

Email: bailey@austengowder.com
Direct: (843) 727-2215

October 7, 2025

SC Court of Appeals
1220 Senate St
Columbia, SC 29201

Re: Henry Bailem, IV v. County of Charleston
Case No.: 2025-001719

To Whom It May Concern:

Pleased accept this correspondence as confirmation that the transcript in the above-referenced case has been received. The transcript is enclosed herewith.

Thank you for your attention and assistance with this matter.

Sincerely,

AUSTEN & GOWDER, LLC

/s. Bailey Pope

Bailey Pope
Paralegal to W. Andrew Gowder, Jr.

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO. 2023-CP-10-0947
4

5 Henry Bailem, IV, et al,)

)

7 Plaintiffs,)

)

9 vs.)

)

11 County of Charleston, et al,)

)

13 Defendants.)

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Hearing before the Honorable Mikell R.

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Scarborough, reported by Josie Allen Boehm, Registered

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Professional Reporter and Notary Public, at 100 Broad

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Street, Courtroom 2A, Charleston, South Carolina, June

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2nd, 2025 commencing at 2:10 p.m.

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APPEARANCES

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For the Plaintiffs:

W. Andrew Gowder, Jr.

Austen & Gowder LLC

PO Box 20820

Charleston, SC 29413

Office: (843) 727-2229

andy@austengowder.com

For the Defendant Charleston County:

Marc Graylynn Belle

4045 Bridge View Drive

Charleston County Attorney's Office

North Charleston, SC 29405

Office: (843) 958-4010

mbelle@charlestoncounty.org

Bernard E. Ferrara, Jr.

bferrara@charlestoncounty.org

Andrew LaRoche Hethington

alhethington@charlestoncounty.org

APPEARANCES CONTINUED

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For Defendant Town of Mount Pleasant:

James Irving Ward, IV
Town of Mount Pleasant
100 Ann Edwards Lane
Mount Pleasant, SC 29464
Office: (843) 849-2020
jward@tompsc.com

For Defendant DRB:

Paul Eliot Sperry
Sperry Law, LLC
PO Box 14395
Charleston, SC 29422
Office: (843) 345-9880
paul@sperrylawsc.com

William Taylor Stanley
Adams and Reese LLP
1221 Main Street, Suite 1200
Columbia, SC 29201
Office: (803) 212-6518
taylor.stanley@arlaw.com

1 THE COURT: We've got the Bailem versus
2 Charleston County case, which involves the Town of
3 Mount Pleasant and the DRB Group, South Carolina LLC.

4 Case number is 2023-CP-10-947. I've got
5 Mr. Andy Gowder for the plaintiffs.

6 Let's see. Mr. Sperry and Mr. Stanley for
7 DRB?

8 MR. STANLEY: Yes, Your Honor.

9 THE COURT: And Mr. Belle for the County?

10 MR. BELLE: Yes, Your Honor. Along with
11 Mr. Hethington and Mr. Ferrara.

12 THE COURT: And then Mr. Ward for the Town?

13 MR. WARD: Yes, Your Honor.

14 THE COURT: All right, folks. I've gotten
15 your motions in memoranda for summary judgement.
16 That's what we had set for today is dispositive
17 motions.

18 Plaintiffs made a partial summary judgement
19 motion. All the other defendants have made full
20 motions for summary judgement. I usually take them in
21 the order in which they are received, and I think the
22 first one I got was from Mr. Stanley if I'm not
23 mistaken.

24 Are you prepared to go forward?

25 MR. STANLEY: I am, Your Honor.

1 THE COURT: Anything we need to take up
2 before we start?

3 Okay. So let me hear from the defendants in
4 that order and then I will be glad to hear from the
5 plaintiff. Okay?

6 You may proceed.

7 MR. STANLEY: May it please the Court, Your
8 Honor. We're here today on DRB's motion for summary
9 judgement. We submitted a robust memoranda of law --

10 THE COURT: It was only 40 pages.

11 MR. STANLEY: You know, I could have made it
12 a little longer if I tried, I think. I have a copy of
13 that with all exhibits if I may pass it up to the
14 Court.

15 THE COURT: I have the memo. I don't have
16 all the exhibits with me.

17 MR. STANLEY: And because it's somewhat
18 lengthy and I know the Court is familiar, I'm not
19 going to take a whole lot of time. I'm going to try
20 to be brief.

21 The length of the memorandum really is a
22 result of the mountain of evidence that this is a
23 public road, and we felt it necessary for us to bring
24 that to the Court's attention.

25 As you know, Mr. Bailem filed this action on

1 February 23rd, 2023. DRB was not a party to this
2 action. We did not become a party until June 6 of
3 '24.

4 As you know, this concerns a plat that was
5 recorded in 1986. It has an expressed statement: We
6 hereby dedicate this 50 foot right of way to the use
7 of the public forever.

8 It was signed by Henry Bailem, Rebecca
9 Jefferson, and Estelle Capers. It's an express
10 dedication, Your Honor.

11 Other than Ann Bailem Simmons, there is no
12 one who was present when that plat was signed. No
13 one.

14 Ms. Simmons testified in this matter. She
15 gave a deposition, and I asked her, "Were you aware
16 that Exhibit 4 was being created in 1986?"

17 She answered, "Yes."

18 "Okay. What did you know at the time?"

19 "That's the time I have been living there
20 because I was lot one."

21 I said, "Okay. Do you recall there was a
22 separate plat that was done that created two lots
23 instead of five at one point? Do you remember that?"

24 "I don't remember."

25 She then was asked, "Were you present when

1 those signatures were fixed to Exhibit 4?"

2 Exhibit 4, Your Honor, is the 1986 plat
3 that's been certified by the register of deeds.

4 So I said, "Were you present when these
5 signatures were fixed to Exhibit 4? Henry Bailem,
6 Rebecca Jefferson, and Estelle Capers?"

7 She answered, "Yes, I was there. Yes."

8 I said, "You were there when those signatures
9 went on the plat?"

10 Answer, "Yes."

11 "Okay. You saw them sign Exhibit 4?"

12 Answer, "Exhibit 4? Well, I will say it like
13 this. When they signed -- I don't know. I know that
14 this plat was signed."

15 The testimony is clear, Your Honor. She was
16 there. She saw them sign it. Now, the plaintiffs, in
17 their memorandum, argued that it's unclear what plat
18 was signed. I asked her about a separate plat. She
19 said, no, I don't remember that.

20 I said, "Exhibit 4, the one that's in front
21 of you, certified copy, you saw those three people
22 sign that plat?"

23 And she answered, "Yes." There's no
24 ambiguity. We know what she testified to. She said
25 she saw them sign the plat.

1 The only other witness who -- well, I take
2 that back. Michael Jefferson also said that Rebecca
3 Jefferson's signature was her signature. He testified
4 to that in deposition.

5 THE COURT: What was his name?

6 MR. STANLEY: Michael Jefferson, one of the
7 plaintiffs.

8 Following the plat being signed, the
9 dedication being signed, it was submitted to the
10 County with a subdivision application.

11 The names on that subdivision application are
12 Michael and Diane Jefferson. The Jeffersons
13 themselves submitted that application. It says five
14 lots. Doesn't say anything about four lots. It says
15 five lots.

16 That application was assigned number 11829.
17 The Exhibit 4 '86 plat says in two different places
18 lower right-hand corner 11829 and right under the
19 approval by the planning director and the clerk,
20 11829.

21 In 1996, the tax records reflect that the
22 road was no longer being taxed to the plaintiffs.
23 That's implied acceptance within months of the plat
24 being recorded.

25 In '87 and '88, the owner sent deeds to the

1 lots, which specifically incorporated all easements on
2 the plat. The plaintiffs say that it didn't
3 incorporate the dedication.

4 Under *Town of Kingstree vs. Chapman*, 405 S.C.
5 282, when we cite to this in our brief, at page 308,
6 it says: By a common law dedication, the fee does not
7 pass. The public acquires only an easement in the
8 land designated for its use. Subject to all easements
9 shown on the plat.

10 That road is an easement. It was
11 incorporated into their deed. Following those deeds
12 in 1994, County Council approved public funds to
13 improve the road.

14 In '95, it was annexed into the Town.
15 Several of the plaintiffs or their predecessors in
16 title actually signed the application -- or the
17 petition, I'm sorry.

18 That was Ms. Simmons' then husband, Abraham
19 Simmons, Florence Coakley, who then owned lot 4, and
20 plaintiff Michael Jefferson.

21 That petition, under each one of their names,
22 says plat book BK at page 135. That's the 1986 plat
23 that was recorded in October of '86.

24 In '96, the County Transportation Commission
25 held a meeting in which it approved funding of the

1 road.

2 Now, Mark Cane is former County engineer, and
3 he testified by way of affidavit that there's certain
4 road plans where he made notes of conversations with
5 Henry Bailem, plaintiff Henry Bailem, not the
6 signatory, and Diane Jefferson.

7 And he -- in those notes, it says that
8 Ms. Jefferson was adamant -- that's his word, not
9 mine -- adamant that the road be constructed. He then
10 says that -- he asked her if they would dedicate
11 another 10 feet of right of way so that they could
12 alleviate some of the issues surrounding the
13 improvement of the road, and she declined, the
14 additional 10 feet, Your Honor, because there's
15 already a 50-foot dedication.

16 THE COURT: When was this?

17 MR. STANLEY: That was in '96, I believe.

18 THE COURT: Okay. All right. In 1997, each
19 plaintiff for the predecessor in title signed
20 easements to the Town. Those easements say -- or, I'm
21 sorry. The easements describe the easement granted by
22 saying that John Bailem Road, 50 foot right of way
23 public.

24 They signed another document in '97 that said
25 it's a public road. The road was improved in '98

1 using County funds.

2 THE COURT: The '97 document, is that an
3 exhibit?

4 MR. STANLEY: It is, Your Honor. You know
5 what, Your Honor, it is within each -- for each lot, I
6 submitted the chains of title, and so it's within
7 those.

8 So that would be Exhibits 5, 16, 24, 26, and
9 28. And if my memory serves me, they're kind of
10 towards the back of each one.

11 THE COURT: Okay.

12 MR. STANLEY: In 2002, the road was actually
13 paved using public funds. Any of these opportunities
14 that I've already talked about were times that the
15 plaintiffs could have asserted their rights.

16 They could have said that's not a public
17 road. That's a private road. The latest date that I
18 just mentioned was 2002.

19 Under ten-year statute of limitations, their
20 time expired in 2012, 11 years prior to this case
21 being filed and 12 years prior to this case being
22 filed against DRB.

23 And I will be brief on the DRB portion. DRB
24 acquired the property to south of the road. It relied
25 on the public records that said this was a public road

1 when it acquired the DRB property for approximately
2 3.5 million dollars.

3 It then extended additional funds in actually
4 developing the subdivision. There are currently 18
5 homes in this subdivision. Not one of them has been
6 sold or occupied because of this lawsuit because
7 access to DRB's property is being questioned.

8 This is a public road. It has been for
9 decades. And the plaintiffs did nothing. In their
10 memorandum, the plaintiffs cite to multiple places
11 where they say deposition testimony stands for a
12 certain proposition.

13 If you take a look at the actual depositions,
14 it doesn't say anything about what they say it stands
15 for.

16 On page 10, they say that Ms. Jefferson
17 testified -- I'm sorry. On page 4 of their
18 memorandum, they say Ms. Jefferson testified on page
19 10 of her deposition that Pennington was hired to
20 create a plat showing four lots and private access
21 road dedicated to the owners of the lot. It says the
22 "four" line. It does not say anything about private
23 dedication on that page.

24 I think the most telling one is where they
25 cite to Mr. Linkler's deposition, and he is the

1 County's 30(b)(6) designee. They say on page 10 that
2 he testified that the October 7th, '86 council action
3 was to approve a private dedication.

4 That is taken completely out of context. If
5 you actually look at Mr. Linkler's testimony, he was
6 being questioned about a letter that was attached to
7 the plaintiffs' complaint.

8 And if you read from pages 10 to 18 of the
9 deposition, you will see that he testified in numerous
10 places that the October 7th, '86 council action was to
11 approve the subdivision, and that's exactly what the
12 council meetings reflect.

13 Where the plaintiffs cite to is really where
14 he's being asked -- that's what it says on the page.

15 THE COURT: You know which exhibit
16 Mr. Linkler's testimony is?

17 MR. STANLEY: I don't, Your Honor, because I
18 only attached excerpts. The County and the Town both
19 attached the full deposition.

20 THE COURT: That's good. Okay. That's fine.

21 MR. BELLE: Your Honor, when it's time, the
22 County will bring its full exhibits for you to look
23 at. It's Exhibit F in the County's packet.

24 THE COURT: Okay. Thank you. All right.
25 Thank you, Mr. Belle.

1 MR. STANLEY: And testimony specifically that
2 was cited in the memo on page 10 was, question, "With
3 a private dedication, isn't that what it says in this
4 document in front of you?"

5 "The document in front of me says a 50 foot
6 right of way will be dedicated to the property
7 owners."

8 We cite to numerous places in our memorandum
9 where he says 11829 is what was approved by council,
10 the plat that's recorded is 11829.

11 The plaintiffs attempt to create issues of
12 fact saying that it was the family's intent to create
13 a private dedication.

14 The '86 plat is unambiguous. It says,
15 "Dedicated to the public."

16 Their ancestors signed the plat. I don't
17 think that the Court should really be considering
18 parol evidence because it's not an ambiguous evidence.
19 The parol evidence rule says we don't worry about any
20 of this other circumstantial evidence that they claim
21 creates an issue of fact.

22 THE COURT: Clear and unambiguous document?
23 Says so on its face?

24 MR. STANLEY: That's right.

25 THE COURT: That's plat BK at 135. Okay.

1 MR. STANLEY: Your Honor, we actually have
2 the certified copy that was marked as Exhibit 4 in the
3 deposition right here if you'd like.

4 THE COURT: Sure. I will take a look at it.

5 MR. STANLEY: The plaintiffs also try to
6 create an issue of fact saying that the signatories
7 signed a different plat.

8 Your Honor, it's entirely possible that even
9 if someone saw the signatories signing a different
10 plat, that they signed that plat, too.

11 No one except for the signatory can know if
12 they signed a separate plat and that plat? That's
13 pure speculation to say they only signed a different
14 plat.

15 Next, the plaintiffs claim that Estelle
16 Capers always signed "Estelle Bailem Capers." This is
17 contradicted by numerous documents in the record,
18 including deeds, and most importantly, the affidavit
19 that she signed that's attached to the amended
20 complaint in this case. She signs it "Estelle
21 Capers."

22 The plaintiffs then claim that Rebecca
23 Jefferson was blind and couldn't have signed. There's
24 ample case law that says that blind people can sign
25 documents.

1 Now I'm going to get to the actual defenses
2 that we have asserted. We've asserted the statute of
3 limitations under both 15-3-340 and 15-3-530(7).

4 15-3-340 is the ten-year statute of
5 limitations that says that in order to bring a claim,
6 you have to bring it within ten years of being seized
7 or possessed of the real property.

8 They weren't seized or possessed of this road
9 for at least -- and if we take the latest date -- at
10 least 12 years before they sued DRB. That's the
11 paving of the road. There are plenty of earlier
12 timeframes, but taking the latest date that was at
13 least 12 years too late in the previous case.

14 The three-year statute of limitations was not
15 addressed by the plaintiffs in their memorandum, and
16 that is under McKinnon vs. Summers. Basically it's
17 where the action is one for forgery, a three-year
18 statute of limitations with a discovery rule in place.

19 We've got '86. We've got '94. We've got
20 '95, '96, '98, 2002. We've got all those dates, and
21 then we also have the easements in '97 that they
22 signed. We've got 2017, which is when Ms. Jefferson
23 sent a letter to the other property owners that says:
24 Our rights to ownership of John Bailem Road is being
25 challenged, and we are requesting the service of

1 attorneys to help protect our rights.

2 That's January of 2017. A three-year statute
3 of limitations would have expired in 2020, four years
4 before they sued DRB.

5 THE COURT: That was from whom?

6 MR. STANLEY: Diane Jefferson. And that is
7 attached -- I believe it's Exhibit 17. That's right,
8 Your Honor. Exhibit 17. It's a January 3rd, 2017
9 letter that Ms. Jefferson testified that she sent to
10 the other property owners.

11 I'll be very brief on laches and
12 acquiescence. DRB bought this property for 3.5
13 million dollars relying on the public road. The
14 plaintiffs knew -- let's use the latest date.

15 2017, the plaintiffs knew that whether it was
16 public or private was being questioned. In '21, DRB
17 acquired the DRB property, again, on reliance.

18 That delay is unreasonable. And we were
19 prejudiced by it because we wouldn't have bought this
20 property if we had known that public or private was at
21 issue.

22 Acquiescence, I've talked about all the
23 things that the public authorities have done. They
24 stood by and waited. They did nothing. They let
25 these public authorities take actions, which they

1 allege were contrary to their rights.

2 And I've talked a fair amount about
3 dedication and acceptance. I would just say that,
4 again, it's an unambiguous plat. The parol evidence
5 rule bars any intent that they may have had,
6 especially when you consider the three-year forgery
7 statute of limitations, and that makes sense, because
8 we're going back 40 years in the public's record.

9 And to now say that a signature that -- three
10 signatures that have been there for 40 years aren't
11 what they purport to be, that just doesn't make sense.
12 The plaintiffs have also-

13 THE COURT: Is that your -- what's the name
14 of that case? I think it was Richardson versus
15 Harris.

16 Is that the one that the Supreme Court said
17 it was just too long? It's a laches argument.

18 MR. STANLEY: It's the Estate of Robinson
19 versus I can't remember who.

20 THE COURT: Robinson vs. Harrison, I guess.

21 MR. STANLEY: The plaintiffs have also
22 testified, specifically Henry Bailem testified when I
23 asked him what kind of maintenance he had done on the
24 road, he said he was cleaning ditches and mowing the
25 grass.

1 And I asked him: Did you do any maintenance
2 on the asphalt?

3 And his response was: Well, it's their road.
4 What would we have to do?

5 Your Honor, this is a clear-cut case. This
6 is a public road. It was dedicated both implied by
7 sitting back and letting the public authorities take
8 all these actions and, more importantly, expressly by
9 the express words on the plat.

10 The statute of limitations has run long ago,
11 and DRB bought their property in reliance on this
12 being a public road. This is exactly why statutes of
13 limitations exist because you don't want plaintiffs to
14 sit on their rights, the public to rely on the public
15 record, and then someone come in 40 years after the
16 public record goes on and say that's not what we
17 intended. The statute of limitations is intended to
18 protect people like DRB.

19 Your Honor, unless you have any other
20 questions, I would incorporate all of the arguments
21 that we set forth in our memorandum.

22 I would also join in the County and the
23 Town's arguments on dedication and acceptance, statute
24 of limitations, and acquiescence and laches. Thank
25 you.

1 THE COURT: Let me just ask this question.
2 I'm looking at the plaintiffs. Do you know who owns
3 which lots?

4 Are all the lot owners the plaintiffs or not?
5 That might be addressed.

6 MR. GOWDER: Yes, sir, Your Honor. And in
7 the amended complaint, it goes through in detail who
8 owns which lot.

9 THE COURT: Okay. And so none of the people
10 who signed the plat are parties, are they? They're
11 not alive today?

12 But Ann Bailem Simmons is the name of the
13 woman who testified she was present at the time.

14 MR. GOWDER: She's here in the courtroom.

15 THE COURT: She's here as well. All right.
16 Very good. Thank you.

17 MR. GOWDER: Your Honor, I was incorrect.
18 Estelle is still alive.

19 THE COURT: Thank you. All right. Let me
20 hear from Mr. Belle.

21 MR. BELLE: I will try to be very brief. I
22 believe Mr. Stanley has adequately incorporated
23 everything the County would want to say.

24 In addition to DRB, the County also filed a
25 motion for summary judgement. Because at the end of

1 the day, there are no genuine issues as to any
2 material facts in this matter. Therefore, the County
3 believes it's entitled to judgement as a matter of
4 law.

5 Our grounds are that it's timed-barred; the
6 doctrine of laches; there's proper dedication and
7 acceptance; the plaintiff failed to produce any
8 evidence of ownership of the road; and they're barred
9 by doctrine of estoppel.

10 In the interest of time, we won't go through
11 the whole memorandum that you have in front of you.
12 We will be incorporating all the arguments that both
13 DRB has made and the Town will supplementally make.

14 I do want to point out one fact. In 1994,
15 there was express acceptance by the County. County
16 council voted to approve and accept the road it into
17 the County maintenance system.

18 You can find that at County Exhibit E. So
19 that's the formal expressed acceptance of the County.

20 Now, in addition to what Mr. Stanley has
21 already said, essentially to create a public right of
22 way, you need two elements. Proper dedication and
23 acceptance by the public.

24 Mr. Taylor has already adequately covered
25 dedication, and I will throw out, in addition to that,

1 because the heirs of John Bailem, who are three people
2 who signed the plat, because they're not parties or
3 here to speak for themselves, the only way to measure
4 their intent is looking at that document that they
5 signed that's the public record.

6 THE COURT: The plat?

7 MR. BELLE: The plat that is recorded, BK
8 135.

9 Now, as far as acceptance, as I stated, the
10 County formerly accepted the road in 1994 with this
11 council action.

12 Additionally, the state law does apply for
13 applied acceptance. Applied acceptance can occur in a
14 myriad of factors such as public use of the road,
15 public maintenance of the road, changing of tax maps
16 to include the property, and things of that nature.

17 Here, in 1986, the County amended the tax
18 maps to reflect the subdivision of five lots in the
19 road. The road was separated out. The road is no
20 longer being taxed, although the other lots do.

21 THE COURT: Okay. That happened in '86,
22 right?

23 MR. BELLE: Yes, Your Honor.

24 THE COURT: With the recording of the plat?

25 MR. BELLE: Yes, Your Honor. So since 1986,

1 neither the original property owners or the plaintiffs
2 have been taxed by any portion of the road.

3 Now, additionally, I would also like to talk
4 about the lack of evidence showing any ownership in
5 this road. As Mr. Stanley stated, all the plaintiffs
6 took title to their perspective lots by deeds conveyed
7 to them by the heirs of John Bailem.

8 Those deeds came to them in '88 and
9 thereafter. But if you look at those deeds, all the
10 deeds described their property as being butted and
11 bounded on John Bailem Road and not including the
12 road. Otherwise, if you did include the road, the
13 line would have said butting and bounding on the
14 McManus tract, but it does not.

15 A claimed reading of the deeds showed that
16 the properties do not include the road. Therefore,
17 the plaintiffs themselves have never held title to and
18 have never paid taxation on any portion of the road.

19 THE COURT: Each deed cites that, right?
20 Bounded on the south by John Bailem Road?

21 MR. BELLE: Yes, Your Honor.

22 THE COURT: Okay. All right.

23 MR. BELLE: And, again, in the interest of
24 time, I have nothing further to add other than to echo
25 that we will be incorporating everything in our memo,

1 everything Mr. Stanley has said, and everything
2 Mr. Ward may say.

3 Correction, Your Honor. If you would like to
4 see the actual plat, the ROD is available to bring
5 that to the courtroom today. Otherwise, that is the
6 certified copy of that plat.

7 THE COURT: Y'all got from the ROD?

8 MR. BELLE: And we can bring the original if
9 you'd like to see it.

10 THE COURT: Cross that bridge.

11 Let me hear about your argument on estoppel.
12 My recollection is estoppel doesn't run against the
13 government. You sort of touched on that.

14 Let me hear about estoppel, and then I want
15 to hear about, in preparation for Mr. Gowder's
16 argument, adverse possession.

17 MR. BELLE: So right now, we are saying the
18 plaintiffs are estopped from their claim that this is
19 their road. Basically what is occurring is the action
20 or inaction of a party cannot alter the position of
21 another party. And, here, they have caused the County
22 to change its position in the matter.

23 The County accepted the road in 1994. And
24 after getting funding, went out in '96 to survey the
25 area and design and construct the road.

1 In conjunction with meeting with Mr. Bailem
2 and Ms. Jefferson, they had lengthy conversations
3 about positioning the road around a well that was in
4 the right of way and realigning the drainage.

5 And the County did all of this relying on the
6 plaintiffs testifying or what the plaintiffs said is
7 how they want the road constructed.

8 The County would not have done this but for
9 interacting with them and knowing the road was going
10 to be a future public road open to everyone.

11 THE COURT: Is that at which time the road
12 was being constructed or did the road -- what existed
13 there previously?

14 MR. BELLE: Simple earth path, Your Honor.
15 No official road or anything, just a dirt path over
16 years of cars driving down it.

17 So the County is the one that actually
18 constructed the road. So the construction occurred in
19 two phases. In '96, the original engineering and
20 design. In, '98, completed the road to a gravel
21 standard, and then additional funding was acquired or
22 made available, and the road was paved in 2002.

23 So originally, all the plaintiffs had was a
24 dirt path, and now there's a full-on asphalt road.

25 THE COURT: And no objection was made --

1 MR. BELLE: No objection was made.

2 THE COURT: -- that proves that the County
3 made --

4 MR. BELLE: No, Your Honor. And as
5 Mr. Stanley said, if you look at the field notes from
6 Mark Cane, the engineer at the time, the plaintiffs
7 were adamant that the road be built.

8 THE COURT: Okay. All right. Those were
9 shown on some diagram if I remember correctly.

10 MR. BELLE: Yes. There was engineering plans
11 in exhibit I, preliminary engineer and construction
12 drawing with the field notes of the project manager.

13 THE COURT: Okay.

14 MR. BELLE: Just to close, while we were
15 talking about estoppel, I would like to point out that
16 South Carolina case law has stated that a grantor
17 conveying land founded by a street is estopped from
18 denying that such street exists and to override the
19 grantor of this 50 foot right of way would be a
20 travesty of justice.

21 THE COURT: What's your cite on that one?

22 MR. BELLE: Let me pull up the case name.
23 Murrells Inlet Corporation v. Ward, 378 S.C. 225, and
24 Cason v. Gibson 217 S.C. 500.

25 THE COURT: Okay. Ward and Gibson?

1 MR. BELLE: Yes, Your Honor.

2 THE COURT: Okay. All right. Very good.

3 Thank you, Mr. Belle.

4 All right. Mr. Ward, let me hear from you.

5 MR. WARD: Yes, Your Honor. May I please
6 hand you a copy of my memorandum? I condensed it down
7 a bit.

8 Our motion for summary judgement includes
9 that there are no genuine issues of material fact as
10 to the essential elements of the plaintiffs' claim for
11 declaratory judgement and quiet title.

12 We believe that there is clear public
13 dedication. We also moved for summary judgement on
14 our affirmative defenses of statute of limitations, as
15 well as doctrine of laches make equitable estoppel.

16 And then we, out of an abundance of caution,
17 moved for summary judgement on the plaintiffs' claims
18 for adverse possession and inverse condemnation.

19 I know those were already dismissed by you on
20 Charleston County's motion to dismiss. Was not clear
21 if that also applied to the Town, so out of abundance
22 of caution, we move for summary judgement on those
23 claims as well.

24 And then we moved on summary judgement for
25 our claim of adverse possession of the road, and I

1 will get to that in just a minute. I will be very
2 brief.

3 I think counsel for DRB and for the County
4 has adequately discussed why this should be -- why
5 there's no material issue of fact for the claim that
6 the road is private and not public.

7 The plat speaks for itself. It's
8 unambiguous. It's signed by the land owners at the
9 time.

10 In our request for admissions, the plaintiffs
11 admit that those three individuals, Henry Bailem, Jr.,
12 Rebecca Jefferson, and Estelle Capers, were the owners
13 of the property at the time the plat was executed, so
14 we have all the owners.

15 They signed the plat. But even if you were
16 to buy the argument that maybe these signatures were
17 transposed or were copied, the plaintiffs' individual
18 deeds incorporated the plat, and they referenced the
19 plat and are signed by those three same individuals.

20 THE COURT: They're the same grantors in all
21 of the deeds?

22 MR. WARD: Yes, Your Honor. And I believe
23 case law is very clear that an expressed dedication
24 does not need to be on the plat. It can be implied by
25 references to the plat through deeds that are

1 subsequently done, and that is cited in my brief. I
2 believe it was the -- I apologize. It was a case
3 cited earlier by Mr. Stanley, Town of Kingstree versus
4 Chapman.

5 So we believe there's clear intent to
6 dedicate the property by the three land owners at the
7 time the plat was drafted by Mr. Pennington.

8 And to be honest, Your Honor, a lot of the
9 claims that they have are really against
10 Mr. Pennington in his capacity as surveyor.

11 As you're aware, he's not a party to this
12 action. But, I mean, those are certainly plans they
13 could have asserted against him.

14 As far as public acceptance, Charleston
15 County clearly accepted the property. There's a
16 council action that's attached to the plaintiffs'
17 complaint that shows they accepted the road as a
18 public right of way.

19 They paved the road. The plaintiffs admitted
20 in their depositions that Charleston County paved the
21 road using public funds. So I think that is very
22 clear that we have both dedication and acceptance.

23 And just briefly on the adverse possession
24 and inverse condemnation, I know Your Honor has ruled
25 on these already, but you cannot adversely possess a

1 property against the State or any of its political
2 subdivisions.

3 The plaintiffs can't assert adverse
4 possession against the Town. And the inverse
5 condemnation claim, again, as Your Honor pointed out
6 in his order, they require some sort of affirmative
7 act by the governing agency to take this property.

8 We have not done anything to take the
9 property. We've relied on the plat and relied on the
10 dedication statement in asserting any sort of
11 maintenance that's been done on the property in our
12 ownership of the property, and so we believe summary
13 judgement is for that claim as well.

14 And then I won't go back over the statute of
15 limitations, but we believe there's a ten-year statute
16 of limitations. We believe that's been well expired.
17 Even if you use the latest date of when the road was
18 paved, which is 2002, the statute of limitations
19 expired in 2012. This claim was brought several years
20 later. So I believe statute of limitations has
21 expired.

22 As for the doctrine of laches, the plaintiffs
23 have really rested on their rights in asserting
24 ownership of this road. They have not acted in -- the
25 unreasonable delay has caused harm to the town and to

1 the tax payers of the town. We have used public funds
2 to improve this road. We've cleaned up the ditches on
3 the side of the road per the requests of the
4 homeowners, and that leads into my equitable estoppel
5 argument.

6 The plaintiffs in this case admitted in their
7 depositions that they requested the Town to come out
8 and perform maintenance to the ditches within the
9 public right of way.

10 They can't ask the Town to come and perform
11 maintenance to a public road and then say, well, we
12 own the road. That just conflicts on its face.

13 And then lastly, for summary judgement on our
14 adverse possession claim, the Town has -- the Town has
15 relied on the plat and of public record in this matter
16 to assert its maintenance responsibilities and its
17 obligations to maintain the road as a public right of
18 way.

19 We have entered -- there's color of title
20 there to show that we have -- that the road is a
21 public road. It's own in the plaintiffs' depositions
22 that any attempts to block the road, the Town has
23 removed.

24 In Henry Bailem's deposition, he is cited to
25 saying what happens when the developer -- I asked him:

1 Have you ever attempted to block public access?

2 And he said: Yes.

3 I said: What happened when you tried to
4 block access?

5 He said: The Town came out, took down my
6 gate, took down my sign. Any attempts to the block
7 public access to the road, the Town has gone out there
8 and removed it. The Town has gone out there and
9 performed maintenance on the road. We have treated
10 this road as a public right of way. We have defended
11 any sort of claim of private [sic] by the plaintiffs,
12 and we believe that it is a public right of way.

13 THE COURT: Town employee?

14 MR. WARD: That was the plaintiff, Henry
15 Bailem, who testified that they removed the gates.
16 But in our 30(b)(6), we did have an employee say that
17 they have gone out there and done maintenance in the
18 ditches.

19 THE COURT: The road is now paved?

20 MR. WARD: The road is paved. We have done
21 inspections on the road. It is not in a condition
22 that requires it to be re-paved. The road is in
23 fairly good condition.

24 We have inspected the road. It's not one
25 that needs repair, but we have performed drainage.

1 The drainage ditch adjacent to the road and between
2 the road and the plaintiffs' property, we have gone
3 out there and cleared up the culverts.

4 THE COURT: Okay. The dedication was a 50
5 foot right of way, was it not?

6 MR. WARD: Yes, Your Honor.

7 THE COURT: Okay. All right. Thank you,
8 Mr. Ward. All right.

9 MR. GOWDER: May it please the Court. Andy
10 Gowder for the plaintiffs.

11 Your Honor, what I will do is first of all
12 respond to the motion for summary judgement and then I
13 will argue our motion as well.

14 THE COURT: Thank you, sir. All right.

15 MR. GOWDER: Your Honor, this case, contrary
16 to Mr. Stanley's opening statement, this case is
17 particularly unsuited to a decision on summary
18 judgement.

19 The issue before the Court at this stage is
20 whether these property owners or their ancestors made
21 a public dedication of this right of way known as John
22 Bailem Road.

23 That issue is hotly contested by the
24 conflicting testimony of the witnesses and by the
25 inferences to be drawn from the documents.

1 My clients say neither. They, nor the
2 previous generation who conveyed this property,
3 intended any public dedication, but instead intended
4 that this right of way be for private use only.

5 Your Honor, the Bailem family has owned and
6 exclusively used the land on which the current John
7 Bailem Road is located for over 100 years dating back
8 to after the Civil War.

9 In 1986, seeking only to subdivide family
10 land to distribute to their children, the three living
11 heirs hired a surveyor, Mr. Pennington, for the simple
12 task of drawing lot lines.

13 Without authorization, without explanation,
14 and without the family's knowledge, the surveyor added
15 language on that plat purporting to dedicate the road
16 to public use. This unauthorized act cannot and did
17 not divest the family of their property rights.

18 Your Honor, the one document on which the
19 defendants hang their entire case is that one that
20 you're holding.

21 On its face, the October 1986 recorded plat
22 seems to indicate a public dedication, but a slightly
23 deeper look at the circumstances and the signatures of
24 the owners raises at the very least a question for the
25 fact finder to be weighed and determined at trial, not

1 here at a summary judgement hearing.

2 We would contend that there is little doubt
3 that these are not the owners' signatures on that
4 plat. We think it's patently clear. And that there
5 never was, to this day, a public dedication of that
6 road by the owners.

7 Your Honor, summary judgement, as this Court
8 knows, is inappropriate here where disputed facts
9 exist regarding the surveyor's authority, the family's
10 intent, the validity of any dedication, and the
11 propriety of governmental actions taken without due
12 diligence concerning the road's ownership.

13 For that reason, Your Honor, as I will
14 outline here and as we've argued in our memorandum
15 filed last Friday, we respectfully request that you
16 deny these motions for summary judgement and that we
17 proceed to trial in two weeks on the issue of
18 ownership.

19 So, Your Honor, I would like to review the
20 facts with you, because the facts are really crucial
21 here.

22 First of all, the Bailem family has owned
23 this property for over 100 years as I indicated.
24 Bailem or formerly Bailem (ph) family has owned this
25 property since just after the Civil War.

1 This was family land passed down through the
2 years, and there was no formal road as Mr. Belle
3 indicated serving to access to family homesites.

4 The land was initially entered into the
5 family through Flora Bailem, a former slave to Boone
6 Hall Plantation, and John Bailem, also known as Sandy
7 Bailem.

8 This family has taken great pride and
9 ownership of this land for about 150 years. In 1956,
10 the heirs of John Bailem's estate, Henry Bailem, Jr.,
11 Rebecca Jefferson, and Estelle Capers owned the
12 properties as tenants in common. All the plaintiffs
13 have lived on this land for decades.

14 Your Honor, the 1986 subdivision was intended
15 to create family parcels accessed by an unpaved
16 private road.

17 In '86, the then-living family owners, three
18 of them, decided to formally subdivide their property
19 to create individual lots for other family members.

20 They hired James Pennington, a surveyor, for
21 what they understood to be a straightforward task of
22 surveying the property and drawing lot lines.

23 And, Your Honor, there are cites to these
24 facts in our memo. I won't belabor those citations
25 now, but they are there. And if you have questions

1 about them, I'm happy to point them out.

2 On March the 6th, 1986, the plat lands of
3 John Bailem's estate was recorded in Charleston, TMS
4 561000060, making the first subdivision.

5 Originally, Pennington was hired to create a
6 plat showing four lots and a private access road
7 dedicated to the owners of those lots.

8 On July 23rd, 1986, Pennington drafted a plat
9 that contained dedication language that incorporated
10 the words above the signature line -- and those words,
11 Your Honor, were: I hereby dedicate the ingress
12 egress easement over my property to the use of the
13 property owners. And I, my heirs, and assigns
14 guarantee maintenance of said ingress egress easement,
15 which may not be changed either in size or location
16 without express written consent of County Council.

17 And then it's over three signature lines.
18 Henry Bailem, Estelle B. Capers, Rebecca Jefferson.
19 This was the plat presented to the owners for approval
20 and signature.

21 The family's intent was clear. Create
22 private lots for family members with access via an
23 existing unimproved dirt road.

24 This intention was clearly communicated to
25 Mr. Pennington. Nothing in their discussions with

1 Mr. Pennington indicated any intent to dedicate
2 property to public use.

3 Though no original signed copy of that
4 earlier four-parcel plat with the proper private
5 dedication can be located, unfortunately, a marked-up
6 copy of that plat that Mr. Pennington gave to Diane
7 Jefferson, one of my clients, for her safekeeping is
8 submitted as plaintiffs' memorandum Exhibit A.

9 It's attached. But if I may approach, I will
10 show you the original, which I have told Ms. Jefferson
11 I would ask the Court for back.

12 THE COURT: All right. This was a July
13 document?

14 MR. GOWDER: Yes, sir. Your Honor, Exhibit
15 A, if you will look in the lower right hand corner,
16 shows the faint indication of signatures indicating
17 that the owners intended to provide access to the
18 property owners only.

19 It appears, Your Honor, from what we can tell
20 that this is a working copy of a plat book assigned,
21 so that makes the signatures indistinct. But you can
22 tell there are signatures there, and this was used by
23 Mr. Pennington when the plans changed to go from four
24 lots to five lots to make revisions, and you can see
25 his marking there on the plat.

1 THE COURT: I'm only seeing three lots there.

2 MR. GOWDER: I think you'll see four, and
3 he's doing some calculations, I think, Your Honor, to
4 get to the fifth.

5 And Ms. Jefferson indicated that he gave that
6 to her. You know, once he no longer needed it, and
7 that's how it came to be in her possession.

8 Your Honor, the plat that was actually filed
9 contained dedication language contrary to the language
10 that you see there, contrary to the family's
11 instructions, and it was not signed by the owners of
12 the property.

13 Diane Jefferson approached Mr. Pennington
14 about adding a fifth lot creating necessitating the
15 creation of another plat.

16 Mr. Pennington apparently made a copy of the
17 four-lot plat that's before you that's been signed by
18 the owners with a private road dedication and marked
19 it up.

20 Pennington gave that copy to Ms. Jefferson
21 but did not show her the subsequent five-lot parcel
22 before it was finalized and submitted for subdivision
23 plat approval and filing, which is the certified copy
24 that you have no front of you.

25 THE COURT: Let me stop you there.

1 Ms. Jefferson did not sign the plat?

2 MR. GOWDER: She didn't sign any of them,
3 Your Honor, because she wasn't an owner.

4 THE COURT: She was not an owner.

5 MR. GOWDER: For some reason, Mr. Pennington
6 or someone in his office erroneously without notice to
7 or authorization from Diane Jefferson or any other
8 member of the Bailem family substituted a public
9 dedication on the five-lot parcel.

10 THE COURT: All right. What evidence do you
11 have of that? I understand that's the allegation.

12 MR. GOWDER: What we have is we've got the
13 two documents. We've got the testimony of a number of
14 the family members, most notably Diane Jefferson and
15 Henry Bailem, that the intent throughout was a private
16 dedication.

17 And you can see, Your Honor, that for the
18 first time, a public dedication language shows up
19 there.

20 Now, the difficulty that we have in this case
21 is, unfortunately -- and Mr. Pennington's deposition
22 is attached to the documents. I, Your Honor,
23 recommend the reading of that deposition.

24 In it, he is particularly unhelpful. He
25 doesn't remember anything. He doesn't remember the

1 work. Doesn't remember the Bailems. Doesn't remember
2 anything about this. That's understandable.

3 What's worse, though, Your Honor is that he
4 testified that he would have had Mylars of both plats
5 with inked signatures on them, probably in black. But
6 unfortunately -- and those Mylars -- and, Your Honor,
7 I'm telling you something I know you know.

8 But the Mylars would have been used to make
9 the blueprint kind of copies, and the original of
10 which is in the records there at Charleston County,
11 which you would see if you went and looked at it.

12 But the Mylar is not there. And I wasn't
13 counsel then, but counsel who was present then asked
14 Mr. Pennington in the deposition, okay. Well, where
15 are the Mylars? And he said, well, I would have kept
16 them, but I don't have them anywhere. I lost them, or
17 I don't know, but I don't have them.

18 THE COURT: They would have existed but they
19 would --

20 MR. GOWDER: They would have existed in his
21 possession so that he could make additional copies,
22 but he doesn't have them.

23 THE COURT: All right.

24 MR. GOWDER: But, Your Honor, what we do have
25 is -- well, I will get there in a minute. This

1 language, Your Honor, that you see on that plat that
2 was recorded, it's never discussed with the family,
3 and there's testimony to that effect in their
4 depositions.

5 It was never authorized by the family.
6 There's testimony to that in their depositions. And
7 it was contrary to the family's intent to maintain
8 this as private property. That's in the depositions.

9 Compounding the error, Your Honor, of having
10 this public dedication language on there that nobody
11 authorized or knew about, Pennington obtained through
12 some means signatures on the public dedication
13 language that are not the signatures of the owners.

14 And, Your Honor, if I may approach, I have
15 taken the -- and these are all documents that the
16 defendants have submitted as well. But just to do a
17 comparison, this is just the signature lines of one of
18 the deeds.

19 Your Honor, you can look at them. They don't
20 look like the same signatures, A. B, there's
21 testimony that Rebecca Bailem Jefferson was blind at
22 the time as a result of diabetes, and she didn't sign
23 her name. She made an X.

24 If you look on the deed, you can see that.
25 There's an X.

1 It says in print, "Rebecca Bailem," her mark,
2 and "Jefferson." Somehow she was able to, though, when
3 it came to sign the plat, sign it in very nice
4 handwriting. Don't know how that happened.

5 Also, Your Honor, that handwriting appears to
6 be pretty similar for all three signatures.

7 Your Honor --

8 THE COURT: The plat is some 18 months prior
9 to the deed, is it not? This deed is January 26th of
10 '88. This plat July 23 of '86.

11 MR. GOWDER: That is true, Your Honor. But
12 the testimony in the record was that in '86, she was
13 blind.

14 THE COURT: Okay.

15 MR. GOWDER: There's testimony that Estelle
16 Bailem Capers did routinely use "Bailem" when she
17 signed her name, which she did not on the plat.

18 Henry Bailem, IV, sitting here with me,
19 testified that he knows his father's signature, and
20 the signature on the recorded plat is not his father's
21 signature. He testified to that.

22 Nevertheless, this five-lot parcel plat
23 bearing an unauthorized and erroneous public
24 dedication without the signatures of the owners and
25 without witnesses -- obviously, on a deed, Your Honor,

1 we have to have at least two witnesses and a notary.
2 There are no witnesses on the signatures on the
3 dedication.

4 The plaintiffs were not aware of the filing
5 of this erroneous plat, Your Honor, until years later
6 when the ownership of the road came in to dispute.
7 But, Your Honor, we're not only relying on --

8 THE COURT: Let me ask you about that.
9 Drafted a plat. You're relying on the '86 plat that
10 says that the owner is going to maintain the property.

11 And so the defendants have all said, hey, the
12 County accepted the dedication. The County started to
13 maintain the road first as a rock road and then they
14 paved the road.

15 If someone comes out and paves my road, I'm
16 wondering why. I may not object, but it's certainly
17 an indication that it's not my road anymore. That's
18 just common sense.

19 MR. GOWDER: When they paved the road, they
20 had a pretty good idea that there was a problem with
21 the County.

22 THE COURT: They say that was in 2002.

23 MR. GOWDER: It was in 2002.

24 The problem, Your Honor, earlier was that --
25 and the reason that the County came out and did work

1 on the road before it was paved is the County had an
2 agreement that dated back to the '60s -- and, again,
3 this is in the testimony of the plaintiffs -- for
4 maintaining the ditch.

5 But for many years, it was not maintained
6 adequately. When the County finally did come out to
7 do some intense work on the ditch, they damaged the
8 right of way.

9 So the way they looked at it, the County was
10 simply correcting some damage that they had done to
11 the road. And their testimony is the County did no --
12 practically did no maintenance of the ditch but
13 certainly did no ongoing maintenance to the road.
14 That's their testimony. And, obviously, it is
15 contrary to some of the testimony given by the
16 government.

17 But, Your Honor, the one piece of critical
18 evidence that hasn't been featured very much,
19 understandably until now, is that the Charleston
20 County Planning Staff and Public Works recommended in
21 September 29, 1986 on the agenda that the application
22 be approved with the granting of a variance from
23 section 3-E-12 which will allow the creation of four
24 lots that do not front on a State or County maintained
25 road, and with the dedication of a 20 foot wide

1 drainage easement as shown on the plat, this plat
2 represents a division of estate property and a 50 foot
3 right of way will be dedicated to the property owners.

4 That's the agenda item that preceded the
5 filing of this recorded plat. Also even more telling
6 on October the 10th, 1986 -- and, Your Honor, if I may
7 approach, I will hand this up.

8 There's a letter from the clerk of council.
9 And in that letter -- to Mr. Pennington. And in that
10 letter, it reiterates the dedication of a 50 foot
11 right of way to the property owners.

12 You can see it right there at the end of the
13 paragraph. This plat represents a division of estate
14 property, and a 50 foot right of way will be dedicated
15 to the property owners.

16 Now, in the deposition of Mr. Pennington,
17 which, again, I unfortunately was not there to attend.
18 But I again ask you, Your Honor, to, in considering
19 this matter, to read it.

20 And the deposition page here is page 95, 23
21 through 96, 19. And it went like this --

22 THE COURT: Just one second.

23 MR. GOWDER: Page 95, 23 to 96, 19.

24 THE COURT: Thank you.

25 MR. GOWDER: Question, "What did County

1 Council approve to be recorded as the dedication?"

2 Answer, "Well, according to this letter, they
3 approved the 20 foot wide drainage ditch shown on the
4 plat."

5 "What's the last sentence of the first
6 paragraph say?"

7 "Will be dedicated to the property owners."

8 "What will be?"

9 "The right of way, the 50 foot right of way."

10 "Okay. So where is that plat that represents
11 that?"

12 "It's this plat."

13 "Which plat?"

14 "Exhibit 7."

15 Exhibit 7 is the one that's in front of you
16 that's the certified copy of the original that's on
17 record with the County that has the public dedication
18 on it.

19 The next question is, "Is that what the
20 dedication says?"

21 He says, "No."

22 And so the question is, "So you recorded a
23 plat that was not approved by County Council?"

24 And the answer is, "Apparently so."

25 THE COURT: Got an extra lot out of it, too.

1 It says they approved a four-lot subdivision, and they
2 created a five-lot subdivision.

3 MR. GOWDER: Well, it's confusing. What I
4 think it means is four lots not on a public road.

5 So four lots, and then the one on the end is
6 actually on Six Mile Road.

7 THE COURT: Okay. It faces Six Mile?

8 MR. GOWDER: Yes, sir. That's Mr. Bailem's
9 home.

10 THE COURT: I'm assuming it was all one lot
11 up until this, correct?

12 MR. GOWDER: It was, yes, just one lot. It
13 was heirs property.

14 THE COURT: However many acres it was?

15 MR. GOWDER: That's right.

16 THE COURT: Okay.

17 MR. GOWDER: Your Honor, after that, and
18 despite these arguments about, well, it was clear by
19 the government's, both the County and the Town's,
20 action that it regarded the road as a public road
21 that's not at all clear, Charleston County continued
22 after 1986 after the recording of the plat to regard
23 the access road as a private road.

24 In August of 1993, the County explicitly
25 rejected John Bailem Road as being a road within its

1 maintenance system, confirming it did not meet
2 Charleston County standards for an earth road and
3 cannot be accepted into the Charleston maintenance
4 system and stating that if construction continued
5 without meeting requirements, the County will consider
6 this road to be a private road for the use of the
7 property owners and their heirs.

8 Your Honor, there's also a document that's in
9 evidence that's called the jurisdiction information
10 document, and it's a County document related to John
11 Bailem Road, and it indicates that the maintenance
12 jurisdiction was private until it was crossed out.

13 And according to the 30(b)(6) testimony, it
14 was crossed out and replaced with public once the
15 surrounding property was annexed into the Town of
16 Mount Pleasant by someone at the County.

17 It's an internal document, Your Honor, but I
18 believe -- the indication by the County for all of
19 that period of time when it was in the unincorporated
20 area of Charleston County that was private is telling.

21 Your Honor, further --

22 THE COURT: Annexed in, what, '97 or so?

23 MR. BELLE: 1995.

24 MR. GOWDER: Your Honor, the plaintiffs
25 continued to consider the road private and did not

1 know anyone contended otherwise until the County paved
2 their road without private notice of their approval.

3 Since the plat was recorded in October of
4 1986, plaintiffs and their family maintained this
5 unimproved right of way without contribution from the
6 defendants except for its paving in 2002, which
7 plaintiffs have testified in their depositions, Your
8 Honor, they did not request and were unaware it was
9 happening until it was done. In fact, they testified
10 they went to work and they came back and the road was
11 paved.

12 Mail has not been delivered on the road.
13 School buses did not go down the road for pick-ups,
14 with only one exception due to the illness of a child
15 who was suffering from sickle cell anemia who could
16 not make it to the corner one day.

17 They only received waste disposal services
18 after annexation into Mount Pleasant on April 11th,
19 1995.

20 For decades after 1986, Your Honor, the
21 Bailem family continued to use John Bailem Road as
22 their private access, maintaining exclusive control.
23 It really wasn't until the development began that they
24 realized that they had a problem.

25 Your Honor, as the Court is very aware, but I

1 think it bears repeating, you know, summary judgement
2 is only appropriate when it's clear that there's no
3 genuine issue of material fact and that the moving
4 party is entitled to judgement as a matter of law.

5 It's not appropriate when further inquiry to
6 the facts of the case is desirable to clarify the
7 application of the law, and summary judgement should
8 not be granted even when there's no dispute as to the
9 facts if there is a dispute as to the conclusion to be
10 drawn from the facts.

11 Your Honor, in this case -- and I won't
12 belabor it, but I will be thorough because it is
13 vitally important to my clients -- the motion by the
14 defendants must fail because the crucial question in
15 the case whether the plaintiffs or their predecessors
16 in title publicly dedicated a piece of land now called
17 John Bailem Road or whether it's a private road
18 providing access only to the five parcels owned by the
19 plaintiff Bailem heirs is hotly disputed and very much
20 a question of fact that cannot be decided today on
21 summary judgement and must be determined only after
22 this Court hears the witnesses, weighs the evidence,
23 and makes a determination at the conclusion of a trial
24 on the merits.

25 I want to make several arguments, Your Honor,

1 in response to the defendants' memoranda and arguments
2 today. And the first, and I think really the most
3 important, is on the issue of public dedication
4 because that's what this is all about.

5 And, Your Honor, there is no evidence that --
6 or at least there, at the very minimum, a question of
7 fact as to whether or not there was a valid dedication
8 occurring as a matter of law.

9 Your Honor, the case I cited in my
10 memorandum, Mack vs. Edens on this issue says this.
11 Public dedication is an exceptional mode of passing an
12 interest in land, and proof of dedication must be
13 strict, cogent and convincing. The acts proved must
14 not be consistent with any construction other than
15 that of a dedication and dedication may not be
16 implied. The record must contain evidence the owner
17 of property clearly, convincingly, and unequivocally
18 intended to dedicate the property for public use.

19 Your Honor, you don't have that today. There
20 is no record that is clear, convincing and unequivocal
21 with regard to a public dedication. And so as a
22 result, Your Honor, we believe that summary judgement
23 today is inappropriate.

24 Your Honor, the County has not, and the other
25 defendants have not, met their burden to show this

1 uncontradictory evidence regarding the dedicator's
2 intent.

3 The clerk's letter in front of you states
4 that the right of way would be dedicated to the
5 property owners.

6 Mr. Linkler -- and, you know, with all
7 respect to Mr. Stanley's argument, I would invite you
8 to read Mr. Linkler's deposition.

9 When asked repeatedly whether there was any
10 council action approving public dedication, he
11 couldn't identify any, and there's a good reason for
12 that because there isn't any.

13 We've got the direct testimony from Mr. Henry
14 Bailem who said that the road was always to the
15 family, not to the public, and that when he instructed
16 the subdivision, he specified that the road should be
17 to the family, to the use of the family forever, not
18 the public. That was his instruction to
19 Mr. Pennington.

20 Diane Jefferson, who is sitting next to me,
21 gave explicit instructions to the surveyor,
22 Pennington, that the property should be subdivided and
23 have it dedicated to the property owners, and
24 dedicated to the property owners was the stipulation.

25 And, again, I would offer Ms. Jefferson's

1 testimony, Your Honor, to the Court's reading. She
2 said, among other things, that the original plan was
3 to have four lots, but when she requested a change to
4 five.

5 She specifically asked Pennington to maintain
6 the same "set-up" was her term with dedication to the
7 property owners.

8 She never saw or approved the final plat with
9 public dedication language, and no member of the
10 family, according to the testimony, did before it was
11 recorded.

12 THE COURT: But she would not have been an
13 owner at the time?

14 MR. GOWDER: No, sir, she was not. She was
15 going to take from one of the three owners.

16 THE COURT: Right. And that would have been,
17 I assume, Rebecca Jefferson; is that right?

18 MR. GOWDER: All three of them.

19 THE COURT: And which lot is Ms. Jefferson?

20 MR. GOWDER: Lot three.

21 THE COURT: Okay. All right.

22 MR. GOWDER: Your Honor, the second point I
23 would make is that the County failed to properly
24 accept any public dedication.

25 Even assuming that there's some question

1 about my clients' intent to dedicate, the County's own
2 witness could not identify any evidence that the
3 property owners requested the County accept the road
4 for maintenance.

5 The 1994 acceptance was not based on any
6 request from the property owners. It was, at most, a
7 unilateral -- or best, a unilateral County action.

8 THE COURT: Well, I think dedication is
9 required of the owner and acceptance is required of
10 the recipient.

11 MR. GOWDER: Yes, sir.

12 THE COURT: And I was making my notes. And
13 your argument is your dedication is not clear on the
14 acceptance. They can either be expressed or implied.

15 MR. GOWDER: It does. It comes down to
16 really the plat that you have in front of you. Was
17 there a public dedication by the owners? That's
18 really -- and the only evidence that the defendants
19 have is that language on that plat, and I think that's
20 what this case is about.

21 It's not a case, Your Honor, however, that I
22 think can be decided on summary judgement. Your
23 Honor, it's pretty clear that Mr. Pennington exceeded
24 his authority. There's no evidence that the client
25 requested a public dedication.

1 Your Honor, as detailed, you know, in my memo
2 and as I've argued already, the signatures don't match
3 those on the deeds and are not likely theirs based on
4 appearance, the fact that one witness was blind and
5 only signed her name with an X, and typically included
6 "Bailem" in her middle name, which she did not do on
7 the plat. Further, Mr. Bailem, again, testified he
8 knew his father's signature and that the one on the
9 plat is not his father's.

10 There were no other witnesses for the
11 signatures, Your Honor, as there are and must be on
12 deeds.

13 Now, the defendants bring up the testimony of
14 Ann Bailem Simmons, who is here. She was -- and I,
15 again, invite Your Honor to review her testimony.

16 It is not clear from the line of questioning
17 that she understood exactly what she was being asked
18 to testify was signed. She testified she saw a plat
19 signed. It's not at all clear that she testified that
20 she saw that plat signed. It's highly likely that she
21 saw the witnesses sign the original of the copy
22 included as Exhibit A that you have in front of you
23 which still bears the faint indication of those
24 original signatures.

25 So, Your Honor, her testimony is not at all

1 conclusive as the defendants would argue, and there's
2 plenty of other testimony that would indicate -- in
3 evidence that would indicate that those are not those
4 owners' signatures.

5 Further, Diane Jefferson testified about
6 conversations with Mr. Pennington regarding
7 transferring signatures from one plat to another.

8 And Mr. Pennington, though, said -- when he
9 was asked about it said he did not draft his plat,
10 that a draftsperson did, and he did not remember this
11 plat in any event and, of course, can't find them.

12 The burden, Your Honor, we believe is on the
13 defendants to prove a valid dedication, not on the
14 plaintiffs to disprove.

15 And so we believe that the Court must deny
16 the defendants' motions on this issue. There's at
17 least a question of fact with regard to this.

18 Your Honor, with regard, quickly, to the
19 statute of limitations, first of all, I'm not
20 convinced -- in fact, I don't believe that the
21 ten-year statute applies because the ten-year statute
22 refers to an action for the recovery of real property.

23 What this action is is a declaratory
24 judgement action. They recognize there's a dispute
25 about ownership, and this was the mechanism they used

1 to bring that dispute to the Court's attention.

2 Also, Your Honor, I don't believe that this
3 is a case in which a statute of limitations would
4 apply. I believe that perhaps laches would be an
5 issue that would be appropriate. We don't believe
6 that we are barred by laches in this case given the
7 action of the County and the Town, and I will go into
8 that in a minute.

9 But they're not -- they own the property now.
10 There's nothing to recover. There's really nothing
11 that would have triggered a statute of limitations.

12 It's not an action for forgery, although they
13 will point out that the plat that's being used to
14 indicate that it was publicly dedicated doesn't
15 contain proper signatures.

16 But they're not seeking to have either a
17 recovery for a forgery cause of action or a finding of
18 forgery, necessarily.

19 What they are maintaining is that they never
20 made a public dedication that they owned the road.
21 And so we believe that statute of limitations, Your
22 Honor, has not run. And neither one of the statutes
23 that have been proposed by the defendants as having
24 application here do have any application.

25 Further, Your Honor --

1 THE COURT: I'm going to follow that line up
2 with a thought. Your argument is that the plaintiffs'
3 contention is that they still own the road, correct?

4 MR. GOWDER: Correct.

5 THE COURT: But they're the plaintiffs.
6 Typically the plaintiff has the burden of proof,
7 right?

8 MR. GOWDER: They do, Your Honor, on the
9 declaratory judgement. But if the -- if the defense
10 to the declaratory judgement is that there's been a
11 public dedication, then I think that that burden is on
12 the defendants.

13 THE COURT: All right.

14 MR. GOWDER: And, again --

15 THE COURT: There's still a statutory time
16 limit in which to bring these things, is there not?

17 MR. GOWDER: I don't know what that would be.
18 I don't know what would trigger the statute in this
19 case because they have recognized that there was a --
20 that there is a dispute about this, and they brought
21 it to the Court's attention.

22 Your Honor, and it may be -- perhaps I could
23 real quickly go through a timeline.

24 THE COURT: Let me stop you. The DJ takes
25 the underlying -- whatever the underlying claim is,

1 whether it's equitable or legal, you got to go one way
2 or the other.

3 Legal becomes statute of limitations, and
4 equitable becomes a laches argument.

5 MR. GOWDER: I think that's where we are with
6 the equitable laches argument. The timeline really is
7 that -- of course, in 1986, we have the plat recorded
8 as we've talked about with ambiguous or contradictory
9 documentation.

10 In the '90s, Mr. Bailem testified that the
11 County officials told him it's a private road, and you
12 don't have to worry about it. It's in the book as a
13 private road. He was told that.

14 1990 to 2000, Ms. Jefferson testified in
15 numerous visits to County offices where officials
16 consistently confirmed the road's private status
17 stating John Bailem Road is a private road dedicated
18 to property owners. That's in her testimony.

19 1994 to 2002, County improvements were made
20 without a clear assertion of exclusive public
21 ownership.

22 In 2017, the Town of Mount Pleasant turned
23 down a developer who sought to use John Bailem Road, a
24 predecessor to DRB, because they said he didn't have
25 access to John Bailem Road. It was a private road.

1 In 2019 was the first clear assertion by
2 governmental entities that the road was public. And
3 then 2023, it was a first assertion by the County of
4 exclusive public ownership, adverse of plaintiffs'
5 rights.

6 Your Honor, there's similar representations
7 in Ms. Jefferson's testimony. I outlined those in the
8 memorandum, and so I won't go through them in detail
9 here.

10 But, Your Honor, shifting to laches for a
11 minute, at most, this defense of laches raises a
12 question of fact which is, again, inappropriate for
13 decision at this time.

14 Plus laches, Your Honor, can't be -- can't
15 apply against the defendants when the defendants' own
16 conduct contributes to the delay of confusion.

17 And there are a number of actions and things
18 that were told, both Ms. Jefferson and Mr. Bailem,
19 about, you know, whether that it was a private road,
20 they didn't have to worry about it. They told me it
21 was recorded as a private road, so we didn't have to
22 do anything about that. County officials said you
23 don't have to worry about it. It's a private road.
24 It's on the book as a private road.

25 Ms. Jefferson testified that a County

1 employee in the records office named John initially
2 argued that the road was public, but after checking
3 the records with a colleague and said you're correct,
4 John Bailem Road is private.

5 She was told the road was a private road
6 dedicated to the property owners and was told that on
7 more than one occasion.

8 Your Honor, my clients reasonably relied on
9 that, and we believe that ultimately at a trial in
10 this matter, we would prevail on the defense of
11 laches.

12 Lastly, Your Honor, on the two points of
13 estoppel and implied dedication by deed, again, we've
14 got the County's conduct that we've listed in the
15 memorandum that stated the road was dedicated to the
16 property owners and my clients' reasonable reliance.

17 So we think that actually the estoppel, you
18 know, goes the other way. Secondly, Your Honor, on
19 the implied dedication by reference to the plat, an
20 unauthorized and void express dedication can't boot
21 strap itself in the validity through later deed
22 references.

23 So if it's referring to an invalid plat, that
24 doesn't make the reference somehow valid because it's
25 referred to numerous times in subsequent deeds.

1 The Carolina land case that was cited by the
2 defendants assumes a valid underlying plat, but that
3 doesn't exist here, Your Honor, as we have argued.

4 So, Your Honor, at this point, I'll just
5 briefly make my argument for summary judgement on the
6 adverse possession.

7 THE COURT: Before we get there, there were
8 these notes. I made a reference to it. I can't
9 recall what the fellow's name was, but it was some
10 engineer that went out and met with some folks.
11 Exhibit I is what I'm looking at.

12 MR. GOWDER: Mr. Cane.

13 THE COURT: Yeah. He was deposed?

14 MR. WARD: He was not deposed. He provided
15 an affidavit.

16 THE COURT: He gave an affidavit?

17 MR. GOWDER: Your Honor, Mr. Cane's testimony
18 is contradicted by Ms. Jefferson's testimony.

19 THE COURT: Okay. About what happened?

20 MR. GOWDER: Yes, sir.

21 THE COURT: And when was that? The note I
22 see on the top left --

23 MR. BELLE: 1996, Your Honor.

24 THE COURT: There was some discussion. And
25 he gave an affidavit saying that's in the record?

1 MR. WARD: That's correct, Your Honor. It is
2 I believe 45.

3 THE COURT: Something to do with maintenance
4 at the time, though, did it not?

5 MR. GOWDER: It was, Your Honor.

6 THE COURT: Road was not paved.

7 MR. GOWDER: Her testimony, Your Honor, was
8 that the road was damaged through maintenance or
9 improvements to the ditch, which the County did have
10 an obligation to maintain.

11 THE COURT: How? That's my question.

12 MR. GOWDER: By contract.

13 THE COURT: They contracted with these folks?

14 MR. GOWDER: Not with these folks, but
15 apparently it was a contract -- it's not in the
16 record, but there's a reference to it in the testimony
17 I believe.

18 That there was a -- Jefferson's testimony.
19 That there was an agreement that dated back to the
20 early 1960s where the property owners had a contract
21 with the County to maintain the ditch, not the road,
22 but the ditch.

23 THE COURT: So we don't have that document?

24 MR. GOWDER: We don't. And, Your Honor,
25 the -- well, it's not in the record.

1 THE COURT: Right.

2 MR. GOWDER: But so the road was damaged in
3 the course of maintaining the ditch, and so it was
4 improved, and I think Ms. Jefferson's adamant
5 statements, as Mr. Cane referred to them, were you
6 damaged the road, fix the road, not you own the road,
7 so you need to improve it to a certain level, or you
8 own the road and you need to pave it.

9 There's no evidence of that in the record.

10 THE COURT: Okay. Very good.

11 MR. GOWDER: Your Honor, briefly on the
12 adverse possession, these were -- these are both
13 counterclaims raised by the Town and the County
14 indicating that the Town has --

15 THE COURT: Just to cut to the quick, your
16 argument is it's not been exclusive for all this time,
17 right?

18 MR. GOWDER: Right.

19 THE COURT: I tend to agree with you there.

20 MR. GOWDER: With that, Your Honor, if you've
21 got any further questions, I'm happy to answer them.
22 That's all I've got.

23 THE COURT: Thank you. Any response?

24 MR. STANLEY: Yes, Your Honor. Thank you.

25 Pennington was hired by the Bailem family.

1 His actions are attributable to them, not to us.

2 Okay. He was their agent, not DRB's. DRB
3 wasn't in the picture in 1986. The testimony
4 regarding alleged transfer of signatures, that's
5 inadmissible hearsay.

6 I asked Ms. Jefferson about the transfers,
7 and she said that, "When I spoke to Pennington and
8 asked him to go from four lots to five lots, I asked
9 him if he needed them to sign again. His response to
10 me was he did not need to have them sign again. The
11 signatures from before could go on this document."

12 I said, "Did he say how he was going to do
13 that?"

14 "Transfer."

15 The response continues, "This is hearsay."

16 Then I say, "Did anyone object to him taking
17 the signatures off the other plat and putting them on
18 the second plat without someone seeing it?"

19 "Pennington is a surveyor. This is what he
20 says they do. I asked him do you need them to sign
21 again. Apparently this is common practice to do
22 whatever they need to do."

23 "Did anyone object to him taking the
24 signatures off a four-lot plat and putting them on a
25 five-lot plot? Tried to stop them in any way?"

1 Answer, "As a consumer, I request what I'm
2 wanting from an individual. My request was two things
3 at two different times. Subdivide the property and
4 dedicate to the property owners. He stated that he
5 could do that and didn't need anything additional to
6 do that, therefore didn't request the second
7 signature. There was not -- I asked the question
8 because it would not have been a problem but he didn't
9 think he needed to do it."

10 THE COURT: This is whose testimony?

11 MR. STANLEY: Diane Jefferson. Further on in
12 this deposition, I said, now, did anyone object to him
13 doing that without seeing the plat that the signatures
14 would be placed on?

15 Answer: I can't answer that.

16 Even if it were admissible, which it's not,
17 she knew that he was going to take those signatures if
18 there -- and I have not seen a four-lot plat with
19 signatures from which they could be taken.

20 But even assuming that exists, they knew he
21 was going to do that allegedly and did nothing. Did
22 not object. He's their agent.

23 THE COURT: Okay.

24 MR. STANLEY: That plat that's before you
25 that they handed up, it says "void" all over, upper

1 left side. Pennington testified that that was a draft
2 plat. That was not a final plat according to
3 Pennington's testimony.

4 MR. GOWDER: We agree with that. Just so
5 it's clear, we agree with that.

6 THE COURT: You want to -- what are we going
7 to reference that to? This has not been marked, and I
8 know you want it back. I'm going to give it back to
9 you.

10 MR. GOWDER: If I may approach, I've got a
11 copy.

12 THE COURT: This is the original?

13 MR. GOWDER: Yes. To substitute for the
14 original.

15 It's Plaintiff's Exhibit A to our memoranda.

16 THE COURT: All right. Thank you.

17 MR. STANLEY: And I think that's it's one of
18 the exhibits to ours. I refer to it as the draft
19 plat.

20 THE COURT: Okay. Got it.

21 MR. STANLEY: The reference to the ditches
22 being cleaned, the plaintiffs designated as a witness
23 John Henry Dingle, who is a former maintenance
24 employee. You haven't heard about him at all.

25 And his -- I did not submit his deposition

1 testimony, but I will this afternoon. He was on the
2 maintenance crew for the County.

3 And nobody has been able to say when that
4 maintenance -- the alleged ditch maintenance that
5 caused damage to the road, nobody has said when that
6 occurred, except one person, Mr. Dingle.

7 Question was: When you went out there and
8 did maintenance on the ditch, were you a laborer
9 still?

10 Answer: Yes.

11 Question: So that was prior to 1989?

12 Answer: Yes.

13 The plaintiffs want you to believe that in
14 '96, at least seven years later, is when the County
15 came out and allegedly did repairs to the road because
16 of this work that allegedly -- or the damage that
17 allegedly happened prior to '89. That makes no sense.
18 That's not a reasonable inference.

19 MR. GOWDER: Your Honor, just to save
20 Mr. Stanley some work, the Dingle deposition I think
21 is Exhibit K to the Town's --

22 MR. STANLEY: I stand corrected.

23 Estelle Capers, there was some reference in
24 Mr. Gowder's argument that Ms. Capers always signing
25 "Estelle Bailem Capers."

1 I have already argued that she signed the
2 affidavit as "Estelle Capers." She has not been
3 designated a witness in this case. In no
4 interrogatory response did the plaintiffs designate
5 her a witness.

6 Is she still living? She cannot testify at
7 trial. And, importantly, in her affidavit, she
8 doesn't say, "I didn't sign that plat."

9 She had the opportunity to say, "I didn't
10 sign that plat" in her affidavit. She didn't. Nobody
11 has said they -- those signatories aren't on there.

12 THE COURT: She's the only one still living
13 signature?

14 MR. GOWDER: Yes, sir.

15 MR. STANLEY: On the burden of proof, it's
16 the plaintiffs' burden on forgery. They don't want to
17 be claiming forgery, but they are. And they don't
18 want to be claiming forgery because the three-year
19 statute of limitations applies, and it's running.

20 Your Honor, I haven't seen any evidence in
21 the record. Even outside of the motion for summary
22 judgement, I haven't seen any evidence in the record,
23 and Mr. Gowder can certainly correct me if I'm wrong
24 on this, that the Town turned down the developer
25 because the road was not public. I'm just not aware

1 of that.

2 So I would invite Mr. Gowder to correct me on
3 that, but I have not seen any evidence of that in the
4 record.

5 MR. GOWDER: Your Honor, since Mr. Stanley
6 asked, I believe that testimony is in Mr. Henry
7 Bailem's deposition.

8 MR. STANLEY: Okay. And it may be. I
9 just -- it's not coming to me.

10 On the laches argument, the argument that the
11 County allegedly contributed to the plaintiffs'
12 claims, there is nothing in this record that says DRB
13 somehow enticed them to wait or to sit on their rights
14 or to do anything.

15 DRB bought property in reliance on this road
16 being public for in excess of 3.5 million dollars then
17 undertook extensive construction.

18 And I attached a lot of documents from the
19 ROD where we're getting easements and doing sewer
20 lines and doing water lines and all of that sort of
21 things just to show you how much work went into this.

22 We have encroachment permits. There is
23 nothing in the record that says DRB enticed them to
24 sit on their rights, so I don't think that that
25 argument applies to DRB, and I think even if Your

1 Honor were to hold the statute of limitations doesn't
2 apply somehow, I think laches for DRB does apply.

3 Your Honor, I think that's all the issues
4 that I wanted to address to Mr. Gowder's argument. I
5 appreciate the opportunity to reply. For all the
6 reasons we've argued here today, I believe DRB is
7 entitled to summary judgement. Thank you.

8 THE COURT: Anything further, Mr. Belle?

9 MR. BELLE: Yes, briefly, Your Honor. Again,
10 we will echo most, if not all, of what Mr. Stanley
11 already stated.

12 I will try to be brief. In reference to
13 Exhibit A that Mr. Gowder presented, one, we would
14 like to note that's a void plat. You know, first time
15 anyone saw it was when it was presented at
16 Mr. Pennington's deposition.

17 Nowhere is that document recorded in the
18 public record. That's simply a document that the
19 Bailem family has had in their garage for whoever
20 long. No signatures on it. None from the property
21 owners, none from the surveyor, none from the planning
22 director, and none from the clerk of council.

23 At this point, it is purely the testimony of
24 the plaintiffs attempting to get any merit to that
25 document. And the intent here is really about the

1 property owners, who are not here.

2 And therefore, the only place we can find
3 their intent is on the actual plat that was recorded
4 and approved by everyone.

5 Now, also --

6 THE COURT: The recorded plat, right?

7 MR. BELLE: The recorded plat.

8 THE COURT: They question whether or not it
9 was approved --

10 MR. BELLE: It was recorded. Yes, Your
11 Honor.

12 And there was also some misunderstanding or
13 miscommunication about what the actual County Council
14 action was in 1986. In 1986, the County simply
15 approved the subdivision application, subdivision
16 number 11 and 829.

17 That is what Mr. Linkler was testifying to
18 when he was asked about what the County did in '86.
19 All the County did was approve the subdivision
20 application that was presented in front of them.

21 Notably, that application referenced the same
22 plat that's recorded that has the same dedication
23 statement, and there's no other evidence to refute any
24 of that.

25 Now, as far as the construction and these

1 ditches, there was a 1962 drainage easement that sits
2 in between -- sits somewhere on the DRB property and
3 goes into the right of way that's now John Bailem
4 Road.

5 There was never any contract between the
6 County or the former land owners to maintain it. It
7 was simply a drainage easement that the County had the
8 right to go out to clean drainage so that storm water
9 runoff could occur.

10 It's also unclear as to what they're
11 referring to about the County tearing up the road or
12 doing any damage to anything. Our belief is they're
13 talking about in 1996 when Mr. Bailem and
14 Ms. Jefferson were talking to Mark Cane, all of this
15 was about the construction of John Bailem Road.

16 During that construction, Mr. Cane told them,
17 hey, this ditch will need to be realigned to configure
18 with the new road lay out.

19 So Mr. Cane brought up reconstructing the
20 ditch with them, because if you look at his notes,
21 which are Exhibit I in there, it says that there are
22 wetlands in the very back of the property, and he
23 recommends rebuilding the ditch in order to
24 accommodate the wetlands and the runoff that would
25 occur with that.

1 THE COURT: That's one of his handwritten
2 notes?

3 MR. BELLE: Yes, as far as the 30 foot
4 drainage easement that's also inside of the right of
5 way.

6 Mr. Gowder brought up a 1993 letter from the
7 County. That letter was written by James Rogers. He
8 was the former public works director for the County.

9 First, I want to point out that letter was in
10 1993. That was prior to the County accepting the road
11 and approving it for construction.

12 That letter simply states that at this time
13 County Council has not approved the road, and I can
14 see that you are doing some type of work and spending
15 money. You need to know that the money you're
16 spending is not bringing this road to County standard
17 yet, and so County Council will likely not approve
18 this road, so you're on notice of that.

19 However, in response to that, Mr. Jefferson
20 was still adamant the road be built and there was
21 further dialogue with the County which lead to 1994
22 when the County finally did accept the dedication and
23 approve the road for construction.

24 THE COURT: Is that an exhibit that's in the
25 record?

1 MR. BELLE: That's Exhibit E. And I do not
2 believe we marked the letter. I believe one of the
3 other defendants or the plaintiff has provided that in
4 the record.

5 Additionally --

6 THE COURT: Back to Mr. Rogers' letter. That
7 letter was addressed to one of the homeowners?

8 MR. BELLE: Addressed to Diane Jefferson
9 because she, at the time, was adamant about the status
10 of the road, the road needing to be built.

11 So they were doing some work in hopes of
12 bringing it to County standard for the County to
13 accept it.

14 Mr. Rogers told her, hey, you're spending
15 money. From what I can see and observing it, that's
16 not meeting County standard yet, so County Council is
17 likely not going to accept it because County Council
18 is only in the business of approving County-standard
19 roads.

20 She continued to inquire about it.
21 Ultimately, County Council decided to accept the
22 dedication and approve the road for construction.

23 Initially, Mr. Gowder stated that 2023 was
24 the first time the County had ever asserted there had
25 been any public ownership or use of the road. We

1 would deny that. In 1994, the County accepted the
2 road. Since 1994, the County has considered John
3 Bailem Road a public road.

4 And then, finally, I won't quote you exactly.
5 I didn't write it down. I believe you asked
6 Mr. Gowder about the paving of the road in 2002 and
7 being on notice of it. The response was in 2002, they
8 knew there was a problem. And if there was truly any
9 doubt, they should have raised those issues then and
10 not 21 years after they knew what was going on.

11 In those 21 years, the County has continued
12 to incur expenses improving and constructing that
13 road. I won't speak for Mr. Ward, but I assume he
14 will also say in the 21 years after that, the Town
15 continued to spend public funds to improve and
16 maintain the road.

17 Unless any questions, that's all the County
18 has, Your Honor.

19 MR. WARD: Thank you, Your Honor. Just very
20 briefly.

21 So, first, the plaintiffs rely very heavily
22 on the deposition and testimony of Diane Jefferson and
23 Henry Bailem. They were not the owners of the
24 property when the road was dedicated. That cannot be
25 used to support their claim that both the families

1 intent -- that would need to be shown by the property
2 owners. I believe the plat clearly manifested the
3 intent of the property owners.

4 The case law in Town of Kingstree vs. Chapman
5 citing Van Blarcum vs. City of North Myrtle Beach says
6 if a land owner subdivides and plats an area of land
7 into lots and streets and then sells lots with
8 reference to the plat, the owner manifests an intent
9 to dedicate those common areas to be used by both the
10 purchasers and the public, absent evidence to the
11 contrary.

12 It's clear that even if you were to say maybe
13 these signatures are false, the signatures on the plat
14 aren't necessary. The signatures on the deed, which
15 Mr. Gowder handed up as evidence of how they're in
16 conflict, the signatures of the deed reference the
17 plat. And therefore that is the intent. The plat is
18 referenced in the property description and have
19 referenced the butted and bounded by John Bailem Road.
20 That's clear intent. They're not challenging the
21 signatures on their own deeds.

22 The plaintiffs refer to a letter from the
23 planning commission as well as a letter from clerk of
24 council.

25 The planning commission as well as the clerk

1 of council both signed the plats. They approved the
2 plat that's on record and signed it. Clerk of council
3 and the planning director at the time both signed and
4 approved the plat that's on record.

5 I don't believe you can then reference a
6 letter to show that they didn't approve it because
7 they signed a plat.

8 Something happened between when that letter
9 was sent out and when the plaintiffs applied, when the
10 plat was approved. There's no evidence of what
11 happened, but clearly the County did approve the plat
12 that's on record.

13 And then lastly, just the comment about the
14 development across the street, annexation based on the
15 road being private, that is not in the minutes of the
16 Town.

17 The developer across the street did seek
18 annexation into the Town. It was denied by Town
19 Council back in 2017. Since then, the Town has issued
20 encroachment permits allowing the developer to tie in
21 to John Bailem Road, and they have known that. And
22 there was some damage that was made to the road when
23 they did that. The Town required them to repair the
24 damage that was made to the road.

25 So the Town has exercised -- you know, it's

1 treated the road as public even after the denial of
2 the annexation addition by DRB's predecessor in
3 interest.

4 And then I understand Your Honor doesn't
5 believe that we have exclusively possessed John Bailem
6 Road. I would say we have maintained that is a public
7 road and have defended any actions of the plaintiffs
8 to block off public access. Although the Town has not
9 exclusively possessed it, we have exclusively insured
10 that the public can access that road at all times.

11 THE COURT: Your argument is it's been
12 dedicated and you now own the road, do you not?

13 MR. WARD: Yes, Your Honor.

14 THE COURT: It's been annexed into the Town;
15 that's your position?

16 MR. WARD: Yes, Your Honor.

17 THE COURT: My understanding is that's how
18 government gets ahold of private property, by
19 dedication, not by adverse possession.

20 MR. WARD: Correct, but I believe we have
21 treated -- you know, assuming that you find that the
22 dedication wasn't sufficient, which we strongly
23 contend that it is --

24 THE COURT: I think that's the whole linchpin
25 on the case, is it not? Everybody agrees with that.

1 MR. WARD: Right.

2 THE COURT: Okay. At least we're all
3 fighting in the same ball bark.

4 Anything further, Mr. Gowder?

5 MR. GOWDER: Very briefly, Your Honor. To
6 Mr. Ward's point, Mr. Bailem, Ms. Jefferson are the
7 ones who actually dealt with Mr. Pennington on behalf
8 of the existing owners, so their testimony is
9 certainly relevant and important.

10 In terms of what the County Council did and,
11 you know, what they signed, Mr. Pennington said in his
12 testimony -- and I read it -- that looked like to him
13 that perhaps the County signed the wrong plat.

14 Your Honor, these just two points just are,
15 you know, two examples of --

16 THE COURT: Let me ask this question.
17 Because even if they did sign the wrong plat, it gets
18 put of public record under the statutory scheme. Once
19 you're an owner of property and you're of record, you
20 have constructive notice as to the existence of the
21 document.

22 So since 1986, there has been constructive
23 notice of this plat of record at what's now the ROD
24 office.

25 MR. GOWDER: Which we contend is an invalid

1 plat.

2 THE COURT: I understand that. But that was
3 in '86. In '23, '22 or '23, this case was brought,
4 right?

5 MR. GOWDER: Your Honor, we think that all of
6 the argument today points at the fact that this record
7 is replete with questions of fact of law.

8 We think this matter needs to proceed to
9 trial, and we ask that you deny the motions.

10 THE COURT: Here is what I would like y'all
11 to do. You each made reference to some documents that
12 may or may not have been included in the record. I
13 can't remember what you have so far, but there was
14 some reference to a Jim Rogers letter.

15 There was another document that y'all made
16 reference to.

17 MR. WARD: Your Honor, the Jim Rogers letter
18 is Exhibit E to the plaintiffs' amended complaint.

19 THE COURT: Okay.

20 MR. STANLEY: And I made reference to the
21 John Henry Dingle deposition, which has been attached.

22 MR. GOWDER: And the only other one that came
23 up in my remarks was the easement agreement from the
24 early '60s that's not in the record, but Ms. Jefferson
25 says she has a copy of it. I will provide it to

1 counsel and provide it to the Court.

2 THE COURT: If y'all could get that by the
3 end of the week, that would be great. I'm going to
4 get y'all an answer as soon as possible. I think
5 we're scheduled for trial in a few weeks.

6 Okay. All right. Thank you very much. Get
7 you an answer soon. Thank you.

8 (Off the record at 4:00 p.m. on June 2nd,
9 2025.)

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COURT REPORTER'S CERTIFICATE

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I DO HEREBY CERTIFY THAT THE TESTIMONY
CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
ATTORNEY, AGENT, OR OTHERWISE.

SIGNED THIS THE 2nd DAY OF OCTOBER 2025.

Josie Boehm

JOSIE ALLEN BOEHM

My Commission Expires 10/18/32