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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCCONEE COUNTY
Court of Common Pleas
The Honorable J. Cordell Maddox, Jr.

Case No. 2022-CP-37-00396
Appellate Case No. 2022-001796

John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff,
Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon,

Appellants,

v.

Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC, Globe, a
South Carolina Limited Partnership, and Farnes, a South Carolina Limited Partnership,

Respondents.

RECORD ON APPEAL
(VOLUME 3 OF 3)

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I certify that this designation contains no matter which is irrelevant to this appeal.

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May 26, 2023

1 MR. REID:

2 It has to have four foot shoulders, Ellenburg Road
3 does not. Ellenburg Road when it was done and --
4 and rehabilitated was to -- the road was crumbling.
5 We had to patch essentially the entire road. So we
6 had to take out seven inches, put the road back
7 where it was before because we had a prescriptive
8 easement. We didn't have right-of-way to widen it.
9 We didn't have right-of-way to reconstruct it, the
10 only thing we had was a road that was completely
11 deteriorating that needed to be -- so it's just a
12 long patch is what the road is. It took a lot of
13 time to dig out seven inches at a time.

14 MR. CHAIRMAN:

15 Okay --

16 MALE VOICE:

17 But we don't go back and bring roads up to standard
18 --

19 MR. CHAIRMAN:

20 No, no --

21 MALE VOICE:

22 -- unless there's a --

23 MR. REID:

24 No, we -- we do. We -- we try to bring roads up to
25 standards as we can with, you know, gravel roads or

1 roads that are paved that we know we have an issue
2 on that -- that we have right-of-way on that we can
3 try to bring them up to standard Brown Farm Road
4 being one of them, you know, that that does happen
5 from time to time. But we don't have right-of-way
6 in Ellenburg -- excuse me, Ellenburg Road. We
7 asked, tried to see, you know, fill out the be able
8 to obtain right-of-way on it and it was, you know,
9 we -- nobody wanted to give right-of-way for the
10 road. Or not nobody but the people that we
11 contacted didn't want to give right-of-way for the
12 road. And one no pretty much kills it for us to be
13 able to change it.

14 MR. CHAIRMAN:

15 But there -- I guess the question is there are
16 roads, there are county roads that are somewhat like
17 Ellenburg Road.

18 MR. REID:

19 There's a ton of roads like Ellenburg Road, yes.

20 MR. CHAIRMAN:

21 (Inaudible) there's a lot of roads like that.

22 MR. REID:

23 I'm sorry?

24 MR. CHAIRMAN:

25 There are a lot of roads like that in the county

1 that don't meet current standards.

2 MR. REID:

3 Yes.

4 MR. CHAIRMAN:

5 Okay. It's not like we put in a new standard that
6 automatically we -- we change all the roads.

7 MR. REID:

8 No, and that's standard -- the -- the standard for
9 the new road ordinance is -- was '06. The new
10 standards, the 20 foot wide instead of 22, it used
11 to be 22 and things of that nature so that was --
12 that was '06 when that standard was passed.

13 MR. CHAIRMAN:

14 Okay. And the question was raised about fire
15 equipment access to access down the road. If -- if
16 part of the approval process will see to it that the
17 cul-de-sacs being put in will allow fire -- will
18 allow proper fire access.

19 MR. REID:

20 That's not my side of the world, and James can
21 correct me if I'm wrong, but that's fire that looks
22 at the size of the cul-de-sac --

23 MR. CHAIRMAN:

24 But definitely part of the approval process right?

25 MR. REID:

1 -- for the circumference of it, yeah.

2 MR. CHAIRMAN:

3 Or may --

4 MR. REID:

5 Or the diameter.

6 MR. CHAIRMAN:

7 -- it'll be -- it'll be current county standards of
8 a fire -- for fire equipment?

9 MALE VOICE:

10 They do.

11 MR. REID:

12 Yes.

13 MR. CHAIRMAN:

14 Okay, thank you, sir. I do appreciate it.

15 MR. REID:

16 All right.

17 MR. ROOT:

18 Mr. Chairman?

19 MR. CHAIRMAN:

20 Yes, sir.

21 MR. ROOT:

22 Just while Mr. Reid is up, we talked before about
23 the -- the ending of the 2012 payment why --
24 pavement why it didn't go to the end of the prior
25 pavement, do you want to touch on that?

1 MR. REID:

2 Yes, I was -- I was out there. I was present
3 whenever we decided that and I asked Matt Kelley who
4 was my predecessor over the road department if he
5 wanted to go any further and he told me to stop
6 where we -- where we were that, you know, that was -
7 - get the worst of it essentially and that was with
8 the -- with the subdivision there and some of the --
9 some of the construction that had gone on in that
10 area. That was the -- that was the worst part of
11 the road that was alligator cracked completely up.
12 Yeah. That was -- it was not -- it was not anything
13 but where the worst part of the road was is why we
14 stopped where we stopped.

15 MR. CHAIRMAN:

16 Okay, fine, thank you, appreciate that
17 clarification. Thank you, Mr. Root. Okay, any
18 other questions from staff? Would the Board like to
19 take a break?

20 MALE VOICE:

21 Yes.

22 MR. CHAIRMAN:

23 Before we -- we get into discussion?

24 MALE VOICE:

25 Yes.

1 MR. CHAIRMAN:

2 (Inaudible) okay. Entertain a motion to take a 10
3 minute break, reconvene at five minutes to 8:00?

4 MALE VOICE:

5 So moved.

6 MALE VOICE:

7 Second.

8 (BREAK)

9 MR. CHAIRMAN:

10 Please have your seats. Please stop the
11 conversations, appreciate it. We got enter a motion
12 to reconvene the --

13 MALE VOICE:

14 So moved.

15 MR. CHAIRMAN:

16 -- Planning Commission. Is there a second?

17 MALE VOICE:

18 Second.

19 MR. CHAIRMAN:

20 All in favor please say aye.

21 MALE VOICE:

22 Aye.

23 MALE VOICE:

24 Aye.

25 MR. CHAIRMAN:

1 All right, five nothing. Okay, we've reached the
2 point where we've got to discuss and make a -- a
3 decision. I'd like to propose, I mean there's lot
4 of issues we've got to talk about. I'd like to
5 propose the following categories we talk about, put
6 them in order so that we -- we don't get all
7 confused by one thing or another, we talk about
8 things that -- I'd like to start out with
9 prescriptive easement and then talk about the road
10 itself, then talk about John's Marine, a lot of the
11 issues we have are with John's Marine, talk about
12 how this might impact them, Duke Power, the impact
13 there, and anything else you'd like to do but I'd
14 like -- if we can do it in that order then we'll
15 hopefully avoid --

16 MALE VOICE:

17 That makes sense.

18 MR. CHAIRMAN:

19 -- going off and --

20 MALE VOICE:

21 That makes sense.

22 MR. CHAIRMAN:

23 -- (inaudible) comfortable with that.

24 MALE VOICE:

25 Do it in order.

1 MR. CHAIRMAN:

2 Is anyone -- anyone not comfortable with that
3 approach? Okay. Let's start out with the
4 prescriptive easement. We've heard a lot of input
5 on both sides, the county attorney, everyone else.
6 What are your thoughts on the prescriptive easement?

7 MR. EAGAR:

8 I think -- I think from what we've heard so far that
9 -- that does not bind us in any way in terms of
10 whether, you know, and it -- from a decision
11 standpoint we can go ahead with a decision that
12 perceptively the easement doesn't impede us in any
13 way from what I understood from Mr. Root, is that
14 true?

15 MR. ROOT:

16 From my position, staying neutral, I believe you can
17 craft an order that addresses the fact that the
18 prescriptive easement may -- they may not express a
19 direct opinion on the prescriptive easement but you
20 address the variance of that pinch point, yes.

21 MR. EAGAR:

22 So I think that -- I think -- I think we should do
23 that then and disregard the perceptively easement.
24 This is a discussion?

25 MR. CHAIRMAN:

1 We are not competent to decide that issue.

2 MALE VOICE:

3 All right.

4 MR. CHAIRMAN:

5 We just don't -- we don't have the (inaudible).

6 MALE VOICE:

7 Right.

8 MR. CHAIRMAN:

9 We don't have business in that so we're not gonna
10 decide that but as -- as John's suggesting we ought
11 to go ahead and -- and decide this as though there
12 were an easement and -- and if someone wants to go
13 to court to --

14 MALE VOICE:

15 Yup.

16 MALE VOICE:

17 Yeah.

18 MALE VOICE:

19 Then --

20 MR. CHAIRMAN:

21 -- decide that they can do that but it's --

22 MALE VOICE:

23 Well and they got to have -- Duke's got to get
24 involved on sounds like -- sounds like emergency,
25 sounds like a lot of other folks are gonna get in --

1 MALE VOICE:

2 Sure.

3 MALE VOICE:

4 -- you know. We're not the deciding final decision
5 on it. We're just saying alright move forward is
6 what my understanding we're doing and that pinch
7 point where --

8 MR. CHAIRMAN:

9 So -- so, second thing I'd like to talk about then
10 is the road itself, the pinch point, and the
11 variance being requested. As I understand it the
12 pinch point is on the applicant's property, on the
13 applicant's property. And what he's -- what he's
14 representing is he -- he doesn't have enough right-
15 of-way there but he can install a road or Mr. Reid
16 has said we can install a road there that meets all
17 standards, just need and -- in this particular case
18 we don't need a wide right-of-way, normal 50 feet,
19 the (inaudible) feet will do. So just looking at
20 that, regardless of its impact on everything else,
21 on John's Marine and the traffic and whatnot, are we
22 comfortable with the road itself, is it safe, is it
23 --

24 MR. MCKEE:

25 I would like to ask a question on that.

1 MR. CHAIRMAN:

2 Sure.

3 MR. MCKEE:

4 I don't know exactly who -- who from staff will make
5 -- make comment on it. It may depend on which way
6 we go but if let's -- let's say that -- well, let's
7 -- let's just say we keep it like it is, is Oconee
8 County gonna come down there and -- and do the road?
9 Is -- is the whoever the winner of this argument is,
10 are they gonna -- are they gonna upgrade the road
11 down there around the pinch point or I mean I don't
12 -- if it's not Oconee's road, I -- I don't -- I
13 don't really know why the county would go down there
14 to -- to work on that little bit of area. Now, Mr.
15 Reid may have more to say about that than I do but
16 is that -- I mean, is that the county's thinking is
17 that once it's -- once whatever our decision is A or
18 B, then the county's gonna go in there and make the
19 road what it's supposed to be as far as width, as
20 far as vertical, alignment and everything else. Is
21 -- is that the county gonna do that or is whoever
22 the victor in this --

23 MR. REID:

24 No. We --

25 MR. MCKEE:

1 -- (inaudible).

2 MR. REID:

3 -- we -- we do not.

4 MR. MCKEE:

5 Okay. I -- I just I wanted to make sure because I -
6 - and I may have misheard what you had said that the
7 county would do that.

8 MALE VOICE:

9 They would just inspect and make sure --

10 MR. MCKEE:

11 They would just inspect.

12 MR. CHAIRMAN:

13 I -- I -- okay, I misspoke, I'm sorry I didn't mean
14 to mislead anyone.

15 MR. MCKEE:

16 Okay. Okay, I just wanted to make sure.

17 MR. CHAIRMAN:

18 It will be put in according to county standards. It
19 will have to agree with county, it's the developer
20 who will put the road in.

21 MR. MCKEE:

22 Right.

23 MR. CHAIRMAN:

24 Mr. Lee has said he's gonna put the road in --

25 MR. MCKEE:

1 I -- I just wanted to make sure that --

2 MR. CHAIRMAN:

3 -- to the county standards, it'll -- it'll be sloped
4 the right way, it'll have drainage and -- and
5 whatnot.

6 MR. REID:

7 Yeah, so without the right-of-way we can't change
8 any characteristic of any road.

9 MR. MCKEE:

10 Okay. I just wanted to make sure that nobody 'cause
11 I just wanted to make sure everybody was clear on
12 that. I didn't think the county wanted to get
13 involved.

14 MR. CHAIRMAN:

15 Well, I guess let's decide if there's no
16 prescriptive easement there the county is not doing
17 business down there and there isn't gonna be a road
18 built, doesn't matter who's gonna, you know, it all
19 depends on that getting decided somewhere.

20 MALE VOICE:

21 Right.

22 MALE VOICE:

23 Right.

24 MALE VOICE:

25 Right.

1 MR. ROOT:

2 Mr. Chairman, if I could. One -- the one point that
3 Kyle has made a couple times and I don't want it to
4 get lost is, he went -- went to the mat, but where
5 the pavement is, where the county contends it has a
6 prescriptive easement, that's what we have. We
7 can't jog the road to the right or to the left; we
8 can't widen the road more. By virtue of the nature
9 of a prescriptive easement you get what you've
10 developed over the course of this 20 years of use
11 adverse to the owners so in this case the dirt under
12 the -- underneath the asphalt. So, we can't unless
13 that -- that situation gets treatment.

14 MR. CHAIRMAN:

15 So that'll be a part of whatever decision is made
16 down the street?

17 MR. ROOT:

18 Follow-up proceedings should.

19 MR. CHAIRMAN:

20 Follow-up proceeding (inaudible) -- follow-up
21 proceedings.

22 MR. EAGAR:

23 Mr. Root, would that -- would that mean that if
24 there was a prescriptive easement that that -- that
25 road then in theory could not be moved?

1 MR. ROOT:

2 Without it being abandoned, correct, yes. That --
3 that prescriptive -- so say the developer wants to
4 do a private road and just it's south of this road
5 in question, that area where we have the
6 prescriptive easement where the county contends it
7 has a prescriptive easement, it's still gonna remain
8 there, still gonna remain open to the traveling
9 public as is, we can't widen it, can't move it,
10 can't do anything with it until it's abandoned,
11 until it goes through that procedure that I talked
12 about which is a judicial proceeding. The Court's
13 gonna make a decision that, okay, you can abandon
14 it, it's in the best interest of the -- all
15 interested parties and this is who owns the dirt
16 underneath the asphalt.

17 MR. EAGAR:

18 And then shift it and then -- and then -- then the
19 county would probably take over that road, the new
20 road (inaudible)

21 MR. ROOT:

22 That's all subject to --

23 MR. EAGAR:

24 Turned over to them at some point.

25 MR. ROOT:

1 That would be all subject to the next steps if it's
2 built according to county specifications get through
3 abandonment, you know.

4 MALE VOICE:

5 So -- so who -- who -- who's involved in the
6 abandonment process? I mean, would the Ratliff's
7 have to be --

8 MR. ROOT:

9 They would be --

10 MALE VOICE:

11 -- or the Ellenburg's, I can't keep all the names
12 straight, they would have to agree for it to be
13 abandoned as well?

14 MR. ROOT:

15 Well they wouldn't have to agree, but they would
16 have their -- they would have due process rights to
17 appear and -- and be heard by the Court. So they
18 object to it, the Court gonna take that into the
19 best interest of the public certainly. They
20 wouldn't have to consent necessarily but I don't
21 know -- but I've been involved in one that's been
22 contested that -- that was -- that was still
23 granted. I mean, it's usually it's just not -- I
24 mean, if we seek to abandon a road or a property
25 owner seeks to abandon a road and we consent to it

1 there's no question that there's no use for this
2 road anymore. So I can just speak from history on
3 that experience.

4 MR. CHAIRMAN:

5 So I -- thank you, I think that clarifies for us
6 what the situation is. Does everyone feel
7 comfortable there? Okay. So let's talk about the
8 road itself and it's gonna go the right-of-way is
9 gonna be narrowed down. The road will still be full
10 county spec road going through the narrows, if you
11 will.

12 MR. EAGAR:

13 The full 20 foot?

14 MR. CHAIRMAN:

15 The full 20 foot, no, it'll be built to current
16 county standards. If --

17 MALE VOICE:

18 (Inaudible).

19 MR. CHAIRMAN:

20 -- if we go through all this process and it's
21 decided we're gonna build a road --

22 MALE VOICE:

23 Yes.

24 MR. CHAIRMAN:

25 -- as the developer wants that would be built to

1 county standards.

2 MR. REID:

3 Private -- private or public roads have to be built
4 to the same standard.

5 MR. CHAIRMAN:

6 Right.

7 MR. REID:

8 So 20 foot wide is the minimum that any road in the
9 county can be built but that is all predicated on
10 what the traffic impact study says.

11 MR. CHAIRMAN:

12 Okay. Okay, thank you.

13 MALE VOICE:

14 So there's got to be a traffic study too before --

15 MR. REID:

16 Yes, any law -- any --

17 MR. CHAIRMAN:

18 There's gonna be a traffic study done.

19 MR. REID:

20 -- any subdivision 11 lots or more has to have a
21 traffic impact study for the county road system and
22 the road that is coming in.

23 MR. EAGAR:

24 Would that tra -- would that traffic study also take
25 into consideration the upper part of that road also?

1 MR. REID:

2 Yes, it would be for the entirety of --

3 MR. EAGAR:

4 Because that -- that is -- I've driven that and it's
5 dangerous.

6 MR. REID:

7 Ellenburg Road -- Ellen --

8 MALE VOICE:

9 Thank you.

10 MR. REID:

11 -- Ellenburg Road being all county, so anything that
12 it ties to that is county has to be considered.

13 MR. EAGAR:

14 But I mean with the blind spots and the hills and
15 what have you it's -- it's rather treacherous.

16 MR. CHAIRMAN:

17 But as far as this particular -- the various
18 particular at the pinch point I think we need to
19 look at is the road safe at that point. Is it --

20 MALE VOICE:

21 That's all we're dealing with.

22 MR. CHAIRMAN:

23 As -- as we're constructing through that pinch point
24 is it safe.

25 MALE VOICE:

1 Is --

2 MR. CHAIRMAN:

3 Is that making sense?

4 MALE VOICE:

5 That's all -- that's all -- that's all we've got.

6 MR. CHAIRMAN:

7 That's what the variance is about. Yes, we -- we
8 need to consider traffic safety and all that, we'll
9 talk about that in a minute, but we're talking about
10 the variance and is the -- is the road itself as it
11 goes through that pinch point is it safe.

12 MALE VOICE:

13 Yeah.

14 MR. EAGAR:

15 And then -- and then we're gonna talk about the
16 overall safety of the road --

17 MR. CHAIRMAN:

18 Yes.

19 MALE VOICE:

20 -- the traffic (inaudible).

21 MR. CHAIRMAN:

22 We get to -- we'll get to traffic and that. I just
23 want to -- trying to get things in order, guys. Is
24 that making sense? Everyone agreeing with that so
25 far? The road itself will be safe as it goes

1 through that pinch point, okay. Okay, let's talk
2 about the impact on John's Marine. Who has
3 comments?

4 MALE VOICE:

5 I --

6 MR. CHAIRMAN:

7 Can I say one thing? No one wants John's Marine to
8 go out -- thank you, you can sit down, thank you
9 (inaudible). No one wants John's Marine to go away;
10 can we all agree with that?

11 MALE VOICE:

12 Right.

13 MR. CHAIRMAN:

14 We all want John's Marine to stay, no one -- I don't
15 think the developer wants John Marine to go.
16 Everyone wants John's Marine to stay, thrive,
17 service the community, da, da, da, da, da. Is that
18 right? Okay, so --

19 MR. EAGAR:

20 I think -- I think --

21 MR. CHAIRMAN:

22 -- the impact on John's Marine.

23 MR. EAGAR:

24 And I think the impact is basically that over the
25 years John's Marine has -- has taken that entire

1 road and that has become a part of that overall
2 driveway or turn around area or whatever where he's
3 -- where he's moving his equipment and his boats.
4 And -- and it's -- and any change to that now is
5 gonna have some impact on his business there's no
6 question about that.

7 MALE VOICE:

8 But has he not got more area? It looks to me when
9 you turn it that there's more area there, if he's in
10 agreement to deed it.

11 MALE VOICE:

12 (Inaudible).

13 MR. EAGAR:

14 Not when -- not when you're considering I don't
15 think the fact that he's actually using the roadway
16 as -- as part of his facility there.

17 MALE VOICE:

18 The roadway's not going away.

19 MR. EAGAR:

20 Huh?

21 MALE VOICE:

22 The roadways not going away.

23 MR. CHAIRMAN:

24 Actually if you look at this picture here, look --

25 MALE VOICE:

1 The picture looks like he's got -- he's gonna have
2 more room.

3 MR. EAGAR:

4 And it's not going away but it's gonna -- but you
5 can't block it, you can't park the vehicles across
6 it and things like that.

7 MALE VOICE:

8 If you aban -- if you abandon the Ellenburg --

9 MALE VOICE:

10 I'm not --

11 MALE VOICE:

12 -- like he says, they go through the abandonment
13 process then that becomes, you know, and if he's in
14 agreement to deed it over to him, you know, we can
15 stipulate that.

16 MR. CHAIRMAN:

17 If you look at that he's gonna gain a considerable
18 amount of road that is current Ellenburg Road.

19 MALE VOICE:

20 Yup.

21 MR. CHAIRMAN:

22 You can have that plus he's gonna have, if he has to
23 use it --

24 MALE VOICE:

25 Yup.

1 MR. CHAIRMAN:

2 -- the new Ellenburg Road, so it's going to be
3 considerably wider particularly at the -- at his
4 driveway.

5 MR. EAGAR:

6 I agree. I agree with that. Yeah. Yeah. You
7 know, looking at it that way I'm just stating that
8 the fact that he's been using that road as it exists
9 for part of his -- part of his business --

10 MR. CHAIRMAN:

11 But he'll -- he'll have -- he'll own much of that.
12 I'm not sure how much, he'll own much of that if
13 they -- if they deed over to him, he'll own much of
14 the road he's using now and he'll also have access
15 to the new re-routed Ellenburg Road.

16 MR. REID:

17 That actually be better because I think Mr. Lee, if
18 I'm not mistaken, he made the comment that some of
19 his -- some of his boats and trailers and everything
20 are -- it's on your property anyway right now. And
21 you just -- you've -- you just haven't pushed the
22 button to get it off.

23 MR. CHAIRMAN:

24 And one of the issues is -- is John's Marine needs
25 on occasion to have large trucks in there to offload

1 parts, engines and whatnot. He would be able to
2 park those on -- in this crosshatched area again
3 that we see and not be on the road per se. Is that
4 making sense?

5 MALE VOICE:

6 It seems like that John's Marine is -- is the sticky
7 wicket here, this is the -- the thing that we're
8 trying to --

9 MALE VOICE:

10 Oh, yeah.

11 MALE VOICE:

12 -- appease them and also this --

13 MR. CHAIRMAN:

14 It's very emotional. We have a lot of folks here
15 say it's -- it's big issue for the --

16 MALE VOICE:

17 Listen to them.

18 MALE VOICE:

19 The balance back and forth but the way I look at it,
20 if a developer meets all the criteria for a new
21 development and -- and the uses isn't -- is a
22 recommended use for that land, if it affects another
23 neighbor in that use that's -- that's an impact but
24 I'm not sure that I could just be able to -- I could
25 stop a developer from developing when -- when they

1 meet all the criteria for -- for -- for a variance
2 request. And plus it sounds like the developer is
3 doing things to help mitigate some of that traffic
4 problem and some of the turnaround problem by
5 granting some additional land and things like that.
6 So, I -- I don't want to impact the marina any more
7 than we have to but I think there is a right of a
8 developer if they meet the criteria that the use is
9 that -- if it's a -- if it's a use that can -- can
10 be made that's legally I think they should have the
11 right to do it.

12 MR. CHAIRMAN:

13 Okay. I -- I guess we could say that property was
14 owned by Crescent, I guess it's current -- it's not
15 Crescent it's someone -- some other entity owns it
16 but and it has the same stipulations on it as other
17 Crescent properties do, it's gonna be developed in
18 the same way that some of the Crescent communities
19 have been developed. Okay. Anything else on John's
20 Marine then? We're all agreed we want to keep
21 John's Marine, and it sounds to me like we're saying
22 if anything he'll have better access to his business
23 with these changes. I said that right guys?

24 MR. EAGAR:

25 It -- it appears that way, yes, by the drawings.

1 MR. CHAIRMAN:

2 It's certainly better access, I'm not -- I'm having
3 trouble understanding where this will provided --

4 MALE VOICE:

5 It's deeded.

6 MR. CHAIRMAN:

7 -- if deeded over, the property is deeded over so
8 that for some unknown reason the -- the current
9 owners couldn't stop him from access to his
10 business.

11 MALE VOICE:

12 Yeah.

13 MR. CHAIRMAN:

14 I mean, that's not -- we've been assured that's not
15 gonna be the case. Okay. Duke Power, I don't think
16 that's a -- we're not a party to --

17 MALE VOICE:

18 It's not our (inaudible).

19 MR. CHAIRMAN:

20 -- his relationship with Duke Power.

21 MALE VOICE:

22 That's not our business.

23 MR. CHAIRMAN:

24 That's -- that's his problem. Same thing with the,
25 I think it was mentioned somewhere with the flood

1 zone, that's between the developer and FERC. If --
2 if 810 is a flood zone, you know that -- they got
3 houses below 810 that may mean they have insurance
4 problems, I -- I don't know but that's not our
5 purview. We all agreed there?

6 MALE VOICE:

7 Yeah.

8 MR. CHAIRMAN:

9 Okay. Okay, traffic, let's talk traffic. We've
10 established that there's gonna have to be a traffic
11 study done and it will be done not just right in
12 front of John's Marine but it'll be done on all of
13 Ellenburg Road, is that what it amounts to?

14 MR. REID:

15 Generally, yeah, it'd be up to the traffic engineer,
16 but yes, that's what we would expect that it would
17 be -- it would take into account all of Ellenburg
18 Road.

19 MR. CHAIRMAN:

20 And --

21 MALE VOICE:

22 All right, what decision -- what does that study
23 tell you that --

24 MR. REID:

25 Average daily trips.

1 MALE VOICE:

2 Right, but I'm -- how's that impact the decision
3 whether they get to move forward.

4 MR. REID:

5 If that -- if that road is up to a standard to carry
6 that many trips the ordinance calls out what -- what
7 that breakeven point is 400 and less the 20 foot
8 wide road, 400 to 800 22.

9 MALE VOICE:

10 But it is feasible what a traffic study could niche
11 this thing?

12 MR. REID:

13 Oh, I'm -- I couldn't --

14 MALE VOICE:

15 I mean, it's possible.

16 MR. REID:

17 -- (inaudible).

18 MALE VOICE:

19 I'm just saying is it possible that a traffic study
20 could be done and they -- they say no, you can't --
21 you can't move forward?

22 MR. REID:

23 That would be up to the developer (inaudible) you
24 know, for -- for the -- the same issues that we
25 would have with changing the road in any way

1 (inaudible) right-of-way.

2 MALE VOICE:

3 Right, but if the study comes back and says the road
4 -- road won't support the additional traffic, what
5 happens?

6 MR. REID:

7 It would need to be upgraded.

8 MALE VOICE:

9 Okay. And who's responsibility --

10 MR. EAGAR:

11 Or -- or they would have to reduce the number of
12 houses, right?

13 MR. REID:

14 Right, yeah.

15 MR. CHAIRMAN:

16 So it could -- it can --

17 MR. REID:

18 If it goes under 11 then there's no -- you don't
19 have to do a traffic impact study.

20 MR. EAGAR:

21 Including 11?

22 MR. REID:

23 Yes, including 11 and up.

24 MR. EAGAR:

25 And 11 and up or --

1 MR. REID:

2 Ten and --

3 MR. EAGAR:

4 -- 11 and down?

5 MR. REDI:

6 Sorry, 11 and up requires a traffic impact study.

7 MR. EAGAR:

8 So 10 --

9 MR. REID:

10 Ten and down --

11 MR. EAGAR:

12 Ten and down --

13 MR. REID:

14 -- does not require it.

15 MR. EAGAR:

16 -- doesn't require it.

17 MR. REID:

18 Ten to four is a private drive, three to zero or

19 three to one is a driveway.

20 MR. EAGAR:

21 Appreciate it, thank you.

22 MALE VOICE:

23 So the study would -- would either upgrade the road,

24 reduce the number of lots or -- right, that would --

25 that decision would have to be made by the

1 (inaudible).

2 MR. REID:

3 You know --

4 MALE VOICE:

5 It would just say that that road can't support that.

6 MR. REID:

7 Well they would look at it, they would provide us
8 with whatever rationale that they had as far as a
9 traffic engineer has --

10 MALE VOICE:

11 Okay.

12 MR. REID:

13 -- for that road, what the ADT is, you know,
14 compared to what it's gonna be with the -- with the
15 new development, you know, the peak hours, all that
16 stuff they would consider --

17 MALE VOICE:

18 Okay.

19 MR. REID:

20 -- take into account what that -- what that impact
21 to the road would be.

22 MR. CHAIRMAN:

23 Okay, thank you.

24 MALE VOICE:

25 Thank you.

1 MR. CHAIRMAN:

2 Appreciate your continued --

3 MR. REID:

4 Thank you.

5 MR. CHAIRMAN:

6 -- forbearance and information. Okay, so as I -- I
7 live down South Cove Road, it's a dead end, it dead
8 ends down in South Cove Park, there's about over 300
9 parcels that have to use South Cove Road to get out
10 into -- into the county. I counted the number of
11 parcels on Ellenburg Road and off Ellenburg Road
12 like up in the subdivisions and I got 77, please
13 don't hold me to exact number but that's what I got
14 is number -- is 77. And this project would add 25
15 percent to that or take it up to 96 parcels. And --
16 and I -- and I live in a subdivision that's got 78
17 parcels, 78 and they're almost all built up. I mean
18 I understand people's concern about traffic safety
19 but I -- I just don't see a major safety issue there
20 with the small number of parcels currently and the
21 number of parcels being added. I know that's not a
22 popular -- and I guess if I could say we're --
23 county roads are not intended to be pedestrian
24 friendly. There's all kinds of county roads, I've
25 been on county roads and I'd never be walking on

1 that county road. So I -- and -- and to walk your
2 dog, I mean, it -- it's just not included in the
3 design of county roads. So, I've said my peace.
4 Who else has something to say?

5 MR. EAGAR:

6 I -- I -- I --

7 MR. CHAIRMAN:

8 You guys got to have some -- some -- some idea what
9 you want to say here.

10 MR. EAGAR:

11 Go ahead.

12 MALE VOICE:

13 Well I mean, I -- I think -- I think our first
14 priority somebody, I forgot which side it was on,
15 made the statement about, you know, don't look at
16 this from an economic standpoint, look at it and say
17 -- I've never I've been on this committee for I
18 think 15 years, 100 years or something like that,
19 but I don't think at one time did we ever look at
20 something and say hey, you know, this might get
21 somebody killed but we can -- the county can make
22 some money out of this, taxes. We've never looked
23 at that. It's always gonna be a safety issue and
24 that's the reason as we're looking at this -- at
25 this road I -- I think that it's -- it's -- that is

1 -- and I -- I might be speaking out of turn, y'all
2 can certainly speak but I mean that's -- that's my
3 number one thing is how safe is it going to be, you
4 know, are we taking a bad situation and making it
5 worse or are we taking maybe a bad situation and --
6 and gonna make it better. That's -- that's how I
7 look at it it's -- it's just the safety of the
8 people going in and out because I don't care if --
9 if the county makes 10 billion dollars off of it, if
10 it gets somebody killed because of it that's --
11 that's the wrong thing.

12 MR. CHAIRMAN:

13 We don't take into account tax revenue, that's --
14 that's not in our -- we just don't do that. So, any
15 other comments on traffic safety?

16 MR. ROOT:

17 Mr. -- Mr. Chairman, if I could. I just want to
18 make sure it's noted 'cause Mr. McKee pulled up --
19 or brought up a good point the applicant and the
20 opposing parties have addressed the elements of a
21 variance and standard elements, but this is --
22 remember this is coming out of Chapter 26, so that
23 where it starts in the preliminary inquiry is the
24 safety of the road in question. So, I just want to
25 make sure that you get it -- tag it right so you

1 start there at the safety and then you go through
2 your elements if you're gonna trace with the -- how
3 the order should trace.

4 MR. CHAIRMAN:

5 (Inaudible) a word you said.

6 MR. ROOT:

7 Safety.

8 MR. CHAIRMAN:

9 Safety is the number one issue.

10 MR. ROOT:

11 Safety is number one for a variance from the road
12 standards and it starts --

13 MR. CHAIRMAN:

14 Yes.

15 MR. ROOT:

16 -- there.

17 MR. CHAIRMAN:

18 Yes.

19 MR. ROOT:

20 So I just wanted to underscore --

21 MR. CHAIRMAN:

22 Yes.

23 MR. ROOT:

24 -- that point 'cause I've heard a lot of talk about
25 those four elements which are important and relevant

1 and it should be addressed but you start with that
2 safety of the whole of the road in question.

3 MR. CHAIRMAN:

4 Yes.

5 MR. ROOT:

6 Make sure you hit that.

7 MR. CHAIRMAN:

8 We have -- we have the ordinance right here.

9 MR. ROOT:

10 Okay.

11 MR. CHAIRMAN:

12 We've got that order that safety is the --

13 MR. ROOT:

14 Thank you, sir.

15 MR. CHAIRMAN:

16 Okay.

17 MALE VOICE:

18 On -- on our -- our variance standards it all says
19 is that you'll work with the county planning
20 department and the county road department in an
21 effort to eliminate or minimize the need for the
22 variance (inaudible) that way the solution can be
23 reached. So have we done all that? I'm sure we
24 have. Tried to come up with a --

25 MALE VOICE:

1 I think the last meeting or the meeting before is
2 when the requirement was established (inaudible)
3 make both parties (inaudible) try to work this out.

4 MALE VOICE:

5 Yeah.

6 MALE VOICE:

7 And it sounds like there has not been a resolution
8 that's been reached yet.

9 MALE VOICE:

10 Right.

11 MALE VOICE:

12 The applicant has reached back out and requested
13 that a decision be made.

14 MALE VOICE:

15 Okay.

16 MALE VOICE:

17 So they are due a decision by this body.

18 MR. CHAIRMAN:

19 And we will have a decision. Is there any other
20 general discussion before we get into our questions?

21 MALE VOICE:

22 So are we saying that with the road that we would --
23 if we did approve the variance that we would improve
24 it subject to a satisfactory road study; is that
25 what we're saying?

1 MR. CHAIRMAN:

2 I think we're saying if -- if -- if we approve the
3 variance then they would go through normal -- normal
4 procedures with the county, various county
5 departments, to -- to prove that utilities can be
6 run okay and -- and show that they've got proper
7 fire access and to show that traffic study, traffic
8 is okay --

9 MALE VOICE:

10 All the normal --

11 MR. CHAIRMAN:

12 -- the (inaudible) state --

13 MALE VOICE:

14 -- stuff that they would go --

15 MR. CHAIRMAN:

16 All the normal things --

17 MALE VOICE:

18 We're not the final say.

19 MR. CHAIRMAN:

20 So --

21 MALE VOICE:

22 Yeah, we're not --

23 MR. CHAIRMAN:

24 They're trying to get a variance before they go
25 through all that process.

1 MALE VOICE:

2 Right, we're not the final say.

3 MR. CHAIRMAN:

4 So, yeah. But that's part -- that's part of the
5 approval process that still has to happen.

6 MR. EAGAR:

7 With -- with that par -- with the paramount issue
8 being safety and all, how would the Board feel about
9 putting conditions on a variance if it were granted
10 reducing the number of houses to be built? Maybe
11 down to 10.

12 MR. ROOT:

13 That would be determined by a traffic study.

14 MR. CHAIRMAN:

15 I think I'd -- I'd like the traffic study to speak
16 to that.

17 MALE VOICE:

18 Yeah.

19 MR. CHAIRMAN:

20 If the traffic study said okay, yeah, you can get by
21 with 10 that'd be up, you know --

22 MALE VOICE:

23 Yeah.

24 MALE VOICE:

25 Well any -- any -- any --

1 MR. EAGAR:

2 I was just thinking --

3 MALE VOICE:

4 -- attachments --

5 MR. EAGAR:

6 -- I'm just thinking in terms of a compromise where
7 it would reduce the -- the amount of traffic on that
8 road which is --

9 MALE VOICE:

10 I think if we -- can we attach that, you know, this
11 -- that he indeed is deeded that property.

12 MR. EAGAR:

13 That -- that --

14 MALE VOICE:

15 So he's got more property --

16 MR. EAGAR:

17 Yeah, that --

18 MALE VOICE:

19 -- he's got more access --

20 MR. EAGAR:

21 -- that could be in --

22 MALE VOICE:

23 -- you know, I see that as a win-win, you know,
24 other than --

25 MALE VOICE:

1 Uh-huh.

2 MALE VOICE:

3 -- you know, they don't want extra traffic on their
4 butt. To me I see he's got going if we stipulate
5 that the developer has to deed that in -- deed that
6 over to him.

7 MR. CHAIRMAN:

8 That could be a stipula -- we'd --

9 MALE VOICE:

10 A stipulation.

11 MR. CHAIRMAN:

12 As -- as we go through our questions we got to keep
13 in mind what requirements do we want to put on this
14 so we -- we go through a wordsmithing at the end.

15 MALE VOICE:

16 Yeah.

17 MR. CHAIRMAN:

18 That -- that establishes conditions we're willing to
19 approve this based on. Is that -- that fair?

20 MALE VOICE:

21 Fair.

22 MR. CHAIRMAN:

23 Okay. Ready to ask the questions?

24 MALE VOICE:

25 Yeah.

1 MR. CHAIRMAN:

2 Okay. Four questions, there are extraordinary and
3 exceptional conditions pertaining to the particular
4 piece of property. Can I have a motion in the
5 affirmative please?

6 MR. EAGAR:

7 So moved.

8 MR. MAYS:

9 Second.

10 MR. CHAIRMAN:

11 Okay. Discussion? I think it's been pretty well
12 established that it's narrow and --

13 MALE VOICE:

14 It's too narrow, yeah.

15 MR. CHAIRMAN:

16 -- he's got to -- if he's gonna do something he's
17 got to have a variance.

18 MALE VOICE:

19 Got to have a variance.

20 MR. EAGAR:

21 I think without it he can't do anything.

22 MR. CHAIRMAN:

23 This very narrow view of the question at that -- at
24 the pinch point I think there are exceptional
25 conditions and it doesn't -- and they don't exist

1 el sewhere.

2 MALE VOICE:

3 Right.

4 MR. CHAIRMAN:

5 Okay. So we have a motion to second. All in favor
6 please say aye, raise your hand.

7 MALE VOICE:

8 Aye.

9 MALE VOICE:

10 Aye.

11 MR. CHAIRMAN:

12 Okay, it's five to nothing and approved. These
13 conditions do not generally apply to other property
14 in the vicinity. A motion please, in the
15 affirmative.

16 MR. EAGAR:

17 So moved.

18 MR. CHAIRMAN:

19 Motion in the affirmative.

20 MR. EAGAR:

21 So moved.

22 MR. CHAIRMAN:

23 Second?

24 MR. MCKEE:

25 Second.

1 MR. CHAIRMAN:

2 Discussion? I think we just covered that.

3 MR. EAGAR:

4 I think -- I think this is a unique situation --

5 MR. CHAIRMAN:

6 It's a unique -- unique (inaudible) this property it
7 doesn't really apply elsewhere. All in favor please
8 say aye, raise your hand.

9 MALE VOICE:

10 Aye.

11 MALE VOICE:

12 Aye.

13 MR. CHAIRMAN:

14 It's five to nothing in favor. Because of these
15 conditions the application of this chapter to the
16 particular piece of property would effectively
17 prohibit or unreasonably restrict utilization of the
18 property. Could I have a motion in the affirmative
19 please?

20 MR. EAGAR:

21 So moved.

22 MR. MAY:

23 Second.

24 MR. CHAIRMAN:

25 Second. Discussion? Excuse me.

1 MALE VOICE:

2 We've beat this horse to death.

3 MR. CHAIRMAN:

4 Okay. We -- motion in the affirmative, could we
5 please all in favor please say aye?

6 MALE VOICE:

7 Aye.

8 MR. CHAIRMAN:

9 Raise your hand. Okay, five to nothing. The
10 authorization of a variance will not be of
11 substantial detriment to adjacent uses or to the
12 public good and the character of the district will
13 not be harmed by the granting of the variance.
14 Could I have a motion in the affirmative please?

15 MR. EAGAR:

16 So moved.

17 MR. MAYS:

18 Second.

19 MR. CHAIRMAN:

20 Okay. Discussion?

21 MALE VOICE:

22 This is another whole --

23 MALE VOICE:

24 This is where we need to put the condition in I
25 believe.

1 MR. EAGAR:

2 This is --

3 MR. CHAIRMAN:

4 Well we'll put the condition in if we -- if we are
5 truly are going to approve this --

6 MALE VOICE:

7 Yeah, right.

8 MR. CHAIRMAN:

9 -- we haven't gotten there yet. We have to -- we
10 haven't gotten past the fourth question. I'll put
11 our conditions in. Is that fair?

12 MALE VOICE:

13 That's fair.

14 MR. CHAIRMAN:

15 But I don't think we put conditions on this.

16 MALE VOICE:

17 Yeah.

18 MR. CHAIRMAN:

19 We put conditions on our --

20 MALE VOICE:

21 That's fine.

22 MR. CHAIRMAN:

23 -- if we do approve it.

24 MR. EAGAR:

25 And I think -- and I think the question here is does

1 i t harm John's Marine.

2 MR. CHAIRMAN:

3 Okay.

4 MR. EAGAR:

5 That's -- I think that's --

6 MALE VOICE:

7 Right and I think --

8 MALE VOICE:

9 -- and this one I think that's what we have to

10 discuss whether or not --

11 MR. CHAIRMAN:

12 This is where the safety issue comes in also. It's

13 --

14 MR. EAGAR:

15 Right.

16 MALE VOICE:

17 And I think this is where we said that I think the
18 developer has done quite a bit to minimize that harm

19 to John's Marine and I think the amount of space
20 they're have from what we've seen to operate his

21 business is not anything less than what he has now.

22 So, although there is a -- is an impact it's minimum

23 impact I think it's -- so it's not enough to say

24 that it's -- it's gonna severely hurt another

25 business.

1 MR. CHAIRMAN:

2 Okay. Are there any other comments on this?

3 MALE VOICE:

4 This is --

5 MR. CHAIRMAN:

6 We've had a lot of input from a lot of people. Any
7 other comments? Okay, we have a motion and then a
8 second? All those in favor please say aye, raise
9 your hand. One, two, three, we have five in favor.
10 No no's. So, in conclusion based on the evidence
11 presented to the Board do I hear a motion that the
12 proposed variance be approved with -- with
13 conditions? So let's -- let's talk about conditions
14 now. What -- what conditions do we want to put on
15 here? I would say that the developer follow through
16 on their promise to deed whatever property is
17 necessary to --

18 MR. EAGAR:

19 To make them whole.

20 MR. CHAIRMAN:

21 -- provide -- provide unimpeded access by John's
22 Marine to the new right-of-way, is that --

23 MR. EAGAR:

24 And reference the piece of property that they're
25 already using.

1 MR. CHAIRMAN:

2 We need to get some words to (inaudible).

3 MALE VOICE:

4 Yeah, do we need to stipulate or -- or --

5 MR. CHAIRMAN:

6 Mr. Root, can you help us with what --

7 MALE VOICE:

8 Mr. Attorney --

9 MR. ROOT:

10 I think that the way you started phrasing it was
11 good, that they would have unimpeded access to the
12 new right-of-way.

13 MR. CHAIRMAN:

14 We just kind of period at the end of that, we don't
15 --

16 MR. ROOT:

17 I think that's clear from the record what -- what --

18 MR. CHAIRMAN:

19 I'm -- I'm conscious that people in the future may
20 look at this -- may look at our proceedings here and
21 I want to make sure we're clear.

22 MR. ROOT:

23 You have a substantial record from which any action
24 could be taken. You may want to -- you could anchor
25 it to -- to one of the maps if you want to --

1 MR. CHAIRMAN:

2 I'll just --

3 MR. ROOT:

4 -- particularly (inaudible).

5 MR. CHAIRMAN:

6 I could refer to the map -- to the maps as presented
7 in this proceeding.

8 MR. ROOT:

9 You could, yes.

10 MR. CHAIRMAN:

11 And as represented by the developer but is -- is
12 that the only kind of condition we want to put on
13 here?

14 MALE VOICE:

15 I'd just like to see John's boat -- if he has more
16 access, more room, more everything, you know, that's
17 kind of a win-win. I know they don't like the
18 traffic increased, but, you know, that's not our
19 purview really.

20 MR. CHAIRMAN:

21 So --

22 MR. EAGAR:

23 Well it is if we want it to be.

24 MALE VOICE:

25 Yeah.

1 MALE VOICE:

2 But I don't know -- you know -- but the shaded area
3 or whatever on this document or something stipulate.

4 MALE VOICE:

5 (Inaudible).

6 MALE VOICE:

7 Huh?

8 MALE VOICE:

9 Which one are you looking at?

10 MALE VOICE:

11 That one --

12 MR. CHAIRMAN:

13 (Inaudible).

14 MALE VOICE:

15 -- (inaudible) grid line -- all the grid lines and -

16 -

17 MALE VOICE:

18 That one.

19 MALE VOICE:

20 Yeah, that one.

21 MR. EAGAR:

22 Oh, with -- oh, with the -- how would the proponents
23 area that they said they would give him, how would
24 the proponents to, ask --

25 MR. ROOT:

1 Part of that --

2 MALE VOICE:

3 -- (inaudible) to define --

4 MR. ROOT:

5 -- existing road, right?

6 MALE VOICE:

7 Yeah, it's hard to see on here --

8 MR. EAGAR:

9 Including that they would want for the --

10 MALE VOICE:

11 -- but you can see, yeah, the edge of the concrete
12 pad and the edge of the concrete drive at the top
13 kind of -- can y'all see that where the mouse on
14 there?

15 MR. CHAIRMAN:

16 We can see the mouse, yeah.

17 MALE VOICE:

18 Yeah the --

19 MALE VOICE:

20 You see that, that's the edge of the existing
21 roadway is my understanding.

22 MALE VOICE:

23 That's right.

24 MALE VOICE:

25 And there's some property pins around there.

1 MALE VOICE:

2 That's the concrete pad and that's the concrete
3 driveway and this --

4 FEMALE VOICE:

5 No, that's the house.

6 MALE VOICE:

7 This is the edge -- this is edge of pavement.

8 MALE VOICE:

9 The extra property (inaudible).

10 MALE VOICE:

11 This is a house?

12 MALE VOICE:

13 (inaudible) and not in front of the shop at John's
14 Marine.

15 MR. CHAIRMAN:

16 That's the concrete pad.

17 MALE VOICE:

18 The one in the middle is the driveway to their
19 house.

20 MR. RATLIFF:

21 The extra property is in front of my momma's house,
22 that's not in front of the shop.

23 MR. CHAIRMAN:

24 That's the driveway to the house, I understand where
25 we (inaudible).

1 MALE VOICE:

2 This one isn't even in front of the shop.

3 FEMALE VOICE:

4 Yes.

5 MALE VOICE:

6 The shop is the problem not the house.

7 FEMALE VOICE:

8 That's right.

9 MR. CHAIRMAN:

10 Now we're talking about the concrete pad at the far
11 right.

12 MALE VOICE:

13 Yup.

14 MR. CHAIRMAN:

15 And the issue is it's the sliver of land in front of
16 the concrete pad needs to be deeded to Mr. Ratliff
17 so he has unimpeded access --

18 MALE VOICE:

19 To his --

20 MR. CHAIRMAN:

21 -- to --

22 MR. EAGAR:

23 To his --

24 MR. CHAIRMAN:

25 -- the new road.

1 FEMALE VOICE:

2 He already has that.

3 MALE VOICE:

4 He already owns all that property.

5 MALE VOICE:

6 To the shop, right.

7 MALE VOICE:

8 He owns it to the center line.

9 MR. CHAIRMAN:

10 Well I think there's a portion in here that's been
11 issue -- there's a portion in here that's not owned
12 by him.

13 MALE VOICE:

14 Yeah.

15 FEMALE VOICE:

16 There's nothing (inaudible) in front of the shop.

17 FEMALE VOICE:

18 The center line in the road --

19 MR. CHAIRMAN:

20 Hold it folks. Hold it, please. Please.

21 MR. EAGAR:

22 Mr. Chairman, do we -- if -- if this has already
23 been agreed to by the developer, do we really need
24 to put it in there?

25 MR. CHAIRMAN:

1 Well I would -- I think we ought to go on record
2 saying that's --

3 MALE VOICE:

4 Yeah, and make them be -- feel good about what
5 they're getting.

6 MR. EAGAR:

7 (Inaudible) developer define -- define how he would
8 -- how he would call the piece of property that's he
9 gonna give (inaudible) you could put it in that way?

10 MR. CHAIRMAN:

11 I'd state the condition this way. I -- we're going
12 to -- the proposed variance be approved, based on
13 the condition that the developer deed property that
14 provides unimpeded access to the new road. And was
15 there anything else you want to add in there?

16 MALE VOICE:

17 I guess --

18 MALE VOICE:

19 (Inaudible).

20 MALE VOICE:

21 -- what he says is unimpeded but they say it's not
22 so -- and I don't know --

23 MR. CHAIRMAN:

24 Well --

25 MALE VOICE:

1 -- then they'll be coming back to and we don't want
2 them circling back but somehow, you know, if it
3 could be --

4 MR. CHAIRMAN:

5 If there's no -- if there -- I guess if there's no
6 property after -- we look at all the lines on here,
7 if there's no property that has to be deeded then
8 nothing has to be done. But if we want to -- I
9 think we want to make sure that there is unimpeded
10 access to the road.

11 MALE VOICE:

12 Right. Right.

13 MR. CHAIRMAN:

14 So whatever that needs to be done to provide
15 unimpeded access to all this -- all the legal
16 maneuvering will go on around abandoning the old
17 road and putting in the new road and all that, come
18 out of all that, he'll have unimpeded access to the
19 road.

20 MR. EAGAR:

21 Is that -- is that the --

22 MALE VOICE:

23 (Inaudible)?

24 MR. EAGAR:

25 -- is that the entire -- is that the entire issue?

1 Or is there more land that he's using in addition --
2 in addition to that, I don't (inaudible) we don't
3 know.

4 MR. CHAIRMAN:

5 I don't know of any. I mean, he's -- he has used
6 the existing road --

7 MALE VOICE:

8 Or his -- the developer's property.

9 MR. CHAIRMAN:

10 And half -- half of the road belongs to him.

11 MR. EAGAR:

12 Yeah.

13 MR. CHAIRMAN:

14 And half of the road belongs to the developer, okay.

15 MR. EAGAR:

16 I think they referred to trucks and cars being
17 parked on their road -- on their property.

18 MR. CHAIRMAN:

19 Well that's because half of it's theirs. Because
20 half the road is theirs, and now they're gonna move
21 -- the new road's gonna be moved down, if you look
22 at this diagram --

23 MALE VOICE:

24 The whole road is gonna be all theirs.

25 MALE VOICE:

1 Fifty percent of it's owned by Jimmy.

2 MR. CHAIRMAN:

3 He will -- he will still own a lot of that property.

4 He'll still own that and half the road.

5 MALE VOICE:

6 The whole road now. Right?

7 MR. CHAIRMAN:

8 He will only own -- no, he'll -- his property owned

9 -- you talking about right-of-way versus ownership,

10 the ownership isn't gonna change except for a sliver

11 there if it's -- if it's necessary. But he's --

12 MALE VOICE:

13 The best way to (inaudible) --

14 MR. ROOT:

15 I -- I think if I -- and just tell me I'm wrong.

16 I'm not trying invoke -- substitute my judgment in

17 for yours.

18 MR. CHAIRMAN:

19 Sure.

20 MR. ROOT:

21 I think what you're saying is first it's gonna be

22 subject, the order approves the subject to proper

23 abandonment procedures.

24 MR. CHAIRMAN:

25 Okay.

1 MR. ROOT:

2 Subject to compliance with in our case the local
3 ordinances and state law regarding road acceptance
4 into the county roadway system and subject to the
5 developer granting, I don't know the corporate
6 entity's name, but -- but the marine shop,
7 commercially reasonable access to the road to be
8 constructed. I think you can leave it at that.

9 MR. CHAIRMAN:

10 Okay. About the word say this, proposed variance be
11 approved subject to condition that proper abandon --
12 proper state abandonment procedures are followed,
13 road acceptance procedures are -- are followed and
14 the developer grant reasonable access to the road to
15 include deeding any property necessary.

16 MR. EAGAR:

17 When you say the road should it be the new road.

18 MR. CHAIRMAN:

19 The new road, yes, it's the new road. Yes, sir.

20 MALE VOICE:

21 Forgive me. Then by the variance request it says
22 the 18.1 feet or 19.1 feet, whatever it is, it -- it
23 needs to -- the right-of-way needs to be defined.
24 It may be, you know, down at that point but where do
25 we get back to 50? Our right-of-way needs to be

1 defi ned.

2 MR. CHAI RMAN:

3 Okay, so subject to proper defi ni ti on of --

4 MALE VOI CE:

5 ' Cause --

6 MR. CHAI RMAN:

7 -- right-of-way.

8 MALE VOI CE:

9 Yeah.

10 MR. RATLI FF:

11 There's not enough room there, do the math.

12 MR. CHAI RMAN:

13 The variance is to have a smaller right-of-way.

14 MALE VOI CE:

15 Right. But where we come back and where that right-
16 of-way is 'cause right now it could be the 18.1 feet
17 all the way along on hi s property. See what I'm
18 sayi ng?

19 MR. CHAI RMAN:

20 Okay.

21 MALE VOI CE:

22 By the variance request. It's only at that one
23 poi nt --

24 MALE VOI CE:

25 But once it goes to the pinch point why does it --

1 MALE VOICE:

2 Only at that one point and when it comes back out
3 and again like David said it could be referenced to
4 a drawing but I just want to make clear on my end
5 that I need a clearer definition of what right-of-
6 way is.

7 MR. RATLIFF:

8 That's why there's multiple drawings. It doesn't
9 add up.

10 MALE VOICE:

11 Mr. Chairman, as I understood the request for the
12 variance is at this pinch point --

13 MR. CHAIRMAN:

14 Yeah.

15 MALE VOICE:

16 -- to go to 31.8, then I believe, and this is how
17 the -- the normal road acceptance procedures would
18 come in, that's where they -- if you grant it that's
19 where they'd have a variance, abandonment goes
20 through they -- they start the process of getting
21 the road accepted, the county's gonna say all right,
22 you've got this variance for this pinch point,
23 you're gonna have to have your 50 foot right-of-way.

24 MALE VOICE:

25 In these other areas.

1 MALE VOICE:

2 Show it to us, if you don't have a -- a deeded
3 right-of-way you're gonna have to get it from so
4 that's the way (inaudible) flows so.

5 MALE VOICE:

6 That's not our call basically.

7 MR. CHAIRMAN:

8 That's not our call. That happens later.

9 MALE VOICE:

10 That happens later.

11 MALE VOICE:

12 Right.

13 MALE VOICE:

14 Okay.

15 MALE VOICE:

16 And Mr. Lee handed to me this is item three map,
17 which shows -- I mean, it's a good -- I guess item
18 three does show the area in question. It shows the
19 pinch point and it's really the -- I think what the
20 audience has said is -- is accurate, he's gonna have
21 access to that new road subject to the old road
22 being abandoned.

23 MR. CHAIRMAN:

24 Yes.

25 MALE VOICE:

1 But to the extent that it's not, you know, surveying
2 -- surveyors differ at times, what you've stated
3 would -- would accomplish that, you know. To the
4 extent abandonment doesn't give the marine short
5 full access to the road, you've put it in there as a
6 condition present that -- that the developer has to.

7 MALE VOICE:

8 David, is the county gonna initiate the abandonment
9 litigation?

10 MR. ROOT:

11 Well, one out of five times we do. It -- it goes
12 through the transportation committee first, so Kyle
13 does a survey with the land owners in question, gets
14 the signs posted, goes to the transportation
15 committee and they say yeah, let's -- let's do that
16 or don't do it and then yeah, I certainly can
17 initiate it. Oftentimes the -- the -- in this case
18 the developer probably would. I'm not seeking to --
19 to do the abandonment and it's not required that the
20 county do it. It could be a private party.

21 MR. CHAIRMAN:

22 That's a court proceeding, anyone can take -- go to
23 court and ask that.

24 MR. ROOT:

25 Yeah, any interested party.

1 MR. CHAIRMAN:

2 Interested party, yes.

3 MALE VOICE:

4 (Inaudible).

5 MR. CHAIRMAN:

6 No, that's not us.

7 MALE VOICE:

8 (Inaudible).

9 MR. CHAIRMAN:

10 Okay, so we've -- you know, we've heard a lot of
11 words but what I'm still proposing is we -- we use
12 the words variance be approved, subject to the
13 proper abandonment procedures being followed, road
14 acceptance, the road being accepted by the
15 developer, by the county, and the developer have
16 reasonable access -- excuse me, the developer grant
17 reasonable access including deeding property as
18 necessary to allow access from Jimmy's Marine to the
19 new road.

20 MR. EAGAR:

21 John's Marine.

22 MR. CHAIRMAN:

23 Is that making sense?

24 MR. EAGAR:

25 John's Marine.

1 MR. CHAIRMAN:

2 John's Marine, yes, excuse me. I think the words
3 we've used here and the --

4 MALE VOICE:

5 Is that good wording?

6 MR. CHAIRMAN:

7 -- (inaudible) I think the intent is clear there.

8 MALE VOICE:

9 Yeah.

10 MR. CHAIRMAN:

11 With everything we just said. Okay, based on that
12 do we have a motion and a second?

13 MALE VOICE:

14 So --

15 MR. CHAIRMAN:

16 And based on -- we've already got that, we got a
17 motion and a second, discussion. We've put
18 conditions on there. Could we have a vote please?
19 All those in favor of this variance please raise
20 your hand.

21 MR. EAGAR:

22 We have to vote on the separate --

23 MR. CHAIRMAN:

24 Oh, sure, yes, do you want to have it -- okay, if
25 you want to -- conditions I read. Okay, you want to

1 --

2 MR. EAGER:

3 I didn't know that we had moved to (inaudible).

4 MR. CHAIRMAN:

5 Move that you accept the conditions, all right.

6 MR. EAGAR:

7 Then -- then we move those into the --

8 MR. CHAIRMAN:

9 Is there a second?

10 MR. EAGAR:

11 -- motion.

12 MALE VOICE:

13 Second.

14 MR. CHAIRMAN:

15 Second to that? Okay. All in favor of including
16 those conditions to the -- the variance approval
17 process, please raise your hand. Okay. Conditions
18 are approved so then the entire of the question is
19 based on the evidence presented to the Board do I
20 hear a motion that the proposed variance be approved
21 with the conditions we talked? All those in favor
22 please say aye.

23 MR. EAGAR:

24 So --

25 MR. CHAIRMAN:

1 No, we've -- we've had that motion. Five to nothing
2 in favor of approving the variance. That's all on
3 that one. Could I have a motion to adjourn?

4 MR. EAGAR:

5 So moved.

6 MR. MAYS:

7 Second.

8 MR. CHAIRMAN:

9 All in favor? We stand adjourned.
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STATE OF SOUTH CAROLINA)	IN THE CIRCUIT COURT OF THE
)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE)	CASE NO: 2022-CP-37-00396
)	
)	
John's Marine Service, Inc.,)	
et al,)	
)	
APPELLANTS,)	
)	
-vs-)	TRANSCRIPT OF RECORD
)	
Oconee County Board of)	
Zoning Appeals, et al,)	
)	
RESPONDENTS.)	
)	
)	

AUGUST 16, 2022
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX

A P P E A R A N C E S:

David Lee Paavola, Esquire
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I N D E X

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Certificate of Reporter 52

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THE COURT: Hey, folks, sorry to make you wait. And while there is no record here, we are being taped. By the way, it's 10:15 a.m., we're beginning the case of John's Marine's Service versus Oconee County Board of Zoning. So, technically, there's always a record, but 48 hours ago, I was in Avignon, France, right about this time, getting ready to go have the Greek chef tell me what he was cooking for a French dinner tonight. So, I'm just so happy to be here with all of y'all.

You're my first hearing since I got back, and we left the boat at 3:00 a.m. Saturday and got back 26 hours later. And I've slept an hour, so if I just disappear, just keep talking, it's on here, and I'll take it under advisement. Y'all doing okay?

MR. PAAVOLA: We good.

THE COURT: All right, I did come in yesterday to get this and read it. So, I know generally what's going on, and I understand the issues. So, what I'd like, and I told -- Will is my new clerk. This will be his first hearing, and I told him that in something like this, especially when I am, quite frankly and honestly, a little tired, I'd like to hear your arguments, and then I'll take it under advisement for three or four days, but you'll know by the end of the week.

So, who wants to go first? I've got three hearings --

1 motions, is that right? I guess we need to hear the
2 supersedeas first. You may be muted.

3 MR. PAAVOLA: Sorry, Your Honor, David Paavola, here
4 today ---

5 THE COURT: Hold on a second. Can y'all hear him?

6 MR. BRANDT: I can hear.

7 THE COURT: I cannot.

8 MR. BRANDT: Well ---

9 THE COURT: Boy, this is something. Let's see. I see
10 nothing's changed in my three weeks' vacation to France.

11 MR. BRANDT: Yeah.

12 THE COURT: Will, you may have to fiddle around with it.
13 Larry, are you talking?

14 MR. BRANDT: Well, I -- can you hear me now? Can you
15 hear me now?

16 THE COURT: Yeah, I got you. All right.

17 MR. BRANDT: Okay. Well ---

18 THE COURT: David, you want to try one more time?

19 MR. PAAVOLA: Yes, Your Honor, can you hear me?

20 THE COURT: All right, we're good.

21 MR. PAAVOLA: Okay. Your Honor, all I was going to
22 mention was the parties, prior to getting on, agreed that the
23 Notice of Motion and Motion to Intervene -- we thought that
24 might make sense to go first, since we don't object to their
25 motion.

1 THE COURT: Yeah. So, everybody agrees to the Motion to
2 Intervene? So, I'll assume they do.

3 MR. PAAVOLA: Yes.

4 THE COURT: Okay.

5 MR. PAAVOLA: For the supersedeas, again, David Paavola,
6 and I along with Keith Babcock represent John's Marine
7 Service, the Ratliff family, and the petitioners in this
8 appeal. The Motion for Supersedeas was wrote to maintain the
9 status quo until Your Honor can rule on our appeal. And we're
10 still in that same position. We think it makes -- you know,
11 the Court has discretion under the statute to grant a
12 supersedeas on a Board of Zoning Appeals variance, and we
13 still think it makes sense to preserve the status quo to
14 prevent any claim of mootness that may be raised by the
15 applicants and prevent harm to our clients if construction or
16 road changes were to go forward before Your Honor can hear the
17 appeal. So, that's still where we are today. We still feel
18 like that makes sense to grant the supersedeas, Your Honor.

19 THE COURT: Is -- do any parties have any issue that you
20 need a ruling on before Friday? If I tell you that you'll
21 have a complete ruling by Friday ---

22 MR. BRANDT: I'm okay with that.

23 MR. HOLLIDAY: Your Honor, that was going to be my entire
24 point, is that due to the speed in which Your Honor and the
25 clerk's office moved in getting this scheduled, the

1 supersedeas is effectively moot in and of itself, because to
2 preserve the status quo until your decision, so that's four
3 days from now, maybe, so there's really no need for a
4 supersedeas.

5 THE COURT: Okay, well, what I'll do then, just for the
6 record, I am down to one privilege log and this. I have one
7 case under advisement, and that's going to take me a while.
8 I'll skip over that, and you'll hear from me by Friday with
9 the terms. Now, somebody's going to have to do an order and
10 pass it around, et cetera, so we'll just say that everybody
11 agrees to a supersedeas until I rule. And I'll rule this
12 week. So, nobody's going to do anything to change the
13 situation or the facts on the ground.

14 MR. BRANDT: You're talking about until Friday?

15 THE COURT: Well, yeah. Now, if I get -- let me just
16 tell you, I went on this trip with Frankie and Marly McClain,
17 and they both are home with Covid. I have tested negative for
18 three days in a row. Yeah. I just don't want anything to
19 change on the ground in something like this until I rule. I'm
20 saying Friday. If I get -- something unexpected happens, it
21 might be Monday, but Monday would be literally the latest.

22 MR. BRANDT: I don't have a problem with that time ---

23 THE COURT: Okay.

24 MR. BRANDT: --- there. Obviously, we object to the
25 supersedeas beyond that point, and certainly, this is talking

1 about an \$8 million project that's at issue here, that my
2 clients need the variance decision so they can move forward
3 with the other portions of putting everything together.
4 Obviously, I don't think the appellants are entitled to a
5 supersedeas, nobody has a right to it, but if they do, they
6 have to get that supersedeas, they'd have to post bond on an
7 \$8 million project.

8 We feel that certainly just letting me suggest the
9 numbers crunched, Mr. Holliday may be able to address the
10 numbers, but we feel like that even conservatively, an
11 \$800,000 supersedeas bond, if you are inclined to grant that
12 supersedeas, but we don't think that supersedeas is -- should
13 be granted, and certainly they -- if it is, it should be
14 bonded.

15 But we feel they cannot show that they have a good chance
16 of succeeding on merits, and that the Board of Zoning Appeals
17 acted properly, so obviously, we want to move on with the
18 project. But I don't have any problem with a week delay.

19 THE COURT: Okay, then the best way to handle it is,
20 let's continue the supersedeas hearing until next Monday. If
21 I haven't -- if you haven't heard from me by Monday as to the
22 terms, I will make myself available and we'll hear it. That
23 way nobody has to file anything, we'll just continue it until
24 next week. Will, I'm in Greenville next week?

25 LAW CLERK: Yes, Judge.

1 THE COURT: So, I'll be available. So, I'll just
2 continue this supersedeas motion and only schedule that if
3 something happens that delays it from my end, okay?

4 MR. PAAVOLA: Thank you, Your Honor.

5 THE COURT: And I'm really just trying to make sure you
6 guys don't have to file anything or -- so, does that leave the
7 appeal? Is that the sole remaining issue?

8 MR. PAAVOLA: Yes, Your Honor.

9 MR. BRANDT: Yes, that would be the issues on appeal, and
10 it's -- again, it's a case where time's of the essence for a
11 lot of reasons on my side of the table. And therefore, we
12 wanted to expedite the matter, and move it along as quickly as
13 we can. So, we're here today with the -- basically because we
14 requested to be given priority over other matters in
15 accordance with the statute. So, anyway, we're prepared to at
16 least make the arguments here ---

17 THE COURT: Okay.

18 MR. BRANDT: --- on the appeal.

19 THE COURT: All right, then, for the record, it's now
20 10:25, and I'm doing that just in case you guys need a record,
21 you'll know where to go. We'll continue the supersedeas
22 motion and only hear that in the event I haven't ruled
23 completely by next Monday. Everybody has agreed to the
24 interpleader -- or the intervening, and we're down to the
25 appeal. Does somebody -- now, I've read it, but I've only

1 read the notes from this, so does somebody want to give me a
2 synopsis, and then I'll let the other side yell at you and
3 tell you you're wrong, just factually.

4 MR. PAAVOLA: Yes, Your Honor, we're prepared to go
5 forward. It's our appeal ---

6 THE COURT: Okay.

7 MR. PAAVOLA: --- it makes sense to go first, I think.

8 THE COURT: Okay.

9 MR. PAAVOLA: Thank you, Your Honor. Again, I represent
10 the petitioners in an appeal from a variance order issued by
11 the Oconee County Board of Zoning Appeals. We filed a brief
12 in this matter. In the brief, we may refer to it as BOZA. I
13 may refer to it as Board, as well. The variance order in this
14 issue is for the construction of a new public road, with a
15 right of way only 31.9 feet, which is less than the required
16 50-foot right of way.

17 The purpose for the new road is to service a new 19-home
18 subdivision that was planned to be built on Lake Keowee. The
19 issue today is the placement of the new roadway. The
20 applicant wants to extend the current dead-end of Ellenburg
21 Road, which is my client's private property. Attached to the
22 brief in Exhibit A, we've provided pictures, and I'm allowed
23 to share, I understand, so I should be sharing Exhibit A for
24 the Court, Your Honor.

25 THE COURT: Yep. I got it.

1 MR. PAAVOLA: I want to first reference -- I'll make, is
2 the record page 60. This is the pictures of the property.
3 This is Ellenburg Road, and you can see in the middle of the
4 first picture, the end of the county lane striping and the
5 road continues and dead ends where there's a boat at the end
6 of the road. This is the section of Ellenburg Road that is at
7 issue today.

8 The second picture I referenced -- would direct the Court
9 to, is the record page 60. This is an overhead view of the
10 dead end at the end of Ellenburg Road, John's Marine, where it
11 services boats, and - so, it gives you an idea where this
12 proposed road is planned to be. The Ellenburg Road dead ends
13 -- this is 599 Ellenburg Road. That property is owned by my
14 clients. My clients also own the adjacent property, 585
15 Ellenburg Road.

16 John's Marine Services has been located at this location
17 since 1982. It's continuously serviced boats and used all of
18 this property for 40 years. In the mid-1980's, John Ratliff,
19 who is Jan Ratliff's late husband -- Jan's our client, and is
20 also father of the Ratliff clients that we have, along with
21 T.B. Ellenburg, who gave the land to become Keowee -- Lake
22 Keowee -- they paved from at least 585 Ellenburg Road to the
23 dead end. So, this first picture record, page 60, shows 565.
24 A little bit beyond that is where John Ratliff and T.B.
25 Ellenburg paved the end of Ellenburg Road.

1 My clients have continuously maintained this section of
2 Ellenburg Road as a private driveway for 40 years, just for
3 the patrons of John's Marine's Services and visitors to their
4 homes. There's no question as to legal title of this land.
5 It belongs to my clients, and the adjacent property owners who
6 have moved to intervene. At issue is really whether Oconee
7 County has a prescriptive easement over this section of
8 Ellenburg Road.

9 The variance order in this case changes the character of
10 the Ellenburg Road from a private driveway into a public right
11 of way, so the -- BOZA, when it was first deciding on the
12 variance application, it first decides the county has
13 prescriptive easement over my client's private driveway. From
14 there, the Board then approved the extension of that public
15 driveway for this new subdivision, and such a road will
16 greatly increase my client's -- traffic across my client's
17 property, really impact and hindrance the ability to conduct
18 business as it has for decades.

19 Your Honor, there's five reasons why the BOZA order
20 should be reversed. The first reason is that -- and I'm
21 sharing that -- the first reason is that the -- BOZA exceeded
22 its jurisdiction when it moved forward to approve the variance
23 application without waiting for a court of competent
24 jurisdiction to decide the factual dispute over the existence
25 of a prescriptive easement. Second reason, Your Honor, is

1 that the BOZA abused its discretion when it assumed that
2 Oconee County holds a prescriptive easement over petitioner's
3 private driveway.

4 Third, the order unilaterally and anteriorly expands the
5 easement burden on petitioners' properties. Fourth, the BOZA
6 approved the variance application without the location of the
7 roadway being finalized, and without analyzing the full impact
8 to my client's property under the variant roadway scenarios
9 that were before it.

10 And then finally, Your Honor, fifth, the BOZA failed to
11 adequately explain how the proposed roadway was not a
12 substantial detriment to my client's property when under one
13 scenario of the roadway placement, there was a taking of nine
14 feet of my client's property.

15 Your Honor, back to my -- our first grounds on the
16 jurisdiction. The BOZA is a body of limited jurisdiction.
17 South Carolina Code 629-800 sets forth the powers for a Board
18 of Zoning Appeals. In this case, the board can hear variances
19 from county roadway ordinances. The board does not have
20 general jurisdiction to decide all legal and factual issues.
21 It, in fact, is not competent to decide a factual dispute
22 regarding the existence of a prescriptive easement such as we
23 have here. And the BOZA, during the hearings, it recognized
24 that a determination of the existence of a prescriptive
25 easement in this case was a predicate issue to its vote on the

1 variance application, and that's because in order for a new
2 public road to be constructed, it has to connect to the
3 existing public road system.

4 This section of Ellenburg Road is not public. The BOZA
5 couldn't approve a variance application. In fact, the
6 questions about the existence of a prescriptive easement were
7 reason there were three different hearings on this
8 application. The first hearing was in November 30th of 2021.
9 At that time, the applicant made its presentation and claimed
10 that the county had a prescriptive easement over my client's
11 private driveway. My clients disputed this fact. They
12 provided documents and testimony to the contrary, and the
13 first meeting ended with the Board's directive to county staff
14 to get more information on the issue of the easement.

15 The Board met again January 24th of 2022. The county
16 staff and attorney came and had no new information on the
17 existence of prescriptive easement, but they did receive an
18 affidavit from my client, Jan Ratliff, which was attached as
19 Exhibit D to our brief, stating that her family has
20 continuously maintained that section of Ellenburg Road.
21 Again, the decision on the application was postponed.

22 And then, finally, Your Honor, the third time, the Board
23 met April 25th of 2022, and again it addressed the issue of
24 prescriptive easement and whether it exists. The county again
25 had no new information that it does exist. However, the BOZA

1 went ahead and determined that a prescriptive easement in fact
2 exists.

3 The Board recognized that it's not competent to decide
4 this issue, and effectively, that's just what it did. We
5 showed in our brief, the transcripts -- the April transcript
6 at page 101, line 1, the BOZA states that we're not competent
7 to decide that issue, referring to a prescriptive easement.
8 And a few lines later, they go ahead and state, well, we're
9 going to decide this as though there were an easement. So, by
10 assuming the existence of a prescriptive easement, it
11 effectively decided to dispute a factual issue. And that
12 issue should have been determined by a court of competent
13 jurisdiction prior to the BOZA acting on the application.

14 So, the BOZA recognized it needed to determine -- that a
15 determination needed to be made on the easement. They
16 couldn't decide it, but they went ahead and decided it anyway.
17 And on that basis, you know, approved the variance
18 application. And doing so was outside its jurisdiction.

19 Your Honor, our second ground of the -- which is the
20 assumptions -- the determination of the existence of a
21 prescriptive easement was not supported by the evidence.
22 Assuming that the Board, BOZA, could, in fact, make a
23 determination on the existence of the easement, BOZA abused
24 its discretion when it assumed that the prescriptive easement
25 does exist, as opposed to determining that it does not exist.

1 The -- a proponent of a prescriptive easement must prove
2 by clear and convincing evidence that a continued and
3 uninterrupted use for a period of 20 years. It must be able
4 to identify the easement, what the scope of their easement is,
5 and must show that it's been adverse. Here, the County
6 presented no evidence of a prescriptive easement. They had no
7 documents showing any actual maintenance of a private
8 driveway. They have no witnesses testifying that any
9 maintenance of the property had ever occurred, and certainly
10 nobody testifying to 20 years of continuous maintenance. The
11 only thing they offered to the Board was simply a reference to
12 institutional knowledge and institutional memory, which is not
13 evidence.

14 THE COURT: Did they -- and I'll admit that was sort of
15 intriguing yesterday when I read through all this. The
16 Board's position was there was an institutional memory that
17 there was an easement? That was a finding?

18 MR. PAAVOLA: The Board requested input on the easement
19 from county staff, county attorney, and a county roads and
20 bridges employee, each of which simply referenced
21 institutional knowledge or memory that they actually
22 maintained the property. That's it.

23 THE COURT: Okay.

24 MR. PAAVOLA: And on the other side, the petitioners
25 again presented that affidavit from Janet Ratliff, which I

1 mentioned earlier, which testified they maintained the
2 property for four decades, an affidavit from Lori Ellenburg
3 Bright, that's record page 292, who is a granddaughter of T.B.
4 Ellenburg, and she, in her affidavit, stated that she's lived
5 at the Ellenburg Road -- she had lived there for about 40
6 years, and she testified that the end of county maintenance
7 sign had existed always between 575 and 585 Ellenburg Road,
8 and she'd go by that for decades.

9 The clients also provided Exhibit A to the brief, the
10 pictures I showed you earlier, depicting the actual road and
11 the evidence on the ground that the county lane striping ends
12 before it gets to my client's property, and showing that my
13 clients have used the entirety of that property for their
14 business.

15 And finally, the petitioners provided letters from Jimmy
16 Ratliff, who is the current owner/operator of John's Marine,
17 and you know, information from the Ratliff family stating that
18 their dad paid -- has maintained the road for 40 years and
19 they have continuously used it since that time.

20 We believe it was arbitrarily capricious to decide this
21 dispute -- factual issue in the county's favor. Here, all the
22 evidence was in the petitioner's favor. So, if the BOZA is
23 allowed to make a determination on a prescriptive easement on
24 a disputed issue, it was arbitrary to decide it in the
25 county's favor. At the minimum, the evidence should have been

1 decided in the petitioner's favor, Your Honor.

2 THE COURT: Okay.

3 MR. PAAVOLA: Your Honor, the -- our third ground is the
4 unilateral expansion/modification of the burden. This assumes
5 an easement exists, which we obviously dispute. Now, the
6 BOZA, with its order, totally changes the character of
7 Ellenburg Road and the law doesn't allow the state -- a
8 dominate state to do that. The burden before the variance
9 order went into place would have been minimal. If the county
10 has an easement to do maintenance, or periodic maintenance on
11 this section of Ellenburg Road, minimal burden, and there was
12 no record they ever did that.

13 After this road approval goes into place, huge traffic
14 increase, testimony there could be up to 200 cars a day
15 driving past the petitioner's property. The petitioner's
16 testified it would greatly impact their operations, and may
17 even prevent them from operating as they have for 40 years.
18 Those are new burdens that never existed beforehand.

19 THE COURT: Are they using the end of that property from
20 the picture for storage or -- how are they using that alleged
21 easement?

22 MR. PAAVOLA: Yes, Your Honor, let me share that picture.
23 The black and white picture is probably the easiest.

24 THE COURT: Okay, yeah.

25 MR. PAAVOLA: The entire property is used for boat

1 storage, and the actual service bay is -- I'm kind of circling
2 it -- but in order to park a boat on a trailer and a truck,
3 they use the entire width of the drive and the shoulder to
4 back the boats in there to service the engines. That's how
5 they are using that.

6 THE COURT: All right, well, let me ask you this, because
7 I'm looking at this picture, and I'm looking at the picture
8 on, I guess, the easiest on the right, the color picture,
9 which I assume is looking ---

10 MR. PAAVOLA: Looking toward the dead end.

11 THE COURT: All right. The subdivision is going to be on
12 the right?

13 MR. PAAVOLA: The subdivision is back behind. So,
14 there's this -- the acreage is back behind here. So, to the
15 right is a slight bit of land, and then lake.

16 THE COURT: Okay. So -- and this is the only way to
17 access that property? And I'm just asking. I'm not -- I just
18 want to know to make sure I have ---

19 MR. PAAVOLA: The access would probably either be on --
20 you know, to the right if they are able to build a sufficient
21 drive to the right in the trees here and go around our
22 client's property. But yes, there's water on both sides, if
23 that's what Your Honor is asking.

24 THE COURT: Okay, so there is no real way to access
25 unless you're able to fit a road in to the right of the area

1 that's subject to the discussion on prescriptive easements.

2 MR. PAAVOLA: Maybe I have another picture of it perhaps.
3 Yeah, you can sort of see here. Here's the marina, or the
4 marine service road, and here's the -- you know, the
5 developer's property. So, if they were able to get a road on
6 their own property and go around and connect to that area,
7 that may be the -- where the road could go. Otherwise,
8 there's water on each side.

9 THE COURT: Okay. Okay, I just wanted to make sure I had
10 that in my head straight. All right. So, you're basically
11 alleging that they exceeded their authority in regard to the
12 existence of a prescriptive easement and also in expanding it.

13 MR. PAAVOLA: Yes, Your Honor. They've, you know, gone
14 around our clients and we haven't consented to that increase
15 in the easement and the modification of it, if it even exists,
16 which we dispute it does. And Your Honor ---

17 THE COURT: Does any deed there show that easement? Is
18 there any deed that shows an easement in that spot?

19 MR. PAAVOLA: The County didn't produce any records to
20 the Board about the easement. There's no documentation by the
21 Board. And, of course, we're bound by the record today.
22 That's all we have.

23 THE COURT: I mean, look, I left property issues like
24 that long behind me years ago, but isn't that unusual for
25 there not to be some mentioning of an easement in adjoining

1 properties' deeds? Or ---

2 MR. PAAVOLA: Yes. I mean, I guess our point of view
3 would be if an easement existed, there must be some record of
4 it, and none of it exists today. Nothing's before the Board.

5 THE COURT: Okay. I don't mean to interrupt you, I'm
6 just trying to ---

7 MR. PAAVOLA: Yep. Okay. Your Honor, our fifth basis
8 was the location of the roadway was left uncertain, though the
9 statute has four criteria that the BOZA has to evaluate to
10 approve a variance. The fourth criteria is answering the
11 question of whether there's substantial detriment to the
12 adjacent uses. The primary use here is John's Marine Service.
13 It's not the only use. Our petitioners live here as well.
14 But that's the primary use. So, the question is, would this
15 variance be a substantial detriment to John's Marine?

16 The applicant originally submitted -- and I'll share my
17 screen again -- submitted drawings -- I think I can share my
18 screen again -- the applicant originally submitted drawings
19 for the original hearing showing that it has 13 -- not 13,
20 31.9 feet between the corner of my client's property -- the
21 edge of this property, it has 31.9 feet of its own property
22 for the right of way, thus it needs 18.1 for the variance.
23 That was the original dimensions.

24 However, in November -- however, in April, the applicants
25 submitted a separate drawing showing that, in fact, the corner

1 of my client's property, they needed 9.1 feet onto it to make
2 the 31.9 feet. The -- then it didn't redraw all the original
3 drawings showing the roadway. My client, Jay Ratliff is a
4 licensed South Carolina engineer, and he submitted drawings
5 analyzing these two different roadway placements, and that's
6 at the Exhibit B to our brief, and it's at the record at page
7 295, 97, and 98, and I'll go over that now.

8 Record page 295 uses the applicant's drawing and shows
9 that they only have 22.8 feet between the corner panel of our
10 client's property and their own property to place this 31-foot
11 right of way they are requesting. This is their revised
12 drawings. Mr. Ratliff also prepared this drawing -- this
13 scaled drawing based on the original plans, provided by
14 Ridgeway Engineering. He laid out John's Marine's service
15 bay, a boat, and trailer, and the corner panel of my client's
16 property, and what this demonstrates is that if the applicant
17 had 31.9 feet from the corner of our client's property, it
18 would be out here in the middle of lake, below the 804 barrier
19 on Duke's property, which they could not build on. In fact,
20 that's the problem with the original measurement that they
21 provided to the BOZA.

22 The revised drawing, rather, shifts that 31.9 feet 9.1
23 feet onto my client's property, and when that happens, we can
24 no longer back boats and trailers and trucks into our service
25 bay. You can see that hatched out area would be -- we'd no

1 longer have the space to operate as we have been. This
2 drawing was presented to the BOZA. The BOZA voted and
3 approved the application knowing it didn't know the final
4 location of the roadway. In fact, the BOZA didn't ask any
5 questions about these drawings. It didn't analyze whether
6 under the second scenario, if that would be a substantial
7 detriment to my client's property.

8 In the BOZA's decision to approve the application, one of
9 the factors that I would suggest they found significant was
10 they believed our clients would gain property and not lose
11 anything, or at least not lose access. This diagram shows
12 that there are definitely some area there we lose property and
13 lose access and are very, very damaged. So the BOZA needed to
14 evaluate the application in light of this second scenario, and
15 they never did.

16 They can't -- the BOZA can't possibly determine that a
17 variance is not substantially detrimental. They don't analyze
18 all the potential roadway placement scenarios. And we believe
19 that it is arbitrary, capricious, and an abuse of its
20 discretion. And finally, Your Honor, our fifth basis, the
21 statute requires the BOZA to set forth its findings in
22 writing. And the Court's give leeway for that, so that the
23 order itself doesn't have to be exhaustive -- you can look at
24 the transcript as well.

25 But in this case, the order and the transcript together,

1 none of that addresses this scenario where the right of way
2 has to shift on our client's property by nine feet. I mean,
3 because they -- the BOZA didn't analyze that, it failed to
4 meet the statutory requirements to approve the variance. Your
5 Honor, that's -- I'll take any questions that you have, Your
6 Honor. I'm happy to answer them.

7 THE COURT: Well, I have a lot, but I'm not sure that --
8 yeah. I'd like to hear the other side first. I mean, I --
9 so, I'll be happy to do that. By the way, just so I -- for my
10 records, who does everybody represent? I'm looking at a lot
11 of people. I'm just curious.

12 MR. BRANDT: Well, I represent Globe and Farmes, and
13 Ridgewater Engineering and Surveying. They're named on there,
14 and I have their permission to represent them, too, but
15 they're not the true party in interest here. Globe and Farmes
16 are the true parties in interest, and we've already let them
17 intervene and added them as parties to the action. But let's
18 ---

19 THE COURT: Well, who represents Oconee County Board of
20 Zoning?

21 MR. HOLLIDAY: Your Honor, myself and Bo Bowman also
22 represent Globe and Farmes.

23 MR. BRANDT: Well ---

24 THE COURT: Okay. Wait a minute, I've got -- Jim, you're
25 muted. Who do you -- you're just here watching because you're

1 bored this morning?

2 MR. BRANDT: He represents Oconee County.

3 MR. LOGAN: Let me get my -- oh, I'm muted. Can you hear
4 me now?

5 THE COURT: Yeah, I can hear you now.

6 MR. LOGAN: Okay, well, I represent Oconee County.

7 THE COURT: Okay. All right.

8 MR. BRANDT: Well ---

9 THE COURT: We've got that straight. Yes, sir.

10 MR. BRANDT: Let's make a few things clear. The 31.9
11 feet variance is solely on property owned by my client. It
12 does not touch, does not -- anything does not affect the
13 Ratliff property whatsoever. The road that we're arguing
14 about, where the prescriptive public easement or public road
15 is basically -- you might get a grain or two one way or the
16 other, but really the property line -- my client's property
17 goes down the middle of that road -- Ellenburg Road.

18 So, certainly they have a right to use half that road any
19 way they want to, as long as it doesn't obstruct public use.
20 Now, they keep talking about there not being -- it's being a
21 private driveway. Now, I don't think the fact that whether
22 it's a private easement or a public easement, I don't think it
23 matters, nor is it material relevant to the consideration of
24 the petitioner's and appellant's claim. They basically -- a
25 prescriptive easement just means you don't have a deed to it

1 and you take it by use.

2 However -- and we've got a lot of roads in Oconee County,
3 and I dare say in most every county, that's been there for
4 years and years and years, and there's no deeded right of way.
5 Now, in the 11/30/21 hearing, page 81 through 83, Jay Ratliffs
6 gives a history of that road. Now, they're talking about a
7 historical data doesn't count. He gives it, though. He admits
8 to, in his statement, he said that back years ago, his mother
9 lived there, and it used to be a state road. And then at some
10 point and time, and that was basically, I think, when the lake
11 was built, a lot of roads were interfered with with the lake.

12 Under the statute, basically, on abandoned portions, a
13 road -- if they revert, it would revert to the jurisdiction of
14 the respective appropriate local authorities involved, or be
15 abandoned as a public way. One of two things has to happen.
16 So, it came back to Oconee County and Ellenburg Road was
17 assigned a number of WA-42. WA just means it's identified by
18 Township. That's Wagener Township. It has that nomenclature
19 on every -- on plats, and in fact, at 283 of the transcript,
20 there is a deed that the Ratliffs -- it was an inter-family
21 transaction, I think, and they put that deed on record
22 referencing a plat that clearly identifies Ellenburg Road as a
23 public right of way.

24 But go back to the state -- it gets to the county. And
25 then, you have to have, if you're going to close the public

1 nature -- take it out of the public inventory, there is a
2 particular statute at 57-9-10, which sets out a formal
3 procedure for terminating a public right of way.

4 THE COURT: Right.

5 MR. BRANDT: This is addressed in the case of Henson
6 Family Holdings, SCDOT versus Henson Family Holdings, I think,
7 and it would be 361 South Carolina 649, 608 S.C. 2nd 781. It's
8 a Supreme Court 2004 case. There has never been an action
9 filed by anyone to close that road, and if it did, you would
10 have had to have given the property owners on each side of the
11 roadway being abandoned, notice, bring them into court, and
12 then the Court has to have all necessary parties. No such
13 action has been done.

14 So, I submit that it's -- it is not a determination that
15 the zoning board had to make. It's clear from the history,
16 not from just the -- from Oconee County's perspective of that
17 road, because they addressed it later. They did some
18 maintenance on it in 2012, up the hill, I don't remember how
19 many feet, but several hundred feet back from my client's
20 property line. There was a sign down there up until this
21 matter got started that said County Maintenance Ends Here.
22 And it was right on the line with my client's property.

23 Jay -- but if you read that portion of the road, Jay let
24 -- Jay Ratliffs, speaking for the Ratliff family, describes
25 that road being a state highway, and being abandoned. And he

1 even goes so far as to recognize that it's been passed down to
2 the county, and became part of the county system. There's no
3 record of anything. Now, this business of building a new road
4 was to try to accommodate his complaints that the road -- that
5 we can move the road over and give him more property to
6 maneuver his boats, conduct his business. Now, he is using
7 the entire roadway plus some outside the roadway, because we
8 own property on the other side of Ellenburg Road, too, before
9 you get to the point, that leading down to the point, that we
10 need the variance for.

11 And he's been using that. It's a private road, and he's
12 basically using ours. Now, we don't have any problem with him
13 doing that. But what we were trying to do was accommodate his
14 concerns. And there was concern about that.

15 THE COURT: Right.

16 MR. BRANDT: I think you've got three hearings here.
17 Three times we went over there. First time, it was pretty
18 long. Second time, it didn't last that much, and we wanted to
19 try to negotiate something and see if we could work something
20 out. That failed. We went back for the final hearing, and
21 that lasted a while.

22 The Board of Zoning Appeals certainly didn't make an
23 arbitrary, capricious decision. They thought it through.
24 They listened to everybody. They were very patient, and in
25 this case, I think it's one of the best performances by the

1 Board of Zoning Appeals that, at least, in my career, that
2 I've ever had -- that I've ever seen. They tried to be fair.
3 They tried to accommodate everybody's complaints and resolve
4 them. It wasn't to be.

5 But again, if you look at page 283 of the transcript,
6 you'll see the plat the Ratliff's, which references Ellenburg
7 Road. Certainly, whether we've got -- it's a public easement
8 or just a private easement going down through there, we've got
9 -- certainly could do that -- we didn't raise that below --
10 not trying to argue that again. But certainly -- and the
11 Ratliffs have said we're not trying to cut us off from our
12 property, they just don't like the fact we're going to put 29
13 houses back there.

14 So, it doesn't matter whether it's a public roadway or
15 not, we still have -- would still have access to our property.
16 And certainly, the effect of what happened was taken into
17 consideration by the BZA because -- and they talk about
18 traffic studies hadn't been done. There's a lot of things,
19 even if we were granted this easement -- I mean, this
20 variance, there are a lot of things that will have to happen
21 before it becomes a reality.

22 We will have to bring roads up to specifications, what --
23 within the limits of what we have there to do. We can leave
24 the road where it is and widen it, and expand -- the widening
25 all the way across our property, which we proposed, but we

1 said, well, fine, what we'll do if we own the fee -- half the
2 fee -- or the fee on half that road that's already there,
3 we'll move the road completely on our property and we'll deed
4 Jimmy the entire roadway -- the old roadway. And then we'd
5 have to bring an action to abandon that portion of the roadway
6 as a county road, as a public roadway. And we did offer that.

7 Roads and Bridges, their -- the final permits for
8 building the residential subdivision is there. And we've got
9 to comply, so the mere fact we get the variance, we wanted to
10 know that the county could give us the variance before we go
11 spending this money on the other -- the other facets of
12 development. And there still may be, even with the variance
13 granted, I'll admit there still may not be a way to get in
14 there. We've got to know we've got the variance before we go
15 to spending a lot of this money on other engineering and
16 stuff, and we've spent a good bit of money already to try to
17 get it ready.

18 The -- but right now -- and certainly, I don't need to
19 tell the judge the law, and I think Mr. Paavola, or whoever
20 wrote the memorandums or the briefs for them has correctly
21 stated, you know, that if there's any supporting evidence in
22 the record -- it's not whether the Court would agree with the
23 decision or not of the Board of Zoning Appeals, is the fact if
24 there's any evidence in the record which would support their
25 decision, then you have to give deference to the court -- the

1 Board. And it can't be disturbed.

2 And the -- so, those cases obviously have been there. I
3 mean, Venture Engineering case 433 South Carolina 419, and 858
4 Southeast Second at 638, a 2021 case, are more recent cases
5 that addresses that issue, but they have -- there are other
6 cases behind those two. So, we feel like that the Board of
7 Zoning Appeals endeavored in good faith. They did not take
8 anyone's claims or complaints lightly. They had to make a
9 decision one way or the other. They made it. There is
10 evidence in the record, if you review the record carefully.
11 There is evidence in the record, including plats, deeds, which
12 was given to the -- presented at the hearing, and is in the
13 record that support what the Zoning Board did.

14 Certainly, we think that that is -- it should be -- the
15 variance -- the decision of the Board of Zoning Appeals should
16 be upheld.

17 THE COURT: Okay. Mr. Paavola, let me ask you a
18 question. What -- if -- under what right has your client been
19 using this, for lack of a better word, old road? In other
20 words, I understand that they've got some vested interest in
21 making sure that they can operate their business, but just out
22 of curiosity, I'm -- how did they end up using what, at the
23 very worst, is an old road that probably should have been
24 closed many years ago, but that's such a cumbersome process
25 that, you know.

1 MR. PAAVOLA: Your Honor, I don't know how much is in the
2 record on the history of that. My clients, when they moved
3 their shop there, obviously established a service business and
4 have been using that entire area. Now, at one point and time,
5 there was a fence that bordered the property and included the
6 shoulder area, where they -- you see the boats parked, there
7 was a fence.

8 THE COURT: Right.

9 MR. PAAVOLA: It's since fallen down, but that existed,
10 so that really defined the boundaries of where they used the
11 property for the business.

12 THE COURT: But I mean, on their deed, it doesn't include
13 that old road easement?

14 MR. PAAVOLA: No. There's no evidence of an old road
15 existing, and I know Mr. Brandt said that -- the county staff
16 that -- I think Mr. -- I can't remember his last name, but his
17 name is Kyle, but he asked the state for evidence of an old
18 road, and nothing came back. So, he testified that there's no
19 evidence of an old state road there that had ever been turned
20 over to the county. They had five months to go dig up any
21 information, but they didn't produce anything. So, the record
22 before the BOZA is there is no information that that was a
23 county or a state road ever been ---

24 THE COURT: So your position is that there is a road up
25 until the point of the old sign that's falling down that says

1 End State Maintenance, or End County Maintenance.

2 MR. PAAVOLA: Yeah, that -- so there is no -- that's a
3 factual dispute, but there is not -- we are not disputing that
4 the county has a regular maintenance easement up to that
5 location of the old End of Maintenance sign, which is at 575
6 or 585 Ellenburg. But, you know, the question is where does
7 the road end?

8 THE COURT: Right. That's my question.

9 MR. PAAVOLA: The county recognized that was the end of
10 the road. This sign showing up at the end of our property
11 briefly, and now it's disappeared. An unknown person moved it
12 for an unknown period of time. That's not how it historically
13 was. That seemed more related to these facts than the actual
14 county doing actual, you know.

15 MR. HOLLIDAY: Your Honor, can I shed some light onto
16 this issue?

17 THE COURT: Yeah, who's talking? I can't see.

18 MR. HOLLIDAY: This is Andrew Holliday. I'm sorry, Your
19 Honor, I'm having some technical ---

20 THE COURT: That's okay. I got you.

21 MR. HOLLIDAY: So ---

22 THE COURT: Sure.

23 MR. HOLLIDAY: You know, Mr. Paavola has now said on two
24 occasions after a direct question from you that there is no
25 evidence in the record with regards to this road and its

1 status. And I was hoping that you could open the record to
2 page 283, to go to the plat referenced by Mr. Brandt. And so,
3 Mr. Paavola is either unaware of what the record has in it, or
4 is lying to you. I'm inclined to be charitable, but I'm not
5 really sure how you ignore the substantial evidence in the
6 record that this is a public road.

7 Page 283 of the record makes it clear that Ellenburg
8 Road, otherwise identified as WA-42, is a public road subject
9 to the right of way. The other thing that's really
10 interesting about this ---

11 THE COURT: Well, question -- and let me say this, I
12 don't have that. I just have a -- looks like a copy of a
13 portion of a survey, but are you -- does -- are you looking at
14 anything that shows that that road at one time extended --
15 look, in my years on -- in this job, this is not my first
16 roadway issue in Oconee County. Or Anderson. And ---

17 MR. HOLLIDAY: Judge, this is a plat that Jimmy and
18 Lucretia Morgan had prepared themselves, by their survey,
19 Michael Henderson, less than two years ago. It was introduced
20 to the Board of Zoning Appeals. It's recorded in Book B-754
21 at Page 6 in the records of Oconee County. It was recorded in
22 December of 2020, and it clearly shows that Ellenburg Road is
23 a public road. And this is a plat that the appellants
24 literally paid to have created. And it's in the record.

25 MR. PAAVOLA: Your Honor, if I may address that. I have

1 no problem addressing that issue. I was going to get to that.
2 It was on my notes.

3 THE COURT: Okay.

4 MR. PAAVOLA: I mean, that plat is dated 2020.
5 Obviously, it doesn't show anything prior to that. Also, I
6 don't know if the records addressed it, but my clients were
7 told that they had -- that had to be placed on that plat by
8 the surveyor, that was required by the county, which kind of
9 comes back to our -- full circle to where the county is saying
10 it has access, everybody has an easement.

11 This is not evidence that it has a prescriptive easement
12 on my client's property. This is a county requirement, not
13 our client's admission, and it doesn't ---

14 THE COURT: Yea, there's got to be some -- at some point
15 -- I mean, for me, the issue is whether there was ever a road
16 that extended past what I guess everybody would say is the end
17 of the ---

18 MR. HOLLIDAY: Your Honor, could ---

19 THE COURT: Yeah.

20 MR. HOLLIDAY: Mr. Brandt, and I ---

21 MR. BRANDT: Well ---

22 MR. HOLLIDAY: Mr. Brandt and I had talked previously and
23 took parts of our argument, and I didn't know if I could argue
24 that now.

25 THE COURT: Yeah, if you'll give me one minute, I've got

1 to step out of the room for just a second, I'll be right back,
2 okay?

3 MR. HOLLIDAY: Thank you.

4 THE COURT: Yeah. Be right back. Y'all can take a
5 break, too, if you need it. Two minutes.

6 (Brief recess)

7 THE COURT: All right, sorry about that. Appreciate it.
8 Yeah, Mr. Holliday, were you wanting to argue that portion?

9 MR. BRANDT: He's not with us.

10 MR. HOLLIDAY: Certainly, Your Honor.

11 MR. BRANDT: Okay.

12 MR. HOLLIDAY: Sorry. There you go. Sorry, I thought I
13 had worked through my ---

14 THE COURT: You're all right.

15 MR. HOLLIDAY: --- technical issues, but I'm still on my
16 phone.

17 THE COURT: Okay.

18 MR. HOLLIDAY: As an initial matter, there is some
19 evidence that is being attempted to be admitted by the
20 appellants that's just not proper. If you look at the 15th
21 page of their brief, they correctly state the standard of
22 review and cite South Carolina Code 6-29-840, that this Court
23 is to treat findings of the Board of Zoning Appeals as a
24 finding by the jury, and that this Court may not take
25 additional evidence. And that the findings of the Board of

1 Zoning Appeals will not be disturbed on appeal unless the
2 record contains no evidence to support the BZA's findings.

3 For them to win today, they're asking you to throw out
4 all the evidence that's presented. There's hundreds of pages
5 of the record. Like I've just said a second ago, I cited page
6 283, which shows a plat that Mr. Ratliff and Mrs. Morgan
7 prepared, or had prepared, which is recorded in the Register
8 of Deeds. It appears in the record. So what we are bound by
9 in this appeal is the record, and, you know, two pages prior
10 in the appellant's brief on page 13, you'll see that they're
11 attempting to introduce new evidence. They're -- they have
12 other exhibits that do not appear in the record.

13 But specifically, on page 13, the bottom, you'll see a
14 footnote 2, that says Exhibit D is Mrs. Ratliff's -- and I'm
15 not real sure on the relation, but I assume this is Mr.
16 Ratliff's mother or aunt or some relative, I would assume --
17 that says, well, her affidavit isn't contained in the record,
18 but you should consider it anyways. But that's in violation
19 of what the statute says.

20 The statute ties our hands and says this appeal is only
21 based on what's in the record. And, so, we would object to
22 the inclusion of anything that is submitted as an exhibit with
23 the appellant's brief that does not appear in the record.

24 THE COURT: Okay.

25 MR. HOLLIDAY: Second, going back to my point about your

1 two direct questions to Mr. Paavola about the evidence that
2 exists regarding the status of this road, there is plenty of
3 evidence in the record and in the transcripts that talk about
4 this road. And it's -- the fact that it's been public for
5 decades and has never been abandoned, as Mr. Brandt stated,
6 pursuant to the statute that governs that.

7 You know, this appeal is a rehashing of the, effectively,
8 lies -- I don't like to use that word, but once you make
9 misstatement after misstatement after misstatement and you
10 don't correct it, all the way through three different
11 meetings, and file the same arguments in this appeal brief, I
12 don't know what else you can call it. You can only make it a
13 mistake or a misstatement so many times. If it's not true,
14 and you keep getting corrected about its truth or falsity and
15 you refuse to correct it, I have to call it a lie.

16 It's not that I disagree with Mr. Paavola, it's just that
17 he's factually incorrect, and I would like to ---

18 THE COURT: And what are you referring to there?

19 MR. HOLLIDAY: Certainly.

20 THE COURT: So I -- you guys know this case. I'm seeing
21 it today.

22 MR. HOLLIDAY: Certainly. Certainly, Your Honor. So, I
23 guess one of my personal favorites is the number of times that
24 the transcript is directly cited in the appellate brief. And
25 if you go and look at the transcript, it doesn't say what the

1 appellant brief says it says. So, this is my personal
2 favorite, is on the -- the bottom of the fourth page of the
3 brief, the appellant says that they raised their concerns
4 about granting a variance between two private parties. And
5 that, later on in his brief, he changes his statement and says
6 that they did not have the jurisdiction to decide whether the
7 county has a prescriptive easement.

8 And so, if you go back, and you look at page 86 of the
9 transcript, the first statement is correct. They raise a
10 concern. They say, that was my question, is if the county
11 doesn't maintain, how can the county have any authority?
12 Yeah, have any authority. We'll ask staff to answer that
13 question in a second here. And it's never answered.

14 So, I would encourage you, in determining this case, go
15 back and read the transcript and review the actual record, and
16 you'll find discrepancy after discrepancy in what the
17 appellant's are saying happened, and what happened. The words
18 of the transcript do not line up with what the brief says
19 happened. You know, it's just -- it's not a misunderstanding
20 at that point.

21 You know, the top of the fifth page of the brief, where
22 it says that the Board of Zoning Appeals recognized if the
23 county does not maintain the private driveway, then it would
24 not have the authority to grant the variance. That's -- it's
25 just not what was said at that portion in the transcript. So

1 ---

2 THE COURT: Well -- so, assume that -- I'm assuming that
3 you're telling me that that's correct. But isn't that -- it is
4 correct that if BOZA -- if the county doesn't maintain it ---

5 MR. HOLLIDAY: That's -- so ---

6 THE COURT: See, I don't have the transcript. That's the
7 problem. But I'm ---

8 MR. HOLLIDAY: He cites page 86 from the November 21
9 hearing, lines 15 to 22 that says BOZA recognized that if the
10 county -- recognized that if the county does not maintain the
11 private driveway, then it would not have the authority to
12 grant the variance application. That's not what that section
13 says. It says -- it's a question that is never answered by
14 county staff in that part of the transcript. But the bigger
15 issue is that they've been misleading the Board of Zoning
16 Appeals and this Court in that it's even a threshold issue
17 about whether a prescriptive easement would or would not
18 affect the granting of a variance, because it's completely
19 immaterial. It's not germane.

20 A variance, by definition, is an exception to a rule.
21 Pretty simple. A variance is only going to affect private
22 property. In this situation, it only affects the respondent's
23 property. We didn't apply for a variance on the Ratliff's
24 property. We can't. We can't take their property. You know,
25 I heard that argument by Mr. Paavola that this is a taking,

1 you know, and that, you know, somehow property is going to be
2 seized. The respondent is attempting to put the road on his
3 property, and give Mr. Ratliff more land.

4 All the evidence in the record supports that contention,
5 because it's the truth. It is a complete fabrication that a
6 prescriptive easement condition precedent to the grant of a
7 variance and it's also factually inaccurate if you look at the
8 plats that were provided, and not the drawings that, you know,
9 Jay Ratliff put together in Clip Art.

10 If you look at what the actual experts put together and
11 submitted, it shows Mr. Ratliff getting more land. I mean,
12 it's just -- it's factually inaccurate to say that land is
13 being taken from him, on top of the fact that it's completely
14 immaterial about whether a prescriptive easement exists, which
15 is abundantly clear, if you look at the deeds and the plats in
16 the record, not to mention the plat that Jimmy had put
17 together less than two years ago. You know, the argument that
18 the county made his surveyor put the fact that it's a public
19 road on the plat -- that's not real life.

20 The county can't come to a surveyor and say, hey, this is
21 a public road, Mr. Surveyor, you've got to put that on your
22 plat for this to be recorded. Like, that's the most
23 ridiculous argument I've ever heard.

24 THE COURT: Well, has anybody -- I mean, and I was just
25 talking to Will, my law clerk back there. I mean, Mr.

1 Paavola, does your client -- has an original survey, I guess.
2 And y'all are -- you see the whole forest. I'm quite frankly
3 running into trees here, because the question I've got is, I'm
4 not worried about -- well, I am worried, and at some point
5 we'll have to worry more about the existence of an easement,
6 but I'm just kind of curious. I suspect that somebody's got a
7 survey when your client bought that property that shows that
8 either that road was there, or that easement was there, or it
9 wasn't. And that was my question to you earlier. I --
10 somebody, can you get -- do you think your guy can get a hold
11 of that, and -- I mean, that would go a long way to helping me
12 understand. Because ---

13 MR. HOLLIDAY: Judge, there's nothing in the record that
14 says it's a private road.

15 MR. BRANDT: Well, let me ask you. Are you asking for a
16 survey when our clients bought the property from Duke? The
17 deed's in the record, and it has Ellenburg Road. They
18 conveyed it subject to Ellenburg Road.

19 THE COURT: Well, yeah, and I'm assuming that at some
20 point -- when did John's Marine Service purchase this
21 property? And I know that's an off the wall question, but do
22 you got any idea? Anybody? Like, there had to be a survey
23 done, right?

24 MR. HOLLIDAY: Not necessarily.

25 MR. BRANDT: Well, there are plats that show a road. It

1 doesn't designate. There are other plats in the chain to
2 title on the other properties through there that shows
3 Ellenburg Road going all the way down through. However, it's
4 not designated as a public road. It's just showing it as a
5 road. But there have been people living on that thing for
6 years.

7 MR. PAAVOLA: Your Honor, I'm not aware the record has
8 any kind of plat showing that, showing Ellenburg Road down to
9 my client's property. In fact, I was going to share that page
10 290 of the record was a plat that my -- that the county gave
11 my client and I'll share it on the screen now.

12 THE COURT: Yeah, that would help.

13 MR. PAAVOLA: Yeah, this was -- this shows the --- the
14 county drew on my client's -- on this plat for my client
15 showing that Ellenburg Road ends where the green is -- you can
16 see the green on the drawing of my client's property. So
17 that's where the county gave -- this is the drawing the county
18 gave to my client showing the end of their maintenance and
19 that's where the road ended, the public portion of it. So,
20 that's the documents in the record. I don't know of any other
21 document in the record.

22 THE COURT: Okay. Can you blow that -- can you -- just
23 so I can see it, I am getting older ---

24 MR. PAAVOLA: No, you're right. I'm sorry.

25 THE COURT: Oh, no, that's okay, because that's actually

1 -- all right, so you're saying that the county gave your
2 client that showing that that green mark ---

3 MR. PAAVOLA: Right.

4 THE COURT: -- was the end of the road?

5 MR. PAAVOLA: End of the county maintenance right there,
6 not the end of the road. End of the county maintenance. This
7 is where the sign was located. This was 2008, I believe, it's
8 in Mrs. Ratliff's affidavit, and her and her daughter-in-law
9 went to the county, and this is the document the county gave
10 them, that's 299 Ellenburg down there ---

11 THE COURT: And I wish you could see my -- but, from that
12 green mark to the green portion of property, which I assume is
13 the subject of this action and where the houses are going to
14 be built, on 103 and on 99, there's no reference to that road?

15 MR. PAAVOLA: Right. There is not.

16 THE COURT: Does everybody to agree to that? Or does
17 anybody have something showing that that's different?

18 MR. HOLLIDAY: Your Honor, this isn't even a recorded
19 plat.

20 THE COURT: Well, I'm -- yeah, I'm -- but, I mean, does
21 anybody have -- this is my question. Is there -- does someone
22 have a plat showing a -- and I think Larry -- or Mr. Brandt
23 said there was, that there is an easement or an old road or a
24 county easement or -- because it's either an easement, an old
25 road that has to be closed by the county, and that's something

1 that will have to be done in the future. Or, John's Marina
2 owns 30 more feet of property, and that's not for me decide.
3 It's just -- that would put us into a condemnation, if it was
4 their property. You know, so I certainly don't want to get to
5 that point.

6 MR. HOLLIDAY: That's the problem with this, Your Honor,
7 is that that is the water that has been muddied for months
8 now, is that it's not a condemnation. It is clearly a public
9 road. It's in the county's road inventory. But, even if it
10 was private, it's completely immaterial to the issuance of a
11 variance. The variance is not contingent on the easement.
12 The variance is just saying the county requires a 50-foot
13 right of way for the installation of a road. And we don't
14 have 50 feet because of the unique nature of this property.
15 It's got a very narrow isthmus that is not 50 feet wide. We
16 can't give them 50 feet of earth.

17 And so, if you look at the surveys that are of the
18 proposed new road, you will see that it jogs a little bit
19 south and west of the current road location to put the entire
20 road onto my client's property.

21 THE COURT: And -- but according to Mr. Paavola's
22 clients, you'd be taking their property that -- that's why I
23 asked about his deed.

24 MR. BRANDT: No ---

25 MR. LOGAN: Your Honor, can I ask a question?

1 THE COURT: Sure. I'm just -- because I'm just trying to
2 figure out exactly what's going on here. This is a ---

3 MR. LOGAN: All right, let me ask you this, because I was
4 not at any of these hearings. I've just gotten involved on
5 behalf of the county attorney since the last hearing. Put
6 that -- somebody put that plat back on that you were looking
7 at with the green dots, please.

8 THE COURT: And again, remember that we're always on the
9 record, but we can technically go off the record to talk,
10 there's just always going to be a recording.

11 MR. LOGAN: I understand, but if somebody would put that
12 ---

13 THE COURT: But normally I would say let's go off the
14 record and look at this, but -- and that's what I'd like to
15 do.

16 (Off-the-record discussion held.)

17 THE COURT: All right, I've got enough here. I've got
18 enough to make a -- look, the parameters of what I can and
19 can't do -- I was trying to mediate a little bit, and nobody
20 asked me to do that, so I apologize. It just looks to me like
21 there's a -- that the Ratliff's -- the down line Ratliff's
22 have a concern that somebody sometime is going to claim an
23 easement across their property because unless I'm just
24 misreading it -- I know, David, you're saying it's not there,
25 but it looks like there is one. I mean ---

1 MR. PAAVOLA: Your Honor, I -- if I could show a couple
2 of the documents, I think that would be helpful as well. May
3 I share my screen?

4 THE COURT: Yeah, and by the way, we did find that we do
5 have a 465-page record that was apparently sent after work on
6 Friday. Yeah, that ---

7 MR. PAAVOLA: What I'm showing now, this is page 280 of
8 the record. Unfortunately, in the record it's highlighted, so
9 the maintenance right of way -- the road, they highlight
10 always to the end, and that's actually not what the plat looks
11 like. Here's the Ellenburg Road maintenance right of way, and
12 it ends at that property at 565 Ellenburg. Now, this is dated
13 in 2008, and that is very similar to the document I showed
14 earlier, which was the county's document they provided my
15 client, showing that the end of county maintenance was right
16 there at 565 Ellenburg. This is also 2008. So, this is very
17 similar time period. Those are the documents that ---

18 THE COURT: The problem is, I don't think that's an
19 official -- that looks like something like a tax map or
20 something.

21 MR. PAAVOLA: Well, because probably the county map
22 internal system where they were counting as their easement.
23 But even this, there's no reason to suggest that -- on the
24 plat that this section of Ellenburg Road is somehow county
25 maintained. In fact, all the evidence is that it's not. And

1 it ---

2 MR. HOLLIDAY: David -- David, in that right corner,
3 doesn't it say Nail F pavement end -- end of pavement?

4 MR. PAAVOLA: Sure, the road's paved there. There's no
5 -- we paved it in 1980, so there's no doubt the road's paved
6 there. They don't ---

7 MR. HOLLIDAY: Why would it say Ellenburg Road
8 maintenance right of way? Why would it say that Ellenburg
9 Road is a maintenance right of way and why would the end of
10 pavement be marked on that plat?

11 MR. PAAVOLA: Your Honor, the Court's obviously bound by
12 the record before it. The Board of Zoning Appeals asked for
13 evidence. These documents were before it. The county had
14 five months to provide documents and testimony and witnesses,
15 and the only thing they came up with was institutional memory.
16 They didn't -- none of this was argued. Yeah, it may be in
17 the record, but the county didn't rely any of this to suggest
18 to show they had an easement, so. That's what the Court's
19 bound by today.

20 THE COURT: Okay. Jim, and let -- wait, Jim -- I'm
21 sorry, Mr. Logan, I keep wanting to say Jim. Mr. Logan, yeah,
22 I can see you were waiving your hand.

23 MR. LOGAN: Yes.

24 MR. BRANDT: That plat's in the record.

25 THE COURT: Right.

1 MR. LOGAN: That plat is in the record. It clearly shows
2 a right of way. Whether or not they maintained a portion of
3 it or not, for however long, it doesn't have anything to do
4 with whether or not it's a right of way. They took title
5 subject to the right of way. The right of way exists on
6 plats. If that's not institutional knowledge, I don't know
7 what is. Plus, they've got the -- the only way, if he wants
8 to stop it at the end of the pavement, it's never been
9 abandoned. And that's the only way you can do away with the
10 easement is bring an action to abandon it. They never did
11 that.

12 THE COURT: Yeah.

13 MR. LOGAN: So, I mean that -- I want to defend the Board
14 a little bit. They had all of this in front of them. I've
15 got a copy, and I think we sent it, you should have it, is
16 actually ---

17 THE COURT: We do.

18 MR. LOGAN: --- Legal Eagle transcript of the hearing, if
19 there are any deficiencies in what the Board did, I can -- I
20 want you to read this hearing. I can point out some
21 particular sections if you want me to, but I want you to read
22 it, and they gave it as thoughtful a consideration as
23 possible, and their own law says that that's just like a jury
24 verdict. That's just like the jury. You can't overturn that.
25 It's a jury matter, based upon their analysis of the record.

1 THE COURT: Yep.

2 MR. LOGAN: Prescriptive easement, it's -- and they don't
3 even own the affected property here. So, I think that's --
4 and here with the time, that's all I've got. I'd just ask you
5 to look in the record. They did it right, and we've now
6 established that there is an easement there, and they should
7 be affirmed in all respects. Thank you, sir.

8 THE COURT: Yeah, I've got enough here. And I'm going to
9 have to read that. I really appreciate you sending it to me,
10 so now I want to read it. But I've got the time. So, I'll
11 take it under advisement, like I said. I have done enough of
12 these, I understand the parameters of what I'm -- necessary
13 legally. I just -- this is one of those cases that number
14 one, is not really made for video, but we had to do it this
15 way. And number two, there seems to be a way for everybody to
16 get what they want, but that's for y'all to decide. So, give
17 me till next Monday, and if you hadn't heard something from me
18 by Monday, then we'll have to schedule that hearing for the
19 supersedeas. Okay?

20 MR. PAAVOLA: Thank you, Your Honor. We obviously feel
21 strongly about the position, and of course, we're willing talk
22 to the other side.

23 THE COURT: Yeah, I would. I mean, I do. I think --
24 look, if I owned that marine service, I would be concerned
25 about the fact that I could back a boat out and back a boat

1 in. I would also be concerned that at some point, somebody --
2 the county's going to come in and -- with easements and you're
3 going to have this argument again. If you could get the
4 county to convey that to them, it sounds like that's what
5 their willing to do. But again, you know your case. I'm not
6 trying to tell you. All right, thanks, y'all. I will let you
7 know something by Monday, and if not, we'll reschedule the
8 supersedeas for next week. Wherever I am, I'll -- we'll be
9 back on this computer.

10 MR. LOGAN: Thank you, Judge.

11 THE COURT: All right, thank y'all.

12 (Hearing Concluded.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED MONA L. MANLEY, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF ALL REQUESTED PROCEEDINGS RECORDED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT OF OCONEE COUNTY, SOUTH CAROLINA, ON THE 16TH DAY OF AUGUST, 2022.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

February 25, 2023

MONA L. MANLEY
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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCCONEE COUNTY
Court of Common Pleas
The Honorable J. Cordell Maddox, Jr.

Case No. 2022-CP-37-00396
Appellate Case No. 2022-001796

John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff,
Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon,

Appellants,

v.

Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC, Globe, a
South Carolina Limited Partnership, and Farnes, a South Carolina Limited Partnership,

Respondents.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCAR, the undersigned hereby certifies that the Record on Appeal
contains all material proposed to be included by all of the parties and not any other material.

/s/ David L. Paavola
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Columbia, South Carolina