HAVE ANY STRUCTURAL PROBLEMS WITH  
15 THE WALL AFTER YOU HAD IT PUT IN? LIKE YOUR  
16 NEIGHBOR HAD WITH THE CONCRETE WALL?

17 A I HAD SOME BOWING, BECAUSE IT DIDN'T HAVE A  
18 FOUNDATION, SO THAT'S WHY I PUT THE TIEBACKS  
19 IN.

20 Q DID IT EVER FALL DOWN?

21 A NO.

22 Q DID YOU EVER HAVE TO REPLACE ANY OF THE TIES?

23 A NO.

24 Q DID YOU EVER HAVE TO MAINTAIN THE WALL IN ANY  
25 FASHION?

- 1 A NOT AFTER THE BUILDING PERIOD, NO.
- 2 Q IT SERVED ITS PURPOSE THROUGHOUT YOUR WHOLE
- 3 PERIOD OF OWNERSHIP?
- 4 A UH-HUH (AFFIRMATIVE RESPONSE).
- 5 Q ON YOUR PATIO FACING THE WATER, THAT RAN MOST
- 6 OF THE WIDTH OF THE HOUSE, IS THAT A FAIR
- 7 STATEMENT? THAT CAME OFF OF YOUR SLIDING GLASS
- 8 BEDROOM DOORS.
- 9 A TWO-THIRDS.
- 10 Q TWO-THIRDS. THAT PORCH, DID IT HAVE RAILINGS?
- 11 A YES.
- 12 Q HOW HIGH WERE THOSE RAILINGS, APPROXIMATELY?
- 13 A THE PORCH WAS WINDOWED, SO IT WAS AN ENCLOSED
- 14 PORCH. WHAT YOU CALL A CAROLINA ROOM.
- 15 Q DID IT HAVE JALOUSIE GLASS WINDOWS?
- 16 A YEAH.
- 17 Q DID IT HAVE JALOUSIE ON THREE SIDES?
- 18 A YES.
- 19 Q SOUTH, NORTH AND EAST?
- 20 A YES.
- 21 Q DID YOU CREATE THAT PORCH DURING YOUR PERIOD OF
- 22 CONSTRUCTION OR WAS IT ALREADY THERE?
- 23 A I DON'T HAVE IT RIGHT HERE. I REALLY DON'T
- 24 KNOW. IT WAS AN OPEN THING.
- 25 Q AND YOU ENCLOSED IT?

1 A I ENCLOSED IT.

2 Q YOU CHOSE TO MAKE IT A ENCLOSED PORCH AS  
3 OPPOSED TO AN OPEN PORCH AND YOU DID THAT BY  
4 JALOUSIE WINDOW GLASS?

5 A YES.

6 Q DID THE GLASS RUN FROM THE ROOF TO THE FLOOR OF  
7 THE PORCH? OR WAS THERE SOME SORT OF A WALL  
8 AND THEN THE GLASS WAS ABOVE IT?

9 A IF THERE WAS IT WAS PROBABLY SIX INCHES TO A  
10 FOOT. I DON'T REMEMBER, PARTICULARLY. I THINK  
11 THESE WERE JALOUSIE DOORS THAT I USED TO CLOSE  
12 THAT IN, SO THEY WOULD'VE SOME FOOTER LIKE THAT  
13 AT THE BASE.

14 Q WAS THE GLASS THAT YOU USED, CLEAR GLASS OR  
15 SMOKED GLASS IN SOME FASHION?

16 A CLEAR GLASS.

17 Q SO YOU COULD SEE THROUGH IT FROM ONE SIDE TO  
18 THE OTHER?

19 A UH-HUH (AFFIRMATIVE RESPONSE)

20 Q IF YOU CHOSE TO?

21 A YES.

22 Q IN ORDER TO LEAVE YOUR PORCH, YOU WOULD HAVE TO  
23 GO BACK INTO YOUR HOME, INTO YOUR BEDROOM TO  
24 GO?

25 A NO.

1 Q DID YOU CREATE A STAIRWAY FROM THE PORCH?

2 A THERE WAS A SECOND PORCH. THE PROPERTY TOTAL  
3 WAS THIRTY FEET. THE PORCH WAS TWENTY-TWO.  
4 THERE WAS EIGHT FOOT OF DECK AND FROM THERE A  
5 RAMP THAT WENT DOWN TOWARD THE WATER.

6 Q DID YOU ERECT THAT DECK?

7 A YES.

8 Q DID THAT DECK HAVE A RAILING?

9 A YES.

10 Q HOW HIGH WAS THE RAILING ON THE DECK?

11 A TYPICAL, WHATEVER --- THIRTY-SIX, FORTY INCHES.

12 Q THIS WAS MADE OF WOOD?

13 A YES.

14 Q THERE WERE WOODEN SPINDLES OR SPOKES?

15 A YES.

16 Q DURING YOUR PERIOD OF OWNERSHIP OF 341 WORTEN  
17 ROAD, DID YOU EVER ENTER INTO ANY WRITTEN  
18 EASEMENT AGREEMENTS WITH MR. AND/OR MRS. COOK  
19 FOR ANY REASON?

20 A NO.

21 Q DID YOU EVER GRANT THEM ANY LICENSES DURING  
22 YOUR PERIOD OF OWNERSHIP FOR ANY REASON?

23 A NO.

24 Q DID YOU EVER HAVE ANY LEGAL DEALINGS WITH MR.  
25 AND MRS. COOK WHERE SOME FORMAL DOCUMENTS WERE

1           EVER DRAWN UP AND SIGNED BY THE PARTIES FOR ANY  
2           REASON?

3       A     NO.   NOT THAT I REMEMBER.

4       Q     DURING YOUR PERIOD OF OWNERSHIP, WAS THERE ANY  
5           LITIGATION BETWEEN YOU AND MR. AND MRS. COOK  
6           FOR ANY REASON?

7       A     NO.

8       Q     JUST SO WE'RE CLEAR.  YOU MAINTAINED YOUR  
9           PROPERTY, THE 341 PROPERTY, ALL THE WAY UP TO  
10          THE WALL FROM IT ENDED UP BULKHEADING ALL THE  
11          WAY TO WHERE IT ENDED IN THE WESTERN ASPECT OF  
12          YOUR PROPERTY?

13      A     YES.

14      Q     AND YOU DID SO FOR THE ENTIRE PERIOD OF TIME  
15          THAT YOU OWNED THE PROPERTY?

16      A     YES.

17      Q     DID YOU HAVE EXTERIOR LIGHTS ON YOUR PROPERTY,  
18          MR. MYERS?  FLOOD LIGHTS OF ANY KIND?

19      A     I HAD A LIGHT ON THE PIER, A MERCURY VAPOR.  
20          UNDERNEATH THE BOATHOUSE AND I HAD ONE AT THE  
21          BOTTOM OF THE STEP, BUT I DON'T KNOW WHETHER  
22          THAT WAS STILL THERE WHEN I LEFT OR NOT.

23      Q     WERE THERE EVER ANY PROBLEMS OR COMPLAINTS FROM  
24          THE COOKS REGARDING THE LOCATION OF THE LIGHT  
25          YOU HAD IN THE BOATHOUSE?

1 A NO.

2 Q I THINK I'M DONE. I'D LIKE TO SPEAK TO LINDA  
3 VERY QUICKLY IF WE COULD, JUST FOR A SECOND.

4 **OFF THE RECORD**

5 Q MR. MYER, YOU INDICATED THAT YOU WERE  
6 RESPONSIBLE FOR PUTTING IN THE BOAT RAMP?

7 A YES.

8 Q DID YOU PUT IN ANY BULKHEADING?

9 A YES.

10 Q YOU DID. AND DESCRIBE FOR US ON EXHIBIT "2"  
11 WHERE YOU ERECTED BULKHEADING.

12 A I ERECTED THE BULKHEAD FROM THE SOUTH EDGE OF  
13 THE PROPERTY, ACROSS THE PROPERTY AND BACK TO  
14 THE NORTH SIDE OF THE PROPERTY.

15 Q SO YOU WENT DOWN THE SOUTH SIDE. HOW MANY FEET  
16 IN DID YOU GO WITH THAT BULKHEADING  
17 APPROXIMATELY?

18 A IN TO WHERE?

19 Q FROM THE SOUTH TO THE NORTH?

20 A WE WENT TO THE PROPERTY.

21 Q WHAT BUILDING MATERIALS DID YOU USE FOR THAT  
22 BULKHEAD?

23 A TONGUE AND GROOVE? TREATED LUMBER, TREATED  
24 PILE. IT WAS DONE BY A PILE DRIVER, OBVIOUSLY.

25 Q AND YOU WENT ACROSS THE ENTIRE EAST SIDE OF THE

1           PROPERTY FROM THE SOUTH CORNER THIS WAY, RIGHT?  
2           POINT EAST.

3       A     YEAH.

4       Q     AND THEN, DID YOU TURN THE CORNER AND PROCEED  
5           WESTERLY IN ANY FASHION?

6       A     I PROCEEDED TO THE INSIDE OF THE BOAT RAMP AND  
7           THEN HAD HIM COME BACK AND PUT ONE ON THE OTHER  
8           SIDE, BECAUSE WE WERE LOSING PROPERTY. IT WAS  
9           WASHING OUT.

10      Q     WHEN YOU SAY HIM, ARE YOU REFERRING TO YOUR  
11           CONTRACTOR OR MR. COOK?

12      A     PILE DRIVER.

13      Q     YOUR PILE DRIVER GUY.

14      A     MR. COOK WAS NOT INVOLVED IN ANYWAY.

15      Q     DID MR. COOK OBJECT IN ANY FASHION TO YOU  
16           PERFORMING THIS WORK?

17      A     NO.

18      Q     WAS THAT BULKHEADING THAT YOU PUT IN STILL  
19           THERE WHEN YOU SOLD THE PROPERTY TO MS. SENEZ?

20      A     YES.

21      Q     HAD YOU, AFTER YOU PUT IT IN, DID YOU HAVE  
22           OCCASION OR NEED TO EVER MAINTAIN THAT  
23           BULKHEADING OR REPLACE IT?

24      A     NO.

25      Q     IT PRETTY MUCH WAS AS YOU FINISHED IT WHEN YOU

1 LEFT THERE IN 2000?

2 A THAT'S ABOUT IT.

3 Q TURNING TO THE WALL THAT FELL DOWN, THAT WAS  
4 REPLACED. DID IT FALL DOWN ONCE OR MORE THAN  
5 ONCE?

6 A ONLY ONCE THAT I SAW.

7 Q AND IT WAS REPLACED BY THE CONCRETE THAT YOU  
8 DESCRIBED?

9 A YES.

10 Q WITH THE WEEP HOLES IN IT?

11 A YES.

12 Q DO YOU RECALL HOW FAR APART THE WEEP HOLES  
13 WOULD BE WHERE THE ---

14 A NO IDEA.

15 Q EVERY SO MANY FEET OR INCHES OR ---

16 A SIX FEET, I DON'T KNOW. SIX FEET, MAYBE, I'D  
17 BE GUESSING. I DON'T KNOW. I DON'T REMEMBER.

18 Q DESCRIBE THE WEEP HOLES FOR ME. WAS IT JUST  
19 ONE WEEP HOLE IN A CERTAIN AREA AND THEN  
20 ANOTHER WEEP HOLE AS YOU GO DOWN THE ---

21 A YES.

22 Q --- WALL ITSELF?

23 A YES.

24 Q IT WASN'T A ROW OF WEEP HOLES AND THEN A SECOND  
25 ROW AND MAYBE A THIRD ROW?

1 A NO, IT WAS ONE ROW.

2 Q ONE ROW. DID THAT ROW START AT THE BEGINNING  
3 OF THE WALL AND END AT THE WATER --- AT THE  
4 WATER SIDE?

5 A YES, SIR. AS FAR AS I KNOW. I CAN'T --- I  
6 DON'T REMEMBER.

7 Q AND THE WALL WAS ALWAYS CONSTRUCTED OF A  
8 MASONRY MATERIAL, IT WAS NEVER, THAT YOU RECALL  
9 AT LEAST, RAILROAD TIES OR ANYTHING SIMILAR TO  
10 THAT? IT WAS ALWAYS CEMENT.

11 A NO. IT WAS ALWAYS CONCRETE BLOCK, YEAH.

12 Q MR. MYERS, THANK YOU.

13 MR. CARNEY: MR. LANZI, THAT'S THE LAST  
14 QUESTION. BUT, LET ME INTRODUCE  
15 THESE. EXHIBIT "2" AND EXHIBIT "3"  
16 INTO EVIDENCE AS DEFENDANT'S EXHIBITS  
17 "2" AND "3". I'M SORRY. I ALREADY  
18 INTRODUCED "3". WELL, THEN I'LL JUST  
19 BE INTRODUCING "2", THEN.

20  
21 BOUNDARY SURVEY  
22 MARKED FOR IDENTIFICATION  
23 AND INTRODUCED INTO EVIDENCE  
24 AS DEFENDANT'S EXHIBIT "2".  
25

1                   MR. LANZI: CAN WE GO OFF THE RECORD  
2                   FOR ONE ---

3                   **OFF THE RECORD**

4                   MR. LANZI: INITIAL, J., NEIL, N-E-I-L,  
5                   LANZI, L-A-N-Z-I. 409 WASHINGTON  
6                   AVENUE, TOWSON, MARYLAND 21204. I'M  
7                   HERE ON BEHALF OF ANN AND STEVE  
8                   COLLINS, THE PLAINTIFFS IN THIS CASE.

9                   **CROSS-EXAMINATION BY J. NEIL LANZI:**

10          Q       I WANT TO ASK YOU SOME QUESTIONS THE SAME AS  
11                   MR. CARNEY. IF YOU DO NEED A BREAK, LET ME  
12                   KNOW AND WE'LL STOP.

13          A       I'LL RAISE MY HAND.

14          Q       THERE YOU GO. IF I REPEAT MYSELF, LET ME KNOW,  
15                   BUT IF I'M UNCLEAR WITH ANY QUESTIONS, ALSO LET  
16                   ME KNOW AND I'LL REPHRASE IT IF I CAN.

17          A       OKAY.

18          Q       I BELIEVE YOU SAID YOU PURCHASED THIS PROPERTY  
19                   IN APPROXIMATELY 1980-1981. THE PROPERTY THAT  
20                   WE'RE TALKING ABOUT WHICH WOULD BE 341 WORTON  
21                   ROAD?

22          A       YES.

23          Q       IS THAT CORRECT? OKAY. DO YOU REMEMBER WHO  
24                   YOU PURCHASED THE PROPERTY FROM? DO YOU  
25                   REMEMBER WHO OWNED IT BEFORE YOU?

1 A ALL I KNOW IS, HE WAS A REALTOR. I CAN'T  
2 REMEMBER HIS NAME.

3 Q DO YOU KNOW --- YOU INDICATED THAT YOU HAD TO  
4 MAKE SUBSTANTIAL IMPROVEMENTS TO THE PROPERTY  
5 SO THAT YOU AND YOUR WIFE COULD LIVE IN IT.

6 A YES.

7 Q THAT'S CORRECT? DO YOU KNOW IF THE  
8 PREDECESSOR, THE PERSON THAT SOLD IT TO YOU,  
9 DID THEY LIVE IN A HOUSE THERE THAT YOU EVER  
10 SAW?

11 A NO.

12 Q NO. I WANTED TO CLARIFY SOMETHING, RIGHT OFF  
13 THE BAT, AND I THINK YOU MAY HAVE CLARIFIED IT  
14 AT THE END. AT ONE POINT YOU INDICATED THAT  
15 YOU HAD THE PROPERTY SURVEYED RIGHT BEFORE YOU  
16 WENT TO SELL IT, IS THAT CORRECT?

17 A YES.

18 Q AND THEN YOU ALSO WANTED IT SURVEYED SO YOU  
19 COULD PUT A FENCE UP?

20 A YES.

21 Q AND THE FENCE WE'RE TALKING ABOUT IS NOT ON THE  
22 COLLINS' SIDE, WHICH WOULD BE 339, BUT ON THE  
23 OPPOSITE SIDE?

24 A YES.

25 Q AT SOME POINT YOU INDICATED YOU DID PUT A FENCE

1 UP, SO YOU DID ACTUALLY PUT A NEW FENCE UP  
2 BEFORE YOU SOLD THE PROPERTY?

3 A YES.

4 MR. CARNEY: I'M SORRY, ON THE SOUTH  
5 SIDE ARE YOU REFERRING TO?

6 MR. LANZI: ON THE SOUTH SIDE OR  
7 OPPOSITE FROM COLLINS?

8 MR. CARNEY: RIGHT. I'M SORRY.

9 Q YOU INDICATED YOU LIVED IN --- I KEEP GETTING  
10 THE TWO MIXED UP --- YOU LIVED AT 341 WORTON  
11 CONTINUOUSLY, UNTIL YOU SOLD IT AND THEN MOVED  
12 INTO A MOBIL HOME TEMPORARILY.

13 A YES.

14 Q AND THEN YOU MOVED DOWN HERE.

15 A YES.

16 Q DID YOU MOVE DOWN HERE TO PLAY GOLF?

17 A YES. WE WON'T GO ANY FURTHER, 'CAUSE MY BACK'S  
18 BAD.

19 Q I UNDERSTAND. I ALSO WANT TO MAKE SURE I'M  
20 CLEAR ON THIS. WHEN YOU BOUGHT THE PROPERTY,  
21 AS YOU WERE MAKING THE IMPROVEMENTS, THERE WAS  
22 A BLOCK WALL, I BELIEVE, YOU REFERRED TO THAT  
23 AS CEMENT BLOCK WALL BETWEEN YOUR PROPERTY AND  
24 339 WORTON, WHICH I'LL REFER TO AS THE COLLINS  
25 PROPERTY.

1 A YES.

2 Q WERE THE COOKS LIVING AT 339 WORTON WHEN YOU  
3 BOUGHT THE HOUSE?

4 A YES.

5 Q THEY WERE? AND TO YOUR UNDERSTANDING WHO  
6 ACTUALLY CONSTRUCTED THE INITIAL WALL?

7 A I HAVE NO IDEA.

8 Q DON'T KNOW.

9 A IT WAS THERE WHEN I GOT THERE.

10 Q AS FAR AS YOU CAN RECALL, YOU OWNED THE  
11 PROPERTY --- YOUR PROPERTY INCLUDED THE RAMP  
12 THAT YOU BUILT, IS THAT CORRECT?

13 A YES.

14 Q I WANT TO REFER YOU TO WHAT'S BEEN MARKED AS  
15 EXHIBIT "3", I BELIEVE? NO, "2". CAN YOU FIND  
16 THE RAMP ON THIS SURVEY?

17 MR. CARNEY: INDICATING FOR THE RECORD,  
18 THE, I GUESS, WHAT WOULD BE THE  
19 SOUTHWEST CORNER OF THE PROPERTY?

20 Q YES. SOUTHWEST CORNER OF 341 WORTON. ARE YOU  
21 FAMILIAR WITH THE PROPERTY LINE THAT'S GOING  
22 THROUGH BOTH PROPERTIES?

23 A NOT REALLY.

24 Q BUT YOU UNDERSTAND THAT THE WALL, THE CONCRETE  
25 WALL WE'VE BEEN DISCUSSING, IS ON THE COOK

1 SIDE?

2 A COOK SIDE. YEAH, I UNDERSTAND THAT.

3 Q SO THEN IF YOU LOOK AT THIS SURVEY, WOULD YOU  
4 AGREE THAT PROPERTY LINE GOES RIGHT THROUGH THE  
5 RAMP? NOT TOTALLY IN HALF, BUT THROUGH IT. MY  
6 FINGER IS POINTING AT THE RAMP WITH A DARK LINE  
7 GOING THROUGH.

8 A YES.

9 Q WOULD YOU AGREE WITH THAT?

10 A YES.

11 Q SO, TAKING THAT A STEP FURTHER, YOU'RE  
12 UNDERSTANDING WAS THAT THE CONCRETE WALL WAS  
13 LOCATED IN PART ON THE COOK OR COLLINS  
14 PROPERTY, WOULD YOU ALSO AGREE THAT THE PART OF  
15 THE RAMP ALSO IS LOCATED ON THE COLLINS/COOK  
16 PROPERTY?

17 A YES.

18 Q YOUR --- SO THE WHOLE TIME YOU LIVED THERE, THE  
19 COOK FAMILY LIVED THERE AS WELL UNTIL THEY BOTH  
20 PASSED AWAY?

21 A YES.

22 Q AND YOU GOT ALONG WITH THEM WELL?

23 A ABSOLUTELY.

24 Q DID YOU DO THINGS WITH THEM SOCIALLY?

25 A YES.

1 Q BASICALLY, YOU HAD --- I'LL CALL IT A GOOD  
2 NEIGHBOR RELATIONSHIP WITH THEM.

3 A YES.

4 Q AND DID YOU HELP THEM OUT IF THEY NEEDED IT?

5 A YES.

6 Q AND THEY HELPED YOU OUT IF YOU NEEDED IT?

7 A YEAH, WELL, WOULD HAVE, YES. NEVER DID,  
8 BUT ---

9 Q DID YOU EVER HELP EACH OTHER OUT AS FAR AS  
10 GETTING BOATS INTO THE WATER?

11 A YES.

12 Q WHERE WOULD THE BOATS --- HOW WOULD THE BOATS  
13 GET INTO THE WATER?

14 A THEY WOULD BE BACKED DOWN THE RAMP.

15 Q AND, JUST, IF YOU COULD, REFER TO THE SURVEY  
16 AND SHOW ME HOW IT WOULD COME ACROSS THE  
17 PROPERTY INTO THE WATER?

18 A DRIVE OUT HERE, BACK DOWN HERE AND BACK OUT.

19 Q SO IT CAME DOWN THE SIDE, ALONG BETWEEN THE  
20 HOUSE AND THE WALL?

21 A YES.

22 Q AND THERE WAS ENOUGH ROOM FOR THE BOAT?

23 A UH-HUH (AFFIRMATIVE RESPONSE).

24 Q AND WAS SIT ON A TRAILER?

25 A YES.

1                    MR. CARNEY: FOR THE RECORD, JUST FOR  
2                    CLARITY, BETWEEN THE HOUSE LOCATED ON  
3                    341 AND THE CONCRETE WALL IS WHERE THE  
4                    BOAT WOULD BE BACKED DOWN?

5        A        YES.    ON MY PROPERTY.

6        Q        WHEN YOU INDICATED YOU BUILT SOME RAILROAD  
7                    TIES.    A RAILROAD TIE WALL TO HELP KEEP THE  
8                    DIRT AND LAWN FROM EROSION.

9        A        YES.

10       Q        DID THAT, I'LL CALL IT A RAILROAD TIE WALL ---  
11                   DID THAT RAILROAD TIE WALL, WAS IT LOCATED  
12                   FLUSH WITH THE SIDE OF THE HOUSE OR DID IT  
13                   PROTRUDE A FEW FEET OUT INTO THAT SIDE YARD  
14                   AREA BETWEEN YOUR PROPERTY AND THE COLLINS  
15                   PROPERTY?

16       A        BETWEEN IT, I BELIEVE.    I DON'T KNOW.    I THINK  
17                   IT PROTRUDED, BUT I CAN'T --- IF IT DID, IT WAS  
18                   NO MORE THAN A FOOT OR SO.

19                   MR. LANZI: I'LL MARK THIS PLAINTIFF'S  
20                   "1", THIS IS A COPY OF A PHOTOGRAPH.

21       Q        MR. MYERS, I'LL ASK YOU TO REFER TO THIS COPY  
22                   OF A PHOTOGRAPH.    THIS IS MARKED AS PLAINTIFF'S  
23                   "1".    DOES THAT PHOTOGRAPH SHOW YOUR PROPERTY  
24                   AS YOU REMEMBER IT WHEN YOU LIVED THERE?

25       A        YES.

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PHOTOGRAPH OF 341 PROPERTY  
MARKED FOR IDENTIFICATION AND  
INTRODUCED INTO EVIDENCE AS  
PLAINTIFF'S EXHIBIT "1".

Q THAT SHOWS THAT RAILROAD TIE WALL?

A YES.

Q FROM THE BEST YOU CAN TELL FROM THAT  
PHOTOGRAPH, THAT RAILROAD TIE WALL DOES  
PROTRUDE FROM THE HOUSE, IS THAT CORRECT?

A YES.

Q THERE WAS ENOUGH ROOM BETWEEN THE RAILROAD TIE  
WALL AND THE CEMENT BLOCK WALL TO GET THE BOAT  
DOWN ONTO.

A YES. OH, YEAH, THAT'S ---

Q I BELIEVE YOU INDICATED THAT OTHER NEIGHBORS  
ALSO USED THAT AREA TO GET THEIR BOATS INTO THE  
WATER?

A WELL, THE SON-IN-LAW OF GEORGE COOK USED IT.

Q OKAY.

A PEOPLE WHO I DON'T KNOW WOULD COME DOWN.  
BASICALLY, WHAT HAPPENED THE LOCAL RAMP CLOSED  
AND UNTIL IT WAS OPENED AGAIN, I ALLOWED THEM  
TO COME DOWN AND PUT THEIR BOATS IN. SMALLER

1 BOATS THAN I HAD, BUT SIXTEEN, SEVENTEEN FOOT  
2 BOATS. SO, THEY USED IT ALSO.

3 Q WHEN YOU CUT THE GRASS IN BETWEEN THE CEMENT  
4 WALL AND YOUR HOME ON THE SIDE OF THE PROPERTY  
5 BETWEEN YOUR HOME AND THE COLLINS OR COOK  
6 PROPERTY, DID YOU REALIZE THAT THE PROPERTY  
7 LINE WAS CLOSER TO YOUR HOUSE? LET ME REPHRASE  
8 THAT. DID YOU UNDERSTAND WHERE THE PROPERTY  
9 LINE ACTUALLY WAS WHEN YOU WERE MAINTAINING  
10 THAT AREA?

11 A NO.

12 Q DID YOU HAVE ANY TYPE OF UNDERSTANDING OR ---  
13 I'LL JUST USE THAT WORD. DID YOU HAVE ANY KIND  
14 OF UNDERSTANDING THAT, THAT AREA, THAT AREA  
15 BEING THE SIDE YARD BETWEEN YOUR HOME AND THE  
16 CONCRETE WALL COULD BE USED BY YOU AND MR. COOK  
17 AND I GUESS THE SON-IN-LAW TO GET THE BOATS  
18 INTO THE WATER?

19 MR. CARNEY: OBJECTION. YOU MAY  
20 ANSWER.

21 A NO UNDERSTANDING. IT WAS NOT AN UNDER --- I'M  
22 A NEIGHBOR AND I OFFERED IT. YES.

23 Q SO IT JUST HAPPENED?

24 A YES. DIDN'T HAPPEN THAT OFTEN. WHAT HAPPENED  
25 IS THE BOATS WERE PUT IN THE WATER AND THEN