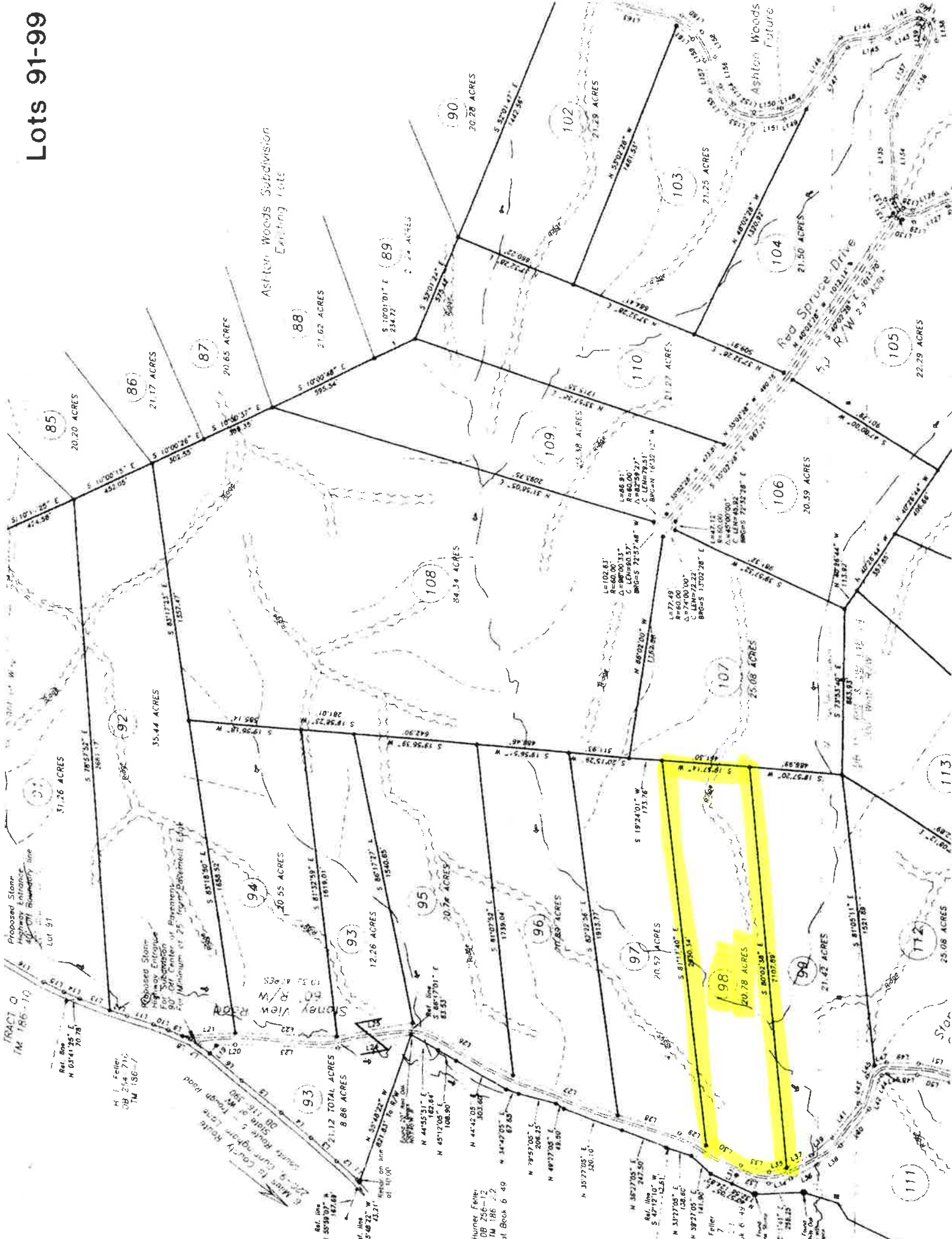


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HANDED TO:  
HARDY COUNTY CIRCUIT COURT

BOOK 322 PAGE 499(5) 184754

DATE 4-30-12



CLERK

*dgk*

IN THE CIRCUIT COURT OF HARDY COUNTY, WEST VIRGINIA

TRANS-ALLEGHENY INTERSTATE LINE COMPANY,  
*Plaintiff,*

v.

CIVIL ACTION NO. 09-C-44  
(Judge Parsons)

RICHARD P.F. LOWE; and  
ROBERT L. FERRELL, in his capacity as Sheriff of Hardy  
County, West Virginia,  
*Defendants.*

FINAL ORDER VESTING INDEFEASIBLE TITLE

Pursuant to the Court's March 23, 2012 Order, this matter was heard on April 20, 2012. Plaintiff appeared by Mr. Melick. Defendant Lowe appeared by Mr. Printz, who advised the Court that his firm no longer sought to withdraw from Mr. Lowe's representation.

The Court noted the absence of Mr. Lowe. Mr. Printz acknowledged that a member of Mr. Lowe's household had signed on March 26, 2012 for receipt of the Court's March 23, 2012 Order. Mr. Printz advised the Court that, when he spoke with Mr. Lowe on April 18, 2012, Mr. Lowe said: that Mr. Lowe, a Department of the Defense employee, advised that he had been out of the country on a work assignment during March and early April 2012; that Mr. Lowe had not received previous and recent email communications from his counsel, which included the February 3, 2012 Order; that Mr. Lowe provided his counsel with new contact information; and that, although Mr. Lowe has returned to Virginia, he was unable to attend the proceedings noticed for April 20, 2012. Mr. Printz did not address Mr. Lowe's earlier failures to communicate with his counsel, or Mr. Lowe's failure to satisfy the Court's mediation requirements and deadlines. Mr. Printz stated, however, that Mr. Lowe was prepared to participate in mediation and any further proceedings in this matter. Upon inquiry from the Court, Mr. Melick stated that TrAILCo objected to any further proceedings, in light of Mr.

{C2311448.1}

Lowe's failure to appear on April 20, 2012 or otherwise show good cause for his previous failures to participate in the mediation of this matter, in which Mr. Lowe bears the burden to prove the damages to which he is entitled.

On the basis of the parties' previous submissions or lack thereof, and the representations concerning Mr. Lowe made by his counsel on March 8 and April 20, 2012, the Court hereby FINDS that defendant Lowe has failed to show good cause, as required by the March 23, 2012 Order, for his failure to participate in Court-ordered mediation of this matter, as required by ¶ 9 of the May 24, 2011 Agreed Scheduling Order and the February 3, 2012 Order. The Court further FINDS that TrAILCo has filed with the Court notice of its payment by check made payable to defendant Lowe of \$645.89 in full satisfaction of the \$500.00 award as directed at the April 20, 2012 hearing, inclusive of interest at the rate of 10% from the date of the filing of TrAILCo's complaint (May 27, 2009) through April 27, 2012.

It is ORDERED that:

1. TrAILCo is hereby vested with indefeasible title, free and clear of all liens and encumbrances to the Right-of-Way as described and depicted on Exhibit A attached to and made a part of this order to (a) construct, reconstruct, repair, improve, alter, replace, operate, use, inspect, maintain and remove an overhead line of poles, towers or structures, as TrAILCo may from time to time deem expedient or advisable, with such wires and cables as TrAILCo shall from time to time suspend therefrom, consisting of all foundations, footings, crossarms, wires, poles, towers, attachments, anchors, ground connections, or other equipment, accessories and appurtenances, as TrAILCo may from time to time deem necessary or desirable in connection therewith (the "Facilities") for the transmission of electrical and other forms of energy as exist from time to time, and for all communication purposes, whether existing now or in the future,

including without limitation fiber optic circuits; (b) permit TrAILCo to transmit and to carry other forms and sources of energy, whether existing now or in the future, in order to deliver electrical power, information or such other services as TrAILCo may provide from time to time.

2. TrAILCo shall at all times have the right to: a) clear the Right-of-Way of all buildings or structures except fences less than 5 feet in height; b) control, cut down, trim and remove trees and underbrush from the Right-of-Way by any method with the exception of aerial spraying; and c) cut down and trim any tree located outside the Right-of-Way which in the opinion of TrAILCo may interfere with the safety, proper operation and/or maintenance of its Facilities.

3. TrAILCo shall exercise its aforesaid rights in such manner as shall cause the least practicable damage and inconvenience to the defendant Lowe. TrAILCo in the exercise of its aforesaid rights shall have the right to open all fences for proper purposes, but shall keep the same closed when not necessary for proper purposes.

4. TrAILCo shall, at its option, repair or pay for damages to the property of the defendant Lowe, except damages to structures, trees or other obstructions as provided below, when such damages result from the construction, reconstruction, repair, alteration, replacement, operation, inspection, maintenance or removal of TrAILCo's Facilities, or from TrAILCo's exercise of the right of ingress, egress, and regress.

5. The defendant Lowe may use the Right-of-Way for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with or endanger the construction, operation or maintenance of TrAILCo's Facilities, and provided further that plans for any grade changes on said Right-of-Way shall be submitted to TrAILCo for its approval.

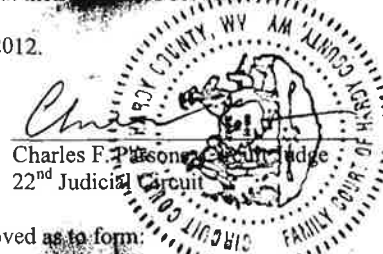
The defendant Lowe shall not erect or construct any building or other structure, except permitted fences, or drill or operate any well within the Right-of-Way.

6. The bond filed July 30, 2009 shall be returned to TrAILCo's counsel, with a photocopy thereof marked "RELEASED BY COURT ORDER" retained in the case file.

7. This Order shall be certified to the Clerk of the County Commission of Hardy County for recordation in the manner provided in W. Va. Code § 51-4-7.

There being nothing further to be resolved or addressed in this proceeding, this action is hereby DISMISSED. The parties' objections and exceptions to all adverse rulings, findings, conclusions, and orders are fully preserved. INSTRUCTIONS TO CLERK: The Clerk shall (i) return TrAILCo's bond per ¶ 6, (ii) certify this Order to the Clerk of the County Commission per ¶ 7, and (iii) mail copies of this order to the parties at their addresses set forth below.

Entered this 30<sup>th</sup> day of April, 2012.



Presented by:

John Philip Melick  
John Philip Melick (WV #2522)  
JACKSON KELLY PLLC  
P. O. Box 553  
Charleston, WV 25322-0553  
Phone: (304) 340-1289  
Plaintiff TrAILCo

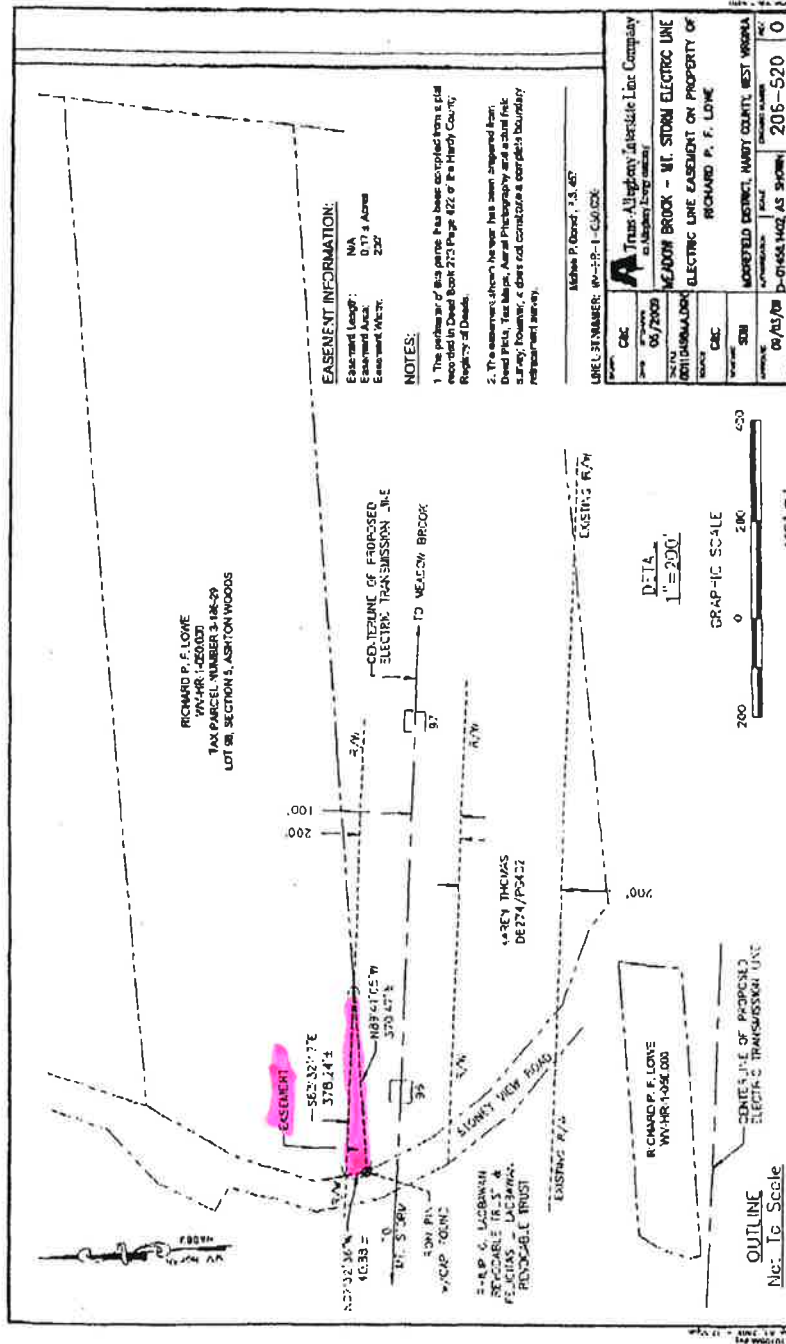
Additional Copy to:  
Lucas J. See, Esq.  
Hardy County Pros. Attorney's Office  
204 Washington Street, Room 104  
Moorefield, WV 26836  
Defendant Ferrell

Approved as to form:

Charles F. Printz, Jr. \*  
Charles F. Printz, Jr. (WV #2985)  
Bowles Rice McDavid Graff & Love LLP  
Post Office Drawer 1419  
Martinsburg, WV 25402-1419  
Phone: (304) 264-4222

Robert R. Bays (WV #274)  
Bowles Rice McDavid Graff & Love LLP  
Post Office Box 49  
Parkersburg, WV 26102  
Phone: (304) 420-5530  
Defendant Lowe

\* signed by Melick with permission



This document presented and filed:  
05/01/2012 02:42:19 PM

Gregory L. Ely, Hardy County, WV  
184754