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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2022-CP-37-00447
Appellate Case No. 2025-000982

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers
Crisp, Amy Cawthon,

Appellants,

v.

Oconee County, Globe, A South Carolina Limited Partnership, Farnes, A South Carolina
Limited Partnership,

Respondents.

RECORD ON APPEAL
(VOLUME 1 of 4)

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Partnership*

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

s/ David L. Paavola
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November 3, 2025

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Frances J Ratliff et al
PLAINTIFF(S)

Oconee County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs motion for jury trial is denied. No formal order is required.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/18/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Frances J Ratliff et al
PLAINTIFF(S)

Oconee County et al
DEFENDANT(S)

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☐ Other
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☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs motion to disqualify attorney Holliday is denied based upon memorandum and affidavits submitted. Oconee County's motion to stay is denied. No formal order is required unless requested by counsel. If a formal order is requested, attorney Holliday is to prepare a formal order relating to the motion to disqualify and attorney Paavola is to prepare an order relating to the motion to stay.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/10/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Francis J. Ratliffe et al.
PLAINTIFF(S)

Oconee County et al.
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF'S POST-TRIAL MOTIONS TO ALTER OR AMEND ARE DENIED WITHOUT NECESSITY OF A FORMAL HEARING. NO FORMAL ORDER REQUESTED.

COURT NOTES THAT PLAINTIFF DID NOT CAUSE THIS MOTION TO BE SERVED ON THE UNDERSIGNED.

This order ☐ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2155

Judge Code

Date**For Clerk of Court Office Use Only**

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT**Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Form 4

S/R. LAWTON McINTOSH

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R-000017

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Frances J Ratliff et al.
PLAINTIFF(S)

Oconee County et al.
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
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NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

THE DEFENDANTS POSITION IS THAT SC CODE ANN. § 57-9-10 IS THE ONLY WAY TO CLOSE A ROAD. THE COURT FINDS THAT THE STATUTORY PROCEDURE FOR ROAD CLOSURE IS NOT THE ONLY WAY TO CLOSE A ROAD, BUT THAT COMMON LAW ABANDONMENT STILL APPLIES. THE PLAINTIFFS DID NOT PROCEED UNDER THE STATUTORY REQUIREMENTS UNDER § 57-9-10, SO THE ONLY ISSUE IN THIS CASE IS ABANDONMENT.

THE COURT FINDS THAT THERE IS AN EASEMENT OVER THE ROAD IN QUESTION AND THAT THE ROAD IS A PUBLIC ROAD. FURTHER, THERE IS NO EVIDENCE THAT THE COUNTY ABANDONED THE ROAD BY UNEQUIVOCAL ACTS SHOWING A CLEAR INTENT TO ABANDON. THEREFORE, PLAINTIFFS PETITION TO HAVE THE ROAD DEEMED ABANDONED AND CLOSED IS DENIED. MR. HOLLIDAY TO FILE A FORMAL ORDER.

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022 CP-37-00447

Frances J. Ratliff, et al.

Oconee County, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Andrew K. Holliday, Larry C. Brandt, and James W. Logan, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMONS PLEAS
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	ORDER
Plaintiffs,	)	
v.	)	
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	Case No.: 2022-CP-37-00447
Defendants.	)	
	)	

The above captioned matter came before me, the undersigned, at the regularly scheduled term of Common Pleas Court for Oconee County, South Carolina, commencing on June 12, 2024 as a non-jury matter and was heard over the course of three days in which numerous witnesses testified and a plethora of deeds and plats of record pertaining to Ellenburg Road (WA-42) were admitted into evidence (Defendants' Exhibit 1).

Upon conclusion of the trial, the Court took the matters presented under consideration and, after giving its careful consideration and attention to all of the evidence, particularly the deeds and plats contained in Defendants' Exhibit 1, the Court makes the following findings of fact:

FINDINGS OF FACT

1. Ellenburg Road, also known and designated as WA-42 by Oconee County, has been a public road since at least 1946 as evidenced by deed of J.J. Younce to Larkin Mayfield, Jr., recorded in Deed Book 5-R, Page 190 records of Oconee County. That deed specifically refers to Ellenburg Road as a public road.

2. An express easement or deeded right-of-way for any portion of Ellenburg Road (WA-42) conveying the roadway or an easement for the roadway to any governmental entity over the subject properties evidently does not exist.
3. The deed of J.J. Younce to Eugene J. Kelley, dated November 17, 1947 and recorded in Deed Book 5-Y, Page 283, also references what is now referred to as Ellenburg Road and again describes it as a public road.
4. Other deeds and plats admitted into evidence as part and parcel of Defendants' Exhibit 1 clearly show what is now Ellenburg Road or portions thereof and refer to the road as a public road, county road and/or an unnamed paved road. Even members of the Ratliff family commissioned a plat and placed it of record clearly delineating Ellenburg Road as a public or a county road (Plat Book B-754 at Page 6, Records of Oconee County, South Carolina).
5. Oconee County Roads and Bridges employees testified and presented documentary evidence that the portion of Ellenburg Road not inundated by the waters of Lake Keowee had been maintained by the County to present date (from Knox Road to the border of Defendants' property) and the County considered Knox Road to be a public roadway all the way from Knox Road to the end of the pavement at the border of Defendants' property.
6. As indicated during the cross examination of Jay Ratliff, the spokesman for the Ratliff family at the BZA hearing on November 30, 2021, he clearly stated that Ellenburg Road, according to his memory, originally ran from what is now Knox Road, formerly S.C. Highway 183, to High Falls Church and was a state highway until a major portion of Ellenburg Road, WA-42, was inundated by the waters of Lake Keowee. He also

acknowledged at that time that the portion of Ellenburg Road not flooded by the waters of Lake Keowee devolved to Oconee County pursuant to law.

7. Other maps in evidence were also presented attesting to the fact that Ellenburg Road was a publicly dedicated roadway running from Knox's Store on what is now Knox Road (old SC 183) to High Falls Church and tied in and/or intersected with other public roadways in the community. Evidence further showed that once Lake Keowee was built, a major portion of Ellenburg Road, WA-42, was inundated by the waters of Lake Keowee; however, the westernmost portion of Ellenburg Road extended from Knox Road to the property of Defendants and has continued to be used by the general public to access Harbor Oaks Subdivision as well as John's Marine Service. Also, it was and is the only access to Defendants' property as is shown on Plat Book B291 at Page 1 by which Defendants' property was conveyed to Defendants by Crescent Communities on December 3, 2008.
8. There is also evidence that at sometime there was an End of County Maintenance sign at the end of the pavement at the border of Defendants' property; however, there was a lot of controversy concerning the sign in that there were allegations that there had been an End of County Maintenance sign at the top of the hill where the Ratliff property began. Witnesses attesting to the sign being located at the top of the hill, however, testified that the sign was white with black lettering. Further, Plaintiffs and witnesses called on their behalf regarding the location and description of this sign differed from one another. Conversely, Oconee County employees testified such signs used by Oconee County were green in color with white lettering, and a photo showing such a County sign, at one time, on Defendants' property where the pavement ends was also entered into evidence. Defense witnesses testified and County records entered into evidence show that the End of County

Maintenance sign was only at a single location, at the end of the asphalt and located upon Defendant's property.

9. The evidence also shows that numerous deeds and plats of property included in Defendants Exhibit 1 show Ellenburg Road (WA-42) as an Oconee County maintained roadway from Knox Road to the end of the asphalt at the border of Defendants' property where the pavement ends.
10. A photograph of an End of County Maintenance sign where the pavement stopped at the border of Defendants' property was also entered into evidence. No photo was introduced into evidence showing any other End of County Maintenance sign at any other location.
11. It is also undisputed that the northernmost portion of the previous paving which is at issue to the beginning of Defendants' property is owned approximately to the centerline of said roadway by the Plaintiffs and the southernmost half of the disputed road is owned by Defendants. Plaintiffs, however, never offered any evidence or attempted to explain how they could dispossess the Defendants of land to which they owned the fee.
12. The Ratliffs also claim that in or about 2009 they had a meeting with Prince Brown, a road department technician with Oconee County, who represented to them that the County did not maintain that part of Ellenburg Road that ran in front of the Ratliff property. Prince Brown is deceased, however, and was not available to testify or refute the allegations of Plaintiffs, but even if he did make such statements there is/was no evidence presented by the Plaintiffs that Mr. Brown had the authority to make the alleged representations and/or that he was duly empowered or authorized to abandon maintenance on public roadways belonging to the County or, in essence, to give away public assets [*City of Myrtle Beach v. Parker* 260 S.C. 475, 197 S.E.2d 290 (Sup. Ct. 1973)]. Again, the Ratliffs admitted that

they only owned to the approximate center of the disputed portion of the roadway and Defendants owned the other approximate half, notwithstanding that they are now claiming “ownership” of all of the road as it being their private driveway.

13. The Plaintiffs also testified that their father had, in conjunction with T. B. Ellenburg (a prior owner of a portion of the subject real estate in question and for whom the Road is named) paved the road in the 1980s. None of the Plaintiffs could place an absolute date on when this occurred and they produced no records for this paving. The only maintenance records produced were for gravel and concrete which were placed solely on the Plaintiff's property and not within the roadbed. Plaintiffs further testified that they were unaware of any survey of their property from the “Bearden Plat” of 1973 until 2020. Plaintiff's expert witness, surveyor Eliotte Quinn, additionally testified about finding the historical pins set in the asphalt, which included a rail road spike, a common practice in the 1970s. Mr. Quinn further testified in his expert opinion that any later repaving would have destroyed or at least covered these magnetic nails and rail road spikes. Therefore, the Plaintiff's claims of their father paving the road are simply not credible.
14. It is also uncontroverted that no action has ever been brought by anyone to close any portion of Ellenburg Road pursuant to *S.C. Code §57-9-10* and the same was stipulated to by the Plaintiffs.
15. Ms. Kalashnikova of the South Carolina Department of Transportation testified that although the South Carolina Highway Department did not have any records of Ellenburg Road ever being in the state inventory, it did have records which, in her opinion, showed that the road was a public roadway.

16. There was also testimony and evidence presented that Oconee County has, to present date, claimed such portion of the roadway in question as a public County road and has on several occasions mowed the shoulders, cleaned out the ditches and did some sporadic maintenance thereon.
17. Although the maintenance records for that portion of the roadway over which abandonment was alleged was somewhat sparse, there was absolutely no showing that County had abandoned and/or relocated the highway to a new location nor that abutting property owners had built fences around any portion of the roadway and/or otherwise obstructed the roadway. In fact, it was the County's claim that it was in their system for maintenance all the way from Knox Road to the border of Globe and Farnes' property.

CONCLUSIONS OF LAW

The Defendants assert that the only way to close a public road is by compliance with S.C. Code §57-9-10 pursuant to the holding of the cases of *S.C. Dept. of Transportation v. Henson Family Holdings, LLC, et al.*, 361 S.C. 649, 606 S.E.2d 781 (2004) and *Town of Kingstree v. Chapman*, 405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013), and all parties agree that no action has been brought by anyone to close any portion of Ellenburg Road pursuant to that statutory process. The Court, however, is of the opinion that the claim of abandonment under common law is independent of said statute. Accordingly, over the objections of Defendants, the Plaintiffs were granted full opportunity to be fully heard on the grounds of abandonment; however, the Court finds that there is no evidence that Oconee County abandoned the road by unequivocal acts showing a clear intent to abandon.

There are four (4) cases that are controlling and determinative on the "abandonment" issue under common law. In the first case, the South Carolina Supreme Court, in *Wessinger v. Goza*,

231 S.C. 607; 99 S.E.2d 395 (1957), held that a basic tenant of common law is that once a public road, always a public road and even an abandoned highway may not be closed without the consent of the persons whose property fronts thereon or over whose land it passes. In the present case, Ellenburg Road is still being used as a public road for access to properties along and on both sides of Ellenburg Road, including the Plaintiffs' property used by the "public" for "public" purposes to deliver and pick-up their boats at John's Marine Service, Inc., which specifically includes the portion of the Plaintiffs' real property directly across from a portion of the Farmes and Globe real property. As such the entirety of the portion of Ellenburg Road, having not been inundated by the waters of Lake Keowee, is still possible to traverse and the use of the same has not wholly failed. There has been neither a discontinuance of the public road in question nor an abandonment of that road and no sufficient evidence of any abandonment of that road has been shown by clear and convincing evidence. There is no evidence that the use for which the property was dedicated has become impossible or that the object of the use for which the property is dedicated has failed. Any past/present use of this road is totally consistent with the declared purpose of dedication and, therefore, will not support a charge of abandonment. At best for the Plaintiffs there is conflicting evidence of the discontinuance of maintenance at some portions of Ellenburg Road, but no evidence of any abandonment as defined by the applicable case authorities exists. Oconee County has never abandoned any portion of Ellenburg Road! The real property owner (Globe and Farmes) of approximately one half of the underlying fee on which Ellenburg Road is located as well as the strip property to southeastern side of the road directly across from the Ratlif property has never consented to the abandonment of that section and intends to use that public road for access to the public development of its property purchased from Crescent Communities SC, LLC!

The second case is *K & A Acquisition Group, LLC, v. Island Pointe, LLC*, 383 S.C. 563; 682 S.E.2d 252 (2009). In that case, the Department of Transportation (DOT) and the City of Folly Beach sought a declaration that a tract of land on a neighboring island that was part of a former toll road remained a public right of way. In its opinion, the Supreme Court of South Carolina made the following statements:

- A. "...we find the "old" Folly Beach Road was dedicated to the public and this public easement remained intact after the new road was created and until the SCDOT affirmatively abandoned the route of the former toll road.
- B. "...[W]e disagree that the "discontinuance" or relocation of the route was sufficient to constitute abandonment. The terms "discontinuance" and "abandonment" are not synonymous."
- C. "*Ord v. Fugate*, 207 Va. 752, 152 S.E.2d 54, 59 (1967) (noting that discontinuance of public road should not carry the same effect as abandonment and stating "under the present statutes the discontinuance of a secondary road means merely that it is removed from the state secondary road system. Discontinuance of a road is a determination only that it no longer serves public convenience warranting its maintenance at public expense. The effect of discontinuance upon a road is not to eliminate it as a public road or to render it unavailable for public use."
- D. "...a party must "show the abandonment by clear and unequivocal evidence. An abandonment occurs where the use for which the property is dedicated becomes impossible of execution, or where the object of the use for which the property is dedicated wholly fails. Any use which is not inconsistent with the declared purpose of a dedication will not support a charge of abandonment." (Emphasis added).

- E. “The rights of purchasers under a map and of the general public cannot be lost by the unauthorized acts of the governing or controlling officials of the municipality, or by their neglect, but only by legal abandonment by the public as well as the officials.’ 26 C.J.S. *Dedication* s 63 at page 552.” (Emphasis added).
- F. “An easement created by dedication may be abandoned by unequivocal act showing a clear intent to abandon. To constitute abandonment, the use for which the property is dedicated must become impossible for execution or the object of the use must wholly fail. Generally, a mere misuser or nonuser does not constitute abandonment of land dedicated to public use.” (Emphasis added).
- G. By way of example, the Court quoted the case of *Williams v. Woodward*, 240 S.W.2d 94 (Ky.Ct.App. 1951) which held that the State Highway Department abandoned roadway and relocated new highway, abutting property owners built fences around roadway and otherwise obstructed it, and roadway had not been used to any substantial extent by the public for some years are examples of an abandonment of a highway. (Emphasis added).
- H. The case of *Hart v. Town of Shafter*, 348 Ill.App.3d 713, 284 Ill.Dec. 699, 810 N.E.2d 489, 491 (2004) the Court cited with approval the statement that “[A]n abandonment will be found only where the public has acquired the legal right to another road or where the necessity for another road has ceased to exist.” (Emphasis added).
- I. See also the final two (2) cases: *Carolina Land Co. v. Bland*, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975) and *Judy v. Kennedy*, 398 S.C. 471, 728 S.E.2d 484 (2012).

Based upon this controlling authority, the Court finds that there is no evidence that Oconee County has abandoned the road by clear and unequivocal acts showing a clear intent to abandon. Accordingly, Plaintiffs' petition to have the road deemed abandoned and closed is denied. Further, Ellenburg Road from its intersection of Knox Road to the border of the Defendant's property is a public road until such time as a party obtains a Court ordered closure of all or some portion of the same or in the event Oconee County, through some clear and unequivocal act, abandons the same.

IT IS SO ORDERED this _____ day of _____, 2024.

The Honorable R. Lawton McIntosh,
Presiding Judge, Oconee County,
Tenth Judicial Circuit



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Judgment and Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-08-06 13:37:55 page 16 of 16

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R-000036

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
) IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Frances J. Ratliff, Edward J. Ratliff, Jr.,
James L. Ratliff, Lucretia B. Morgan,
Sherri Akers Crisp, Amy Cawthon,

Case No. 2022-CP-37-_____

Plaintiffs,

SUMMONS

v.

Oconee County, Globe, A South Carolina
Limited Partnership, Farnes, A South
Carolina Limited Partnership,

Defendants.

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 1513 Hampton Street, Post Office Box 11208, Columbia, South Carolina, 29211, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

s/ David L. Paavola

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Attorneys for Plaintiffs

Columbia, SC
June 17, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
) IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Frances J. Ratliff, Edward J. Ratliff, Jr.,
James L. Ratliff, Lucretia B. Morgan,
Sherri Akers Crisp, Amy Cawthon,

Case No. 2022-CP-37-_____

Plaintiffs,

v.

Oconee County, Globe, A South Carolina
Limited Partnership, Farnes, A South
Carolina Limited Partnership,

Defendants.

**COMPLAINT
FOR
DECLARATORY
JUDGMENT**

Plaintiffs Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon (collectively, “Plaintiffs”), would respectfully show unto the Court as follows:

INTRODUCTION

Plaintiffs own land situated at 585 Ellenburg Road and 599 Ellenburg Road in Seneca, South Carolina. Plaintiffs own a paved private driveway running along the southern end of these properties that dead ends at the eastern end of 599 Ellenburg Road (hereinafter, the “Private Driveway”). The Private Driveway is partially on Plaintiffs’ property (585 Ellenburg Road and 599 Ellenburg Road) and partially on adjacent property owned by Defendant Globe, A South Carolina Limited Partnership, and Defendant Farnes, A South Carolina Limited Partnership, with the majority of the paving on Plaintiffs’ property.¹ The Private Driveway connects Plaintiffs’ properties to the public road system. Plaintiffs, and their heirs or predecessors in title, paved the Private Driveway in the mid-1980’s and for forty years have maintained it as private property. The

¹ Plaintiffs do not waive, and specifically reserve, the right to claim ownership of the entire area of the private driveway that they paved, used, and maintained for forty years.

Private Driveway also serves patrons of John's Marine Service, Inc. ("John's Marine"), which has been located on 599 Ellenburg Road since 1982. Oconee County has no easements of record over the Private Driveway and has never performed road maintenance on the Private Driveway.

On April 25, 2022, the Oconee County Board of Zoning Appeals (the "BOZA") granted a road variance application that was premised on the erroneous conclusion that Oconee County has a prescriptive easement over the Private Driveway. Plaintiffs appealed this decision. (See Am. Compl. *John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon v. Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC*, Case No. 2022-CP-37-00396, attached as **Exhibit A**).

This action seeks a declaration that Oconee County **does not** have a prescriptive easement over the Private Driveway.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs Frances J. Ratliff, Edward J. ("Jay") Ratliff Jr., James L. ("Jimmy") Ratliff, Sherri Akers Crisp, and Amy Cawthon each have an ownership interest in 599 Ellenburg Road Seneca, South Carolina (TMS #150-00-01-100, hereinafter "599 Ellenburg").

2. Plaintiffs James L. ("Jimmy") Ratliff and Lucretia B. Morgan both have an ownership interest in real property located at 585 Ellenburg Rd Seneca, South Carolina (TMS#150-00-01-099, hereinafter "585 Ellenburg").

3. Defendant Oconee County is a political subdivision of the State of South Carolina and a body politic and corporate pursuant to S.C. Code Ann. § 4-1-10.

4. Defendant Globe, A South Carolina Limited Partnership, is a entity organized and existing under the laws of the state of South Carolina, and an owner of real property impacted by this suit, known as TMS #150-00-01-459.

5. Defendant Farmes, A South Carolina Limited Partnership, is a entity organized and existing under the laws of the state of South Carolina, and an owner of real property impacted by this suit, known as TMS #150-00-01-459.

6. Pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, and South Carolina Rule of Civil Procedure 57, this Court can adjudicate the property rights as between Plaintiffs and Defendants.

7. Venue is proper in Oconee County because this action concerns real property located in Oconee County.

FACTUAL BACKGROUND

8. Edward (John) Ratliff and Francis (Jan) Ratliff purchased 599 Ellenburg in 1981 and co-located their home on the property along with John's Marine, which was moved to the property from downtown Seneca in 1982. John Ratliff started John's Marine in 1972.

9. At the time the Ratliffs purchased 599 Ellenburg in 1981, T.B. Ellenburg owned the adjacent property located at 585 Ellenburg. Descendants of T.B. Ellenburg owned 585 Ellenburg until 2020 when it was sold to Plaintiffs James Ratliff and Lucretia Morgan.

10. Upon information and belief, at some point before or around the mid-1980's, Oconee County paved a portion of Ellenburg Road from Knox Road to approximately the western edge of 585 Ellenburg, at which location Oconee County installed an "End of County Maintenance" sign.

11. In the mid-1980's, T.B. Ellenburg and John Ratliff, as fee owners of the private driveway running in front of 585 & 599 Ellenburg, undertook the expense of paving their respective portions of the private drive and for forty years have maintained the road as private property (the "Private Driveway"). The Private Driveway dead ends at 599 Ellenburg and John's Marine. The paved Private Driveway is on Plaintiffs' property (585 Ellenburg Road and 599 Ellenburg Road) and the adjacent landowners' property, with the majority on Plaintiffs' property.

12. Defendants Globe, A South Carolina Limited Partnership, ("Globe"), and Farnes, A South Carolina Limited Partnership, ("Farnes"), jointly own an undeveloped 15-acre tree or arrowhead-shaped peninsula on Lake Keowee, TMS #150-00-01-459 (referred to as "Arrowhead Point").² The "trunk" section of this tract is adjacent to 585 Ellenburg and 599 Ellenburg and a portion of this property is part of the paved Private Driveway. Globe and Farnes purchased the Arrowhead Point property in 2008.

13. Property lines for 585 Ellenburg, 599 Ellenburg, and Arrowhead Point adjoin in the paved section of the Private Driveway, the majority of which is on Plaintiffs' property.

14. Upon information and belief, Oconee County undertook at certain times to stripe the center line of the public section of Ellenburg Road, stopping where the Private Driveway begins and never reaching 585 Ellenburg or 599 Ellenburg.

15. Upon information and belief, Oconee County has no records of public maintenance of the Private Driveway.

16. Upon information and belief, Oconee County maintenance on Ellenburg Road has ended west of 585 Ellenburg for decades.

² The deed reflects TMS#150-00-01-444, which is believed to now be known as TMS#150-00-01-459. Oconee County Register of Deeds Book/Page 1695/87.

17. Upon information and belief, Oconee County has no documentation that the Private Driveway is part of the county road system.

18. In 2009, Plaintiff Francis J. Ratliff and her daughter-in-law, met with employees of the Oconee County Roads and Bridges Department. These employees provided Ms. Ratliff with a plat indicating that the county's maintenance of Ellenburg Road ended at a green highlighted marker at 565 Ellenburg Road. This is where an "End of County Maintenance" sign had been located for years before it was inexplicably removed.

19. There are no deed restrictions and no easements reflected on the recorded plat for 599 Ellenburg.

20. On April 25, 2022, variance application #VA21-011 was before the BOZA for a hearing and vote. This variance application concerned a future public road that would utilize Plaintiffs' Private Driveway as part of the required right-of-way for the new public road. The BOZA granted the variance based on its conclusion that Oconee County has a prescriptive easement over the Private Driveway. See **Exhibit A**. The BOZA erred in concluding that the county has a prescriptive easement over the Private Driveway.

21. A prescriptive easement must be proven by clear and convincing evidence.

22. Oconee County does not have a prescriptive easement over the Private Driveway.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

23. Plaintiffs reallege each and every allegation set forth above as if repeated verbatim herein.

24. Oconee County does not have a recorded easement over Plaintiffs' Private Driveway located at 585 Ellenburg and 599 Ellenburg.

25. Oconee County does not have any records reflecting maintenance to the Private Driveway.

26. Oconee County does not have any records reflecting continued and uninterrupted use or enjoyment of the right over the Private Driveway for a period of twenty years.

27. Oconee County does not have any records indicating that the Private Driveway has ever been a county road or part of any public road system and that it still is today.

28. Plaintiffs are the fee owners of their portion of the Private Driveway.

29. Plaintiffs have used and maintained the entire Private Driveway as private property for forty years.

30. The Plaintiffs are informed and believe that they are entitled to a declaration by this Court that Oconee County does not have a prescriptive easement over the Private Driveway, or any portion of 585 Ellenburg or 599 Ellenburg.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs prays for relief and judgment as follows:

A. Order declaring that Oconee County does not have a prescriptive easement over the Private Driveway or Plaintiffs property located at 585 Ellenburg or 599 Ellenburg;

B. Awarding Plaintiffs their costs and expenses incurred in this action, including reasonable attorneys' fees, expert fees, and all other costs and expenses; and

C. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ David L. Paavola

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June 17, 2022

Exhibit A

i. BOZA concluded that Oconee County held a prescriptive easement over Petitioners' property without having any sworn testimony, documentary, or any other evidence supporting the existence of such an easement, and where Petitioners provided documents and sworn affidavits to the contrary. Prescriptive easements must be shown by clear and convincing evidence. This standard was not met. Because the BOZA failed to find a prescriptive easement by clear and convincing evidence, it lacked jurisdiction to grant a variance for a new public road and order the abandonment of Petitioners' land.

ii. BOZA's decision unilaterally increased and modified the burden on Petitioners' property. Assuming Oconee County has an easement over Petitioners' property, which is expressly denied, the BOZA's grant of the variance expands a dead end road for the development of a nineteen-home subdivision bringing an estimated additional 200 cars a day past Petitioners' property. Such additional traffic will impact the way John's Marine has conducted business at the same location for the past forty years. It was error for BOZA to grant a variance that materially increases and changes the burden on Petitioners' property.

iii. BOZA's Order granting the variance states that the "character of the district *WILL be harmed* by the granting of the variance." (Emphasis added). Granting a variance in light of such a conclusion is arbitrary, capricious, and an abuse of discretion.

iv. BOZA granted the variance application without knowing the final location of the proposed public roadway. Documents submitted to the BOZA showed that the location of the roadway was not final and that under certain scenarios it may push the roadway nine feet onto Petitioners' property, which will further negatively impact John's Marine's ability to conduct business. BOZA's decision to approve the variance without knowing the final location of the roadway and the full impact to John's Marine was arbitrary, capricious, and an abuse of discretion.

v. BOZA is required by statute to provide a written explanation for its findings. The BOZA Order granting the variance does not contain an explanation for why the variance will not be of substantial detriment to John's Marine under the varying road location scenarios. BOZA was presented with drawings showing that under certain scenarios Petitioners will lose land and John's Marine's operations will be greatly impacted. The BOZA did not adequately explain its finding of no substantial detrimental impact to John's Marine in light of the information before it that the roadway location was not final.

For these reasons, the BOZA Order should be reversed.

PARTIES, JURISDICTION, AND VENUE

1. Petitioner John's Marine Service, Inc., ("John's Marine") is an entity organized and existing under the laws of the state of South Carolina, with its primary place of business operations located at 599 Ellenburg Road Seneca, South Carolina (TMS #150-00-01-100, hereinafter "599 Ellenburg").

2. Petitioners Frances J. Ratliff, Edward J. ("Jay") Ratliff Jr., Sherri Akers Crisp, and Amy Cawthon each have an ownership interest in 599 Ellenburg.

3. Petitioner James L. ("Jimmy") Ratliff is the President of John's Marine Service, an owner of 599 Ellenburg, and an owner of real property located at 585 Ellenburg Rd Seneca, South Carolina (TMS#150-00-01-099, hereinafter "585 Ellenburg").

4. Petitioner Lucretia B. Morgan is an owner of 585 Ellenburg.

5. Oconee County is a political subdivision of the State of South Carolina and a body politic and corporate pursuant to S.C. Code Ann. § 4-1-10. In accordance with S.C. Code Ann. § 6-29-780, Oconee County created a Board of Zoning Appeals, which is a quasi-judicial body

empowered to hear appeals from Zoning Administrators, applications for variances, and application for special exceptions.

6. Defendant/Respondent Ridgewater Engineering & Surveying, LLC is a South Carolina limited liability company with its principal place of business in Anderson County, South Carolina, and was the applicant for the variance at issue in this appeal.

7. This Court has jurisdiction over the parties and the subject matters as provided by S.C. Code § 6-29-820(A), which states that “A person who may have a substantial interest in any decision of the board of appeals . . . may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law.”

8. Venue is proper in Oconee County as the acts herein occurred in Oconee County and the properties at issue are located in Oconee County.

PROCEDURAL BACKGROUND

9. This appeal is from the April 25, 2022 decision of the BOZA granting Ridgewater Engineering and Surveying’s (“Ridgewater”) variance application #VA21-011 for a variance of 18.1’ from the 50’ right-of-way required for construction of a new public road.

10. Variance application #VA21-011 initially came before the BOZA on November 30, 2021, then again on January 24, 2022, and finally for a vote on April 25, 2022.

11. The BOZA order being appealed in this matter was issued and mailed on May 11, 2022, attached as **Exhibit 1** (the “Variance Order”).

12. The Variance Order sets forth the following conclusions:

- i. There ARE extraordinary and exceptional conditions pertaining to the particular piece of property;
- ii. These conditions DO NOT generally apply to other property in the vicinity;

- iii. Because of these conditions, the application of this chapter to the particular piece of property **WOULD** effectively prohibit or unreasonably restrict the utilization of the property; and
- iv. The authorization of a variance **WILL NOT** be of substantial detriment to adjacent uses or to the public good, and the character of the district ***WILL be harmed*** by the granting of the variance. (Emphasis added).

13. The Variance Order was approved with the following conditions:

- i. Order approved subject to proper abandonment procedures;
- ii. Compliance with all ordinances and state law on acceptance into the County roadway system;
- iii. Developer grant/ deed John's Marine property so that there is reasonable, unimpeded access to the new road.

14. The Variance Order is premised on Oconee County having a preexisting prescriptive easement along the entire paved section of Ellenburg Road, including in front of John's Marine. This fact is disputed by Petitioners. Petitioners objected to variance application #VA21-011 and submitted documents showing that Oconee County does not have a prescriptive easement across 585 Ellenburg and 599 Ellenburg.

15. The Variance Order is also premised on the assumption that Oconee County can unilaterally increase the burden of a prescriptive easement on a servient estate. Petitioners dispute this conclusion.

16. The Variance Order concludes that the variance will not be of substantial detriment to adjacent uses. Petitioners submitted documents showing that variance application #VA21-011 would be of substantial detriment to John's Marine. Petitioners also submitted drawings showing that the location of the final roadway was not final and there is a possibility that the location of the final roadway would shift considerably towards John's Marine and cause further detriment. The

BOZA approved the variance application without knowing the location of the final roadway and the full extent of the impacts to John's Marine.

17. The BOZA voted to approve variance application #VA21-011 over Petitioners' objections.

FACTUAL BACKGROUND

18. Edward (John) Ratliff and Francis (Jan) Ratliff purchased 599 Ellenburg in 1981 and co-located their home on the property along with John's Marine, which was moved to the property from downtown Seneca in 1982.

19. At the time the Ratliff's purchased 599 Ellenburg in 1981, T.B. Ellenburg owned the adjacent property located at 585 Ellenburg. Descendants of T.B. Ellenburg owned 585 Ellenburg until 2020 when it was sold to Petitioners James Ratliff and Lucretia Morgan.

20. Upon information and belief, at some point before or around the mid-1980's, Oconee County paved a portion of Ellenburg Road from Knox Road to approximately the western edge of 585 Ellenburg, at which location Oconee County installed an "End of County Maintenance" sign. In the mid-1980's, T.B. Ellenburg and John Ratliff, as fee owners of the private driveway running in front of 585 & 599 Ellenburg, undertook the expense of paving their respective portions of the private drive and for forty years have maintained the road as a private driveway (hereinafter, the "Private Driveway"). The Private Driveway dead ends at John's Marine. The paved Private Driveway is on Petitioners' property (585 Ellenburg Road and 599 Ellenburg Road) and the adjacent landowners' property, with the majority on Petitioner's property.

21. Upon information and belief, Oconee County undertook at certain times to stripe the center line of the public section of Ellenburg Road, stopping where the Private Driveway begins and never reaching 599 Ellenburg. Attached as **Exhibit 2** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 155-161).

22. Upon information and belief, Oconee County has no records of public maintenance of the Private Driveway.

23. Jan Ratliff, who has been an owner of 599 Ellenburg since 1981, provided an affidavit to Oconee County stating that:

- i. In 2009, she, along with her daughter-in-law, met with employees of the Oconee County Roads and Bridges Department. These employees provided Ms. Ratliff with a plat indicating that the county's maintenance of Ellenburg Road ended at green highlighted marker at 565 Ellenburg Road.
- ii. The green marker was where the "End of County Maintenance" sign had been located for years before it was moved.
- iii. Her family has continuously maintained the paved portion of Ellenburg Road to the east of the endpoint of county maintenance, and the county has not engaged in any maintenance of the Private Driveway. **Exhibit 3** (Jan Ratliff Aff. (Jan. 7, 2022)).

24. Globe, A South Carolina Limited Partnership, ("Globe"), and Farmes, A South Carolina Limited Partnership, ("Farmes"), jointly own an undeveloped 15-acre tree or arrowhead-shaped peninsula on Lake Keowee, TMS #150-00-01-459 (referred to as "Arrowhead Point").²

² The deed reflects TMS#150-00-01-444, which is believed to now be known as TMS#150-00-01-459. Oconee County Register of Deeds Book/Page 1695/87.

The “trunk” section of this tract is adjacent to 585 Ellenburg and 599 Ellenburg and a portion of this property is part of the paved Private Driveway.

25. Globe and Farnes purchased the Arrowhead Point in 2008. At the time Globe and Farnes purchased this property, Oconee County Ordinances required a 50’ right-of-way for roads serving more than ten homes. **Exhibit 4** (Excerpts from Amended Minutes April 25, 2022, 368-379 (Ordinance 2000-09, § 6.2.3 Private Roads; Ordinance 2006-12, § 2.7.7 Road Design)).

26. Upon information and belief, Globe and Farnes have entered into a contract for the development of Arrowhead Point for a nineteen-home subdivision. Upon information and belief, the size of the Arrowhead Point subdivision will require the developer to construct a public road.

27. Arrowhead Point does not currently have public road access and it is not adjacent to the public road system. The closest vehicular access to the Arrowhead Point is Petitioners’ Private Driveway.

28. Property lines for 585 Ellenburg, 599 Ellenburg, and Arrowhead Point run along the Private Driveway, the majority of which is on Petitioners’ property.

VARIANCE APPLICATION

29. Pursuant to Oconee County Ordinance Section 26-3(e)(1), public roads require a minimum of 50’ right-of-way.

30. According to the drawings and application submitted by Ridgewater, the narrowest section of the proposed public road to service Arrowhead Point is 31.9’. As such, Ridgewater submitted variance application #VA21-011 requesting an 18.1’ variance from the 50’ right-of-way required for public roads. See **Exhibit 5** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 85, 94-95, 103-107).

31. At all points where the proposed new public road is adjacent to Petitioners' property, the 50' right-of-way requirement cannot be met unless Petitioners' Private Driveway is included in the public right-of-way calculation. **See Exhibit 5** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 85, 94-95, 103-107). In voting to approve variance application #VA21-011, BOZA necessarily assumed as a fact that the county has an existing right-of-way over Petitioners' Private Driveway that can be used to satisfy the 50' requirement along the rest of the newly proposed public road. This conclusion is not correct.

32. On November 30, 2021, variance application #VA21-011 was first placed on the BOZA agenda. During this meeting, county staff suggested that Oconee County has a prescriptive easement across the Private Driveway; however, this conclusion is not correct and was contested by Petitioners. The November 30, 2021 meeting ended without a vote and with a directive from the BOZA for county staff to answer the question of who owns the Private Driveway. **Exhibit 6** (Excerpt of Minutes, November 30, 2021 BOZA Meeting 1, 5-7).

33. On January 24, 2022, variance application #VA21-011 was again discussed by the BOZA. The application was removed from the table before discussion of ownership of the Private Driveway began. Oconee County staff indicated continuing conflicting evidence over whether the County maintained the traveling surface of the Private Driveway. A vote on the application was postponed. **Exhibit 7** (Excerpt of Minutes, January 24, 2022 BOZA Meeting 1-3).

34. On April 25, 2022, variance application #VA21-011 was again before the BOZA on continuation from the January 24, 2022 hearing.

35. The minutes of the April 25, 2022 meeting reflect "the County position that the road is under a prescriptive easement based on institutional knowledge, but that the affidavits presented call that into question." **Exhibit 8, at 3** (Excerpt of Minutes, April 25, 2022, 1, 3-7).

36. When asked if the county has a prescriptive easement on the Private Driveway, County Attorney David Root stated that nothing had changed from his January opinion that the “County’s corporate or institutional memory or knowledge is that it has prescriptive easement to the end of the pavement,” but that he also had two affidavits from Jan Ratliff and Laurie Ellenburg Bright calling the ending of the location of the easement into question. (April 25, 2022 BOZA Hearing 19:40, <https://www.youtube.com/watch?app=desktop&v=uAZ6uupnsWI&t=5196s> (hereinafter “BOZA Hearing”)). As Mr. Root summarized, “that’s all I have.” (BOZA Hearing at 20:27). Corporate or institutional memory is not evidence and the county provided no affidavits or other documentary evidence of a prescriptive easement over the Private Driveway.

37. The BOZA was provided with an Oconee County staff opinion stating that the county has a prescriptive easement over the Private Driveway that ends at the edge of the pavement. **Exhibit 9** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 98). No documents were submitted or cited by staff in support of this position. *Id.* Staff did not submit any evidence at all in support of this position. During the April 25, 2022 meeting, county staff employee Kyle Reid reiterated that the staff’s opinion of prescriptive easement was based solely on “institutional knowledge” and further stated that he contacted the state and the state had no records showing that Ellenburg Road was ever a state road, there were no records of state maintenance or abandonment of Ellenburg Road, and the county had no records that it ever accepted Ellenburg Road into the county road system. (BOZA Hearing 24:45-25:45).

38. In making its decision to approve the variance, the BOZA had no written documentation or evidence of any kind showing that Oconee County has a prescriptive easement over the Private Driveway. Oconee County did not provide the BOZA with any maintenance records reflecting that Oconee County has ever performed maintenance on the Private Driveway.

39. The BOZA recognized that deciding the prescriptive easement was a predicate issue to its decision on the variance application, and foundational to the entire approval and development process, stating: “If it’s decided there is no prescriptive easement there the county’s got no business there, there isn’t going to be no road built. . . . it all depends on that getting decided somewhere.” (BOZA Hearing 2:00:55). Even so, the BOZA decided it was “not competent to decide that issue . . . we are not going to decide that.” (BOZA Hearing 1:57:40). Yet, the BOZA moved forward with a vote deciding to “go ahead and decide this as if were an easement,” noting that if someone wants to challenge in court they can do that. (BOZA Hearing 1:57:50).

40. At the time it voted to approve variance application #VA21-011, the BOZA had the following evidence before it concerning ownership and use of the Private Driveway by Petitioners:

- i. November 22, 2021 letter from Petitioner Jimmy Ratliff, attached as **Exhibit 10** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 150-153). Mr. Ratliff explained that:
 - a. His father John Ratliff started John’s Marine in 1972 and moved it to its current location at 599 Ellenburg Road in 1982;
 - b. Oconee County maintenance on Ellenburg Road ended west of 585 Ellenburg and for decades John’s Marine owned and maintained from 585 Ellenburg to the dead end at 599 Ellenburg;
 - c. Petitioners, and their predecessors in interest, have maintained the Private Driveway since 1981.
- ii. April 22, 2022 letter from Petitioner Jimmy Ratliff, attached as **Exhibit 11** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 303-314). Mr. Ratliff attached documents and explained that:

- a. In 2009, Oconee County Roads and Bridges employees provided the Ratliff family with a plat dated 2008 indicating end of County maintenance west of 585 and 599 Ellenburg (attachment #1); see also affidavit Jan Ratliff attached as **Ex. 3**;
- b. Pictures of Ellenburg Road show the end of Oconee County center lane stripes at 565 Ellenburg Road (attachment #2);
- c. Ratliff family has maintained the Private Driveway serving 599 Ellenburg for over 40 years;
- d. Laurie Ellenburg Bright provided an affidavit indicating that she resided at 591 Ellenburg Road for 40 years prior to March 2021, and her recollection that an “End of County Maintenance” sign was located between 575 Ellenburg Road and 585 Ellenburg Road for years (attachment 3);
- e. There are no deed restrictions and no easements reflected on the recorded plat for 599 Ellenburg (attachments 4, 5).

41. At the time it voted to approve variance application #VA21-011, the BOZA had the following information before it concerning the impact to John’s Marine:

- i. November 22, 2021 letter from Petitioner James Ratliff, attached as **Ex. 10**.

Mr. Ratliff explained that:

- a. The boat repair shop is located at the point of the 18.1’ variance;
- b. John’s Marine parks boats and trailers on the Private Driveway, which under the proposed plan will become a public right-of-way;

- c. John's Marine uses the entire area of the Private Driveway to maneuver boats and trailers;
 - d. Customers use the entire area of John's Marine and the Private Driveway to deliver boats and trailers for repair and service;
 - e. John's Marine services disabled boats on Lake Keowee and it uses the entire area of the Private Driveway to facilitate this service;
 - f. Disabled boats are stored all along the Private Driveway until diagnosis and repair;
 - g. John's Marine's centralized location permits it to respond quickly to distress calls on the lake;
 - h. John's Marine would be unable to function if the variance were granted.
- ii. April 22, 2022 letter from Petitioner Jimmy Ratliff, attached as **Ex. 11**, additionally set forth:
- a. Applicant's proposed road diagram overlayed with boats and trailers as John's Marine currently uses its property and showing that applicant only has 22.8' at the location of the variance rather than the claimed 31.9' (attachment 6), which would require Petitioners' property to be used for the proposed road.
 - b. Images depicting entire use of the Private Driveway for repair shop access and boat and trailer storage (attachment 7);
 - c. Scale drawings showing that in order to meet the 31.9' right-of-way, the developer would have to account for 9.1' gap in

measurement that would push the public road onto Petitioners' Private Driveway, which would impact the ability to maneuver boats into the repair shop (attachments 8, 9). The final location of the proposed public road was uncertain at the time of the variance application.

- iii. Diagram prepared by the applicant showing the 9.1' of Petitioners' property in the proposed right-of-way needed for the new public road. **Ex. 5**, at 1.
- iv. Oconee County staff reported to the BOZA that the new development could add as many as 200 daily trips past John's Marine. **Ex. 8**, at 4.
- v. Public comments from Petitioner Jay Ratliff, a South Carolina licensed Professional Engineer, informed the BOZA that the roadway designs provided by the developer reflected a variation in road placement such that under certain scenarios, up to 9-feet of Petitioners' property would be needed to make the roadway meet the 31.9' proposed width, taking away the ability of John's Marine to maneuver boats. (BOZA Hearing 45:20-47:35; **Ex. 5**, at 1). Mr. Ratliff relayed to BOZA the developer's admission that it will not know the exact dimensions of the road until it is built. (BOZA Hearing 49:00-49:50). Mr. Ratliff also raised the issue of placement of the utilities in the right of way, which could further impact John's Marine. (BOZA Hearing 49:50-50:50). Additionally, road and home construction will impact John's Marine. (BOZA Hearing 50:10).

42. During the April 25, 2022 hearing, county staff raised the issue of needing to know as part of the variance application the exact location of the county's proposed right-of-way for the

new public road. (BOZA Hearing 2:32:52-2:33:52). This question was not answered and the BOZA Order does not address it, underscoring Petitioners' concerns about the shifting nature of the location of the public road and uncertain impact to their property.

43. The BOZA had records before it showing that when Globe and Farmes bought Arrowhead Point, Oconee County Ordinance 2000-09, Section 6.2.3, required 50' right-of-way even for private roads. **Ex. 4** (Oconee County Council Meeting (Aug. 1, 2000)).

44. Despite abundant evidence on the absence of a prescriptive easement along the Private Driveway and evidence of substantial detrimental impacts to John's Maine, the BOZA voted to approve the variance.

FIRST CAUSE OF ACTION
(Lack of Jurisdiction to Grant Variance for Proposed Public Road)

45. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

46. Variance application #VA21-011 was before the BOZA requesting a variance for the construction of a new public road.

47. The BOZA granted the variance for a new public road based on its erroneous conclusion that Oconee County held a prescriptive easement along Petitioners' Private Driveway such that this new public road could tie in to, and become part of, the existing county road system.

48. As part of its Order, the BOZA also conditioned its variance approval on abandonment of Petitioners' Private Driveway.

49. The BOZA assumed the existence of a prescriptive easement without first requiring that the prescriptive easement be proved by Oconee County by clear and convincing evidence. *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170-71 (2015).

50. Because BOZA failed to find a prescriptive easement by clear and convincing evidence, it lacked jurisdiction to grant variance application #VA21-011 for the construction of a new public road and lacked jurisdiction to order abandonment of Petitioners' Private Driveway. This was error.

SECOND CAUSE OF ACTION
(Grant of Variance Application Based on Error of Law in Finding Prescriptive Easement)

51. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

52. Prior to voting to approve variance application #VA21-011 to grant a variance for a future public road, the BOZA necessarily had to determine that it had a prescriptive easement across the entire paved section of Ellenburg Road, including Petitioner's Private Driveway. Based on this asserted prescriptive easement, the BOZA then determined it could grant a variance for a future public road that will tie into the existing prescriptive easement along Ellenburg Road.

53. Oconee County does not have a prescriptive easement along the Private Driveway.

54. A prescriptive easement must meet all of the following elements:

- i. Continued and uninterrupted use or enjoyment of the right for a period of twenty years;
- ii. The identity of the thing enjoyed; and
- iii. Use or enjoyment which is either adverse or under claim or right. *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-70 (2015).

55. A prescriptive easement must be proven by clear and convincing evidence. *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170-71 (2015).

56. The only evidence cited by Oconee County for asserting the existence of a prescriptive easement over the Private Driveway was "institutional memory." Institutional

memory is not evidence. The BOZA had no documentary or testimonial evidence before it reflecting any Oconee County use or maintenance of the Private Driveway. Conversely, evidence presented by Petitioners included testimony, affidavits, and documents reflecting that Petitioners paved the Private Driveway and have maintained it for forty years and that Oconee County's road maintenance ended west of the Private Driveway.

57. The BOZA made an error of law when it granted the variance application premised on a finding of a prescriptive easement without first determining the existence of a prescriptive easement with all elements met by clear and convincing evidence.

THIRD CAUSE OF ACTION

(Grant of Variance Application Based on Error of Law Unlawful Expansion of Easement)

58. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

59. Even assuming the existence of a prescriptive easement, which Petitioners expressly deny, the BOZA's grant of a variance application will result in a material increase in the burden on Petitioners' property and imposed a new and additional burdens.

60. Granting a variance for a private development of nineteen homes with an estimated 200 trips per day driving along Petitioners' property will result in a material increase in the burden on Petitioners' property. The only current users of the dead end Private Driveway are Petitioners, their visitors, and patrons of John's Marine. Installation of a public road servicing a brand new subdivision will materially change the character of the Private Driveway and increase the burden of vehicular traffic on Petitioners' property.

61. Transforming the Private Driveway into a public road also places new burdens on Petitioners' property. John's Marine has been operating at its current location for forty years. Petitioners testified that John's Marine will no longer be able to operate on the property should

the Private Driveway be transformed into a public road for nineteen new homes. John's Marine uses the entirety of the Private Driveway to conduct its business. If the Private Driveway is no longer available to John's Marine, this is a new and substantial burden that has never been placed on Petitioners' land and a restriction Petitioners never assented to.

62. It was error for BOZA to approve the variance which will materially increase the burden and create new burdens on Petitioners' land. The owner of an easement cannot materially increase the burden on the servient estate nor impose new or additional burdens. *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). This was an error of law.

FOURTH CAUSE OF ACTION
(Arbitrary and Capricious Grant of Variance Application)

63. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

64. The BOZA determined that "The authorization of a variance WILL NOT be of substantial detriment to the adjacent uses . . ." but that "the character of the district *WILL be harmed* by the granting of the variance." (Emphasis added).

65. The BOZA's decision to approve a variance when the character of the district "WILL be harmed" is arbitrary, capricious, and an abuse of discretion. Moreover, this is contrary to the statutory requirement, and local ordinance, that requires a finding that "the district *will not be harmed* by the granting of the variance." S.C. Code Ann. § 6-29-800(A)(2)(d); Oconee County Code Sec. 38-7.1.(4).

66. Petitioners submitted scale drawings showing that in order for the applicant, or developer, to meet the 31.9' right-of-way to construct the new public road, the applicant will either have to fill in a substantial amount of land currently underwater, or the roadway will have to shift toward John's Marine and be placed on top of the location where John's Marine currently

maneuvers boats and trailers. The applicant's own drawings reflected this 9.1' shift onto Petitioners' property needed for the new public road.

67. Petitioners testified that the substantial increase in traffic (200 cars a day) will detrimentally impact its business, even without this shift in the proposed road. If the road in fact must shift, such that John's Marine will now be a public roadway for 200 cars a day, it will have an even more detrimental impact on Petitioners.

68. In reviewing a variance application, the BOZA is charged with determining whether the requested variance will "be of substantial detriment to adjacent property." S.C. Code Ann. § 6-29-800 (A)(2)(d); Oconee County Code Sec. 38-7.1.(4). "The developer shall have the burden of providing evidence to the county of compliance with . . . the specific requirements of this applicable section." Oconee County Code Sec. 38-7.1. Only where the BOZA determines the variance *will not* be of substantial detriment can a variance be granted.

69. In this instance, the BOZA approved the variance application without sufficient definiteness as to the final location of the proposed public roadway. Moreover, the developer did not present the BOZA with sufficient evidence as to the final location of the roadway. As demonstrated by Petitioners, the detrimental impact analysis changes as the placement of the final roadway shifts. The BOZA did not conduct sufficient analysis of the detrimental impact on Petitioners' property under the various scenarios of the final road placement, and did not sufficiently review the impact of utility placement, road construction, and home construction.

70. The BOZA's finding of no substantial detriment to Petitioners' property and its decision to approve the variance application without sufficient definiteness as to the final location of the roadway was arbitrary, capricious, and an abuse of discretion.

FIFTH CAUSE OF ACTION

(Violation of Statutory & Code Requirement for Explanatory Findings)

71. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

72. In order to grant a variance application, the BOZA must review four state statutory requirements, which are incorporated in the Oconee County ordinance. S.C. Code Ann. § 6-29-800(A)(2); Oconee County Code Sec. 38-7.1.(1)-(4). The BOZA's review of each requirement, and findings as to how each requirement is satisfied, must be explained in writing. *Id.* S.C. Code Ann. § 6-29-800(A)(2) ("A variance may be granted . . . if the board *makes and explains in writing*" the four requirements); Oconee County Code Sec. 38-7.1. ("The board of zoning appeals may grant a variance . . . if the board of zoning appeals makes and explains in writing" the four requirements).

73. Here, the BOZA's Order on variance application #VA21-011, does not contain written explanatory findings as to each of the four statutory requirements. See **Exhibit 1**. The BOZA Order simply repeats verbatim the four requirements without any explanatory analysis or comment.

74. Moreover, the BOZA Hearing transcripts contains no analysis by the BOZA of the impacts to John's Marine under the varying road location scenarios. The BOZA was presented with drawings indicating that under certain scenarios, property from Petitioners would need to be taken to meet the 31.9' right-of-way, and under this scenario Petitioners would lose land rather than gain any land, which contradicts one of the assumptions underlying the BOZA's vote approving the variance.

75. Because the BOZA Order on variance application #VA21-011 was not accompanied by written explanatory findings and the transcript is devoid of sufficient analysis on these points, it must be voided.

WHEREFORE, Petitioners pray that this Court reverse and void the BOZA's grant of variance application #VA21-011, and that the application be denied; and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ David L. Paavola

Keith M. Babcock, S.C. Bar No. 456

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David L. Paavola, S.C. Bar No. 100714

dlp@lewisbabcock.com

Lewis Babcock L.L.P.

P.O. Box 11208

Columbia, SC 29211

(803) 771-8000

Attorneys for Petitioners/Appellants

Columbia, SC
June 9, 2022



Oconee County
Board of Zoning Appeals
415 South Pine Street
Walhalla, SC 29691
864-364-4218

COPY

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BOARD ORDER ON VARIANCE HEARING

Hearing date: April 25, 2022

Permit Application: VA21-011

The Board of Zoning Appeals held a public hearing on Monday, April 25, 2022, to consider the request for a variance in accordance with County Ordinances, by application, for variance request #VA21-011: Continuation from 1/24/2022 BZA hearing postponement: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.

The Board makes the following conclusions:

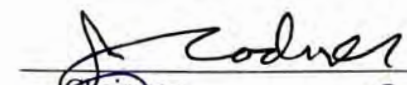
Based on the evidence presented to the Board regarding the proposed Variance:

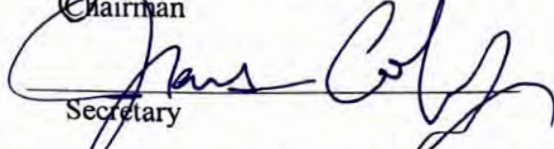
1. There ARE extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions DO NOT generally apply to other property in the vicinity;
3. Because of these conditions, the application of this chapter to the particular piece of property WOULD effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of a variance WILL NOT be of substantial detriment to adjacent uses or to the public good, and the character of the district WILL be harmed by the granting of the variance.

Therefore, by A VOTE OF 5-0, the Board of Zoning Appeals orders that a variance from the required 50' right-of-way of 18.1' located at TMS# 150-00-01-459 has been APPROVED with the following condition:

Order approved subject to proper abandonment procedures, compliance with all ordinances and state law on acceptance into the County roadway system. Developer grant/ deed John's Marine property so that there is reasonable, unimpeded access to the new road.

Date issued: 5/11/22


Chairman


Secretary

Date mailed to parties in interest: 5.11.22
after date this Order was mailed.

Notice of appeal to Circuit Court must be filed within 30 days

R-000067

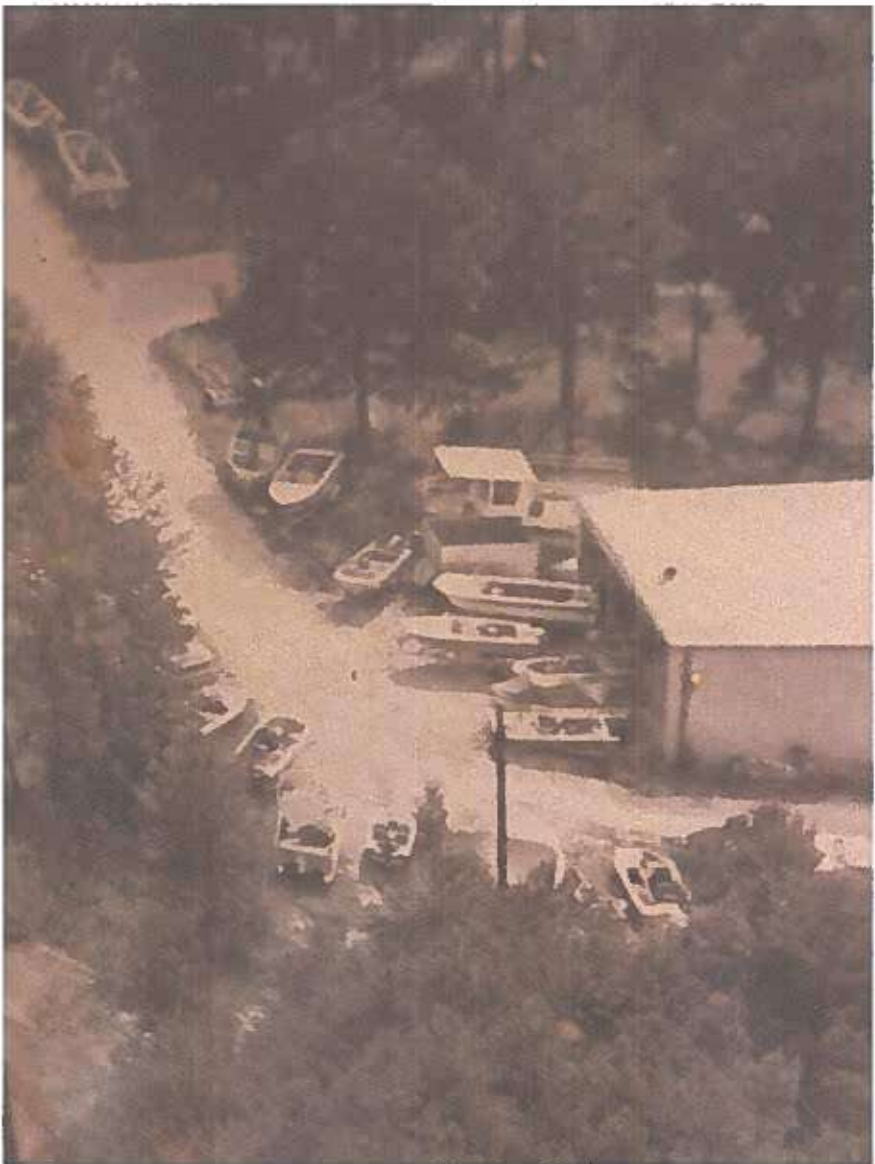
EXHIBIT 1



Ellenburg Road - 2021



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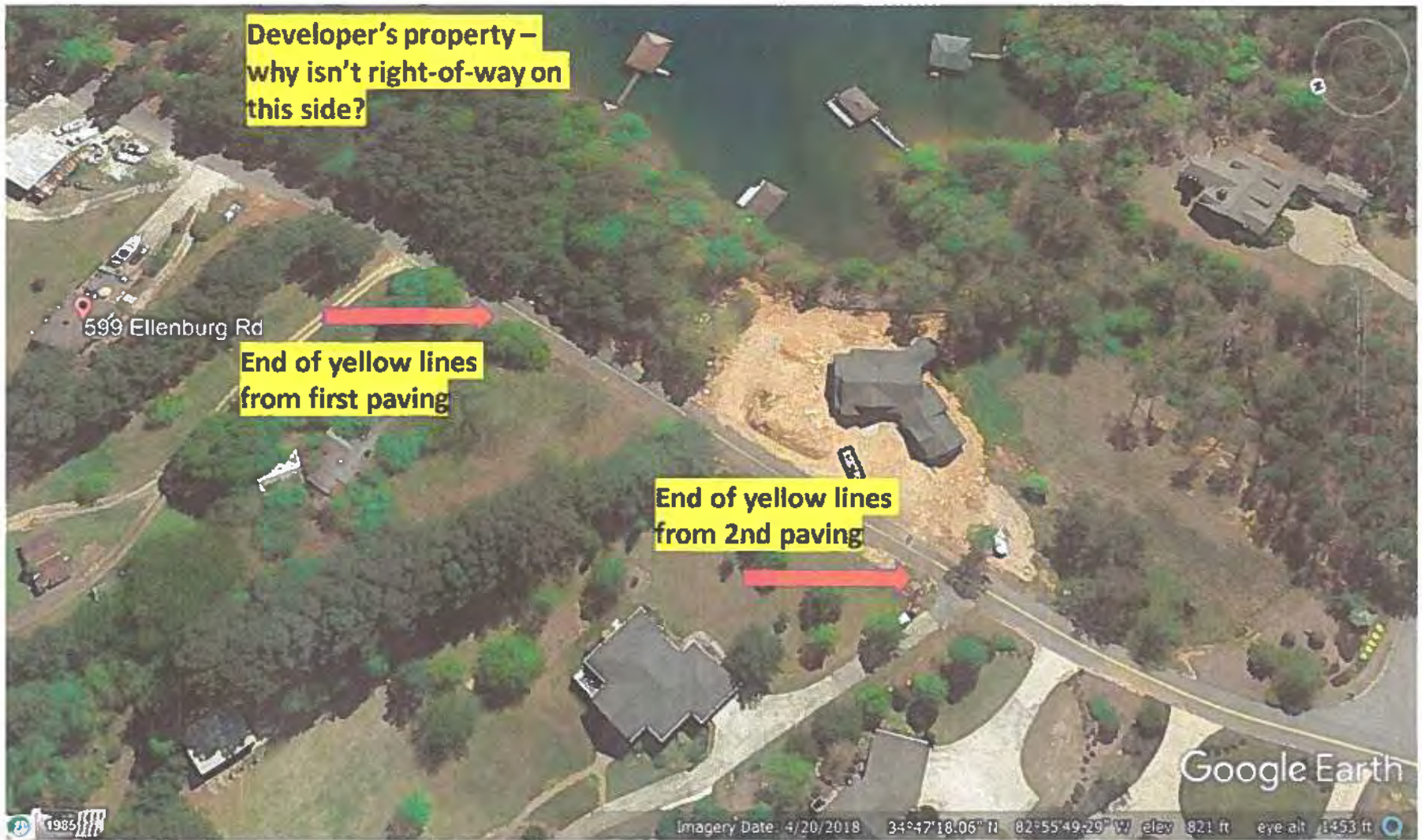
R-000069











STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

COPY

AFFIDAVIT OF JAN RATLIFF

BEFORE ME appeared, Frances ("Jan") J. Ratliff, who deposes and says:

1. I reside at 599 Ellenburg Road, Seneca, South Carolina 29672, and have personal knowledge of the matters set forth herein.
2. On October 1, 2009, I, along with Karen Rasbornik, attended a meeting at the offices of the Oconee County Roads and Bridges Department. Also present were County employees Matt Kelley, Price Brown, and Larry Hardin.
3. At the time of the meeting, Karen Rasbornik and I were given a copy of the Plat attached to as **Exhibit "A"** by employees of the Oconee County Roads and Bridges Department.
4. Exhibit "A" bears the initials of "GBP" (George Prince Brown) and is dated 08-15-08.
5. At the time of the meeting, employees of the Oconee County Roads and Bridges Department stated that the County's maintenance of Ellenburg Road ends where the point is highlighted in green immediately to the west of parcel on Exhibit "A" as 103.
6. The place where County employees stated that County maintenance ends was marked for many years with a sign indicating the end of County Maintenance until someone moved the sign. The Plat reference also coincides with where the road striping ended for many years.
7. The point represented by County employees as the end of County Maintenance is a long distance from my property.

8. My family has continuously maintained the paved portion of Ellenburg Road to the east of the endpoint of County Maintenance. The County has not engaged in any maintenance of the portion of Ellenburg Road in question.

FURTHER AFFIANT SAYETH NAUGHT.

Frances J. Ratliff
FRANCES J. RATLIFF

SWORN to before me this 7 day of Jan., 2022.

Michelle Goulden

Print Name: Michelle Goulden
Notary Public for State of SC

My Commission Expires: 12/9/2029

1

A G E N D A
OCONEE COUNTY COUNCIL MEETING
TUESDAY, August 1, 2000
7:00 PM
OCONEE COUNTY ADMINISTRATIVE OFFICES
415 SOUTH PINE STREET
WALHALLA, SC

1. Call to Order
2. Invocation
3. Approval of Minutes
4. Public Comment Session (Not to exceed thirty minutes)
5. Second Reading of Ordinance 2000-09, "AN ORDINANCE TO AMEND ORDINANCE 99-14, UNIFIED PERFORMANCE STANDARDS ORDINANCE AND LAND DEVELOPMENT REGULATIONS TO INCLUDE SUBDIVISION AND LAND DEVELOPMENT & VARIANCE PROCEDURE FOR SUBDIVISIONS" – Mr. Tommy Abbott, Chairman, Planning Commission
6. Presentation of Draft Proposal for Fall Creek & Town Creek Landing Parks – Dr. Grant Cunningham
7. Consideration of Approval of Grant Application for Federal Assistance in the Amount of \$2,420,078 for the Airport – Mrs. Melissa Brown, Grants Coordinator
8. Consideration of Approval of FY2000 Solid Waste Bonus Grant Application in the Amount of \$10,000 – Mrs. Melissa Brown, Grants Coordinator
9. Consideration of Approval of Tentative Listing of Surplus Equipment to be Sold at Auction – Ms. Marianne Dillard, Purchasing Agent
10. Consideration of Approval to Dispose of Timber at the Vehicle Maintenance Facility – Ms. Marianne Dillard, Purchasing Agent
11. Consideration of Approval of Change Order for Road Department – Mr. Jon Caime, County Engineer
12. Consideration of Approval of Memorandum of Agreement Between Oconee County & Department of Juvenile Justice

Minutes, Oconee County Council Meeting

August 1, 2000

Open Session Period Continued:

Mr. Steve Sokol addressed Council regarding the formation of the Oconee Keowee Alliance, which is opposed to the boat race during Waterfest 2000. Mr. Sokol further informed Council they had received 1200 signatures of people who are opposed to the boat race.

Mr. Steven Ancona spoke in opposition of the proposed subdivision regulations ordinance.

Mr. Warren Carpenter stated he supported the concept of the subdivision regulations ordinance, however, he felt it needed more study. Mr. Carpenter is opposed to the 100 foot set back for septic tanks, he requested the ordinance be sent back to the Planning Commission. (See attached statement)

Mr. Tom Markovich spoke in opposition of the subdivision regulations and requested that Council review it more closely. He also expressed feeling that the ordinance violated the Fifth Amendment and the Twelfth Amendment. (See attached statement)

Mr. John Hamrick also spoke in opposition of the way property would have to be divided under the proposed subdivision regulations.

Mr. Rick Thompson stated that if the ordinance is adopted, zoning in Oconee County will be adopted, he further stated he felt the ordinance should be less restrictive. (See attached statement)

Mr. B. J. Littleton stated he was in support of using the whole block where the courthouse is located for the courthouse. He also asked how many houses would you want to place on a .57 acre tract of land, the houses should not be crowded together, he also stated he felt the setbacks in the ordinance are reasonable.

Ordinance 2000-09:

Mr. Hall made a motion that Ordinance 2000-09, "AN ORDINANCE TO AMEND ORDINANCE 99-14, UNIFIED PERFORMANCE STANDARDS ORDINANCE AND LAND DEVELOPMENT REGULATIONS TO INCLUDE SUBDIVISION AND LAND DEVELOPMENT & VARIANCE PROCEDURE FOR SUBDIVISIONS" be referred to the next Council Meeting when full Council is present. However, this motion died for lack of a second.

Mr. Thomas made a motion, seconded by Mr. Hamilton, approved 2 - 1 (Mr. Hall voting against that Ordinance 2000-09 (titled above) be referred to the Law Enforcement, Safety, Health, Welfare & Services Committee for further study.

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC
COUNCIL MEETING DATE: 4/4/06
COUNCIL MEETING TIME: 3:00 pm

ITEM TITLE OR DESCRIPTION:

Subdivis DR & Land Use Ordinance

BACKGROUND OR HISTORY:

Oconee County Road & Transportation Committee recommended significant amendments to the Subdivision & Land Use Ordinance.

SPECIAL CONSIDERATIONS OR CONCERNS:

Changes to the Subdivision & Land Use Ordinance are part of the ordinance of moratorium.

STAFF RECOMMENDATION:

Council action ordinance on first reading and refer to Planning Commission.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Draft Subdivision & Land Use Ordinance

Submitted or Prepared By:

Toni Hendricks

Approved for Submittal to Council:

Ron H. Reuben
 Ron H. Reuben, County Administrator

Reviewed by Officials:

_____: County Attorney

_____: Finance

(Revisions 3/24/06)

These revisions are in *bold italics*
(Office of Brad Norton)

Performance Standards, Chapter 6.

6.0 SUBDIVISION AND LAND DEVELOPMENT

6.1 AUTHORITY AND JURISDICTION

6.1.1 Authority

These land development and subdivision regulations are adopted under authority granted by Title VI, Chapter 29 (6-29-1120) et. seq. of the Code of Laws of South Carolina, 1976.

6.1.2 Jurisdiction

a. These regulations shall apply to the development and subdivision of land within the unincorporated areas of Oconee County as now or hereafter established and any unincorporated municipality which contracts with the Oconee County Council for these regulations to be administered within such municipality. Regulations contained within this ordinance that apply to the construction and maintenance of roads shall apply to all roads and drainage structures, whether public or private, constructed within any unincorporated area of Oconee County and municipalities contracted with the Oconee County Council for administration of these regulations. Regulations contained within this Ordinance that apply to the construction and maintenance of roads, appurtenances or drainage structures shall apply to all public and private roads, drives and driveways in the unincorporated areas of Oconee County; also included shall be all municipalities contracted with the Oconee County Council to administer these regulations. These regulations shall not apply to those roads completed, under construction, or approved by Oconee County prior to adoption of this Ordinance by County Council. In the event that a regulation in this ordinance conflicts with any other county regulation, the more stringent standard shall apply.

6.2 PURPOSE AND SHORT TITLE

6.2.1 Purpose

- k. be signed in accordance with adapted T-03 - Addressing regulations.
- l. allow at least one hundred (100) feet of sight distance for each ten (10) miles per hour of the posted speed limit where the private drive intersects a public road. The sight distance shall be measured from a seeing height of three and one-half (3 1/2) feet to an object one foot in height above the grade of the public road. If the proposed drive does not meet the sight distance requirement, a waiver must be signed by the individual(s) constructing the private drive stating that the owner(s) is liable and responsible for any accidents, injuries, problems, and property damage resulting from improper sight distance;
- m. meet all applicable storm water management and sediment control regulations;
- n. be approved in writing by Planning Commission staff prior to submission of plat to the Registrar of Deeds for recording. The following shall be prominently printed on the plat(s) in all capital letters:

"THE ROAD RIGHT-OF-WAY EASEMENTS SHOWN ON THIS PLAT SHALL BE PRIVATE DRIVES NOT OWNED, MAINTAINED OR SUPERVISED BY OCONEE COUNTY, AND WERE NOT CONSTRUCTED PURSUANT TO ANY PLAN FOR FUTURE ACCEPTANCE BY OCONEE COUNTY. ROAD RIGHT-OF-WAY EASEMENTS SHOWN UPON THE PLAT SHALL NOT BE ACCEPTED FOR MAINTENANCE BY OCONEE COUNTY AT ANY TIME IN THE FUTURE, UNLESS CONSTRUCTED IN ACCORDANCE WITH ADOPTED OCONEE COUNTY SUBDIVISION REGULATIONS."

- o. Comply with the State Manual for Uniform Traffic Control Devices.

6.2.3 Private Roads - Private roads shall provide vehicular access and road frontage to developments, or sections of developments, containing more than ten (10) single-family residential lots. All private, non-dedicated roads shall be prominently indicated as such on plat prior to subdivision approval. Maintenance arrangements for such roads must be agreed in writing on subdivision plat submitted and must be subsequently accepted. The development served by a private road shall have direct access into a public road, and no such private road shall be laid out so as to serve property outside the development. All private roads shall:

- a. serve a minimum of eleven (11) lots;

h. have a minimum right-of-way easement width of 100 (100) feet.

i. have a minimum road coverage requirement of thirty (30) feet for all lots.

d. be constructed in accordance with the regulations set forth in section 6.8 of these regulations.

e. be maintained by an individual, association of property owners, or active Home Owner's Association as recorded in appropriate deed covenants and restrictions.

f. be legally verified for compliance by a surveyor/engineer licensed by the State of South Carolina.

g. be named in accordance with adopted E-51 Addressing regulations.

h. meet all storm water management and sediment control regulations.

i. be properly approved in writing by Planning Director prior to submission of plat(s) to the Register of Deeds for recording. The following shall be prominently printed on the plat(s) in all capital letters:

"THE ROAD RIGHT-OF-WAY EASEMENTS SHOWN ON THIS PLAT SHALL BE PRIVATE ROADS, NOT OWNED, MAINTAINED OR SUPERVISED BY OCONEE COUNTY AND NOT CONSTRUCTED PURSUANT TO ANY PLAN FOR FUTURE ACCEPTANCE BY OCONEE COUNTY. ROAD RIGHT-OF-WAY EASEMENTS SHOWN UPON THE PLAT SHALL NOT BE ACCEPTED FOR MAINTENANCE BY OCONEE COUNTY AT ANY TIME IN THE FUTURE UNLESS CONSTRUCTED IN ACCORDANCE WITH THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE."

j. Comply with the State Manual for Uniform Traffic Control Devices.

With the exception of the recommendations put forth in this section, all private roads shall meet the requirements of Section 6.8 Public Roads of the Subdivision and Land Development Ordinance.

3

Minutes, Oconee County Council Meeting

April 4, 2006

Ordinance 2006-11:

Mr. Lyles made a motion, seconded by Mr. Crumpton, approved 5 – 0 that Ordinance 2006-11, "AN ORDINANCE REGULATING THE USE OF COUNTY ROADS" be adopted on first reading.

Ordinance 2006-12:

Mr. Rinehart made a motion, seconded by Mr. Lyles, approved 5 – 0 that Ordinance 2006-12, "AN ORDINANCE AMENDING SECTION 6: SUBDIVISION & LAND USE DEVELOPMENT OF ORDINANCE 99-14, OCONEE COUNTY UNIFIED PERFORMANCE STANDARDS AND LAND USE DEVELOPMENT REGULATIONS AS ADOPTED BY ORDINANCES 2001-04, 2002-05 & 2004-14" be adopted on first reading.

Ordinance 2006-07:

Mr. Moore made a motion, seconded by Mr. Crumpton, approved 5 – 0 that Ordinance 2006-07, "AN ORDINANCE IMPOSING A SIX MONTH MORATORIUM ON THE APPROVAL OF SITE PLANS AND/OR BUILDING PERMITS FOR ANY CONSTRUCTION PROJECT WITHIN ONE THOUSAND (1,000') OF LAKES THAT ARE WITHIN OR ADJACENT TO OCONEE COUNTY UNLESS SAID PROJECT INCLUDES A TWENTY-FIVE (25') FOOT RIPARIAN BUFFER AND A SIX MONTH MORATORIUM ON THE APPROVAL OF SITE PLANS AND/OR BUILDING PERMITS FOR ANY SUBDIVISION AS DEFINED IN THIS ORDINANCE THAT WILL RESULT IN THE NEED TO UPGRADE A COUNTY ROAD IN ACCORDANCE WITH THIS ORDINANCE" be adopted on second reading.

Ordinance 2007-09

Mr. Crumpton made a motion, seconded by Mr. Rinehart, approved 5 – 0 that Ordinance 2007-09, "AN ORDINANCE REGULATING FALSE FIRE ALARMS TO WHICH OCONEE COUNTY RURAL FIRE DEPARTMENTS RESPOND" be adopted on first reading.

Auction Listing:

Mr. Crumpton made a motion, seconded by Mr. Moore, approved 5 – 0 that the attached listing of surplus properties be adopted and a date of May 6, 2006 be established for the auction.

Oconee County Planning Commission

415 S. Pine St. • Walhalla, South Carolina 29691
Phone (864) 638-4218 • Fax (864) 638-7046

3



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Memorandum 42-00

May 23, 2000

To: Oconee County Council

From: Planning Commission *[Signature]*

Subject: Performance Standards Ordinance

Please find attached the following:

1. An amendment to the Performance Standards Ordinance.
2. The proposed Chapter 2 of the Performance Standards Ordinance.

The amendment will allow a variance procedure for the proposed chapter 2. The original ordinance allowed a variance for all chapters except chapter 2. This language will correct that omission.

The proposed chapter 2, Subdivision and Land Development has been reviewed and approved by the Planning Commission. Some parts of the chapter are contentious and council members will hear from some disgruntled developers. The chapter will solve many of the ongoing problems created by development.

Cc: Harrison Orr
Planning Commission w\encl

3

**ATTACHMENT 1- PROPOSED AMENDMENT TO THE
PERFORMANCE STANDARDS ORDINANCE**

New section to 1.4.1 (h)

(h) Variance- to hear and decide requests for variance from the requirements of Chapter 2, of the Performance Standards Ordinance concerning the standards for the subdivision and land development, when strict application of the provisions of the ordinance would result in unnecessary hardship. Variances shall be decided by the Planning Commission pursuant to Section 1.5.5.3 of this ordinance, *General Criteria for Granting a Variance*.

3

Performance Standards, Chapter 2.

2.0 SUBDIVISION AND LAND DEVELOPMENT

2.1 AUTHORITY AND JURISDICTION

2.1.1 Authority

These land development and subdivision regulations are adopted under authority granted by Title VI, Chapter 29 (6-29-1120) et. seq., of the Code of Laws of South Carolina, 1976.

2.1.2 Jurisdiction

These regulations shall apply to the development and subdivision of land within the unincorporated areas of Oconee County as now or hereafter established and any incorporated municipality which contracts with the Oconee County Council for these regulations to be administered within such municipality. Regulations are also contained herein which shall apply to the construction and maintenance of all roads whether or not they are part of subdivision development.

2.2 PURPOSE AND SHORT TITLE

2.2.1 Purpose

The purpose of this ordinance is to protect and promote the public health, safety and general welfare of the citizens of Oconee County, South Carolina, providing for the harmonious, progressive, and orderly development of land. These regulations are established for the following specific purposes, among others, as provided for in the South Carolina Local Government Comprehensive Planning Enabling Act Of 1994 (Section 6-29-1120 of the Code of Laws of South Carolina, 1976, et seq.):

- (1) to encourage the development of an economically sound and stable county;
- (2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;
- (3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. In addition, the permit-issuing authority may require temporary turnarounds to be constructed at the end of such streets pending their extension when such turnarounds appear necessary to facilitate the flow of traffic or accommodate emergency vehicles. Notwithstanding the other provisions of this subsection, no temporary dead-end street in excess of one thousand (1,000) feet may be created unless no other practicable alternative is available.

- 2.7.3 Private Roads** - All private, non-dedicated roads must be indicated as such prior to subdivision approval. Maintenance arrangements for such roads must be stated in writing on subdivision plat submittals. The development shall have direct access into a public road and no such private road may be laid out so as to serve property outside the development. Each private road must be indicated as such on all plats and deeds.
- 2.7.4 Road Names** - A proposed road which is obviously in alignment with or an extension of an existing named road shall bear the name of the existing road. Except for the above, in no case shall the name of a proposed road duplicate or be phonetically similar to an existing road name, irrespective of the use of suffix (road, avenue, boulevard, drive, place, court, lane, etc.). It shall be unlawful for any person in laying out any new road to name such road on any final plat or in any deed or instrument, without first obtaining the approval of the Oconee E-911 Addressing Office and the Planning Commission.
- 2.7.5 Local Roads** - Local roads shall be so laid out that their use by through traffic will be discouraged.
- 2.7.6 Residential Buffers for Major Roads** - Where a subdivision abuts or contains an existing or proposed collector or arterial road, the Planning Commission may require that lots which abut or are adjacent to the major road shall face a minor interior access road. Other treatment may also be required, as necessary, for adequate protection of residential properties and for separation of through and local traffic. Special treatment may be required, such as screen planting contained in a non-access reservation along the rear property line adjacent to the major road.
- * 2.7.7 Road Design (Geometric Criteria)** - In general, geometric criteria for road design shall be in accordance with standards of the South Carolina Department of Transportation (SCDOT). Said standards are those contained in the latest edition of "A Policy on Geometric Design of Highways and Streets" by the American Association of State Highway and Transportation Officials". Local and collector residential roads (public or private) shall be designed in accordance with the following standards.

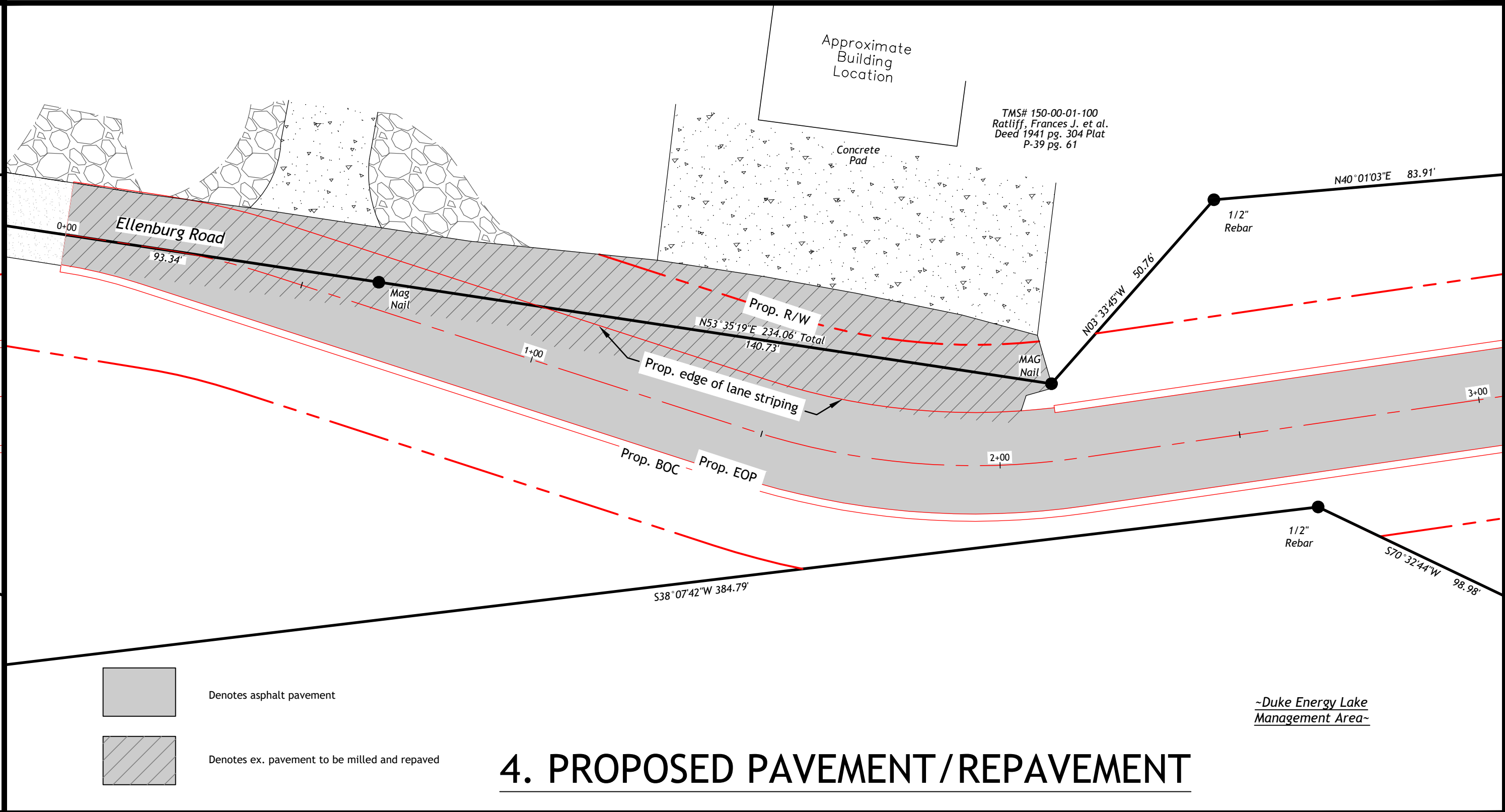
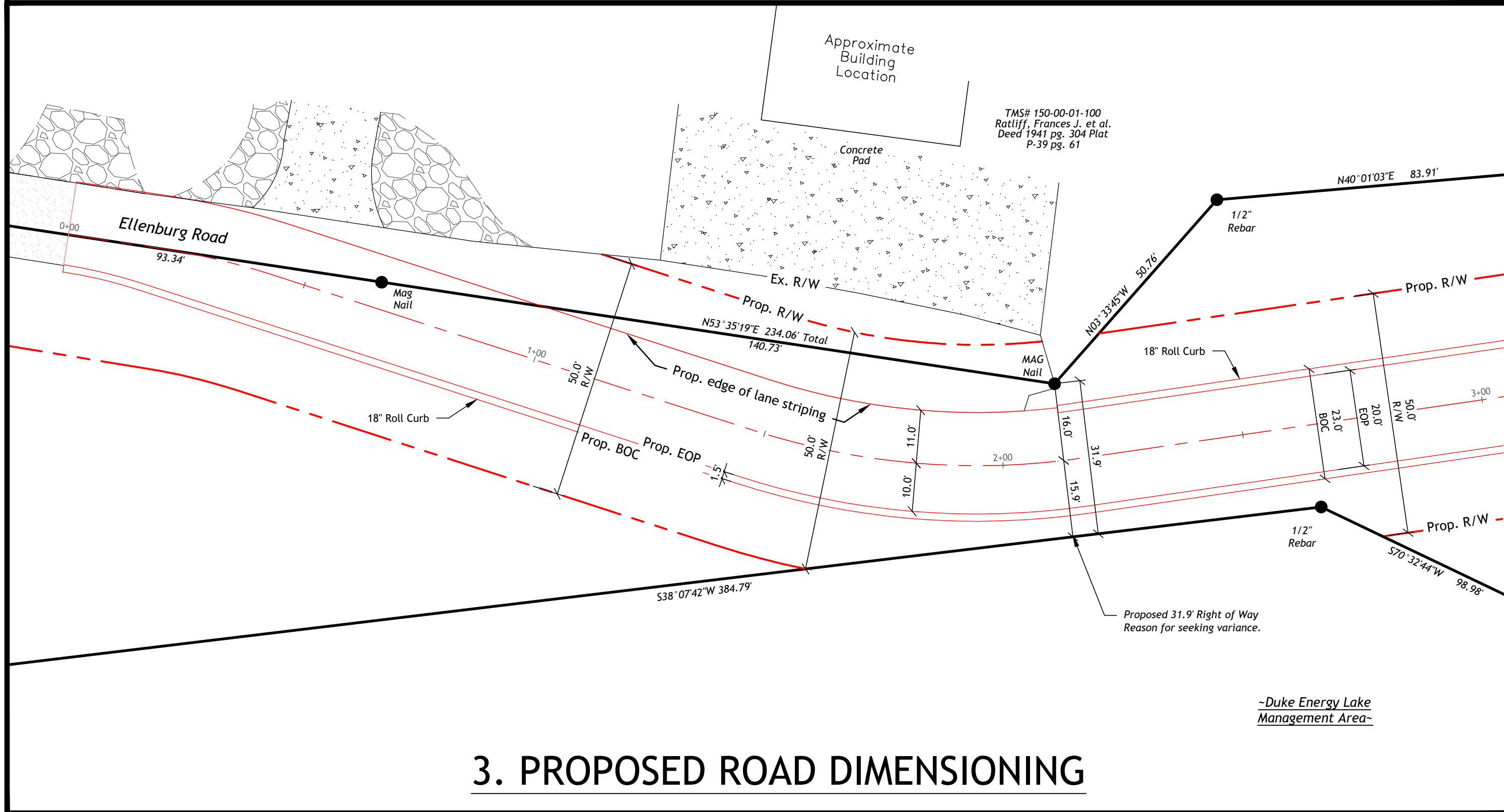
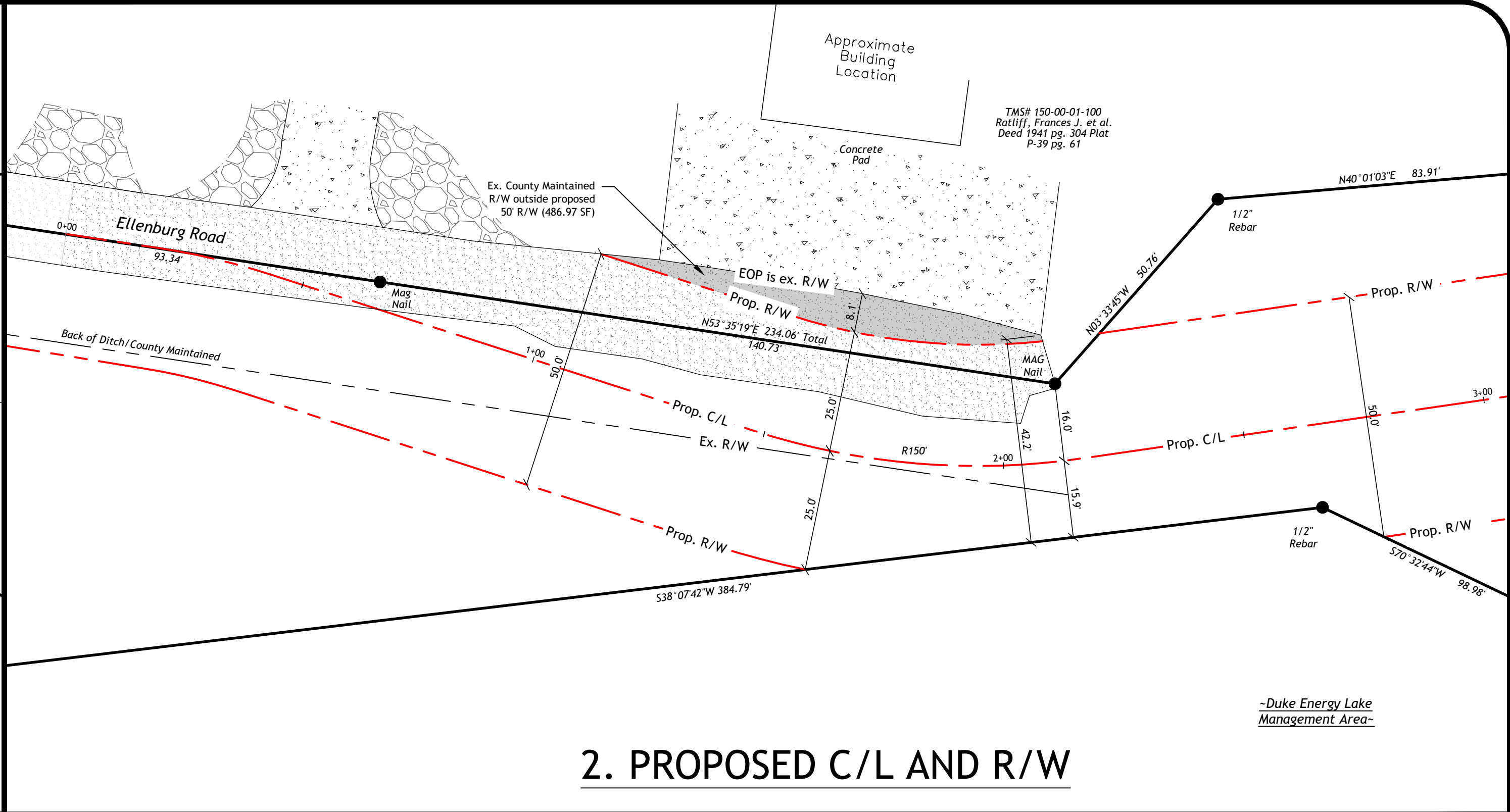
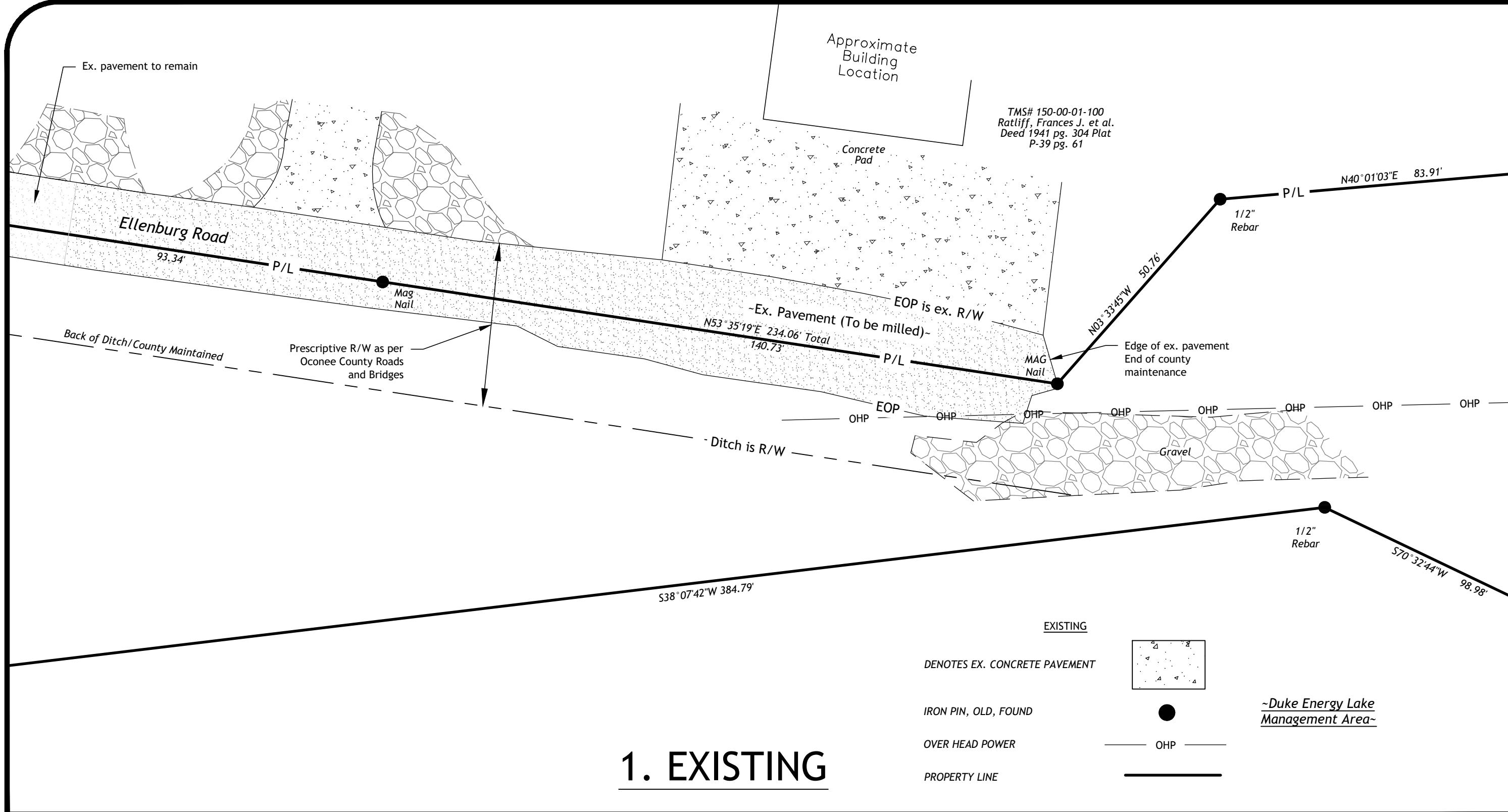
- a. Minimum right-of-way and pavement width shall be as follows:

<u>Road Type</u>	<u>Right-of-Way</u>	<u>Pavement</u>
Local (closed drainage)	50'	22'
Local (open drainage)	50'	22'
Collector	50'	24'

For high density residential or nonresidential subdivisions or portions thereof, additional right-of-way or pavement width shall be provided when determined as necessary by the Planning Commission or County Supervisor.

- b. Cul-de-sacs shall not exceed one thousand (1000) feet in length, except where unusual topographic or other physical conditions dictate otherwise, and shall have a turnaround with a minimum diameter of seventy (70) feet to pavement edge and a minimum diameter of one hundred (100) feet to the right-of-way line. Dead-end streets without turnarounds are prohibited.
- c. Horizontal curvature shall be introduced at any change in road direction, and the minimum centerline radius shall be one hundred fifty (150) feet for local roads and two hundred fifty (250) feet for collector roads. Arterial road curvature shall be in accordance with State Highway Department standards. Minimum tangent between reverse curves shall be one hundred (100) feet for local roads, and sixty (60) feet from curve to any intersecting road.
- d. Stopping sight distance on vertical curves shall be at least one hundred fifty (150) feet (25 mph design speed) for local roads and three hundred twenty five (325) feet (45 mph design speed) for collector roads. If a collector road may reasonably be expected to serve more than one subdivision, it shall be designed for at least a fifty five (55) mph design speed (450' minimum sight distances). Minimum sight distance at intersections shall be established by provision of a clear sight triangle right of way measured at least twenty five (25) feet from the intersection of the road right-of-way in either direction which triangle shall be entered upon the final plat prior to recording. Modifications may be required by the County Engineer in order to insure safety.
- e. Roads shall be designed to intersect as nearly as possible at right angles but no less than seventy five (75) degrees. Minimum radius of curb or pavement edge at intersections shall be at least twenty (20) feet at intersections with local roads and twenty five (25) feet at intersections with collector roads.





PO BOX 806
ANDERSON, SC 29622
(864) 226-0980
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SCALE: 1 in = 20 ft.

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Arrowhead Point

Oconee County,
South Carolina

DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21286

REV #	DATE	COMMENT
0	11-24-21	ISSUE FOR REVIEW
...	...	...
...	...	...
...	...	...
...	...	...
...	...	...

SITE LEGEND

C/L	Centerline of Road
EOP	Edge of pavement
BOC	Back of curb
R/W	Right-of-way
R	Radius
Prop.	Proposed
Ex.	Existing

SHEET

Variance Request

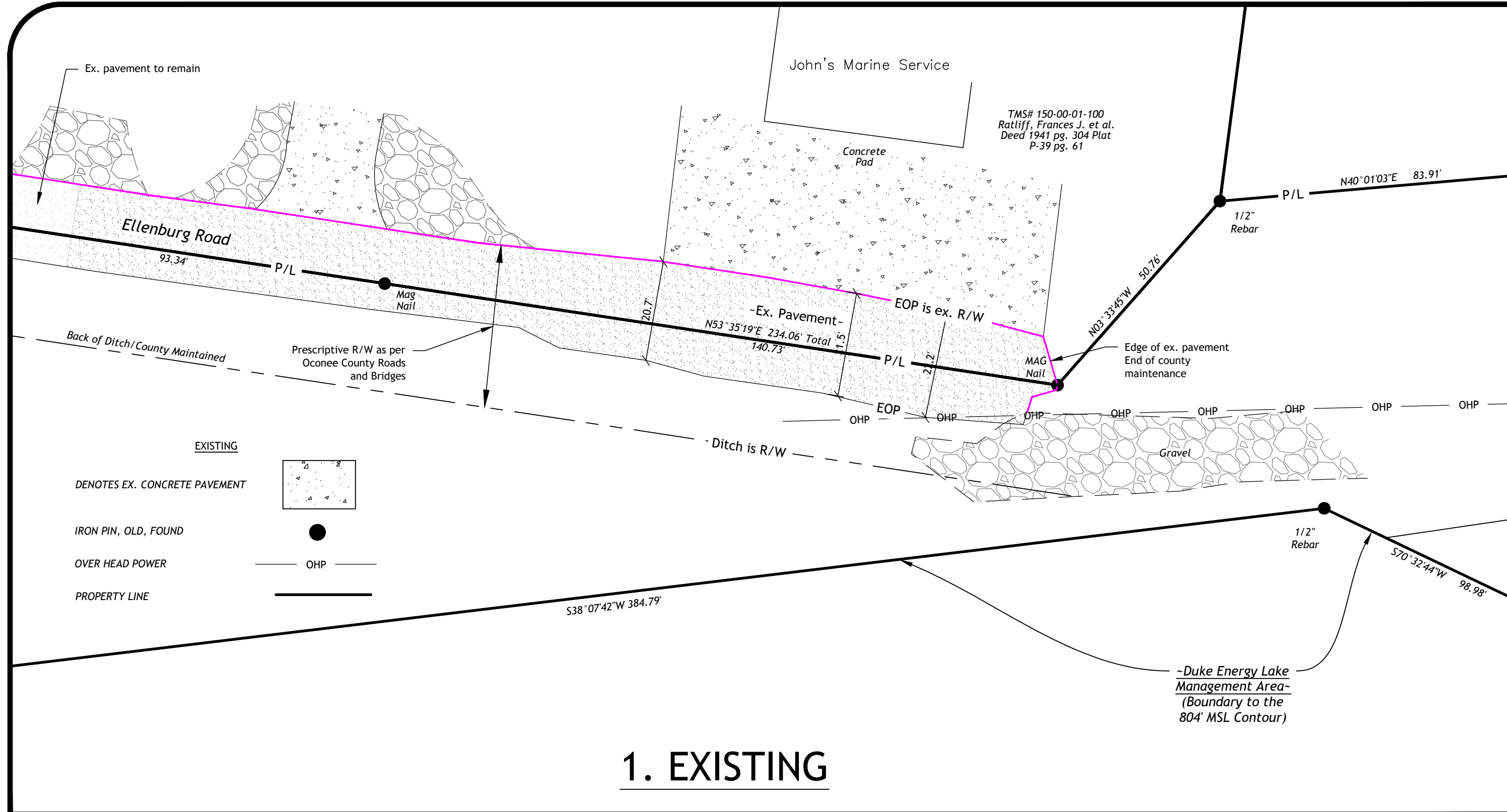
C - 2

CAUTION

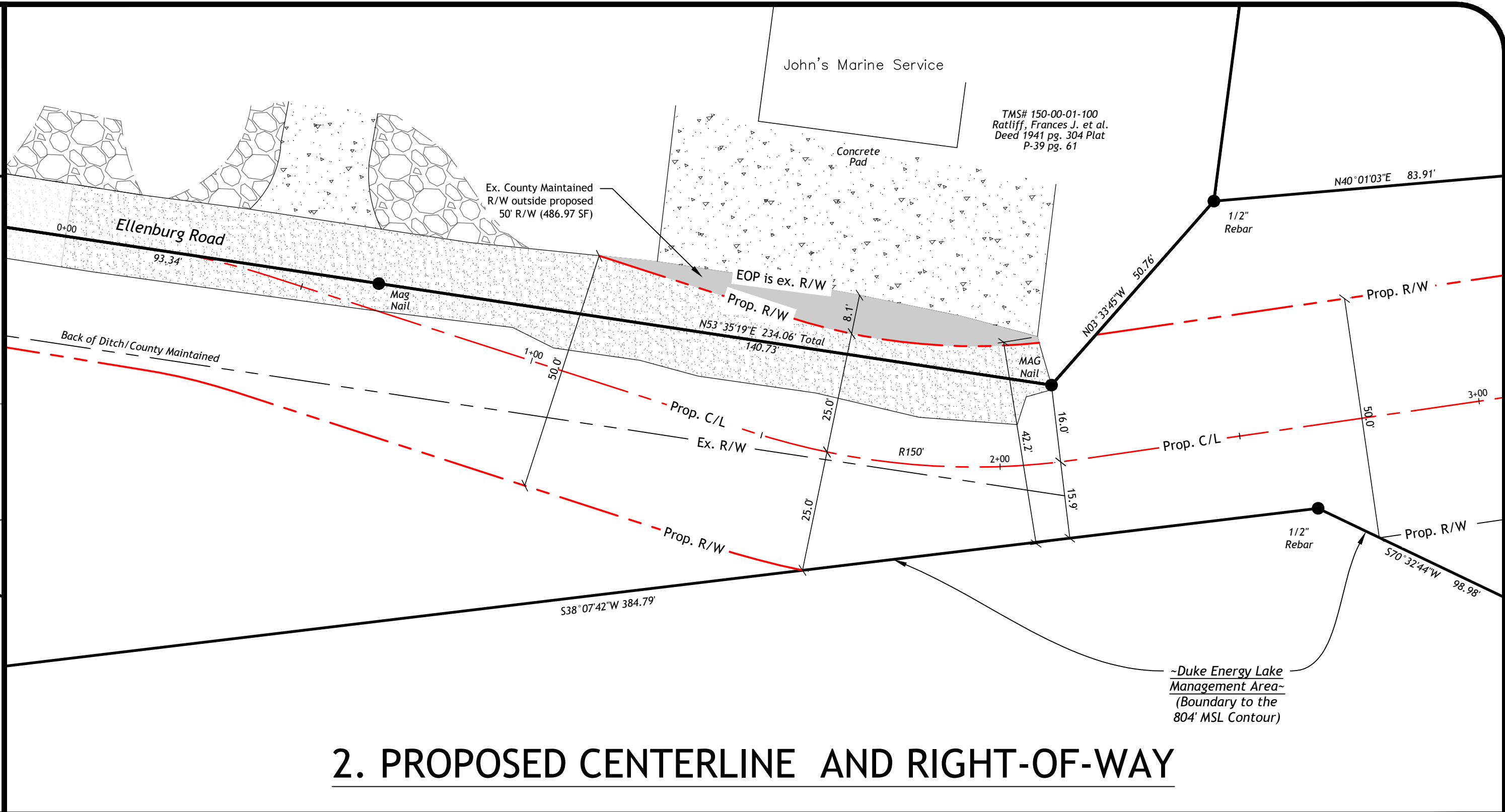
PALMETTO UTILITY LOCATION SERVICE

3 DAYS BEFORE DIGGING CALL
TOLL FREE 811

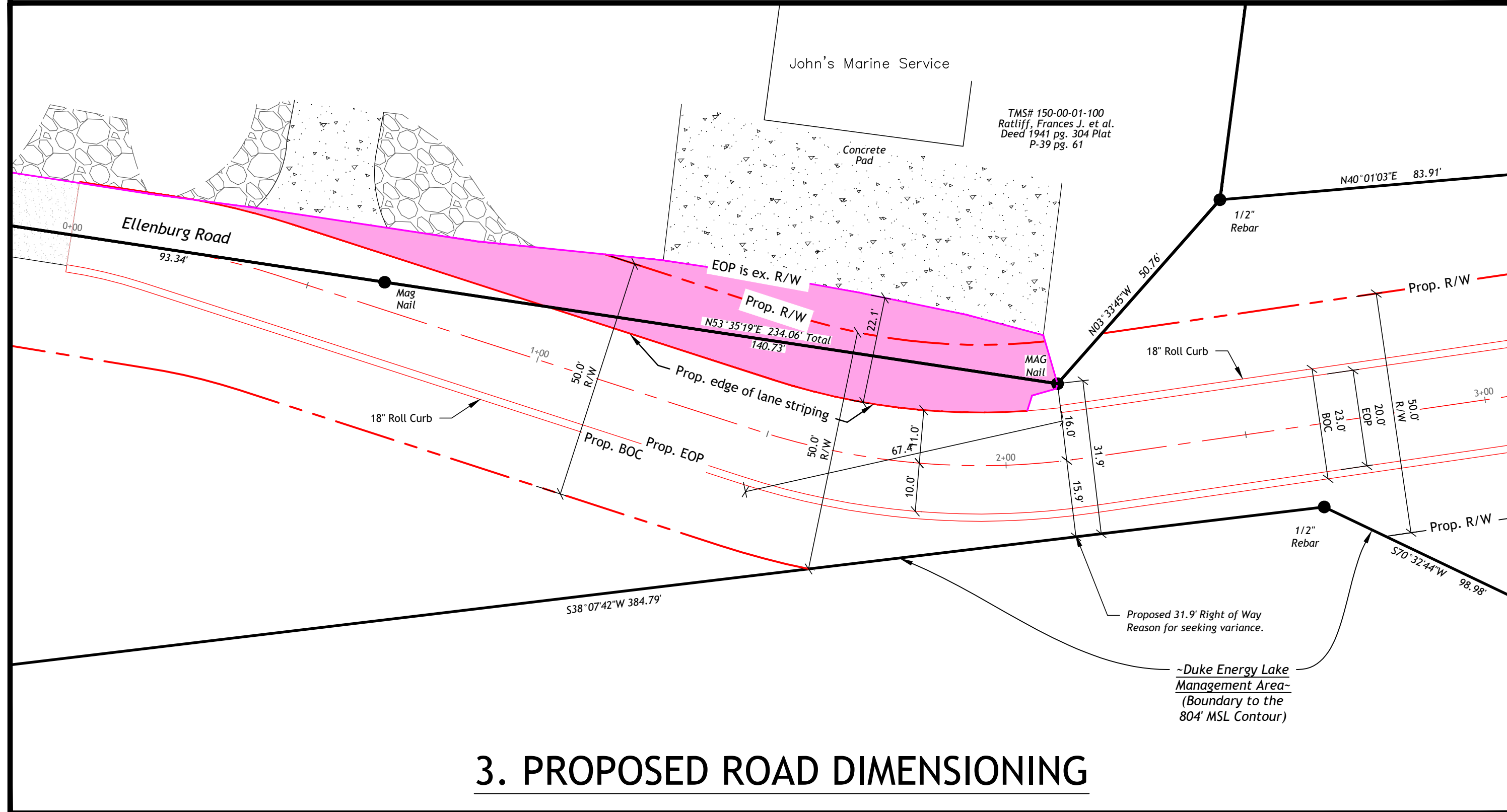
A ONE CALL SYSTEM FOR COMMUNITY AND JOB SAFETY.



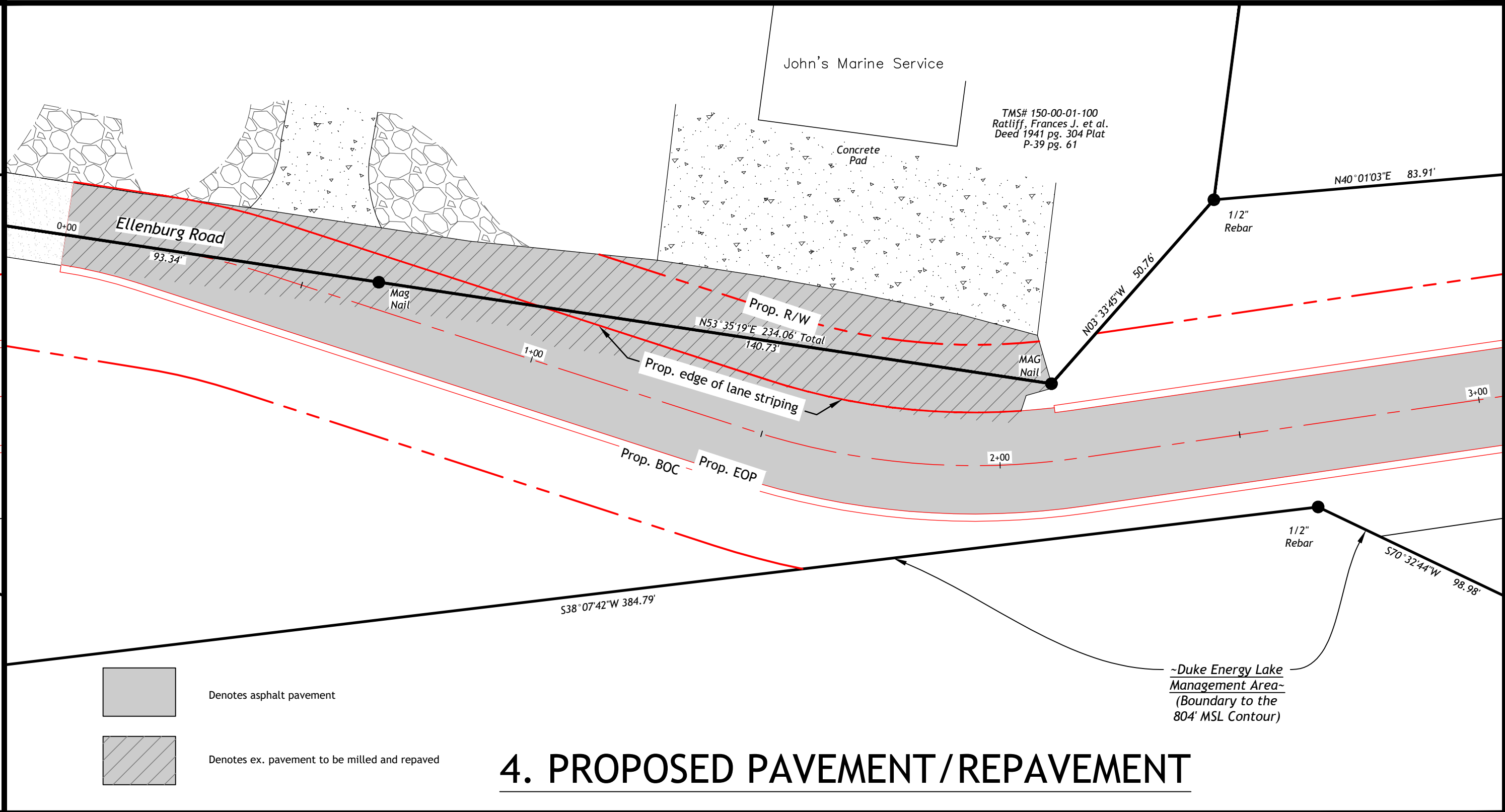
1. EXISTING



2. PROPOSED CENTERLINE AND RIGHT-OF-WAY



3. PROPOSED ROAD DIMENSIONING



4. PROPOSED PAVEMENT/REPAVEMENT

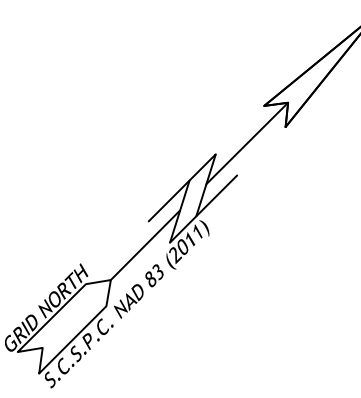


SITE LEGEND

- C/L Centerline of Road
- EOP Edge of pavement
- BOC Back of curb
- R/W Right-of-way
- R Radius
- Prop. Proposed
- Ex. Existing

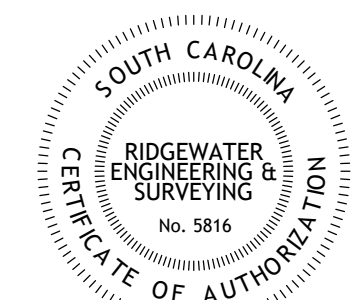


PO BOX 806
ANDERSON, SC 29622
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SCALE: 1 in = 20 ft.

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Arrowhead Point

Oconee County,
South Carolina

DRAWN BY: KOC

CHECKED: JWW

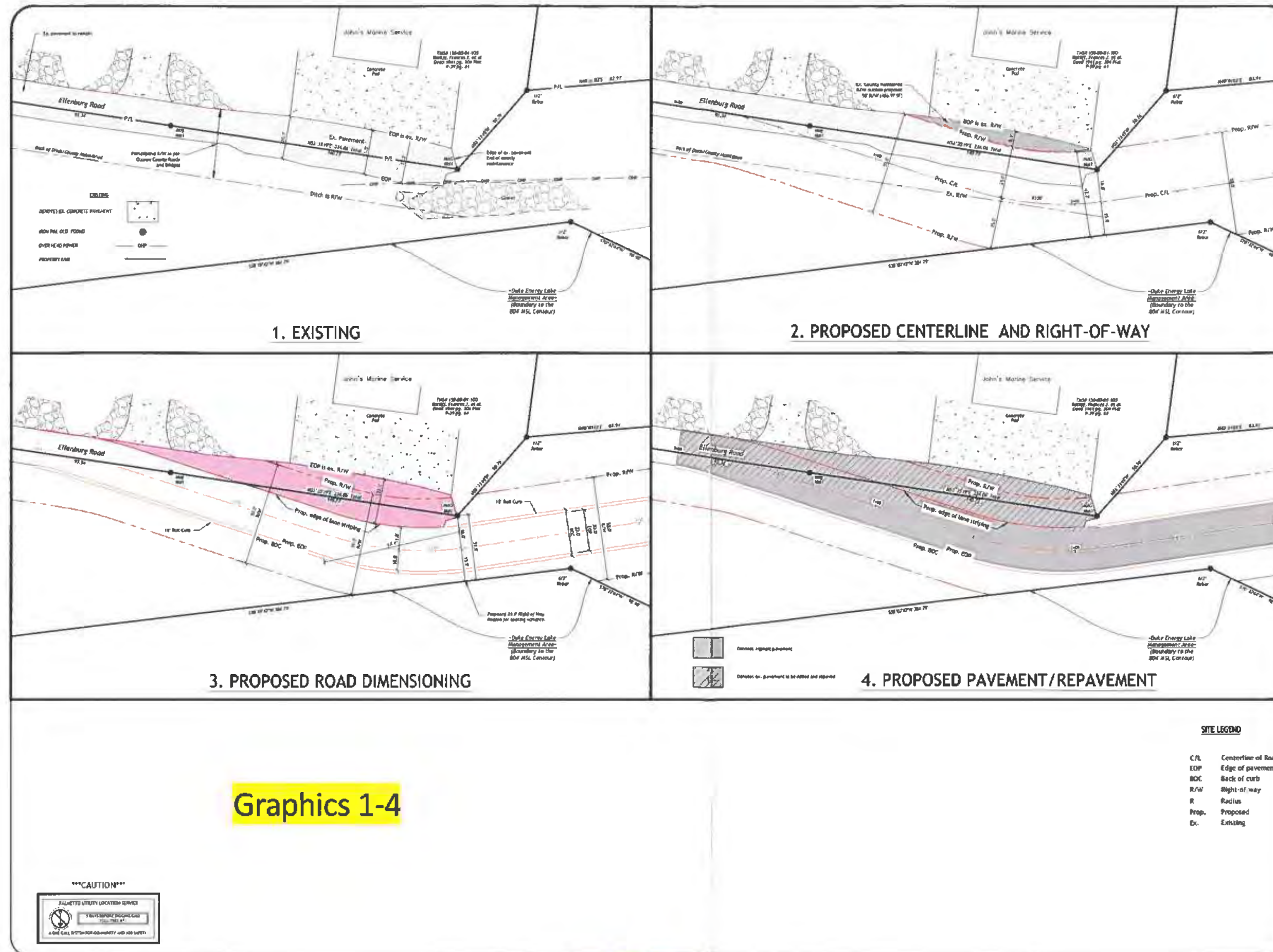
JOB NUMBER: 21286

REV #	DATE	COMMENT
0	11-24-21	ISSUE FOR REVIEW
1	11-29-21	PLANNING COMMISSION MTG.
...	...	...
...	...	...
...	...	...
...	...	...

SHEET

Variance
Request

C - 2



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Arrowhead Point

Oconee County, South Carolina

DRAWN BY: KOC
CHECKED: JMW
JOB NUMBER: 21286

REV # DATE COMMENT

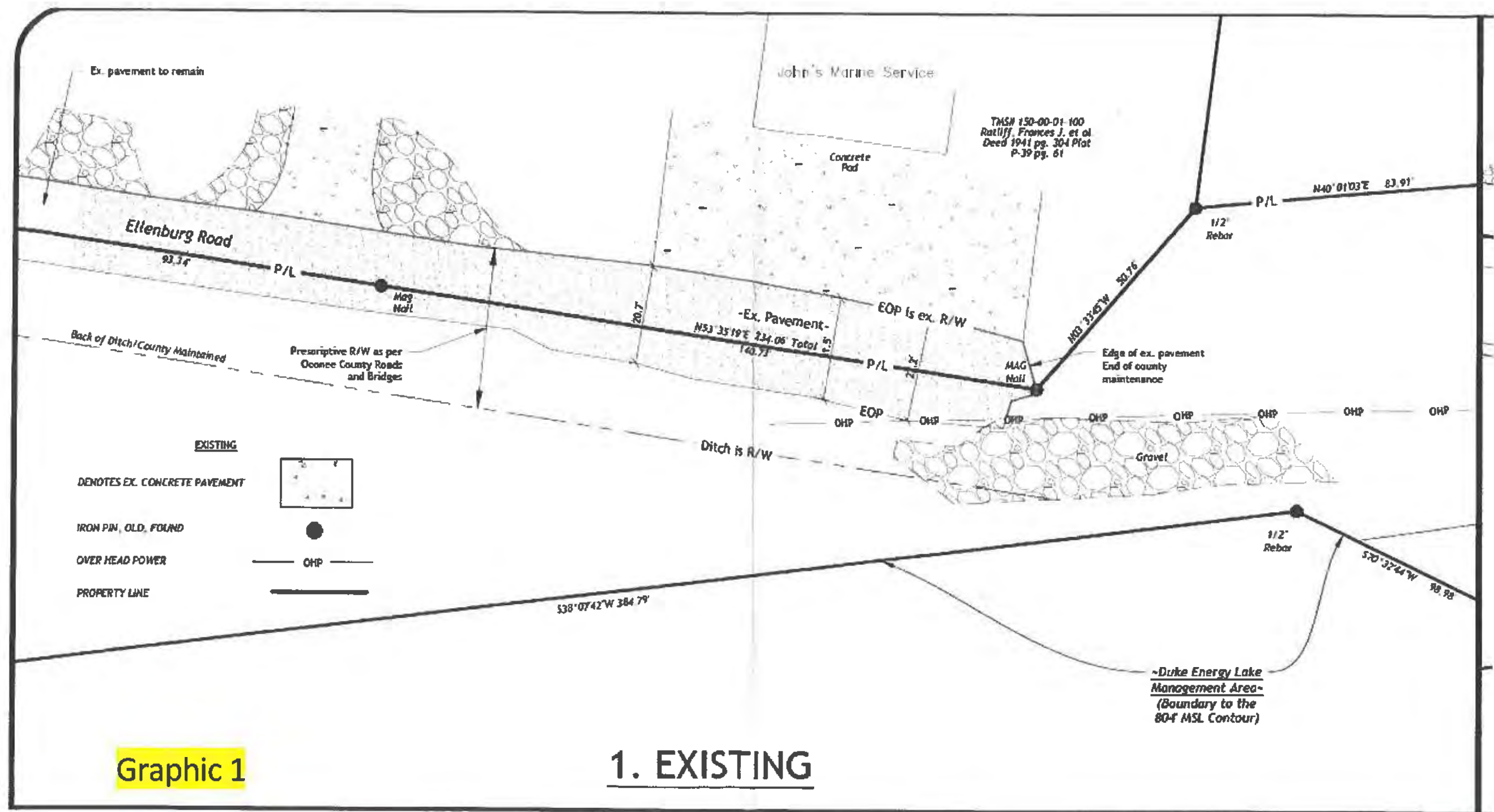
1	11-24-21	FOR REVIEW
2	11-29-21	PLANNING COMMISSION 11/15

SHEET

Variance Request

C - 2

3

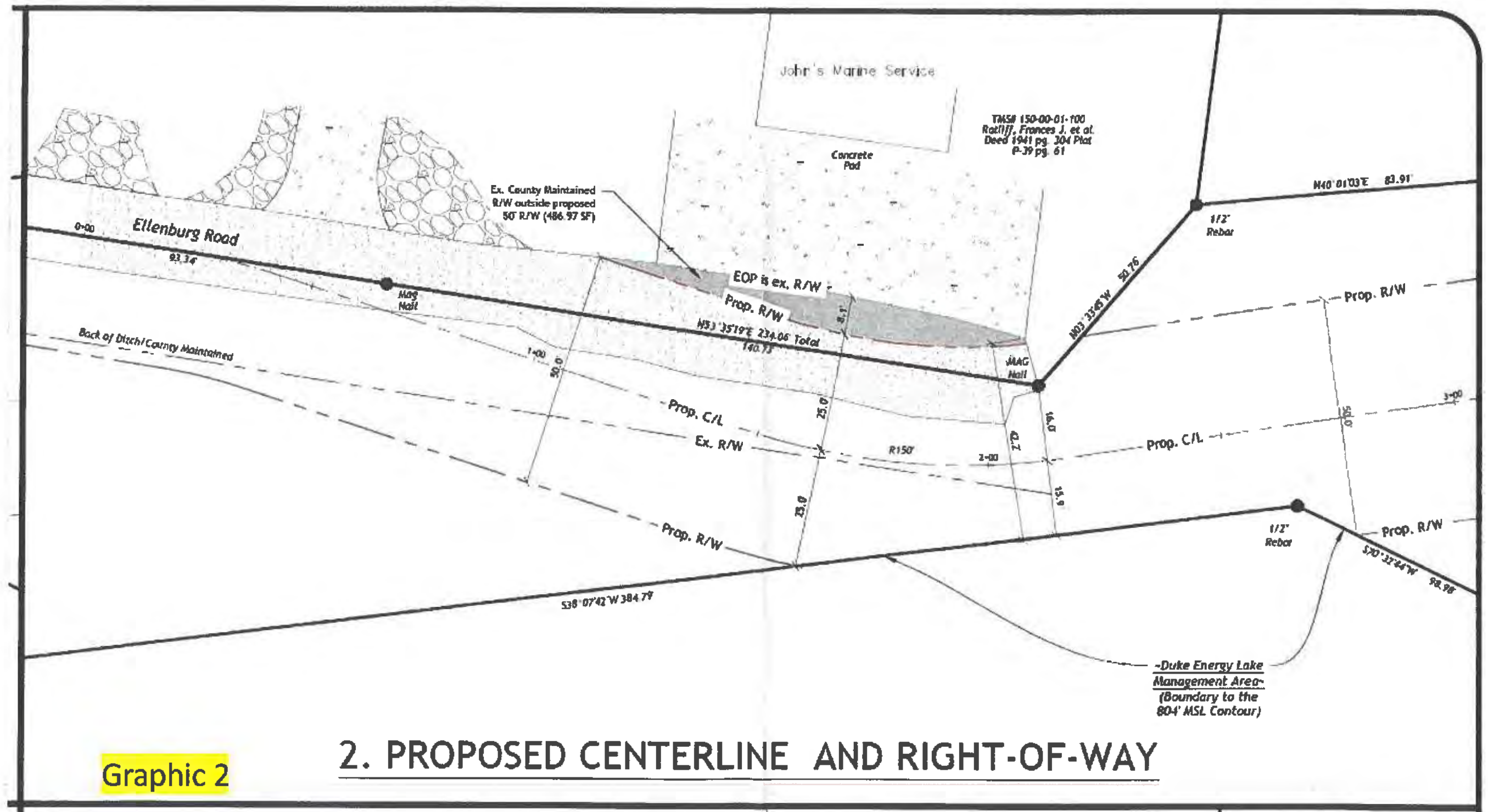


Graphic 1

1. EXISTING

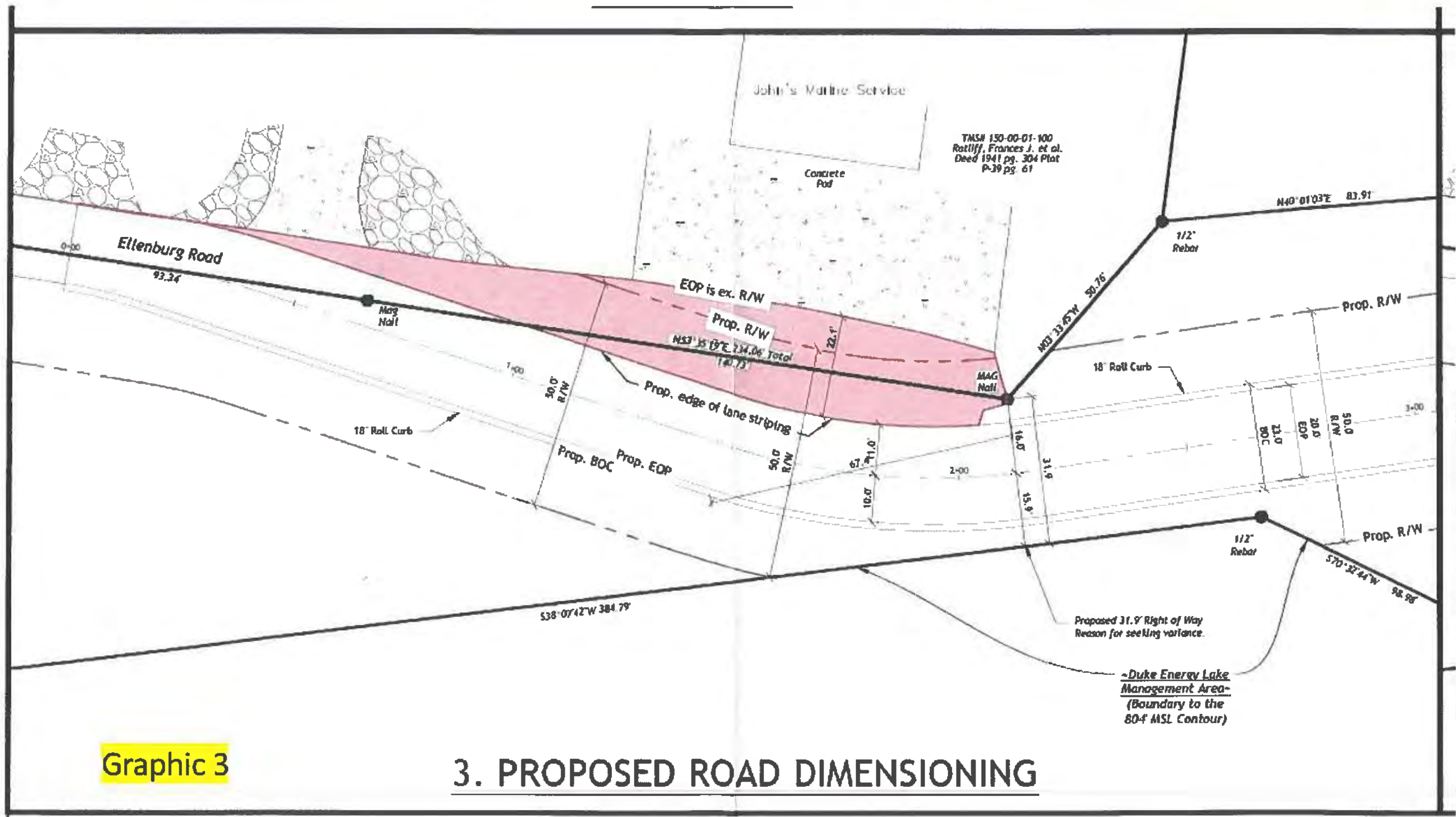
4

R-000093



Graphic 2

2. PROPOSED CENTERLINE AND RIGHT-OF-WAY

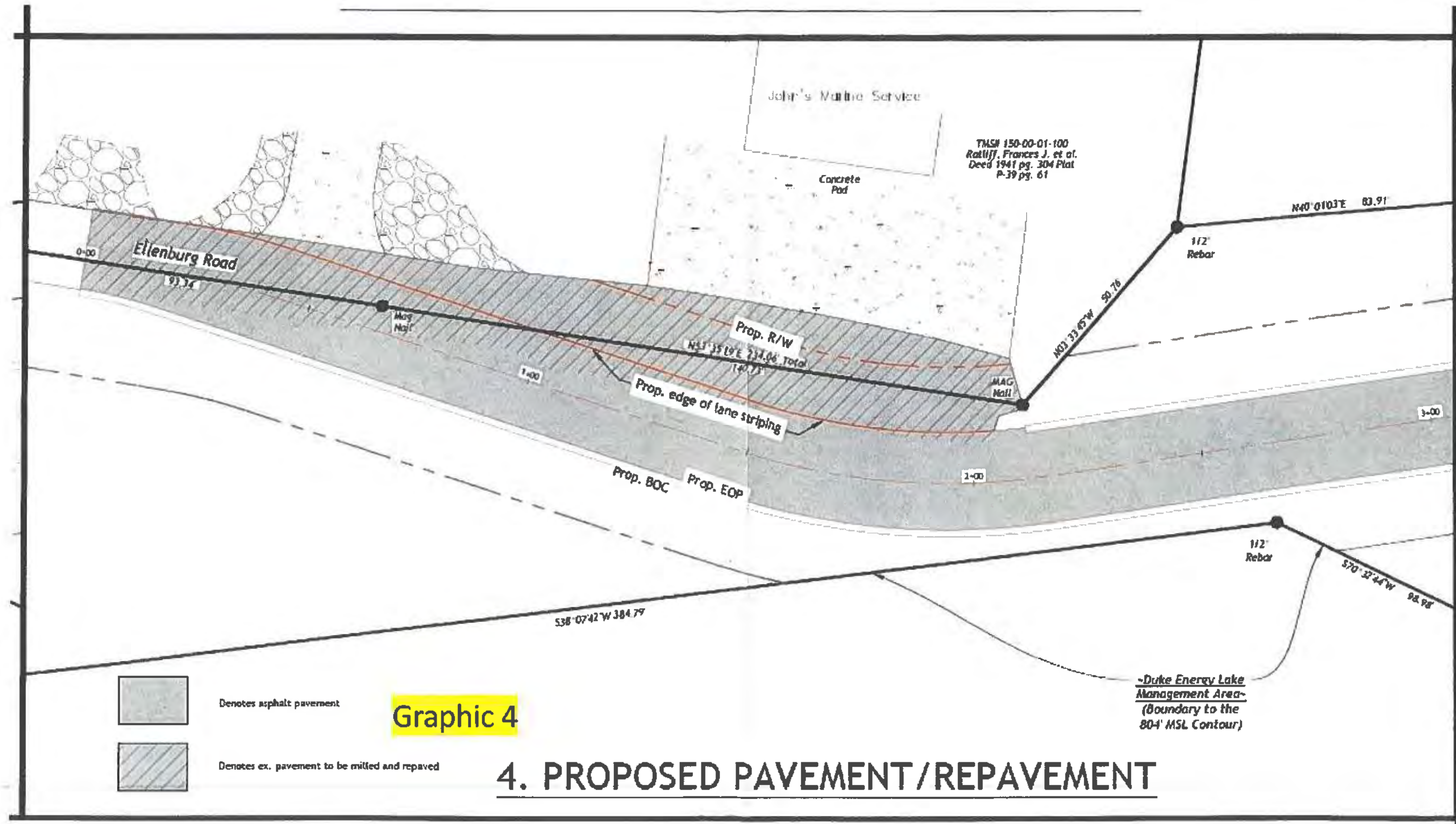


Graphic 3

3. PROPOSED ROAD DIMENSIONING

6

R-000095



7

R-000096

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



TEL (864) 638-4218 FAX (864) 638-4168

Minutes

6:00 PM – November 30, 2021

Members in Attendance

Gwen Fowler
Marty McKee
Bill Gilster
Bill Decker

Tim Mays
Jim Codner
John Eagar

Staff

James Coley
Vivian Kompier

Media

Lauren Pierce, The Journal

ITEM 1 – Call to Order – Mr. Codner called the meeting to order at 6:00 PM.

ITEM 2 – Approval of minutes of May 24, 2021 meeting – Mr. Eagar made a motion to approve; seconded by Mr. McKee. Vote 4/0 to approve, with Mr. Mays, Mr. Gilster and Mr. Decker recusing themselves.

ITEM 3 – Brief statement about rules and procedures – Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide an 8-minute presentation to state their request. Mr. Codner asked presenters not to be overly verbose.
- For the opposition to the request, the Board asked that one or two people summarize the opposition—concerns, problems, etc.
- Citizen comments – Mr. Codner asked that speakers avoid identical comments in the interest of brevity. He added that the Board has received close to 100 emails that they have reviewed and they understand the issues. It is important that everyone have their say, but asked everyone to be brief if at all possible.
- Applicant rebuttal
- Board member questions, with input from Planning Staff when requested.
- Voting

ITEM 4 – Variance request application #VA21-010: Seamon Whiteside and Associates, Inc. – Paul Talbert is requesting a variance allowing the side setback

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5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved**.
- Motion – Mr. Eagar made a motion; seconded by Mr. Decker. No discussion.
 - Vote

In-favor	Opposed
7	0

Mr. Codner noted that variance request was approved.

Item 5 – Variance request application #VA21-011: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1’ variance from the 50’ right-of-way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch-to-ditch right-of-way. TMS #150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.

Applicant’s opening statement and provision of evidence:

Reah Smith, Development Team, Lake Keowee Real Estate, spoke on behalf of the applicant for the variance. She presented evidence that the property has geographic and physical constraints that require the variance and that each of the four criterion can be met to approve the variance. Ms. Smith added that the Road Ordinance that is referenced was adopted after the property was purchased. Ms. Smith described the positive impact the variance will have on John’s Marine and the nearby County roads. Board members asked questions to clarify certain points.

Staff comments: Mr. Coley explained that the request is a road variance, not necessarily a zoning ordinance, and Planning staff have met with staff from the Roads & Bridges Department to discuss. Notable findings from the meetings include agreement that the current road right-of-way is prescriptive and ends at the pavement on either side of the road, the variance is for a section that is 100 ft. in length and 31.9 ft. at its narrowest point, and the applicant is shifting the proposed entrance south from the center of the road so that it is all on their property. Mr. Coley also noted that granting this variance would not allow construction to begin immediately. The applicant would still need Roads & Bridges’ approval for their plan to fit road shoulders, appropriate drainage, and all utilities in a narrow right-of-way. In addition, a traffic study would need to be completed as well as approvals for access and turn radiuses from Emergency Management.

Public comment time:

- Rick McDuff, Attorney, Spokesman for John’s Marine (Ratliff family), stated the opposition to the ordinance. Points of opposition included:

- The portion of the road in question is not owned by Oconee County. Ownership is split between the developer and Ratliff's, with the majority by the Ratliff's.
- The belief that the BZA has no authority to make this decision; must be decided between the two private parties.
- No evidence a prescriptive easement has been obtained by the County
- Applicant is attempting to change a contour of an easement that they are not a party to
- Negative impact on John's Marine and the Ratliff property and absence of legal remedies to address the impact

Discussion with the Board followed.

- Edward John "Jay" Ratliff, Jr., outlined the Ratliff family's opposition to the variance, the history of the business and the negative impact of the approval of the variance.

Discussion with the Board followed.

- Mike Johnson, citizen, expressed his support for the variance approval, citing the changes to the County ordinance that regulates roads and right-of-ways over the years, specifically regarding private roads.
- Maggie Johnson, citizen, spoke in support of the variance approval and property owner's right to use their property as allowed.
- Chad Knot, citizen, expressed his opposition to the variance approval noting issues with the legality of Board deciding this application, infringement of the Duke 804 line, traffic, and the impact on John's Marine.
- Chris Holder, citizen Greenville, SC, stated his opposition to the variance approval. Mr. Holder referred to the negative impact on John's Marine specific to the space needed to navigate boat trailers and traffic.
- Jon Martin, citizen, stated his opposition to the variance with concern that John's Marine will lose their business and/or Oconee County taxpayers will have to defend decision in appellate court.
- Bruce Hadley, citizen, expressed his concern that the Board has no jurisdiction over this application as the road is private land and there is no plan to allow for a similar business if John's Marine is forced out of business
- Barry Steele, citizen, expressed his opposition to the variance approval based on his concerns with erosion and limited room for tractor trailers used for deliveries.
- Doug Cooper, Harbor Oaks HOA President, expressed his opposition to the variance approval citing safety concerns with regards to increased traffic.
- Mr. Codner made a motion to take a 5-minute break, seconded by Mr. Eagar. Mr. Codner called for a vote. The motion passed unanimously 7/0
- Mr. Codner made a motion that the Board reconvene, seconded by Mr. McKee. Mr. Codner called for a vote. The motion passed unanimously 7/0
- Mr. Codner read a sample of emails submitted by the public into the record.

Applicant rebuttal: Mr. Larry Brandt, attorney for the applicant, presented a summary rebuttal to the argument against the requested variance. A question-answer session with the Board followed. Andy Lee, Developer, addressed the opposition presented during public comment specifically the size of the cul-de-sac, piece of land between the two properties, encroachment into the 804, flood plain easement with regards to the 810, existence and “ownership” of the prescriptive easement, stabilization of the shoreline, and traffic. Discussion with Board followed. Ms. Smith made closing remarks.

Board discussion: Discussion by the Board included, but was not limited to, the Board’s jurisdiction in this case considering the conflicting legal opinions of the applicant and the opposition, John’s Marine, and traffic and pedestrian safety—specifically **section 26-8 (a) Variance from road standards** of the Oconee County Ordinances. Mr. Codner made a motion to table the variance request, with the supposition directing Planning Staff answer the question of who owns the property (road), and the two parties meet and try to resolve this issue—specifically the piece of land between the two properties—coming back to the Planning Department to schedule a new hearing; seconded by Mr. McKee. Mr. Codner called for a vote. The vote was approved unanimously 7/0.

Item 6 – Adjourn

Mr. Codner asked for a motion to adjourn

Motion – Mr. Mays made a motion; seconded by Mr. Eagar

Vote – Mr. Codner called for a vote. Motion was unanimously approved 7/0.

Meeting was adjourned at 6:58 PM.

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



TEL (864) 638-4218 FAX (864) 638-4168

Minutes

6:00 PM – January 24, 2022

Members in Attendance

Gwen Fowler

Tim Mays

Jim Codner

Bill Gilster

John Eagar

Staff

James Coley, Planning Director

Vivian Kompier, Planner/Zoning Administrator

David Root, Attorney

Media

Lauren Pierce, The Journal

ITEM 1 – Call to Order – Mr. Coley called the meeting to order at 6:00 PM.

ITEM 2 – Election of officers – Mr. Coley called for nominations for Chair. Mr. Eagar made a motion that Mr. Codner continue as Chair; seconded by Mr. Gilster with no discussion. Mr. Coley called for a vote. The motion was approved 5/0. Mr. Codner called for nominations for Vice-Chair. Mr. Eagar made a motion for Ms. Fowler to serve as Vice-Chair. Ms. Fowler declined the nomination. Mr. Codner made a motion for Mr. Eagar serve as Vice-Chair; seconded by Ms. Fowler with no discussion. Mr. Codner called for a vote. The motion was approved 5/0. Mr. Codner made a motion that Mr. Coley serve as Secretary; seconded by Mr. Eagar with no discussion. Mr. Codner called for a vote. The motion was approved 5/0.

ITEM 3 – Approval of 2022 calendar – Mr. Eagar made a motion that the proposed 2022 calendar be adopted; seconded by Mr. Mays with no discussion. Mr. Codner called for a vote. The motion was approved 5/0.

ITEM 4 – Brief statement about rules and procedures – Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide a presentation to state their request.
- Staff will be asked to make any comments regarding the request.

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ELECTRONICALLY FILED - 2022 Jun 17 3:16 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

- Citizens are allowed to voice their approval or opposition to the proposed. Please do not repeat opinions that have already been stated into the record.
- Applicant rebuttal
- Board members will discuss in detail.
- Voting

ITEM 5 – Approval of minutes of November 30, 2021 meeting – Mr. Eagar made a motion to approve the November 30th minutes; Mr. Gilster seconded. Discussion: Mr. Codner noted that Mr. Ratliff sent an extensive letter pointing out issues with the minutes. Mr. Codner asked County Attorney, David Root to define and explain what minutes should provide. Mr. Root stated that minutes for public bodies are defined by statute. They should include when a meeting is held, the subject matter of the meeting, and who is present. With regards to the essence of what was spoken, the statute says minutes should capture the substance of what was said; it is not a transcript. Mr. Codner summarized that approval of the minutes would be agreement that the minutes are a fair representation of what happened in that meeting. When asked, Mr. Coley stated that he believes the minutes are a fair representation. Discussion included agreement that the proposed minutes are adequate and suggestion that all public comments, including the letter questioning the minutes, should be included with the approved minutes. Mr. Coley confirmed that as procedure, all citizen emails would be attached to the minutes as part of the record after the minutes are approved. In addition, the Ratliff letter will be attached to the minutes as well. Mr. Eagar noted the spelling of his name was incorrect in the minutes. Mr. Codner called for a vote. The motion was approved unanimously 5/0.

ITEM 6 - Variance request Continuation #VA 21-011: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1’ variance from the 50’ Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672. – Mr. Codner explained that this request is a continuation from the January meeting and the requesting and responding parties have presented their cases and all public comments have been entered into the record. Public comment was closed with the closing of the last meeting, with the exception of the letter received from Mr. Ratliff concerning the minutes. In preparation of this continuation, the Board asked staff to present a delineation of who owns the road in question and they asked the two parties to attempt to come to an agreement. Mr. Coley deferred to Mr. Root for clarification on ownership of the road. As a matter of parliamentary procedure, Mr. Root asked Mr. Codner to first take action to remove the request from the table before proceeding. Mr. Eagar made a motion to remove Variance request #VA21-011 from the table; seconded by Mr. Mays. Mr. Codner called for a vote. The motion was approved 5/0.

Mr. Root explained that there is no question on who owns the rights to the land underneath the road. The question at hand is the traveling surface of the road. Records show that Oconee County Roads & Bridges maintained the road to the end of the paved section for 20 years (the requirement for a prescriptive easement). However, Mr. Root has recently received affidavits that questioned his findings and he needs more time to research the facts.

Board questions: Mr. Root answered questions from members of the Board regarding the definition of the term prescriptive easement, clarifying the County's authority to approve or deny a request to change the location of a road (prescriptive easement), if and how right-of-ways should be considered, and clarification of the need for permit approval in the future.

Mr. Codner summarized the actions the Board can take at this juncture. Based on his conversations with the legal counsel for both parties, Mr. Root stated that a postponement may be in order. Attorneys for the applicant and the opposing party agreed. Mr. Eagar made a motion to postpone the request until the applicant asked for it to be reinstated on the BZA agenda; Mr. Gilster seconded the motion. Discussion led to amending the motion on the table. Mr. Codner amended the motion to limit the postponement for a total of six months. Mr. Codner called for a vote of motion as amended. The motion was approved 5/0.

ITEM #7 - Variance application #VA 21-012A: Variance allowing the side setback for lot lines dividing attached single family units to be reduced to zero feet thus allowing the construction of individually-platted, attached single family units. Variance application VA21-012B: 27' Variance from the 50' road right of way to allow for the new townhomes to be consistent with the existing townhomes. Resideum, LLC – Greg Kurzner is requesting these variances. TMS# 257-00-02-008 an unaddressed parcel with the closest address of 304 Breakwater Lane, Seneca, SC 29678.

Applicant's opening statement and provision of evidence: Greg Kurzner, Managing Member of Resideum LLC, presented their answers to the four questions on the Variance application, noting that they are trying to complete the development of a previously approved community in the fashion, consistent with the existing individually platted for sale units and to protect the integrity and investment of the current homeowners. He also noted that the required 50' road right-of-way was not in place at the time the development was originally designed, permitted and built.

Public Comment:

- Gary Moss, citizen, requested more information on how approval of the variance will affect the established homes off Shiloh Road.

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



TEL (864) 638-4218 FAX (864) 638-4168

Minutes

6:00 PM – April 25, 2022

Members in Attendance

Tim Mays
Marty Mckee
John Eagar

Bill Gilster
Jim Codner

Staff

David Root, County Attorney
James Coley, Planning Director
Vivian Kompier, Senior Planner
Kyle Reid, Roads and Bridges

Media

Lauren Pierce, The Journal

ITEM 1 – Call to order – Mr. Codner called the meeting to order at 6:00 PM.

ITEM 2 – Brief statement about rules and procedures – Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide a presentation to state their request (5 minutes).
- Staff will be asked to make any comments regarding the request.
- The public is allowed to voice their approval or opposition to the proposed. Please do not repeat opinions that have already been stated into the record (3-5 minutes).
- Applicant rebuttal
- Board members will discuss in detail.
- Voting

ITEM 3 – Approval of minutes from February 28, 2022 – Mr. Eagar made a motion to approve the minutes from February 28th; seconded by Mr. Mays Discussion – none. Mr. Codner called for a vote. The motion passed 5/0,

ITEM 4 – Special exception application #SE22-003 – Faulk & Foster – Victoria Farmer is requesting a special exception to construct a 172' monopole telecommunications tower (182' top of lightning rod) TMS#285-00-05-001 an

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3. Suitable for the property in question, and designed, constructed, operated, and maintained so as to be in harmony with appropriate in appearance to the existing or intended character of the general vicinity:

- a. Motion – Mr. Eagar made a motion in the affirmative, seconded by Mr. Mays. A brief discussion followed.
- b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

4. Suitable in terms of effects on highway traffic, parking and safety with adequate access arrangements to protect streets from undue congestion and hazards.

- a. Motion – Mr. Eagar made a motion in the affirmative; seconded by Mr. Mckee. A brief discussion followed.
- b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed special exception be **approved with the following condition: No Outside Boarding, pet runs, outside kennels, pet daycare.**

- a. Motion – Mr. Eagar made a motion; seconded by Mr. Mays. No discussion.
- b. Vote

In-favor	Opposed
5	0

ITEM 5 – Variance application #VA 21-011-Continuation from 1/24/2022 BZA hearing postponement: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.

Applicant's opening statement and provision of evidence: Ms. Smith noted that the applicant has made attempts to reach a resolution with the Ratliff's, and have reached an been unable to resolve the issue, and are coming back to the board for a decision. She believes that they meet the criteria for the variance. The geography and topography

limit the development of the property. The lake is an additional factor limiting the applicant's ability to develop the property. It is the applicants position that the ordinance is overly restrictive and granting of the variance will not negatively impact the adjacent property owners. Ms. Smith detailed the applicant's roadway design.

Staff comments and Board questions:

- Mr. Root stated the County position that the road is under a prescriptive easement based on institutional knowledge, but that the affidavits presented call that into question.
- Mr. Reid explained the road surface area, and the right-of-way. Right-of-way is additional space for maintenance, utility, drainage, widening. Mr. Reid explained that there is no record that the property was ever turned over to the property owners. To the best knowledge of the County staff, the road was originally a state road, that the County assumed responsibility for after the creation of the lake. Neither the state nor the County have documentation relating to Ellenburg Road. Mr. Reid also contacted Crescent to see if they had any documentation, and they did not.

Public Comment:

- Rick McDuff- The BZA does not have authority to make this decision. The Ratliff family has paved and maintained the end of the road. There is no evidence of County maintenance on the road. Institutional knowledge is not the basis for changing the proposed course of the road.
- Ken Charles- concerned about fire safety, against the variance
- Jay Ratliff- Mr. Ratliff stated his qualifications, he showed a drawing he overlayed with boats, trucks, and use of the property. Mr. Ratliff showed his revised right-of-way drawings. The family believes there will be a negative impact on the family business. The board asked about usage of the road for the business and discussion about the impacts of the variance. Mr. Ratliff confirmed that they have not been able to reach resolution. Mr. Ratliff is concerned the board is using economic interests as justification.
- Larry Brandt- The Ratliff plats and deeds show public right-of-way. Ellenburg is a public road and cannot be abandoned without following proper procedures. The applicant is willing to deed property to the Ratliff's to maintain access to the road.
- John Richardson- against, the unique property should be protected.
- Doug Cooper- Mr. Cooper thanked the board for allowing additional public comment. The developer has placed filled on the site. Mr. Cooper believes the developer has indicated they have permission from Duke, but they actually have not. Mr. Cooper believes the County does not maintain the end of the road. Mr. Cooper believes the 50' right-of-way was in effect when the property was purchased.
- Bruce Dew- against, variance is a problem for the business.

- Serena Richardson- road is dangerous and narrow. Ms. Richardson believes illegal fill has been added to the property. Ms. Richardson believes emergency services will not be able to access the property. Ms. Richardson is concerned that locals are not being looked after, and that investors are being prioritized.
- Chris Leonard- against
- Lucretia Morgan- Ms. Morgan stated issues with statements made by Mr. Johnson at the November 2021 meeting regarding this variance. Ms. Morgan provided copies of minutes from a 2006 County Council meeting where 50' right-of-way requirements for subdivisions were in place (see exhibit 2). Ms. Morgan stated in addition, dating back to 2000, Ordinance 99-14 Section 6.7.3 Private Roads, the 50' ROW was in place. On August 1, 2000 John Hamrick attended the county council meeting to discuss proposed changes to Ordinance 99-14 and was in opposition to the way property would have to be divided under the proposed subdivision regulations (Exhibit 1). Ms. Morgan provided the deeds proving the home size statements made by the developer were inaccurate. Ms. Morgan stated the developer needs the Ratliff's in order to make their plan work. Ms. Morgan stated that a variance cannot be approved based on only profitability per Oconee County Code of Ordinances Section 32-5. Ms. Morgan is opposed to granting the variance.

Applicant rebuttal: Mr. Andy Lee stated the plats along Ellenburg show the right-of-way. Mr. Lee stated the road standards have changed over the years and that roads have widened as standards have improved. Mr. Lee stated the County repaved the bad part of the road and left the remainder due to where the previous construction took place. Mr. Lee stated the portion at the end of the road could not have been abandonment as described opposition. Mr. Lee stated he does not need Duke's permission to develop. Mr. Lee reviewed the need for the variance.

Board questions for Staff:

- Mr. Root clarified that the board has the ability to make a decision.
- Mr. Reid clarified that the 200 average daily trips number was not an official estimation, and was a general statement to a question. He confirmed that a professional traffic study would be required for this development. Mr. Reid stated the work on the upper section of the road was done after construction and was a large patch job where the road was crumbling.
- Mr. Coley confirmed that Emergency Management will review turn abounds
- Mr. Reid confirmed that the Road paving on Ellenburg was at the direction of the County Engineer.

Mr. Codner made a Motion to take a 10-minute break seconded by Mr. Mays, motion passed 5-0

Mr. Codner called the meeting back to order at 7:55 pm

Board Discussion:

- Mr. Eagar the board should make a decision
- Mr. Mays the applicant still has a lot of other requirements
- Mr. Codner, the narrow point in on the applicant's property
- Mr. McKee who will do the work on the road- the developer will be responsible to road construction
- Mr. Root discussed road abandonment
- A traffic study is required for road width determination
- Safety is paramount
- Mr. Codner everyone wants John's Marine to stay
- Discussion of use of the road as part of the business
- Discussion of if there is more space for John's Marine after the new road is constructed.
- Duke power issues are not applicable to this discussion
- County roads are not built to accommodate pedestrian traffic
- This is not being evaluated based on economic impacts
- Safety is the primary review criteria
- Mr. Coley reviewed the applicant had reached out for a decision by the Board after attempting to reach a resolution
- Discussion regarding conditions

Consideration of VA21-011:

1. There **are** extraordinary and exceptional conditions pertaining to the particular piece of property:
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
 - b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

2. These conditions **do not** generally apply to other property in the vicinity:
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. McKee. No discussion.
 - b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property **would** effectively prohibit or unreasonably restrict the utilization of the property; and

a. Motion – Mr. Eagar made a motion, seconded by Mr. May. Brief discussion followed.

b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

4. The authorization of a variance **will not** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

a. Motion – Mr. Eagar made a motion; seconded by Mr. May. Discussion- does this harm John's Marine? Will the impact have severe impacts? Discussion- does this harm John's Marine? Will the impact have severe impacts?

b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved**.

a. Motion – Mr. Eagar made a motion; seconded by Mr. Mays. Vote. No Discussion

In-favor	Opposed
5	0

Mr. Codner noted that variance request was **approved** with the following conditions:

Order approved subject to proper abandonment procedures, compliance with all ordinances and state law on acceptance into the County roadway system. Developer grant/ deed John's Marine property so that there is reasonable, unimpeded access to the new road.

Item 6 Adjourn – Mr. Eagar made a motion to adjourn; seconded by Mays. Mr. Codner called for a vote. Motion passed unanimously 5/0.

415 South Pine Street - Walhalla, SC



TEL (864) 638-4218 FAX (864) 638-4168

Staff Opinion

BZA #VA21-011 Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive “ditch to ditch” right-of-way. TMS # 150-00-01-459 is an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672

Applicant has requested a variance from the road standards under Sec 26-8 of the Oconee County Code of Ordinances. They have requested the variance from Sec 26-3(e)(1) Public Road Minimum right-of-way, pavement, and shoulder width shall be as follows: minor local 50' right-of way.

The applicant is connecting to the existing Ellenburg Rd, a county road, with a new road to develop land past the end of the existing road. Their design as presented would shift the road to the south, establishing a new road layout with curb and gutter on the south side of the road and curb and gutter on both sides past the end of the current road.

- Currently the road right-of-way is prescriptive and ends at the edge of pavement.
- The right-of way request is for a section of the road approximately 100 foot in length with a varying width, which at its narrowest is 31.9 foot
- Sketch is shifting the road to the applicant's side of the property line.

The applicant has meet with the Roads and Bridges Department (notes attached at the end), and based on the initial conversation the Department does not believe that the relocation of the road would have an adverse effect of road maintenance. If the variance is approved they would still need to show the ability to place the road, shoulders, drainage, and utilities in the proposed, narrowed, right-of-way, would need to have a traffic study completed, and would need approvals on access and turning radius with emergency management.

James L. Ratliff, Owner/Operator
John's Marine Service
599 Ellenburg Road
Seneca, SC 29672
November, 22 2021

Jim Codner, Chairman
Oconee County Board of Zoning Appeals
415 South Pine Street
Walhalla, SC 29691

LETTER of OPPOSITION to Variance request application #VA 21-011 – TMS #150-00-01-459 an
unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672

Dear Mr. Codner,

My family and I are in opposition to the development of the proposed 19-home subdivision as presented on the sketch prepared by Ridgewater Engineering & Surveying. My father (John Ratliff) started John's Marine Service to serve boaters on Lake Keowee in 1972. In 1982, he opened his shop at 599 Ellenburg Road which borders TMS #150-00-01-459, the unaddressed parcel in the variance request application. I now own and operate the repair shop and my son is also learning the trade. The unaddressed parcel was purchased in 2008 by GLOBE, LLC & FARMES, LLC (agent John Hamrick). At that time, I was starting to operate the business because my father was diagnosed with Alzheimer's. John Hamrick approached my father multiple times attempting to negotiate with him to sell his property. Fortunately for my family, my father did not sell. Prior to my father passing away, I became the owner of the business to support my parents and my family. This business is our livelihood and the means of support for my family for approximately four decades at the present location.

The proposed development, which is titled "Arrowhead Point" on the sketch plan attached to the variance request application, will have a detrimental and crippling impact to my business and property. The area directly adjoining the 31.9-foot bottleneck is my repair shop. In addition to the bottleneck, yesterday a sketch was added to the meeting backup material. At first glance, it appeared that this will not hinder my business, however upon further examination, he is proposing to take part of my property for his much-needed county right-of-way. The sketch contains a proposed re-pavement and an added county right-of-way which will hinder access for me to utilize my property per Oconee County Code of Ordinance 26-7.f.1. This ordinance prohibits parking within 3-feet of the pavement. Traffic in this area will directly impact my ability to operate the marine service business. Customers typically deliver their boats by trailer and they routinely need assistance with backing and parking their boats. I routinely back boats from the front of my property multiple times daily. When pulling boats out on the ramp or maneuvering them on land, a wide turning radius is needed. We must use all of our property to make

the turn and back down the road into the shop or onto the ramp for lake-testing. Since we are on a dead-end road, there have been no issues with operation since the shop was built almost 40 years ago in 1982. Creating a bottleneck directly in this path with the size of the planned development will create a dangerous situation for my business and the public. Traffic from the residential and proposed rental homes will also remain a hazard, not only for my business and customers but also the surrounding public and neighbors walking and bicycling on Ellenburg Road. When the owner purchased this parcel in 2008, he was aware of the shop's existence and the impact to the public. This proposed variance will have a crippling impact on my customer's ability to deliver their boats for repair and service.

We also have a boat ramp to accommodate customers who don't own a trailer or have access to a trailer. We haul boats out of the lake using our ramp and our trailers for service and repairs. Disabled boats are often towed to our docks by water to have emergency repairs performed.

Beyond the boat service business that my father created and I have sustained, we perform various deeds for the good of the general public. Over the years, we rescued families who were lost or stranded on the lake. We assisted boaters who've had engine fires and those with sinking boats. Due to our shop's central location on Lake Keowee, it gives us quick access to assist distressed boaters. Our long-standing reputation in the community enables people to have us on "speed-dial" to handle emergency situations. Once while lake testing a boat, I was flagged to the county park for emergency response to a distressed family. I went closer and learned a person went under and did not resurface. I dove in the water and began an underwater search. After several free dives, I found the victim on the bottom of the lake and I pulled him to shore. Unfortunately, the outcome was not positive, and the individual did not survive. For my service, Oconee County honored me with recognition at a county council meeting for my emergency response (Proclamation P2012-06). I only wish it would have been for saving a life. The public good has been served by our business for almost 40 years and many boaters stand ready to give statements of support to its continued operation.

After obtaining the variance application #VA 21-011 via a Freedom of Information Act request and reviewing the applicant's response to the fourth question, it was disingenuous of the applicant to assert that "no detriment will be created to the adjacent uses or the public good" given that my boat service business is directly adjacent, has been in operation since 1982 and it is obvious that it will be impacted. As a former Crescent developer, the buyer of TMS #150-00-01-459 the unaddressed parcel, knew what he was purchasing and the detrimental impact it would have on my adjacent business, my livelihood, my family and the public. The unaddressed parcel was purchased with inadequate entry for the size of the planned development and the owner is now asking for a variance that will have a substantial detriment to me, the adjacent user, and a substantial detriment to the public good.

As the Zoning and Appeals Board evaluates the variance application #VA 21-011, below are our responses.

Application Responses to Section 38-7.1:

Question 2:

Are the circumstances affecting the subject property the result of actions by the applicant/owner?

Response:

The applicant/owner purchased this property knowing that the direct access to their parcel was much less than 31.9-foot width at its narrowest point. County maintenance on Ellenburg Road

has been established at 585 Ellenburg (adjacent property up the road from 599 Ellenburg Road) for decades. John's Marine has owned and maintained the property between 585 Ellenburg and the unaddressed parcel described as Arrowhead Point since the shop was built in 1982 as a private road. On July 31, 2021, we noticed construction activities were performed without our knowledge or consent to backfill portions of the property between 599 Ellenburg Road and the Lake Keowee full pond FERC boundary and possibly below the FERC boundary. We approached the vehicles to inquire as to who authorized this activity. Their response was that they didn't know and they produced no documentation. These activities appear to create the condition for seeking a variance for less footage than would otherwise be needed for the 50-foot county ordinance. Video evidence of the backfill activities is available upon request.

Question 4:

Will the proposed variance result in an activity that will not be of substantial detriment to the adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance?

Response:

Granting this variance will have a substantial detriment to the adjacent uses by John's Marine Service, the marine service customers, the general public, and the Ratliff family. These uses have been in place for over 40 years and are for the good of the public. The granting of this variance will in essence put John's Marine Service out of business. As aforementioned, for John's Marine to properly and safely service boats, a wide swath of land is necessary for boats to be maneuvered safely, stored on the property while being repaired and have access to the ramp for lake testing. Storage of disabled boats has been paramount to my business to enable John's Marine to diagnose and repair the issues. The central location of John's Marine on Lake Keowee has allowed me to be of service in emergent situations, where at a moment's notice, I can respond to people in distress in their boats on the lake. My son and I hope to continue to provide service for the next half of a century on Lake Keowee.

Granting this variance will also have a substantial detriment to the public good for safety reasons. Ellenburg Road is a quiet road without much car traffic and the surrounding community love and respect John's Marine. The unexpected increase in car traffic on Ellenburg Road from the size of the development that is being proposed will create safety issues for the surrounding property owners who are accustomed to walking their dogs, riding their bikes and have been for 40 years.

Of additional, significant concern is the potential fire safety hazards from a roadway not suitable to meet the size of the residential development that is being proposed. The small direct access will impact the ability of emergency vehicles for emergency response.

Obviously, if the variance is granted, the construction to expand the roadway will be very impactful to my business as it will be difficult to maneuver boats efficiently and safely and it will create a substantial business interruption.

My family and I request the board deny Variance Request Application #VA 21-011 due to the impacts on my business, the good of the public, and my family. We desire to continue serving the public by owning and operating John's Marine as we have for the past 49 years, of which 40 years have been at its present location.

Sincerely,



James L. Ratliff
Owner/Operator John's Marine Service

Distribution:

Impacted property owners of 599 Ellenburg Road:

Frances J Ratliff
Sherri D Akers
Amy L Cawthon
Edward John Ratliff Jr.
James L Ratliff

Board of Zoning Representatives:

Gwen Fowler
Bill Gilster
Marty McKee
Tim Mays
John Eager
William Decker

John's Marine Service
599 Ellenburg Road
Seneca, SC 29672

April 22, 2022

Board of Zoning Appeals
Mr. Codner, Chairperson
415 South Pine Street
Walhalla, SC 29691

Re: Ratliff family opposition to variance application VA21-011 (Ridgewater Engineering and Surveying TMS#150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672).

Opposition to the variance application to include:

- o Property rights and ownership of 599 Ellenburg Road (TMS#150-00-01-100).
- o Substantial detriment to adjacent property (John's Marine).

Dear Mr. Codner and Members of the Board of Zoning Appeals,

The Ratliff family requests denial of VA21-011 based on lack of resolution from the requirements outlined by the Board in the 11/30/2021 BZA meeting.

Below are the requirements on which the Applicant has failed to meet its Burden of Proof:

Property rights and ownership of 599 Ellenburg Road (TMS#150-00-01-100) includes a private driveway on the property and Applicant and County has failed to show that County has any rights over such:

- 1) Oconee County Roads and Bridges employees provided a copy of the attached Plat dated 2008 to the Ratliff family documenting the Ellenburg Road termination to the west of the Ratliff property. [Attachment 1]
- 2) The physical evidence of pavement transition and road striping are consistent with the documentation dated 2008 provided to the Ratliff family where the road terminates to the west of the Ratliff property. [Attachment 2]
- 3) When the lake was built, the County terminated Ellenburg Road to the west of the Ratliff property line and the Ratliff family has maintained our property with a private driveway serving Jan Ratliff's private residence and John's Marine for over 40 years.
- 4) The County has not performed maintenance on the private driveway and/or Ratliff property and the County has not offered any evidence of maintenance.
- 5) Laurie Ellenburg Bright has provided an affidavit of the termination of Ellenburg Road as evidenced by the End of County Maintenance sign. Laurie resided on Ellenburg Road adjacent to the Ratliff property for a period of 40 years. She is a current resident of Oconee County. [Attachment 3]
- 6) There are no restrictions, easements, or right of ways on the Ratliff property from the property lines on the Deed and Plat. [Attachment 4 and 5]
- 7) The Ratliff family has maintained both sides of the private driveway for over 40 years.
- 8) Oconee County does not have a prescriptive easement over 599 Ellenburg Road and the private driveway.

9) Oconee County has no jurisdiction to issue a variance over a private driveway.

Substantial detriment to adjacent property (John's Marine) remains and Applicant has failed to show otherwise:

- 1) There will be a crippling, substantial detrimental impact of the variance on John's Marine business. [Attachment 6]
- 2) There would be substantial detriment to John's Marine, preventing the ability to maneuver, park and service boats/trailers, in addition to severely limiting maneuvering by delivery trucks who bring in large motors, and equipment for boat repair. [Attachment 7]
- 3) The service business requires maneuvering boats and large trailers on the Ratliff property. [Attachment 7]
- 4) John's Marine uses the entire private driveway to pull boats out of the water, to put boats into the water, to maneuver boats into the shop for repair, to park boats and to maneuver trailers. [Attachment 7]
- 5) A large number of boats are frequently maneuvered on Ratliff property. [Attachment 7]
- 6) Boats that arrive by water need to be put onto a trailer, pulled from the water, and maneuvered into the shop for repair utilizing the private driveway in front of the shop.
- 7) The variance would permit the developer to change the current road from a private driveway to a private road or public road. This change would allow much more vehicle traffic (~200 cars per day as represented by Oconee County Roads and Bridges) which will prevent John's Marine from using the private driveway to maneuver and service boats as they have been doing for over 40 years in a very narrow stretch of land. This coupling of residential traffic and commercial traffic will be a disaster. [Attachments 8, 9 and 10]
- 8) There would be a substantial detriment to the health and safety of the public with approval of this variance with ~200 additional cars per day on a narrow road.

In conclusion, the Oconee County BZA does not have the authority to take Ratliff property. The applicant has failed to meet the burden of proof for criterion #4 (...substantial determinant to adjacent uses...).

The Oconee County BZA is encouraged to acknowledge these facts and vote against the variance.

We appreciate your consideration in this matter, and we will attend the BZA meeting on 4/25/2022 to continue to represent the Ratliff position.

Thank you,



Jimmy Ratliff
John's Marine Service

cc: Edward (Jay) Ratliff Jr.

Sherri D. Crisp

Amy L. Cawthon

Frances J. Ratliff

County Council members:

John Elliot, Chair

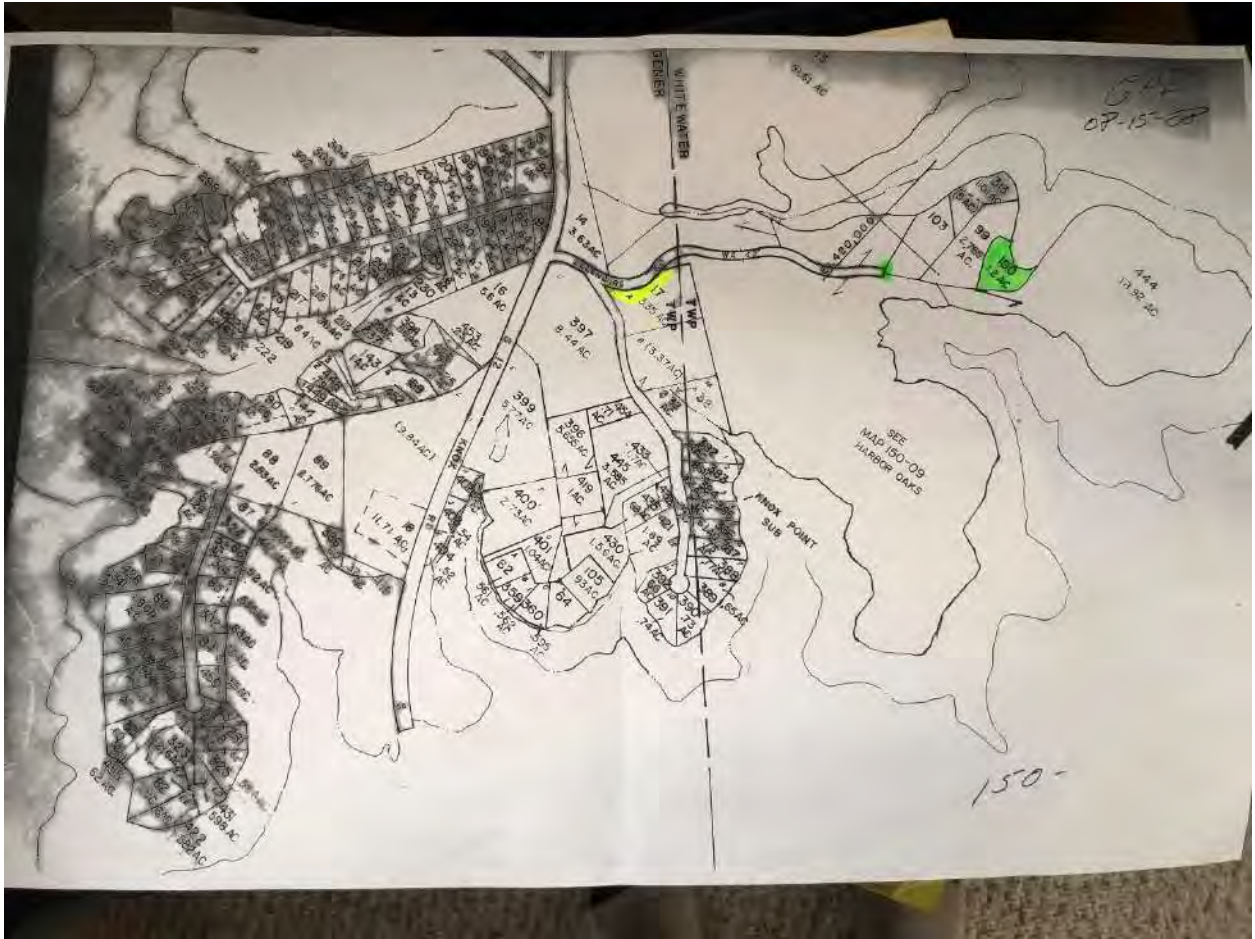
Julian Davis III

Matthew Durham

James Glenn Hart

Paul A. Cain, Esq.

Attachment #1 (Map of end of county maintenance provided to the Ratliff family in 2008):



Attachment 2 (Physical evidence of road termination):



Attachment 3 (Ellenburg affidavit End of County Maintenance)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)

AFFIDAVIT OF LAURIE ELLENBURG BRIGHT

BEFORE ME appeared, Laurie Ellenburg Bright, who deposes and says:

1. I reside at 178 Madison Pointe Drive, Seneca, South Carolina, 29678 and have personal knowledge of the matter set forth herein.
2. Prior to moving to my current residence in March 2021, I resided at 591 Ellenburg Road, Seneca, South Carolina 29672.
3. I grew up/resided at 591 Ellenburg Road for a period of 40 years. Intermittently, I left Ellenburg Road from 1995-2002.
4. I am the grand-daughter of T.B. Ellenburg, the original owner of the property who sold a portion of his farmland for the creation of Lake Keowee.
5. My grandfather, T.B., was given naming rights for the road and he chose to name it Ellenburg Road.
6. After the creation of Lake Keowee, I recall an "End of County Maintenance" sign between 575 Ellenburg Road and 585 Ellenburg Road. I drove past this "End of County Maintenance" sign for years. This "End of County Maintenance" sign was located near a bathtub that my grandfather used to water his cattle.

FURTHER AFFIANT SAYETH NAUGHT.

Laurie Ellenburg Bright
 LAURIE ELLENBURG BRIGHT

SWORN to before me this 21st day of April, 2022.

James E. Moore
 Print Name: JAMES E. MOORE
 Notary Public for State of S.C.
 My Commission Expires: 7-24-2025

14-I Page 102

State of South Carolina
County of Oconee

TITLE TO REAL ESTATE

County Doc. Tax is not
of \$55.00 collected

RECORDED
ROY D. HAROLD
MAY 07 1981
CLERK OF COURT
OCONEE COUNTY, S. C.

Know All Men By These Presents, That we, Jennings Dewey Burton and Nancy R. Bearden Burton, formerly Nancy R. Bearden,

in the State of South Carolina, for and in consideration of the sum of \$10.00 and other considerations to us paid by Edward J. Ratliff and Frances J. Ratliff in the State of South Carolina, have granted, conveyed, sold and released, and by these presents do grant, convey, sell and release unto the said Edward J. Ratliff and Frances J. Ratliff, their heirs and assigns forever:

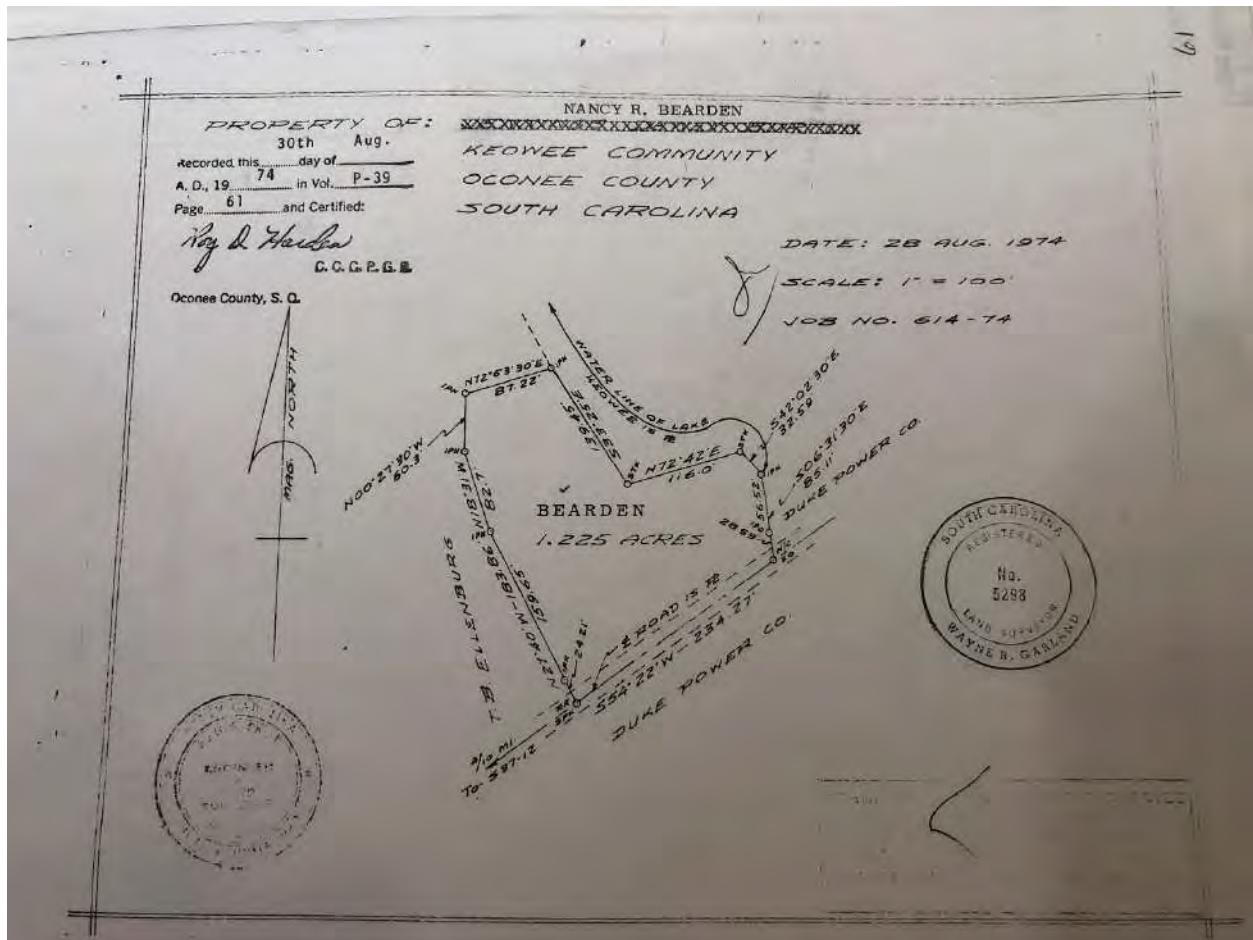
All that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Oconee, Keowee District, containing 1.225 acres, more or less, shown on plat thereof by Schneider Engineering Service dated 8/18/74 and recorded in Plat Book P-39, page 61, records of Oconee County, South Carolina.

This being the identical property conveyed unto Nancy R. Bearden by deed of T. B. Blankenship dated 8/10/74 and recorded in Deed Book 13-A, page 476, with a one-half interest having been conveyed to Jennings Dewey Burton by deed of Nancy R. Bearden Burton, formerly Nancy R. Bearden, by deed recorded in Deed Book 13-M, page 413, records of Oconee County, South Carolina.

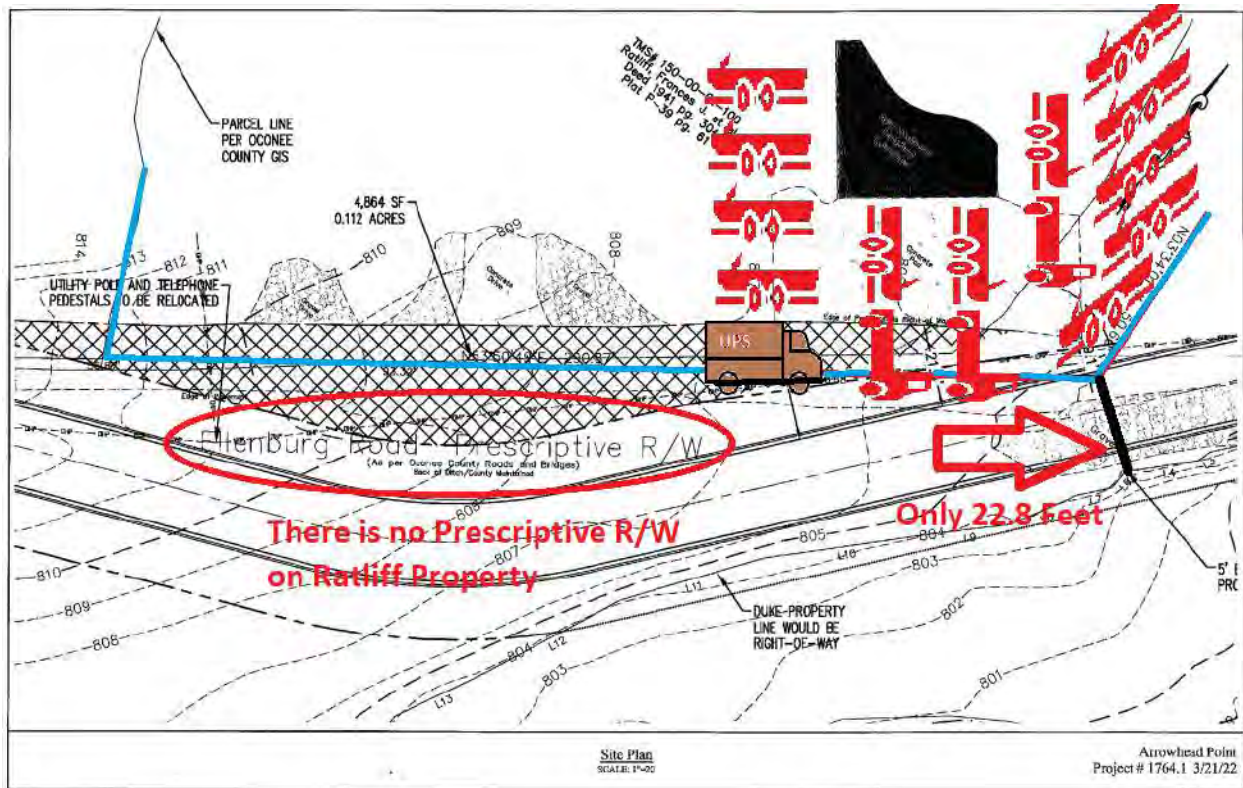
This conveyance is made subject to any easements or rights-of-way for roadways or utilities heretofore conveyed by the grantors hereto or any predecessor in title as may appear of public record or upon the ground.

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Attachment 5 (Ratliff Platt Book P-39 page 61):



Attachment 6 (Developer plan designed by Goldie and Associates):



Attachment 7 (John's Marine servicing boats on Ratliff property):

Pic #1: 20 foot pontoon being serviced



Pic #2: View standing in center of proposed 9.1 foot right of way



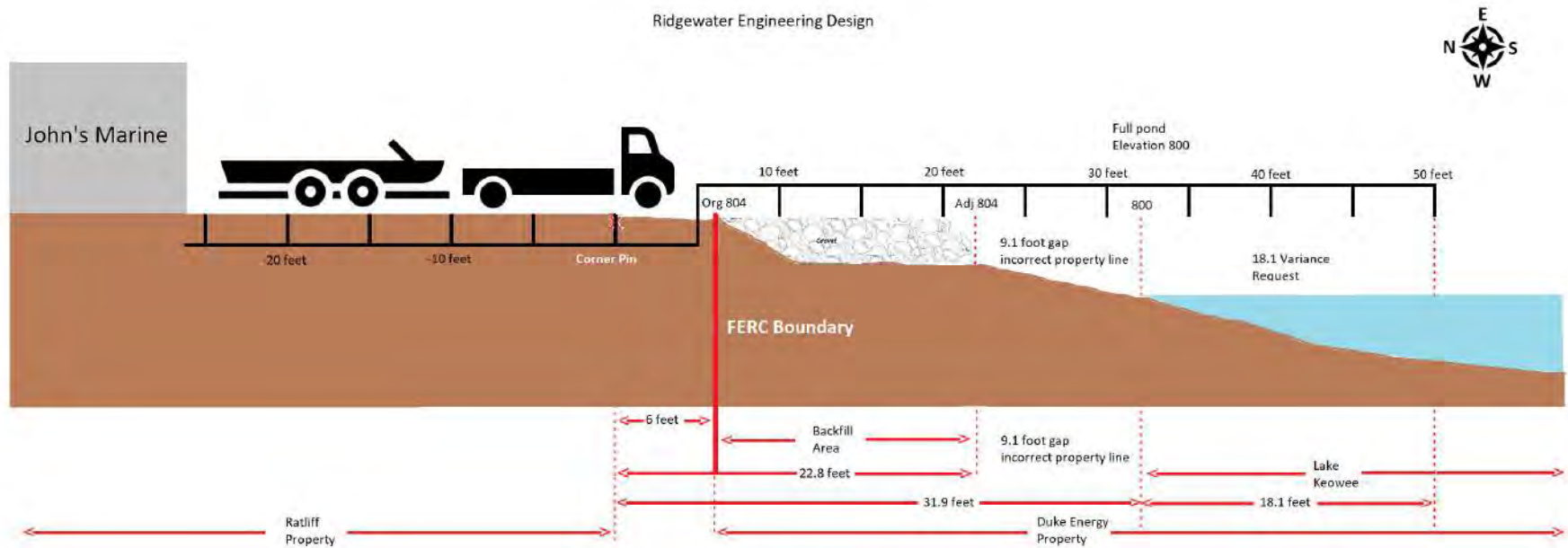
Pic #3: Customer pickup and delivery of boats.



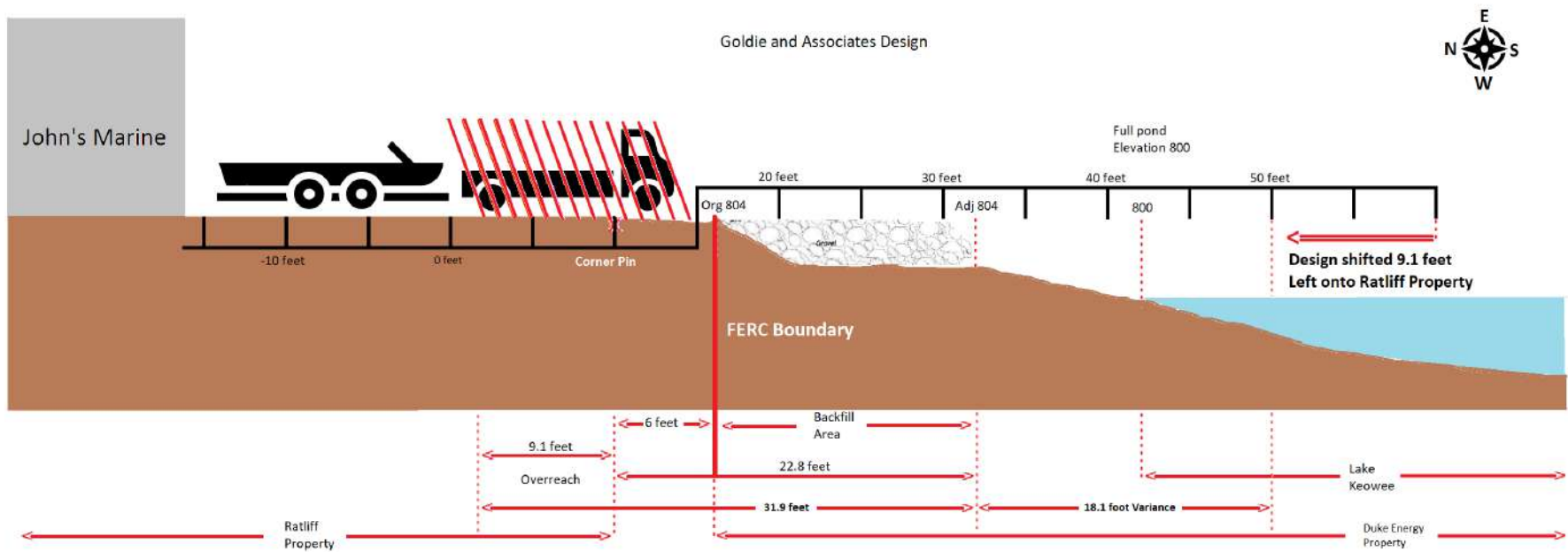
Pic #4: Google street view from 2008.



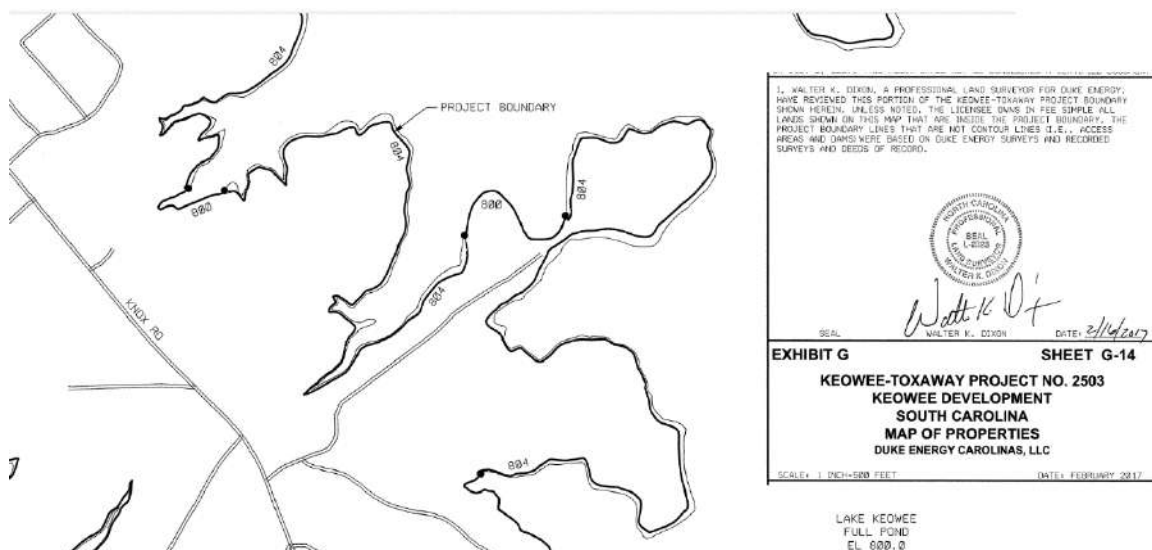
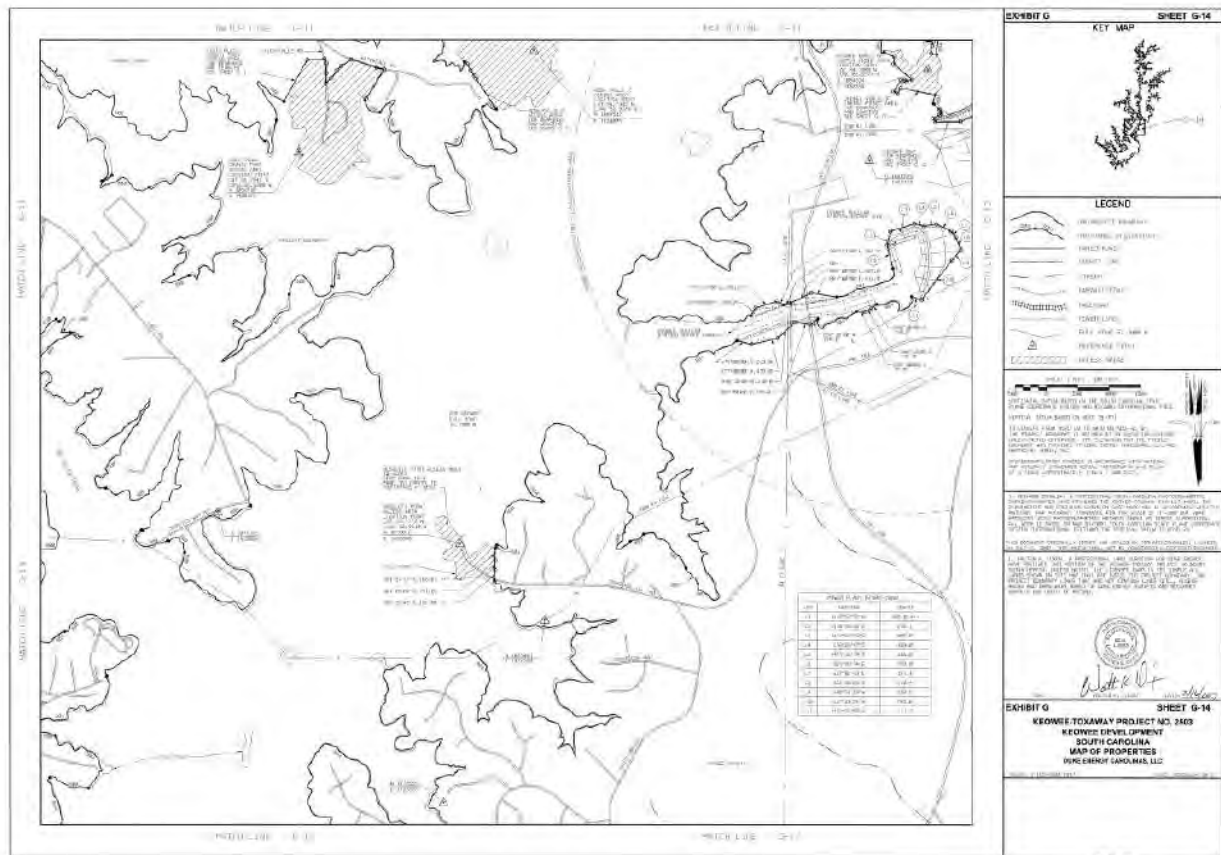
Attachment 8 (Scale diagram of Ridgewater Engineering design):



Attachment 9 (Scale diagram of Goldie and Associates design):



Attachment 10 (Project boundary map provided by Federal Energy Regulatory Commission):



STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMONS PLEAS
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	
James L. Ratliff, Lucretia B. Morgan,	)	ANSWER OF DEFENDANTS,
Sherri Akers Crisp, Amy Cawthon,	)	GLOBE, A SOUTH CAROLINA
	)	LIMITED PARTNERSHIP, AND
Plaintiffs,	)	FARMES, A SOUTH CAROLINA
v.	)	LIMITED PARTNERSHIP
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farnes, A South	)	
Carolina Limited Partnership,	)	
	)	Case No.: 2022-CP-37-00447
Defendants.	)	
_____	)	

Defendants, Globe, A South Carolina Limited Partnership, and Farnes, A South Carolina Limited Partnership, answering the Plaintiffs' Complaint for Declaratory Judgment would respectfully show unto the Court:

1. Any and all allegations contained in the Complaint not specifically admitted, modified, or otherwise explained are emphatically denied.

INTRODUCTION

2. Defendants admit that Plaintiffs own land located at 585 Ellenburg Road and 599 Ellenburg Road in Oconee County, South Carolina, but deny that Plaintiffs own a driveway that dead ends at the eastern end of 599 Ellenburg Road. It is admitted that Ellenburg Road is partially on Plaintiffs' property and partially on property owned by Defendant Globe, a South Carolina Limited Partnership, and Defendant Farnes, a South Carolina Limited Partnership, with the boundary line between the properties being

approximately in the middle of the public roadway known as Ellenburg Road. Defendants, furthermore, deny the Plaintiffs' claim that their heirs or predecessors in title paved the subject roadway in the mid-1980s and deny the Ratliff Family has maintained that roadway for forty years as private property as there is more than ample evidence that shows otherwise; therefore, Defendants emphatically deny same and demand strict proof thereof. Further answering, the Defendants would show that the public roadway alluded to as a private driveway by Plaintiffs is commonly known as Ellenburg Road and is denoted on the records of Oconee County as roadway number WA-42. Plaintiffs admit that Ellenburg Road does serve the patrons of John's Marine Service, Inc. which has been located on 599 Ellenburg Road for quite some time. It is admitted that Oconee County has no written easements of record over the public roadway alluded to by the Plaintiffs as a private driveway; however, Defendants deny that Oconee County has never performed road maintenance on any portion of Ellenburg Road. It is admitted that on April 25, 2022, the Oconee County Board of Zoning Appeals (the "BOZA") granted a road variance application, but it is denied that it was premised on an erroneous conclusion that Oconee County has a prescriptive easement over the private driveway, and, in fact, will show that the evidence produced at the hearing shows that Oconee County has maintained the roadway to the end of the pavement at Defendants' boundary line at the end of the public roadway for years and is vested in the roadway by the doctrine of prescription. Furthermore, the roadway, Ellenburg Road, has been and is shown on plats commissioned by Plaintiffs and members of the Ratliff Family as well as represented in deeds which the Ellenburg and Ratliff Family members have executed and placed of

record in Oconee County, South Carolina within the last few years denoting Ellenburg Road as a public roadway from Knox Road all the way to Defendants' boundary line. It is admitted that Plaintiffs have appealed the decision of BOZA and that this action seeks a declaration as to whether Oconee County has a prescriptive easement over the public road in question.

PARTIES, JURISDICTION, AND VENUE

3. The allegations of Paragraphs 1, 2, 3, 4, 5, 6, and 7 are admitted.

FACTUAL BACKGROUND

4. Defendants admit so much of Paragraph 8 as alleges that Edward (John) Ratliff and Francis (Jan) Ratliff purchased real property at 599 Ellenburg Road in 1981 and co-located their home on the property along with John's Marine at some point in time thereafter. All other allegations of said paragraph are denied.

5. Answering Paragraph 9, it is admitted that T.B. Ellenburg, upon information and belief, owned the property at 585 Ellenburg Road until it was sold to Plaintiffs James Ratliff and Lucretia Morgan.

6. Answering Paragraph 10, it is admitted that Oconee County paved Ellenburg Road from Knox Road to the edge of Defendants' property, but it is denied that Oconee County ever installed an "End of County Maintenance" sign where Plaintiffs allege. Further answering said paragraph, Defendants would show that the "End of County Maintenance" sign was placed by Oconee County at the end of the paved roadway at the common boundary of Plaintiffs' property and Defendants' property.

7. Answering Paragraph 11, it is denied that T.B. Ellenburg and John Ratliff, as fee owners of part of the land under the public roadway running from Knox Road all the way to the boundary of Defendants' property, maintained the road as a "private driveway" and that said private driveway dead ends at 599 Ellenburg and John's Marine. Defendants admit that the roadway referred to as a private driveway (Ellenburg Road) is partly on Plaintiffs' property (585 Ellenburg Road and 599 Ellenburg Road) and the Defendants' property but are informed and believe that the boundary line between the two is approximately the middle of the pavement that was placed there by Oconee County some years ago.

8. The allegations of Paragraph 12 are admitted.

9. Answering Paragraph 13, it is admitted that the property line for 585 Ellenburg, 599 Ellenburg, and Arrowhead Point adjoin in the paved section of the public roadway, but it is denied that the majority of same is on Plaintiffs' property.

10. Answering Paragraph 14, Defendants have no knowledge upon which to admit or deny same and, therefore, would demand strict proof thereof.

11. The allegations of Paragraphs 15, 16, 17, and 18 are denied.

12. The allegations of Paragraph 19 are admitted.

13. Answering Paragraph 20, it is admitted that on April 25, 2022, variance application #VA21-011 was before the BOZA for a hearing and vote, but it is denied that the variance application concerned a future public road that would utilize Plaintiffs' private driveway as part of the required right-of-way for the new public road. The BOZA granted the variance based on its conclusion that Oconee County has a prescriptive easement over

the private driveway. Defendants also will show that the BOZA granted the variance based on the findings in the Order that was rendered, and there was substantial evidence produced at that hearing that Oconee County maintained the paved roadway that Plaintiffs refer to as a private driveway, that it was in the County inventory of public roads, that there has never been any action taken as required by South Carolina law to close same for public use, and that the Plaintiffs and/or other members of the Ratliff Family have commissioned and placed on record plats denoting Ellenburg Road (WA-42) as a public road. It is further denied that BOZA erred in concluding that the county has a prescriptive easement over the private driveway.

14. The allegations of Paragraphs 21 and 22 are denied.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

15. Answering Paragraph 23, Defendants are informed and believe that since said paragraph merely restates by reference Paragraphs 1-22 which Defendants have fully answered, no further answer is needed for said paragraph.

16. The allegations of Paragraph 24 are admitted.

17. The allegations of Paragraphs 25, 26, 27, 28, 29, and 30 are denied.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendants, Globe, A South Carolina Limited Partnership, and Farnes, A South Carolina Limited Partnership, pray that:

- a. The Prayer for Relief of the Plaintiffs be denied;

- b. The Court should declare that Ellenburg Road is a public roadway of Oconee County from Knox Road to the boundary of Defendants' property;
- c. The Defendants be granted such other and further relief as to this Court seems just and proper.

Respectfully submitted,

s/Larry C. Brandt
Larry C. Brandt (S.C. Bar #856)
Larry C. Brandt, P.A.
P.O. Box 738
3691 Blue Ridge Blvd.
Walhalla, SC 29691
864/638-5406
lcb.brandtlawfirm@att.net

s/Andrew Holliday
Andrew K. Holliday (S.C. Bar #101754)
Derrick, Ritter, Williams & Morris P.A.
Post Office Box 795
Seneca, South Carolina 29679
P: (864) 882-2747
andrew@drwmlaw.com
***Attorneys for Defendants,
Globe and Farnes***

July 21, 2022
Walhalla, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	C/A NO: 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp and Amy Cawthon,	)	
Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	
	)	ANSWER OF OCONEE COUNTY
v.	)	TO PLAINTIFFS' COMPLAINT FOR
	)	DECLARATORY JUDGMENT
Oconee County, Globe, a South Carolina,	)	
Limited Partnership, Farmes, a South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

The Defendant, Oconee County, in answer to Plaintiffs' Complaint, would respectfully show unto the Court as follows:

As a preliminary matter, Oconee County would show and allege that Plaintiffs' Introduction contained in the first three (3) paragraphs of Plaintiffs' Complaint sets forth only the grounds asserted by the Plaintiffs and require no response from Oconee County. To the extent it is determined that a response is required, Oconee County denies said allegations and demands strict proof thereof and incorporates herein all allegations contained in the defenses hereinafter set forth.

FOR A FIRST DEFENSE

1. The Defendant, Oconee County, would show that the Plaintiffs' Complaint fails to state facts sufficient to constitute causes of action against this Defendant and that the alleged causes of action so stated in said Complaint fail to state claims on which relief can be granted and,

therefore, said Complaint should be dismissed as to this Defendant pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

2. The allegations contained in the first defense hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

3. Oconee County denies each and every allegation contained in the Plaintiffs' Complaint not hereinafter specifically admitted, modified or explained.

4. Oconee County admits, based upon information and belief, the allegations contained in Paragraph 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Plaintiffs' Complaint.

5. Oconee County denies, based upon a lack of information and belief, the allegations contained in Paragraph 11 of the Plaintiffs' Complaint and demands strict proof thereof.

6. Oconee County admits, based upon information and belief, the allegations contained in Paragraph 12 of the Plaintiffs' Complaint.

7. Oconee County denies the allegations contained in Paragraph 13 of the Plaintiffs' Complaint and demands strict proof thereof.

8. Oconee County denies the allegations contained in Paragraph 14 of the Plaintiffs' Complaint and demands strict proof thereof.

9. Oconee County denies the allegations contained in Paragraph 15, 16 and 17 of the Plaintiffs' Complaint and demands strict proof thereof.

10. Oconee County lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 18 and 19, and therefore denies the same.

11. Oconee County admits so much of the allegations contained in Paragraph 20 of the Plaintiffs' Complaint as alleges the hearing on April 25, 2022 regarding Variance Application

#VA21-011 and vote, the variance application referenced therein and that BOZA granted said variance for the reasons stated in its Order, as corrected. The remaining allegations contained in said Paragraph 20 of the Plaintiffs' Complaint are denied and strict proof thereof is demanded.

12. Oconee County denies the allegations contained in Paragraph 21 and 22 of the Plaintiffs' Complaint, as stated, and demands strict proof thereof.

13. In response to the allegations contained in Paragraph 23 of the Plaintiffs' Complaint, Oconee County incorporates herein by reference thereto its responses to Paragraphs 1 through 22 of the Plaintiffs Complaint set forth above.

14. Oconee County denies the allegations contained in Paragraph 24 (as stated), 25, 26, 27, 28 (as stated), 29 and 30 of the Plaintiffs' Complaint and demands strict proof thereof.

FOR A THIRD DEFENSE

15. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

16. This Defendant pleads the provisions of the South Carolina Tort Claims Act, South Carolina Code §15-78-10, *et seq.*, including all of the immunities, limitations, including, but not limited to, statute(s) of limitations, and defenses granted or preserved by the Act.

FOR A FOURTH DEFENSE

17. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

18. This Defendant affirmatively pleads and asserts §15-78-60 (1), (2), (3), (4), (5), (7), (8), (10), (13), (15), and (20), South Carolina Code of Laws, 1976, as amended. Further, this Defendant pleads and asserts as a complete bar, absolute, and affirmative defense to Plaintiffs' claims any and all conditions of recovery, statute of limitations, limitations of liability, and above

listed exceptions from liabilities and/or immunities as set forth in the South Carolina Tort Claims Act.

FOR A FIFTH DEFENSE

19. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto

20. Any injury or damage sustained by Plaintiffs as a result of the matters alleged in the Amended Complaint were caused by events over which this Defendant had no control or right of control, thereby relieving this Defendant from any liability or responsibility.

FOR AN SIXTH DEFENSE

21. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

22. Any damages suffered by the Plaintiffs were not due to any continuance action by Oconee County.

FOR A SEVENTH DEFENSE

23. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

24. This Defendant, at all times relevant hereto and during the performance or non-performance of the acts alleged in the Amended Complaint, did not perform any acts or fail to perform any acts in bad faith, in a malicious manner, or with corrupt motives and this Defendant is, therefore, immune from suit.

FOR AN EIGHTH DEFENSE

25. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

26. This Defendant would show that at all times alleged in the Plaintiffs' Amended Complaint, it acted reasonably and in good faith and did not violate any clearly established right of the Plaintiffs and, therefore, is qualifiedly immune from suit.

FOR A NINTH DEFENSE

27. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

28. Plaintiffs have not suffered any damages caused by the actions of this Defendant. This Defendant further asserts Plaintiffs failed to properly mitigate damages.

FOR A TENTH DEFENSE

29. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

30. Any injury or damage sustained by the Plaintiffs as a result of the matters alleged in the Amended Complaint were a proximate result of the acts of a third-party which this Defendant affirmatively pleads as a complete bar to this action.

FOR AN ELEVENTH DEFENSE

31. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

32. This Defendant asserts the applicable statute of limitations as a defense to Plaintiffs' Amended Complaint.

FOR A TWELFTH DEFENSE

33. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

34. This Defendant places the Plaintiffs on notice that it will subsequently move to amend this Answer should it appear through discovery or continued fact investigation that additional defenses and/claims are available.

LOGAN & JOLLY, LLP

s/James W. Logan, Jr.
James W. Logan, Jr. (SC Bar #3385)
Post Office Box 259
Anderson, South Carolina 29622
864-226-1910
logan@loganandjolly.com
Attorneys for Oconee County

Dated: July 27, 2022

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
 COUNTY OF OCONEE)

Frances J. Ratliff, Edward J. Ratliff, Jr.,)
 James L. Ratliff, Lucretia B. Morgan,)
 Sherri Akers Crisp, Amy Cawthon,)

Case No. 2022-CP-37-00447

Plaintiffs,)

**PLAINTIFFS' MOTION FOR
A JURY TRIAL**

v.)

Oconee County, Globe, A South Carolina)
 Limited Partnership, Farnes, A South)
 Carolina Limited Partnership,)

Defendants.)

TO: ANDREW HOLLIDAY, ESQ., LARRY BRANDT, ESQ., ATTORNEYS FOR GLOBE, A SOUTH CAROLINA LIMITED PARTNERSHIP AND FARNES, A SOUTH CAROLINA LIMITED PARTNERSHIP; JAMES LOGAN, JR., ESQ., ATTORNEY FOR OCONEE COUNTY:

You will please take notice that on the 10th day after service hereof, or as soon thereafter as counsel can be heard before the Presiding Judge at the Oconee County Courthouse, Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon, (“Plaintiffs”) will move before the Court for an Order for jury trial in this matter. This motion is made pursuant to Rule 39(b), SCRCP, which states that “notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.”

This is a declaratory judgment action brought pursuant to S.C. Code Ann. Section 15-53-10, *et seq.* When a declaratory judgment action “involves the determination of an issue of fact such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil

actions in the court in which the proceeding is pending. All existing rights to jury trials are hereby preserved.” S.C. Code Ann. § 15-53-90.

This case concerns whether Oconee County has a prescriptive easement over the roadway running in front of Plaintiffs’ property. Plaintiffs’ property extends to approximately to the center line of the roadway and Defendants Globe and Farmes own the other side of the roadway. Plaintiffs claim to have paved the roadway and maintained it since the 1980’s. Oconee County claims to have performed maintenance on the roadway for the required time period to give it a prescriptive easement. Such factual disputes, among others, are appropriate for a jury.

Plaintiffs did not demand a jury trial in this matter when it was filed in June 2022. At the time this declaratory judgment was filed, Plaintiffs had also filed an appeal of an Oconee County Board of Zoning Appeals Variance Order (the “Variance Case”). The Variance Case was the primary focus for the parties to this action until the appeal was denied by the circuit court in November 2022 and then appealed to the South Carolina Court of Appeals. Briefing to the South Carolina Court of Appeals concluded in June of 2023.

Discovery in this matter began in earnest in February and March of 2023, with the first deposition taking place in August 2023. The parties to this matter have entered a scheduling order that places trial on or after February 12, 2024. Defendants will suffer no prejudice or delay if a jury trial is granted in this matter.

This Motion is supported by the pleadings on file with the Court, the SCRCP, the laws, and statutes of South Carolina, and whatever supporting affidavits and memoranda of law that may be submitted to this Court. The undersigned counsel for Plaintiffs respectfully requests this Court to grant Plaintiffs’ Motion for Trial by Jury on the grounds set forth in this Motion.

The undersigned counsel hereby certifies, pursuant to Rule 11, that he has communicated in writing with opposing counsel and attempted to resolve this matter.

Respectfully submitted,

s/ David L. Paavola

David L. Paavola (S.C. Bar No. 100714)

Kenison, Dudley & Crawford, LLC

1122-B Barnwell Street

Columbia, South Carolina 29201

Office: (864) 242-4899

Email: paavola@conlaw.com

Counsel for Plaintiffs

October 24, 2023
Columbia, SC

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMONS PLEAS
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	DEFENDANTS'
Plaintiffs,	)	MEMORANDUM OF LAW
v.	)	
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farnes, A South	)	
Carolina Limited Partnership,	)	
	)	Case No.: 2022-CP-37-00447
Defendants.	)	
_____	)	

This matter is before the Court on Plaintiffs' Motion for a Jury Trial filed October 24, 2023, and its declaratory judgment action brought pursuant to *S.C. Code Ann. §15-53-10 et seq.* Defendants, however, object to Plaintiffs' motion upon the grounds that Plaintiffs failed to comply with *SCRCP 38(b)* in that they did not demand a jury trial when the case was initially filed and the demand was not timely made thereafter, i.e. not later than ten (10) days after service of last pleading directly to the issue. *SCRCP 39(b)* provides that issues of law and issues not demanded for trial by jury as provided in *Rule 38* should be tried by the Court or may be referred to a Master as provided in *Rule 53*. Plaintiffs, however, are requesting that, notwithstanding their failure to comply with such rules, they should still be granted a jury trial and argue there are facts in dispute which must be determined by a jury. Defendants respectfully submit, however, that Plaintiffs are not entitled to a jury trial as there is not a dispute as to the relevant facts of the case and this matter merely requires the Court

to apply the law upon the facts that are germane. It is clearly the law of South Carolina that declaratory judgment actions are neither inherently legal nor equitable, and whether a particular case is to be handled as an equitable matter or a legal matter is determined by the nature of the primary underlying issues involved [*Campbell v. Marion County Hospital District*, 354 S.C. 274, 580 S.E.2d 163, (Ct. App. 2003), see also unpublished opinion *Collins v. Griffin*, 2006 WL7287897].

In this case there are no material issues as to the facts as the Ratliffs admit that Ellenburg Road was a public roadway belonging to the State of South Carolina for many years until Lake Keowee was constructed at which time the road, by operation of law, became a county road under the management and control of Oconee County [see *S.C. Code §57-5-120* and *Collins v. Griffin*]. Jay Ratliff, the Ratliff spokesman at the BZA hearing on November 30, 2021, admitted that the road was once a state road and devolved to the county in accordance with state law [**Exhibit A** attached]. Absolutely no evidence has been produced to date, through discovery or otherwise, that there has been an action by Oconee County or any other citizen, more particularly the Ratliffs, to close the road or abandon any portion of Ellenburg Road in accordance with *S.C. Code §57-9-10*. It is Oconee County's official position, as fully disclosed in the transcript of record of the BZA hearings, that the portion of the road still in existence is a public road from Knox Road to end of the pavement at the border of the Globe and Farnes property and is denoted as WA-42 on the records of Oconee County. It is also undisputed that neither the county nor anyone else, particularly the Ratliffs, have ever brought an action pursuant to *S.C. Code §57-9-10* to close the road.

The Ratliffs' claim is solely based upon their assertion that Prince Brown, Oconee County's road supervisor or technician, told them several years ago that it was not a county road or that the county would abandon the road at a point beyond the top of the hill where the Ratliff property began. Plaintiffs have also produced affidavits from numerous people concerning a sign regarding County Maintenance; however, whether or not there was a sign out there at any point along the road is totally irrelevant. There is no record of the Brown conversation with the Ratliffs other than what the Ratliffs say was said, and the county still claims the road from Knox Road to the border of the Globe and Farnes property (at the end of the pavement); however, even if Prince Brown made the representation as alleged, it exceeded his authority and did not bind the county or anyone else to anything [*City of Myrtle Beach v. Parker*, 260 S.C. 475, 197 S.E.2d 290 (1973)]. Brown's conversation with the Ratliff Family, therefore, is of no value in determining the underlying issue in this case, i.e. the operation of the South Carolina law upon the facts thus rendering the matter an equitable issue. Although a case cannot be found in which this exact issue has ever been presented to our courts, the case of *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997), holds that if an action mandates the interpretation of a deed, it is an equitable matter. It further holds that even though the existence of an easement may be for a jury, the scope of an easement is equitable [see unpublished opinion *Collins v. Griffin*, 2006 WL7287897]. In the BZA action the Ratliffs even admitted that Globe and Farnes had an easement to their property, i.e. they were not trying to landlock Globe and Farnes or prevent them from accessing their property. There is no question that an easement exists; therefore, the question

here is scope of the easement which is clearly equitable. This is a declaratory judgment action brought pursuant to *S.C. Code Ann. §15-53-10 et seq.* that does not necessitate a jury's determination of facts in order to arrive at the legal status of the roadway. The only fact that Plaintiffs seem to be relying on is whether Prince Brown, Oconee County's road technician, made statements that abandoned or closed a portion of Ellenburg Road (WA-42). Whether he did or not is not an issue since Prince Brown did not have the authority to make such a decision and/or bind the county or any other public entity to an abandonment or closure of the roadway. In essence, he did not have any authority to give away a county asset. Even if he had made the statement as alleged by the Ratliffs, the closure procedure outlined in *S.C. Code §57-9-10*, first enacted in 1962, had to be complied with in order to legally effect the alleged closure [*S.C. Dept. of Transportation v. Henson Family Holdings, LLC, et al.*, 361 S.C. 649, 606 S.E.2d 781 (2004), *Town of Kingstree v. Chapman*, 405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013)]. There is absolutely no evidence that Oconee County Council ever considered abandoning or vacating a portion of Ellenburg Road, and neither the county nor any of the landowners or tenants along the roadway sought to have the road or any portion thereof closed or abandoned in accordance with *S.C. Code §57-9-10*. It cannot, therefore, be held that the county abandoned any portion of the road which has still been used by the public and/or other landowners served by the road at least to a limited extent [*City of Myrtle Beach v. Parker*, 260 S.C. 475, 197 S.E. 2d 290 (1973)].

Further, the rights of Globe and Farnes and members of the general public in and to Ellenburg Road cannot be lost by the unauthorized act of a county employee (Prince Brown)

or any other official exceeding his authority or even by neglect. Everyone agrees that Ellenburg Road was a public road connecting with other public roads and devolved to the county upon the South Carolina Highways abandonment of a portion of Ellenburg Road (WA-42) pursuant to *S.C. Code §57-5-120* when Lake Keowee was constructed. Jay Ratliff in his statement to the BZA Board on November 30, 2021, pages 81-83 (See ***Exhibit A*** attached), admits that it was a state (public) road. Furthermore, the property records, deeds and descriptions of other properties in this area before Lake Keowee was constructed refer to the road now known as Ellenburg Road as a public road. More importantly, as recently as December 4, 2020, members of the Ratliff family, namely James L. Ratliff and Lucretia B. Morgan, commissioned, paid for and recorded a plat depicting Ellenburg Road (WA-42) as a county public roadway (***Exhibit B***).

In summary, this case does not turn on disputed facts which require the services of a jury but merely requires the Court to apply the applicable law to the facts that are obvious and render a legal opinion. It is, therefore, equitable in nature and requires the Court, not a jury, to apply the law accordingly. It is, therefore, respectfully submitted that Plaintiffs' motion to be granted a jury trial be denied.

[Signature on Following Page]

Respectfully submitted,

s/Larry C. Brandt

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Attorneys for Defendant Oconee County

January 15, 2024

Walhalla, South Carolina

JOHN'S MARINE SERVICE, INC., ET AL.

VS.

ORIGINAL

OCONEE COUNTY BOARD OF ZONING APPEALS, ET AL.

11/30/2021

LEGAL EAGLE

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Greenville, South Carolina 29606

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EXHIBIT A

R-000148

1 Yes. And -- and it's -- it appears to be a gravel
2 road so at some point was it just gravel all the way
3 down --

4 MR. RATLIFF:

5 So --

6 MALE VOICE:

7 -- to the shop?

8 MR. RATLIFF:

9 So the history goes -- goes back to before Lake
10 Keowee was built. It was Route 1, Box 268, that was
11 mom's address and the road went all the way across
12 and it was a tar and gravel road. So an old -- old
13 designed road and then right at John's Marine there
14 was a split and there was a dirt road that went
15 across the lake over towards High Falls. And so
16 that road no longer exists. Route 1 went along the
17 -- the edge of the -- the shoreline here, came --
18 came down this way, went along here, then they went
19 -- went out. Now that portion of the lake is still
20 flooded, you can still see the tar and gravel under
21 the water and -- and it's there. The -- the end of
22 county maintenance stopped when about 40 years ago
23 when -- when dad started building the -- the shop
24 they stopped paving the road up here. So everything
25 from here down was maintained by the Ratliff family.

1 MALE VOICE:

2 So that was my question. So, the -- the area
3 because it's not obviously not a -- a gravel road
4 now, it is paved, so y'all paved that road?

5 MR. RATLIFF:

6 That's right.

7 MALE VOICE:

8 The -- Oconee County did not pave that road at any
9 point?

10 MR. RATLIFF:

11 That's correct. So, that's correct.

12 MALE VOICE:

13 Thank you.

14 MR. RATLIFF:

15 And you can, if you go out there you can see where
16 the tar and gravel ends. You can see where the --
17 the pavement has changed over the years. And then
18 in this -- this particular photograph here you can
19 see where the yellow lines end and where the --

20 MALE VOICE:

21 And y'all paved up -- up to that?

22 MR. RATLIFF:

23 That's correct. We've -- well, not -- not every
24 time the county's paved right, so I -- I think
25 someone mentioned that the -- the road is kind of in

- 1 disarray so we haven't kept up with it as much as --
- 2 as the county (inaudible).

3 MALE VOICE:

4 And my -- right. My -- my point is so if the -- if
5 you did that privately, y'all paved it privately,
6 the county never has paved that road because I would
7 hope to goodness that if the county did not have an
8 easement for that road that we didn't waste taxpayer
9 money paving the road. That's what I was getting --

10 MR. RATLIFF:

11 I can assure you taxpayer money was not wasted
12 paving that road. There is -- there is one -- one
13 more -- one more piece with the road. It -- it was
14 originally at some point a state road when it was
15 Route 1, Box 268, so -- so it was a state road at
16 some point and then I guess the state of South
17 Carolina went through a -- a -- I'm trying to -- to
18 transition all the roads to local governments and
19 that's when it became a county road, and that's when
20 it transitioned from tar and gravel to asphalt. So
21 it -- it was more -- more funds I guess to be able
22 to pave the road, so.

23 MALE VOICE:

24 || Mr. Chairman, I have a question.

25 MR. CHAIRMAN:

CV-20-00001-DWM-2020-MORGAN JAMES L. RAYLIF AND LUCRETTA B. MORGAN.dwg 11/17/20 11/10/2020 10:52:17 AM
 11/10/2020 10:52:17 AM (HP OfficePlot Pro 7740 series). t:1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' MEMORANDUM IN
v.	)	SUPPORT OF THE MOTION FOR
	)	A JURY TRIAL
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

The Court has discretion to grant Plaintiffs' request for a jury trial and there is no prejudice to any of the Defendants in granting a jury trial at this stage of the litigation. This case has progressed in the typical fashion and there are factual disputes that will be presented to a factfinder, the only question is whether these factual disputes will be heard and decided by the Court or a jury.

"[N]otwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues." Rule 39(b), SCRCF. When a declaratory judgment action "involves the determination of an issue of fact such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. All existing rights to jury trials are hereby preserved." S.C. Code Ann. § 15-53-90.

In *Patterson v. McNeill-Patterson & Assoc.*, 312 S.C. 471, 441 S.E.2d 328 (Ct. App. 1994), the South Carolina Court of Appeals affirmed the circuit court's grant of a jury trial under Rule 39(b), SCRCF, finding "no reversible error because the court found [the party opposing the motion for jury trial] would suffer no prejudice." *Id.* at 472, 441 S.E.2d at 329. The court explained that "a party's

failure to make a timely demand for a jury trial does not mean the opposing party acquires a right to have, as a matter of law, a non-jury trial.” *Id.* (quoting *Hannah v. United Refrigeration Services, Inc.*, 305 S.C. 394, 394, 409 S.E.2d 360, 361 (1991) (internal quotation marks omitted)).

Here, Defendants have not raised any issue of prejudice and have not even addressed prejudice in their opposition brief. Rather, Defendants argue that there are no factual disputes for a jury to decide. This is incorrect. While Plaintiffs are not required in a motion for jury trial to set forth all genuine issues of material fact, as would be required in a motion for summary judgment, Plaintiffs will address Defendants’ contention that there are no factual disputes that would require a jury’s determination.

ARGUMENT

Oconee County has advanced two theories as to how it came to hold an easement over the Plaintiffs’ properties on Ellenburg Road: (1) Ellenburg Road was previously a state-maintained road that reverted to the County when Lake Keowee was created; and (2) the County has performed continuous uninterrupted maintenance on the Ratliff family’s section of Ellenburg Road for a sufficient time period to give the County a prescriptive maintenance easement. There are factual disputes with both theories that are appropriate for a jury to decide.

I. There is a factual dispute over whether Ellenburg Road was ever a state road.

Defendants first argue that it is undisputed that Ellenburg Road “belong[ed] to the State of South Carolina for many years until Lake Keowee was constructed at which time the road, by operation of law, became a county road” and that Plaintiffs admit this fact. (Defs.’ Mem. at 2). This is wrong. In fact, in response to a subpoena in this matter, the South Carolina Department of Transportation (“SCDOT”) stated that according to its records, Ellenburg Road was never part of the state road system. (Excerpt from SCDOT Subpoena Response, attached as **Exhibit 1** (“[T]he road in question was a non-

state maintained road.”)). This is the very definition of a factual dispute—Oconee County argues it obtained an easement over Plaintiff’s property by virtue of Ellenburg Road having been part of the state highway system and the SCDOT states that Ellenburg Road was never part of the state highway system. This is the type of factual dispute that is appropriate for a factfinder.

To date, Oconee County has not produced a single document showing that Plaintiffs’ section of Ellenburg Road was ever part of the state highway system or that it reverted to the County upon the creation of Lake Keowee. During its deposition, Oconee County stated that it was told by SCDOT that Ellenburg Road was part of historic Highway 201 but that SCDOT has never provided any documents supporting this contention:

Dep. 207:9-209:10

9 Q. So what -- what were the -- what was the result of
10 those records? What -- in your understanding, did
11 DOT say that Ellenburg Road had ever been a state
12 road?

13 **A. Yes.**

14 Q. Okay. They said it was -- it had been a state
15 road?

16 **A. Yes.**

17 Q. Okay. And it had been a state road, and, I guess,
18 did that stop at some point in time?

19 **A. Yes.**

20 Q. And when was that, from your understanding?

21 **A. Nobody can tell me.**

22 Q. No one can tell you. Okay.

23 So the documents that DOT provided you show that --
24 or reflect, in your understanding, that it was a
25 state road?

1 **A. It shows 201 and what they did to S-201.**

2 Q. What they did?

3 **A. Where they -- the work performed on S-201.**

4 Q. Okay. And is S-201 the same as Ellenburg Road?

5 **A. That's what they told me.**

6 Q. DOT told you that?

7 **A. Yes.**

8 Q. Okay. And that's reflected in the documents they
9 gave you; is that right?

10 **A. Yes.**

11 Q. Okay. Has that informed your understanding of
12 whether Ellenburg Road is part of the county system
13 now?

14 **A. No.**

15 Q. No. Okay.

16 Well, do you have an understanding of how the -- if
17 that was a state road at some point in time, how it
18 came to be from a state road system into a
19 prescriptive easement for Oconee County?

20 **A. No.**

21 Q. And you don't have any understanding of how that
22 would have happened?

23 **A. No, sir.**

24 Q. Okay. Did you look into that?

25 **A. Yes.**

1 Q. Okay. What did you find?

2 **A. The DOT did not provide me with any -- that**
3 **information.**

4 Q. Okay. Does Oconee County have any information
5 about how that came to be?

6 **A. No -- or not to my knowledge.**

7 Q. You looked for that?

8 **A. Yes.**

9 Q. Didn't find anything?

10 **A. No, sir.**

(Oconee County 30(b)(6) Dep. 207:9-209:10 (Aug. 9, 2023), excerpts attached as **Exhibit 2**). Only after its August 2023 deposition did the County finally produce July 2022 emails reflecting these claimed statements by an SCDOT employee. (Email Terrica Turner to Sheila Okelley (July 13, 2022), attached as **Exhibit 3**). These emails directly contradict SCDOT's official subpoena response that Ellenburg Road has never been state-maintained, and this topic will be explored during SCDOT's upcoming deposition on January 25, 2024. The historic maps of Highway 201 show that it did not encompass

Ellenburg Road, but again, this fact will be fully explored with SCDOT. There remains a factual dispute over this issue.

As to Defendants' argument that the Ratliffs admit Ellenburg Road was a state road, the Defendants take Jay Ratliff's public comments to the Oconee County Board of Zoning Appeals too far. Mr. Ratliff was making a public comment about his childhood memories of his home's mailing address. He was not opining as to whether Ellenburg Road was ever a state road, and he certainly was not under oath or making an admission in this litigation. Jay Ratliff's public statement to the BOZA does not make this factual issue more or less likely to be true, nor can it. Had the County chosen to explore Mr. Ratliff's basis for these comments further, it could have done so during his deposition. However, none of the Defendants asked Jay Ratliff a single question during his deposition about these public comments made to the BOZA. Defendants conveniently ignore Jay Ratliff's other public comments stating that his father rather than the County paved the disputed section of Ellenburg Road and his family has maintained the road since purchasing it in the mid 1980's. (Ex. A to Def.'s Mem. 82:1-11, 83:3-12). Defendants also ignore sworn affidavits of numerous individuals, each attesting that an end of county maintenance sign was located along Ellenburg Road prior to the Ratliff properties, which is the same location that County tax maps showed the road ending for decades and where county employees previously indicated to the Ratliff family that county maintenance ended, as Karen Rasbornik testified in her deposition. (Affidavits attached as **Exhibit 4**; County Tax Maps 1991, 2001, 2008, attached as **Exhibit 5**; Karen Rasbornik Dep. 11:9-13:18 (Oct. 5, 2023) & Exhibit 1 thereto, attached as **Exhibit 6**). All of this information directly contradicts the County's theory that the disputed section of Ellenburg Road has ever been a county road, or that the County has ever treated it as such until this litigation began. There is clearly a factual dispute over this issue.

Concerning the survey prepared by Michael Henderson, Ex. B to Defendants' memorandum, Mr. Henderson testified that his survey cannot create easements or rights-of-way. (Dep. Michael Henderson Dep. 18:4-8 (Oct. 30, 2023), excerpts attached as **Exhibit 7**). Mr. Henderson was unable to identify any controlling document that would have created a public right-of-way along Ellenburg Road and in fact he testified that even though he marked public right-of-way on the survey, he does not know that there is in fact a public right-of-way at that location, he simply indicated a public right-of-way because a street is at that location. (Henderson Dep. 12:16-18:8, Ex. 7). The only plat ever prepared of 599 Ellenburg Road does not show a public right-of-way. (**Exhibit 8**). Mr. Henderson's survey cannot, and does not, create a public right-of-way.

II. There is also a factual dispute over whether Oconee County has ever maintained the Ratliff section of Ellenburg Road.

In order to succeed on its second theory, prescriptive easement, Oconee County must prove each of the following elements by clear and convincing evidence:

- i. Continued and uninterrupted use or enjoyment of the right for a period of twenty years;
- ii. The identity of the thing enjoyed; and
- iii. Use or enjoyment which is either adverse or under claim or right.

Bundy v. Shirley, 412 S.C. 292, 304, 306, 772 S.E.2d 163, 169-71 (2015).

The Ratliff family has consistently stated that its family maintained the disputed section of Ellenburg Road since purchasing it in the mid-1980's. (Ex. A to Def.'s Mem. 82:1-11, 83:3-12; Compl. at 1, ¶¶ 8, 11). Jimmy Ratliff and Jay Ratliff each testified during their depositions that the family has maintained Ellenburg Road for decades rather than the County. Conversely, Oconee County contends that it has maintained all the way to the end of Ellenburg Road for decades. However, the County has no maintenance records of continuous uninterrupted maintenance for this section of Ellenburg Road. At

most, the County has hearsay from prior employees and non-specific general maintenance records showing some work on Ellenburg Road in general. Given these disparities, it is abundantly clear that there is a factual dispute over whether Oconee County has satisfied the elements necessary to have a prescriptive easement over the Plaintiffs' properties. Determining which party has in fact maintained the section of Ellenburg Road in front of the Ratliff properties is a factual dispute that is appropriate for a jury to determine.

CONCLUSION

The Court has discretion to grant Plaintiffs' request for a jury trial. This case has progressed the same as any typical case set for a jury trial. Defendants have not demonstrated, or even argued, that they will suffer prejudice from this change to a jury trial. For these reasons, Plaintiffs' request should be granted.

Respectfully submitted,

s/ David L. Paavola
David L. Paavola (S.C. Bar No. 100714)
Kenison, Dudley & Crawford, LLC
1122-B Barnwell Street
Columbia, South Carolina 29201
Office: (864) 242-4899
Email: paavola@conlaw.com
Counsel for Plaintiffs

January 16, 2024
Columbia, SC

Exhibit 1

History of Oconee – Ellenburg Road

4. S-12 is currently in place of the old location of a portion of SC 183 (see attached maps from 1969 – before Lake Keowee, and from 1974 – after the establishment of Lake Keowee). But even then the road in question was a non-state maintained road.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE CASE NO. 2022-CP-37-00447

Frances J. Ratliff, Edward J. Ratliff, Jr.,
James L. Ratliff, Lucretia B. Morgan,
Sherri Akers Crisp, Amy Cawthon,

Plaintiffs,

vs.

Oconee County, Globe, A South Carolina
Limited Partnership, Farmes, A South
Carolina Limited Partnership,

Defendants.

30(b)(6) DEPOSITION OF OCONEE COUNTY
GIVEN BY
JAMES COLEY AND
WILLIAM KYLE REID

DATE TAKEN: August 9, 2023

TIME BEGAN: 10:06 a.m.

TIME ENDED: 4:21 p.m.

LOCATION: Logan & Jolly, LLP
 1805 North Boulevard
 Anderson, South Carolina 29621

REPORTED BY: Kaylyn K. Brantner
 Court Reporter
 Notary Public

207

1 A. Yes.

2 Q. I don't believe I've seen those in this document
3 production. If you'd please provide those to your
4 counsel to produce to us.

5 MR. LOGAN: I gave you everything I've got.

6 MR. PAAVOLA: I haven't seen those.

7 EXAMINATION RESUMED

8 BY MR. PAAVOLA:

9 Q. So what -- what were the -- what was the result of
10 those records? What -- in your understanding, did
11 DOT say that Ellenburg Road had ever been a state
12 road?

13 A. Yes.

14 Q. Okay. They said it was -- it had been a state
15 road?

16 A. Yes.

17 Q. Okay. And it had been a state road, and, I guess,
18 did that stop at some point in time?

19 A. Yes.

20 Q. And when was that, from your understanding?

21 A. Nobody can tell me.

22 Q. No one can tell you. Okay.

23 So the documents that DOT provided you show that --
24 or reflect, in your understanding, that it was a
25 state road?

208

1 A. It shows 201 and what they did to S-201.

2 Q. What they did?

3 A. Where they -- the work performed on S-201.

4 Q. Okay. And is S-201 the same as Ellenburg Road?

5 A. That's what they told me.

6 Q. DOT told you that?

7 A. Yes.

8 Q. Okay. And that's reflected in the documents they
9 gave you; is that right?

10 A. Yes.

11 Q. Okay. Has that informed your understanding of
12 whether Ellenburg Road is part of the county system
13 now?

14 A. No.

15 Q. No. Okay.

16 Well, do you have an understanding of how the -- if
17 that was a state road at some point in time, how it
18 came to be from a state road system into a
19 prescriptive easement for Oconee County?

20 A. No.

21 Q. And you don't have any understanding of how that
22 would have happened?

23 A. No, sir.

24 Q. Okay. Did you look into that?

25 A. Yes.

1 Q. Okay. What did you find?

2 A. The DOT did not provide me with any -- that
3 information.

4 Q. Okay. Does Oconee County have any information
5 about how that came to be?

6 A. No -- or not to my knowledge.

7 Q. You looked for that?

8 A. Yes.

9 Q. Didn't find anything?

10 A. No, sir.

11 Q. And so I see this response references Exhibit 1 and
12 Exhibit 2, and Exhibit 1 is a deed from I think the
13 DOT to Duke Power, I believe.

14 Are you familiar with this exhibit, Exhibit 1?

15 A. Yes.

16 Q. Okay. So this lists a number of -- I think it -- I
17 believe it's a number of road that maybe the DOT
18 was turning over, I guess, to Duke Power maybe as
19 part of the lake, I guess. So I see on page 2 is
20 the number -- item number 12, and that is a --
21 that's listed as road S-201.

22 Is that the road you're describing?

23 A. That is the number that they told me Ellenburg Road
24 used to be.

25 Q. Okay. S --

RE: Archives-Oconee County

ELECTRONICALLY FILED - 2024 Jan 16 3:07 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

Turner, Terrica L

07/13/2022 at 11:41 AM

To: Details ^

From: **Turner, Terrica L** <TurnerTL@scdot.org>**Sent:** 07/13/2022 at 11:41 AM**To:** **Sheila Okelley** <sokelley@oconeesc.com>[Display Images](#)

▲ For your security, images aren't automatically displayed.

📎 3 Attachment(s) Total 14.1 MB View ^

Hi,

From comparing the historical maps from 1957 and 1975, Ellenburg Road at one time use to be the latter part of S-201. The construction posting advice that confirms the 1975 map has 53 pages. I will have to send this separately are in parts because we have a cap of the size of files we can send. So in this email is the historical maps only with road S-201 highlighted on each one.

The posting advice will include the file numbers and some construction pages. If you have more questions on any of this just email me. I'm here until 3:30.

I'm still working on the overall list of roads turned over to the county.

Terrica L. Turner**Program Coordinator II-Systems Office****Road Data Services Department****SC Department of Transportation****803-737-4810 O | 803-737-0006 F****TurnerTL@SCDOT.org**

From: Sheila Okelley <sokelley@oconeesc.com>

Sent: Wednesday, July 13, 2022 10:59 AM

To: Turner, Terrica L <TurnerTL@scdot.org>

Subject: RE: Archives-Oconee County

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

Ms. Turner,

We are looking specifically for Ellenburg Rd (currently WA-42) off of Knox Rd S-37-12. We were told by some longtime residents that Ellenburg Rd was state maintained until Lake Keowee was built. The rest of the state roads that turned into county is important as well and we appreciate the time and effort it will take to compile that list.

Thank you,

Sheila O'Kelley

Office Manager

Oconee County Roads & Bridges

15022 Wells Hwy

Seneca, SC 29678

Telephone Number: 864-886-1072

Fax Number: 864-886-1071

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From: Turner, Terrica L [mailto:TurnerTL@scdot.org]

Sent: Wednesday, July 13, 2022 9:33 AM

To: Barnes, Jean C <BarnesJC@scdot.org>; Sheila Okelley <sokelley@oconeesc.com>

Subject: RE: Archives-Oconee County

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Good Morning,

My name is Terrica Turner in the Systems office of Road Data Services. Jean Barnes forwarded you email to me concerning I will be able to assist you with any road history or road questions at anytime.

The one particular road, Knox Road S-37-12 is state maintained. From October of 1969 to current, S-12 has been the renumbering of the old location of SC 183. From posting advice record 446, here shows when the old location of SC 183 was renumbered to S-12. Then with posting advice 450 which as the same information but is accompanied with a map. The old locations were assigned new numbers in order to assign SC 188 as a complete route.

I hope this helps answer your immediate question. In the meantime, I will have to run an extensive report in order capture all the roads that were turned over to Oconee County. And I will review and send you the results as soon as I can.

Thanks,

Terrica L. Turner

Program Coordinator II-Systems Office

Road Data Services Department

SC Department of Transportation

803-737-4810 O | 803-737-0006 F

TurnerTL@SCDOT.org

From: Barnes, Jean C <BarnesJC@scdot.org>

Sent: Wednesday, July 13, 2022 8:27 AM

To: Turner, Terrica L <TurnerTL@scdot.org>

Subject: FW: Archives-Oconee County

Is this something that Road Data Services can assist her with? I don't know where to tell her to find dates other than Commission minutes. Would we have this information anywhere else?

R-000167

From: Sheila Okelley <sokelley@oconeesc.com>

Sent: Monday, July 11, 2022 4:21 PM

To: Barnes, Jean C <BarnesJC@scdot.org>

Subject: Archives-Oconee County

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

Ms. Barnes,

I have been asked to contact you to see when roads that were state roads were turned over to Oconee County for road maintenance. If you can give me any information on how to go about looking for this information will be greatly appreciated.

There is one particular road that we are trying to see if it was ever a state maintained road, Ellenburg Rd off of Knox Rd (S-37-12) in Seneca.

Any help you can give will be greatly appreciated. Have a wonderful week.

Thank you,

Sheila O'Kelley

Office Manager

Oconee County Roads & Bridges

15022 Wells Hwy

Seneca, SC 29678

Telephone Number: 864-886-1072

Fax Number: 864-886-1071

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R-000168

Exhibit 4

ELECTRONICALLY FILED - 2024 Jan 16 3:07 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

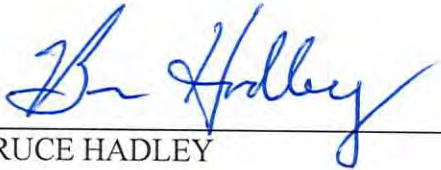
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF BRUCE HADLEY
v.	)	
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farnes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

BEFORE ME appeared, Bruce Hadley, who deposes and says:

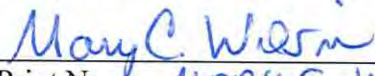
1. I reside at 167 Northshore Drive, Seneca South Carolina 29672 and have personal knowledge of the matter set forth herein.
2. I have been sending my boats since 2003, for service and repairs to John Ratliff and Jimmy Ratliff, of John's Marine Service, Inc. ("John's Marine") located at 599 Ellenburg Road, Seneca South Carolina 29672.
3. Since 2003 I travelled six to seven times yearly down Ellenburg Road to John's Marine and have taken numerous friends and neighbors out to introduce them to John and Jimmy Ratliff so that they could have their watercrafts serviced and repaired.
4. I specifically recall there being an "End of Road Maintenance" sign located on the right-hand side of Ellenburg Road roadway and located approximately 20 yards before the driveway to 591 Ellenburg Road. I noticed that as the property at the end Ellenburg Road started being developed, the "End of Road Maintenance" sign disappeared.
5. Throughout the years I have witnessed John Ratliff maintaining the portion of Ellenburg Road past the "End of County Maintenance" sign by paving the roadway. I've also

witnessed Jimmy Ratliff doing significant concrete work past the "End of County Maintenance" sign.

FURTHER AFFIANT SAYETH NAUGHT.


BRUCE HADLEY

SWORN to before me this 28 day
of DECEMBER, 2023.


Print Name: MARY C. WILSON
Notary Public for State of South Carolina
My Commission Expires: 6/3/2029

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

COUNTY OF OCONEE)

Frances J. Ratliff, Edward J. Ratliff, Jr., James L.
Ratliff, Lucretia B. Morgan, Sherri Akers Crisp,
Amy Cawthon,

Case No. 2022-CP-37-00447

Plaintiffs,

AFFIDAVIT OF GARY TAYLOR

v.)

Oconee County, Globe, A South Carolina Limited
Partnership, Farnes, A South Carolina Limited
Partnership,

Defendants.)

BEFORE ME appeared, Gary Taylor, who deposes and says:

1. I reside at 30 Gulf Stream Lane, Salem, South Carolina 29676, and have personal knowledge of the matter set forth herein.
2. I have been sending my boats for service and repairs to John Ratliff and Jimmy Ratliff, of John's Marine Service, Inc. ("John's Marine") located at 599 Ellenburg Road, Seneca South Carolina 29672, for many years.
3. There was an "End of Road Maintenance" sign on the right-hand side of the road, approximately 100-125 yards before you get to John's Marine which was situated at approximately 582 Ellenburg Road.
4. On or around 2009, Jimmy Ratliff and I leveled the parking lot just passed the shop building on Ellenburg Road and at which time the "End of Road Maintenance" sign was still there.
5. To my knowledge, the "End of Road Maintenance" sign is no longer there, and no new maintenance has been done to that portion of Ellenburg Road.

FURTHER AFFIANT SAYETH NAUGHT.

SWORN to before me this 8th day
of JANUARY 2024, ~~2023~~.Lashonda M. Adams
Print Name:Notary Public for State of South Carolina
My Commission Expires: 10-21-31

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF MICHAEL GRANT
v.	)	
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

BEFORE ME appeared, Michael Grant, who deposes and says:

1. I reside at 599 Ellenburg Road, Seneca South Carolina 29672 and have personal knowledge of the matter set forth herein.
2. Prior to moving to my current residence in 2019, I resided at 4029 Creekside Drive, Seneca SC 29672 and resided there for a period of 18 years.
3. In 1995, I met Jimmy Ratliff through mutual friends and at which time he allowed me to store my jet ski at 599 Ellenburg Road, Seneca South Carolina 29672 also known as John's Marine Service ("John's Marine").
4. Between the years of 1995 and 1996 I traveled somewhere between four and five days a week down Ellenburg Road to John's Marine during the Summer months and recall seeing an "End of Road Maintenance" sign on the right-hand side of the roadway. The sign was located approximately two (2) football field lengths away from where the pavement ends on Ellenburg Road and approximately situated at 582 Ellenburg Road.
5. On numerous occasions I have witnessed Jimmy Ratliff, Frances Ratliff, and Lucretia Morgan maintaining that portion of Ellenburg Road after the "End of Road Maintenance"

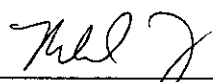
sign down to the end of Ellenburg Road towards John's Marine by using their zero-gravity mower and at times with their push mower to cut the grass on both sides of Ellenburg Road.

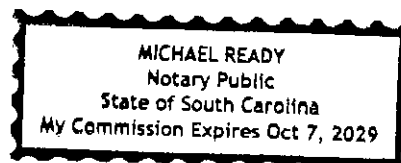
6. Approximately two (2) years ago, Jimmy Ratliff had someone install a culvert pipe which would allow the water to drain properly from his property. It was being connected at Jimmy's driveway down to the existing culvert pipe located at 599 Ellenburg Road. I witnessed Jimmy on his tractor helping spread gravel over the top of the culvert pipe after it had been covered with dirt.
7. I do not recall when the "End of Road Maintenance" sign was removed; however, I do know that the sign has been removed as of the date of this affidavit.

FURTHER AFFIANT SAYETH NAUGHT.


Michael Grant

SWORN to before me this 28th day
of December, 2023.


Print Name: Michael Ready
Notary Public for State of South Carolina
My Commission Expires: October 7, 2029



STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Frances J. Ratliff, Edward J. Ratliff, Jr.,
James L. Ratliff, Lucretia B. Morgan,
Sherri Akers Crisp, Amy Cawthon,

Plaintiffs,

v.

Oconee County, Globe, A South Carolina
Limited Partnership, Farmes, A South
Carolina Limited Partnership,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2022-CP-37-00447

AFFIDAVIT OF ROBBIE HOPKINS

BEFORE ME appeared, Robbie Hopkins, who deposes and says:

1. I reside at 760 Knox Road, Seneca, South Carolina, 29672 and have personal knowledge of the matter set forth herein.
2. For nearly thirty years I have been a boat customer of John's Marine Services, Inc. ("John's Marine"), located at 599 Ellenburg Road, Seneca South Carolina 29672.
3. Knox Road is in close proximity to Ellenburg Road.
4. I have notified Oconee County numerous times for maintenance and repairs needed to Ellenburg Road.
5. I recall an "End of County Maintenance" sign as you are going towards John's Marine, on the right-hand side of 566 Ellenburg Road, near the last house on the right. However, I have noticed that road sign is no longer present on Ellenburg Road.
6. Throughout the years, I have witnessed Jimmy Ratliff maintaining that portion of Ellenburg Road by building up the edge of the roadway and cutting the grass on both sides of Ellenburg Road down below where the "End of County Maintenance" sign stood.

FURTHER AFFIANT SAYETH NAUGHT.


ROBBIE HOPKINS

SWORN to before me this 31st day
of December, 2023.

JAMES E. MOORE

Print Name:

Notary Public for State of South Carolina

My Commission Expires: 7/24/2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF RONNIE MORGAN
v.	)	
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

BEFORE ME appeared, Ronnie Morgan, who deposes and says:

1. I reside at 105 Chelsea Court, Central, South Carolina 29630, and have personal knowledge of the matter set forth herein.
2. In 2011, I started servicing my boats and jet skis at John's Marine Service, Inc. ("John's Marine"), located at 599 Ellenburg Road, Seneca, South Carolina 29672. During that time, the owner of John's Marine, Jimmy Ratliff, rented slips and allowed me to store watercrafts.
3. After I began using John's Marine services and slips, it was a normal occurrence that I would travel down Ellenburg Road two to three times a season.
4. I distinctly recall the first time I traveled down Ellenburg Road to meet Jimmy Ratliff at John's Marine. My wife at that time was in the car with me. We drove down a paved Ellenburg Road towards the end which changed from paved to gravel. I noticed a sign on the right-hand side of the road which read "End of County Maintenance". After seeing that County sign, I made a comment to my then wife that Mr. Ratliff's family must own the rest of that property.

5. Throughout the years of traveling down Ellenburg Road to John's Marine, I witnessed Mr. Ratliff cutting the grass on both sides of Ellenburg Road at 575 Ellenburg Road and 858 Ellenburg Road and witnessed Mr. Ratliff pouring gravel into potholes between 575 Ellenburg Road and 585 Ellenburg Road.

FURTHER AFFIANT SAYETH NAUGHT.

Ronnie Morgan
RONNIE MORGAN

SWORN to before me this 18th day
of December, 2023.

Marcella Coppola
Print Name:

Notary Public for State of South Carolina

My Commission Expires: 2-13-2033



Exhibit 5

(Placeholder)

(Exhibit 5 includes Oconee County Tax Maps 1991, 2001, 2008)

Counsel to submit via traditional means due to the file size exceeding e-filing requirements.



N 656,000
E 1,410,000

N 650,000
E 1,410,000

REVISIONS			
DATE	BY	DATE	BY
4-29-74	VGS		
7-2-74	RCA		
5-23-89	RJV		

LEGEND			
STATE LINE	BLOCK NO.	FILED PLAN LOT NO.	
COUNTY LINE	PARCEL NO.	INTERSTATE HIGHWAY	(1-85) (Shaded)
TOWNSHIP	AREAS (Dead) 75ac (C) (Shaded) 25ac (C)	U.S. HIGHWAY	65
PROPERTY LINE	DIMENSIONS (Dead) 75 (Shaded) 198	STATE HIGHWAY	65
ORIGINAL LOT LINE	FILED PLAN BLOCK NO. (4) (7)	STATE HIGHWAY	65
STREAMS	TRANSMISSION LINE	LAND	1

OCONEE COUNTY - SC.

PHOTO NO. _____ DATE OF MAP 5-23-89
DATE OF PHOTO _____ SCALE 1"=400'

MAP NO. 150

1991



N 854,000
E 1,410,000

N 850,000
E 1,410,000

REVISIONS			
DATE	BY	DATE	BY
4-29-74	VGS		
5-23-89	RJV		
1-17-95	RJV		

LEGEND			
STATE LINE	BLOCK NO.	FILED PLAN NO.	FILED PLAN DATE
COUNTY LINE	PARCEL NO.	FILED PLAN NO.	FILED PLAN DATE
TOWNSHIP LINE	APPLICANT NAME	FILED PLAN NO.	FILED PLAN DATE
PROPERTY LINE	APPLICANT ADDRESS	FILED PLAN NO.	FILED PLAN DATE
ORIGINAL LOT LINE	FILED PLAN NO.	FILED PLAN NO.	FILED PLAN DATE
STREAMS	TRANSACTION LINE	FILED PLAN NO.	FILED PLAN DATE

OCONEE COUNTY - SC.

PHOTO NO. DATE OF MAP 5-23-89
1:1 OF PHOTO SCALE 1" = 100'

NO FLOOD ZONE 45087-0006A 11-25-77

MAP NO. 150

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
C.A. NO. 2022-CP-37-00447

FRANCIS J. RATLIFF, EDWARD J. RATLIFF, JR.,
JAMES L. RATLIFF, LUCRETIA B. MORGAN.
SHERRI AKERS CRISP, AMY CAWTHORN,
PLAINTIFFS,

- V -

OCONEE COUNTY, GLOBE, A SOUTH CAROLINA
LIMITED PARTNERSHIP, FARMES,
A SOUTH CAROLINA LIMITED PARTNERSHIP
DEFENDANTS.

D E P O S I T I O N

WITNESS: KAREN RASBORNIK
DATE: OCTOBER 5, 2023
TIME: 4:06 P.M.
LOCATION: KENISON, DUDLEY & CRAWFORD, LLC
704 EAST MCBEE AVENUE
GREENVILLE, SOUTH CAROLINA 29601
REPORTED BY: CHERYL PRIMM, PROFESSIONAL COURT REPORTER
LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 Yeah, there you go.

2 (Whereupon, the below-described
3 document was marked as Defendant's
4 Exhibit No. 1.)

5 BY MR. HOLLIDAY:

6 Q. That's what he just found that has the original color
7 still on it.

8 A. Yeah.

9 Q. And so Exhibit 1 is the document we're talking about?

10 A. Yep.

11 Q. And so what does ---

12 A. This represents Jan's property (indicating). This
13 represented end of county maintenance (indicating).
14 And this was in the discussions that we had about --
15 there was all sorts of discussions about rights-of-way.

16 Was there any type of right-of-way on the -- on
17 this portion of Ellenburg? Where was maintenance being
18 done by the County on Ellenburg Road? So this
19 represented the rights-of-way that were deeded, like a
20 deeded right-of-way is where they sort of talked about
21 that, as opposed to other types of right-of-way.

22 Was it County? Was it State? Was it -- what type
23 of road was it? In the notes that I have, Matt
24 indicated that the road wasn't in the County road
25 inventory. And so it wasn't State -- or it wasn't

1 County, is what he said.

2 I said, what other kind of road could there be?
3 He said, well, it could be a State road. It could be a
4 private road. It could be dot, dot, dot, you know, put
5 dots on there, ellipses, I don't know what other kinds
6 of roads there could have been, but that's what they
7 said.

8 Q. Okay. And these initials and this date, that was done
9 in your presence at your request?

10 A. Correct.

11 Q. Okay. And I -- just to kind of nail down ---

12 A. I wanted to find out when did they make that map, and
13 so they put that date on there, and I said, you know,
14 who made the map? Or how did you get the map? You
15 know, tell me that I'm getting it from you. I asked
16 for business cards. Nobody had a business card. So
17 that was my next best ...

18 Q. And that stands for George Prince Brown?

19 A. I believe that those are his initials, correct. He
20 didn't introduce himself as George. I have it in my
21 notes as Prince Brown. So I believe he went by Prince.

22 Q. Okay. Do you know what this 150 foot means?

23 A. I don't know that that was that -- is what it was. I
24 think it had to do with 150 being some sort of tax
25 section, maybe. They did it by sections in numbers.

1 So I think it more related to a tax. And I don't know
2 if there were others that were associated with it, but
3 it's not 150 feet, I don't believe.

4 Q. Okay. But, effectively, they created this for you?

5 A. Well, I wouldn't say created. It was already in
6 existence, right, and handed it to us and represented
7 that this is where they stopped county maintenance.
8 They did not do any maintenance beyond that point. The
9 -- the baby green dot right there.

10 Q. Okay. And is that a similar spot to -- I believe your
11 husband had testified that there was a sign there for
12 end of county maintenance?

13 A. Correct.

14 Q. So that's a similar spot to where that sign was?

15 A. If you're starting up here (indicating) on Knox road
16 and you run down the road past Rollingwood and it's on
17 the right-hand side. At the times that we used to run
18 the road, that's where it was.

19 Q. Okay. And what did that roughly look like? I think
20 there was some testimony that it was next to a trough
21 or a tub or something.

22 A. I don't remember any trough, but this was all wooded
23 (indicating). So, in my mind, prior to Harbor Oaks,
24 you know, being developed, and if you go back and look
25 at some of the aerial photos, there was a lot of woods

Attachment #1 (Map of end of county maintenance provided to the Ratliff family in 2008):



R-000186

R-000187

MICHAEL HENDERSON

12

1 Q: Known as 585 Ellenburg Road, the address.

2 A: I don't know the address.

3 Q: Okay. How would you identify this property?

4 A: I would identify it by tax map parcel number.

5 Q: Okay. And this tax map, this is for tax map
6 parcel ending in 099, correct?

7 A: Okay, sir.

8 Q: All right. And then looking at Exhibit 3,
9 which is your file. The first page,
10 Cornerstone 1, you have that, as well? This
11 tax map, it does have address numbers or street
12 numbers, doesn't it, in small writing there?

13 A: Okay.

14 Q: So five -- you see 585 Ellenburg or 585?

15 A: I see that.

16 Q: Okay. And that's the tax map ending in 099,
17 right?

18 A: The tax map number is 099.

19 Q: Okay. So the plat you prepared in November of
20 2020 was for 585 Ellenburg Road. Do you agree
21 with that?

22 A: Would you talk out a little louder, please?

23 Q: The plat you prepared in November of 2020 was
24 for 585 Ellenburg Road?

25 A: Yes, sir. According to your records that



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R-000188

1 you're telling me. I have no knowledge of the
2 address.

3 Q: Okay. You have ---

4 A: I can see that, but I don't know whether that's
5 the address. The County has a lot of addresses
6 on their stuff that is not correct. So,
7 whether that is the correct address or not, I
8 do not know.

9 Q: Okay. Well, we'll refer to the tax map number.
10 Are you comfortable with the tax map ending in
11 099?

12 A: That's correct.

13 Q: Okay. Thanks. And next door to tax map 099
14 and to the -- I guess that's toward Knox Road
15 is the tax map ending in 103, right?

16 A: Okay, sir.

17 Q: And underneath that, it says 565. Do you see
18 that?

19 A: I see that.

20 Q: Okay. And in the opposite direction towards
21 the end of the road, the tax map ends in 100.
22 Do you see that?

23 A: I see that.

24 Q: Okay. And it's kind of hard to read, but it
25 looks like it says 599 next to that. Do you



1 see that?

2 A: I see that.

3 Q: Okay. Let me ask you to look at page
4 Cornerstone 05, which is the November of 2020
5 plat.

6 A: You'll have to look at me and speaking up,
7 rather than talking into the paper.

8 Q: Look at Cornerstone 5, the fifth page ---

9 A: Okay.

10 Q: --- of your documents. Okay. You see this is
11 -- at the bottom of this plat, there's an
12 indication, it says, Ellenburg Road, WA-42,
13 Subject to R/W, Public. Do you see that?

14 A: I do.

15 Q: Okay. And you added that indication onto this
16 plat, right?

17 A: I did.

18 Q: So, tell me how you came to conclude that that
19 indication should be added on this.

20 A: I looked at the County and State roads'
21 numbers, South Carolina Department of DOT.
22 It's online.

23 Q: And what did you see on DOT?

24 A: It's just a map of all of the counties. It's
25 got the road numbers on it.



- 1 Q: Okay. Other than looking at the SCDOT website,
2 did you look at any other documents?
- 3 A: Not to my knowledge. Not to figure out the
4 road number. I mean, it has the name on it.
5 It's on the County website.
- 6 Q: The name of the road is on the website?
- 7 A: That's correct.
- 8 Q: Okay. What about the notation that there's a
9 public right-of-way along this section of
10 Ellenburg Road in front of this property?
- 11 A: Well, I just said it was subject to a right-of-
12 way, if there is one.
- 13 Q: Okay. Do you know if there is one, in fact?
- 14 A: No, I do not know that there's one.
- 15 Q: Okay.
- 16 A: I didn't see anything in their deed that
17 specified that there was a right-of-way on the
18 road.
- 19 Q: Okay. Did you see any documents indicating
20 that there is a right-of-way in front of this
21 property on Ellenburg Road?
- 22 A: Repeat that question?
- 23 Q: Did you see any documents indicating that there
24 is a right-of-way on Ellenburg Road in front of
25 this property?



MICHAEL HENDERSON

16

1 A: Well, a right-of-way has to be in the deed, and
2 I did not see anything in the deed.

3 Q: Okay. What caused you to add the language here
4 that says it's subject to a right-of-way,
5 public?

6 A: Because there's a road out there.

7 Q: Okay. And so there's a road out there, and
8 because it's identified as -- has a County name
9 to it, is that -- you concluded that there's a
10 right-of-way that belongs to the County? Is
11 that what happened?

12 A: Well, people are using it. I assume that
13 there's a right-of-way there of some kind. But
14 not necessarily a legal right-of-way, as far as
15 defined as in a deed or easement papers that's
16 recorded at the courthouse.

17 Q: Mr. Henderson, do you hold a license -- any
18 license in South Carolina?

19 A: I have a surveyor's license.

20 Q: Okay. And how long have you been a licensed
21 surveyor?

22 A: Since 1977, is when I took the test. I got my
23 license as soon as they mailed it to me,
24 probably early '78.

25 Q: And that license is current, right?



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R-000192

1 A: No.

2 Q: Okay. I'm sorry. As of the date of this plat,
3 November of '22 -- November of 2020, it was
4 current?

5 A: Repeat that question.

6 Q: I said, your license is current? Do you still
7 hold ---

8 A: Yes, sir.

9 Q: --- a license today?

10 All right. So as a surveyor, are there
11 requirements that have to be met before you
12 indicate on a plat that a right-of-way exists?

13 A: Well, a surveyor's obligation is to show what's
14 there on the ground. If it's obvious -- it
15 looks like there's a road there, you show that
16 there's some right-of-way. That's all we do,
17 is observe. We don't create or make any right-
18 of-ways. That's all done by deeds and
19 attorneys.

20 Q: Okay. So your writing that this portion of
21 Ellenburg road is subject to a public right-of-
22 way. Does that create a right-of-way?

23 A: Repeat.

24 Q: When you wrote that -- you wrote on this plat
25 that it was subject to a right-of-way, public,



1 correct?

2 A: Yes, because people public -- people were using
3 the road. That's what I observed.

4 Q: Does your -- but does your writing that on the
5 plat, does that make it a legal, official
6 right-of-way?

7 A: No, absolutely not. All of that has to be
8 transferred by a deed.

9 Q: On this plat dated November 23rd, 2020, there's
10 an RW line running across the bottom of that
11 property. Do you see that?

12 A: I see that.

13 Q: And RW, does that indicate a right-of-way?

14 A: Well, it's indication that there is a potential
15 right-of-way there.

16 Q: Okay. And how did you determine that there's
17 a potential right-of-way at that location
18 across the front of the property?

19 A: Well, there was an iron pin that I found out
20 there that is approximately that distance from
21 the centerline of the road that someone set
22 prior to me getting there.

23 Q: And what would an iron pin indicate to you as
24 a surveyor?

25 A: Well, it's usually put on the other side of a

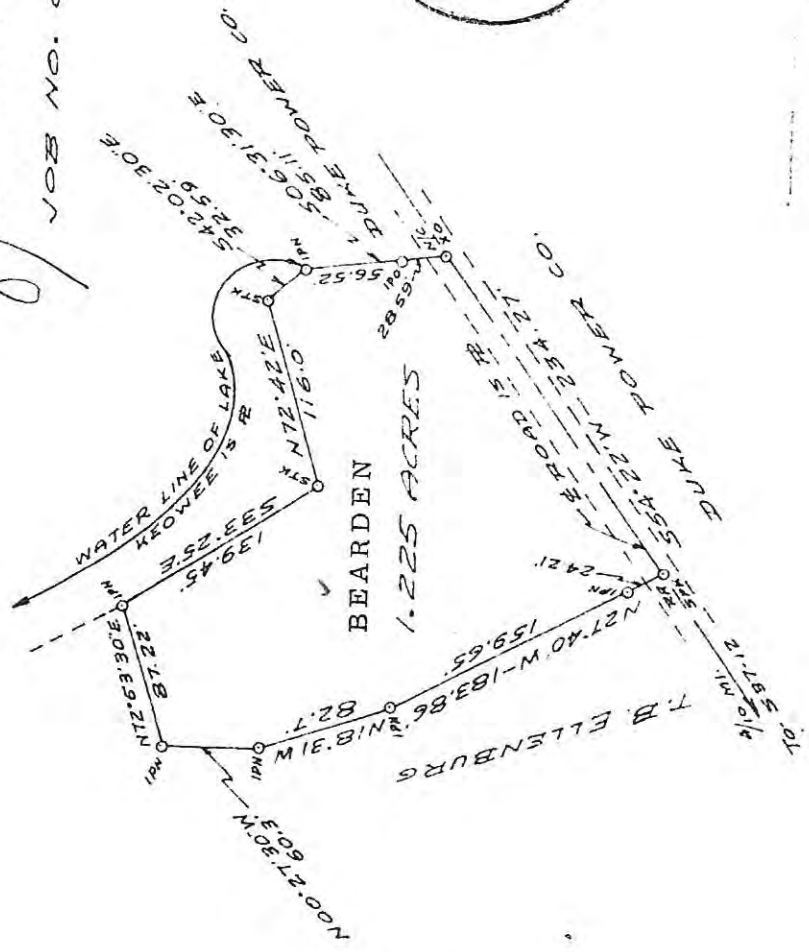


NANCY R. BEARDEN
XXXXXXXXXXXXXXXXXXXX
KEOWEE COMMUNITY
OCONEE COUNTY
SOUTH CAROLINA

PROPERTY OF:
30th Aug.
Recorded this.....day of.....
A. D., 1974 in Vol. P-39
Page 61 and Certified:
Nancy R. Bearden
C.C.C.P.G.

DATE: 28 AUG. 1974
SCALE: 1" = 100'
JOB NO. 614-74

Oconee County, S. C.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' MOTION TO
v.	)	DISQUALIFY ATTORNEY AND LAW
	)	FIRM
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farnes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

TO: ANDREW HOLLIDAY, ESQ., LARRY BRANDT, ESQ., ATTORNEYS FOR GLOBE, A SOUTH CAROLINA LIMITED PARTNERSHIP AND FARNES, A SOUTH CAROLINA LIMITED PARTNERSHIP; JAMES LOGAN, JR., ESQ., ATTORNEY FOR OCONEE COUNTY:

You will please take notice that on the 10th day after service hereof, or as soon thereafter as counsel can be heard before the Presiding Judge at the Oconee County Courthouse, Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon, ("Plaintiffs") will move before the Court for an Order disqualifying attorney Andrew Holiday, Esquire ("Attorney") and the law firm of Derrick, Ritter, Williams & Morris, P.A. ("Law Firm") from representing Defendants Globe, A South Carolina Limited Partnership, and Farnes, A South Carolina Limited Partnership (collectively, "Defendants") in this matter based on a conflict of interest. This motion is pursuant to Rule 1.9(a), RPC, Rule 407, SCACR. As part of this motion, Plaintiffs will show as follows:

1. Attorney Andrew Holliday and Emma Morris are partners in the Law Firm.

2. In December 2020, attorney Emma Morris and the Law Firm represented James L. Ratliff and Lucretia B. Morgan in the purchase of 585 Ellenburg Road, tax map parcel #150-00-01-099. As part of this transaction, Michael Henderson of Cornerstone of Seneca, Inc. was hired to prepare a survey that was eventually recorded in Oconee County (the “Henderson Plat”).
3. This lawsuit seeks to determine what rights, if any, Oconee County has over 585 Ellenburg. Plaintiffs claim the Henderson Plat is in error by indicating a public right-of-way across 585 Ellenburg.
4. The Law Firm is representing Globe and Farnes in this lawsuit opposed to James Ratliff and Lucretia Morgan, and the Law Firm has used the Henderson Plat to argue a position in opposition to its former clients as related to their rights to 585 Ellenburg.
5. A conflict of interest exists for Attorney Holliday and the Law Firm to represent clients taking a position in opposition to James Ratliff and Lucretia Morgan as it relates to the title of 585 Ellenburg. James Ratliff and Lucretia Morgan have not waived this conflict.
6. The Law firm did not disclose this conflict or obtain a waiver from James Ratliff or Lucretia Morgan.
7. Accordingly, Attorney Holliday and the Law Firm should be disqualified from continued representation in this matter.

INTRODUCTION

This lawsuit concerns what rights, if any, Oconee County has across 585 Ellenburg Road (Tax Map #150-00-01-099, hereinafter “585 Ellenburg”) and 599 Ellenburg Road (Tax Map #150-00-01-100, hereinafter “599 Ellenburg”). The Ratliff family has owned 599 Ellenburg since 1981. James Ratliff and Lucretia Morgan purchased 585 Ellenburg in December of 2020, and were represented by the Law

Firm. (Affidavit Lucretia B. Morgan ¶ 3, attached as **Exhibit A**; Affidavit of James L. Ratliff ¶ 3, attached as **Exhibit B**). The first recorded plats for both 599 Ellenburg and 585 Ellenburg were based on surveys prepared in August 1974 when T.B. Ellenburg sold 599 Ellenburg to Nancy Bearden and retained ownership 585 Ellenburg. (585 Ellenburg 1974 Plat attached as **Exhibit C**, hereinafter, the “1974 Plat”). There are no other recorded plats for 599 Ellenburg.

When James Ratliff and Lucretia Morgan purchased 585 Ellenburg in December 2020, the bank required a new survey. (Aff. Morgan ¶ 4). Michael Henderson, surveyor with Cornerstone of Seneca, Inc., was hired to prepare the new survey. (Aff. Morgan ¶ 6). The Law Firm informed Lucretia Morgan that this new survey would need to be reviewed by the planning commission and recorded in the public records. (Aff. Morgan ¶ 7). Neither Morgan nor Ratliff wanted a survey and did not know they had a choice not to record this survey. (Aff. Morgan ¶ 7; Aff. Ratliff ¶ 6). The Henderson survey was recorded in public records. (the “Henderson Plat,” attached as **Exhibit D**).

The Henderson Plat referenced the 1974 Plat but then added indications of a public right-of-way along 585 Ellenburg and a notation of “Ellenburg Road WA-42 Subject to R/W Public,” which did not previously exist on the 1974 plat. (Compare Ex. C with Ex. D). The Law Firm did not identify this change in the plat and explain it to James Ratliff and Lucretia Morgan. (Aff. Morgan ¶ 10; Aff. Ratliff ¶ 9). This purported right-of-way is excepted from the property’s title policy, but the Law Firm did not walk James Ratliff and Lucretia Morgan through these title exceptions, which would have brought this new purported right-of-way to their attention. (Aff. Morgan ¶ 11; Aff. Ratliff ¶ 10).

Until 2021, there had never been a question that the Plaintiffs own and perform all maintenance on 585 Ellenburg and 599 Ellenburg. Only when a developer (Andy Lee) began seeking a road width variance to develop property to the east of 599 Ellenburg did Oconee County claim for the first time that

it has a prescriptive easement over Plaintiffs' property. Andy Lee's company has a contract to purchase Globe and Farnes property for development. John Hamrick is the owner of Globe and Farnes. Attorneys Larry Brandt and Andrew Holliday both represented Globe and Farnes in this lawsuit.

The developer referenced the Henderson Plat during comments to the Oconee County Board of Zoning Appeals and it was made part of the hearing package for the board, and the developer used the Henderson Plat to argue that a public right-of-way already exists across Plaintiffs' property and in opposition to Ratliff's position that the road is private. (BOZA Hearing Trans. 78:20-79-16, Record p. 283 (April 25, 2024), attached as **Exhibit E**). Plaintiffs also believe that Attorney Andrew Holliday represents the developer Andy Lee in certain matters in addition to Globe and Farnes. In public comments submitted to BOZA for the April 2022 Hearing, Attorney Andrew Holliday submitted an email in support of the variance, reflecting his longtime involvement with many of the parties. (BOZA Record p. 302-303, attached as **Exhibit F**). In these comments, Mr. Holliday makes the following comments to the detriment of James Ratliff, his firm's former client, suggesting Mr. Ratliff is lying, opposing the variance for pecuniary gain, and attempting to extort the developer, and would lose any related court case:

"The fourth question you must answer is more difficult but that is mostly *due to the ridiculous amount of misunderstandings, rumors, and outright lies being told about this variance request*. The most dangerous untruth being told with regard to this variance request is that this developer is decreasing the size of the current road and seizing property from Mr. Ratliff.

....

These drawings do not show that Mr. Ratliff will be "cut off" as has been asserted. The doubling of paved surfaces adjacent to his business does not sound like a substantial detriment to Mr. Ratliff or a substantial detriment to the operations of his business.

....

There have also been claims that dangerous conditions will be present on the road if this variance is granted. If the paved area near Mr. Ratliff's property is doubled presumably any safety concerns would be reduced. Mr. Ratliff's claims regarding

safety ring especially hollow when considering that his business is the cause of large trucks to be traversing Ellenburg Road in the first place.

....

I am not aware of any substantial arguments relating to detriments to the public good made by Mr. Ratliff or others but to the extent they assert such, I would disagree. *Mr. Ratliff's opposition to this variance seem personal and pecuniary and not focused on the public good. My opinion is that he is seeking to extort this developer and I think he expects to be paid off to drop his opposition to this developer.*

Most importantly, the ownership of the road and the easements or lack thereof is immaterial to your decision. You do not have the authority to determine the ownership of the road nor should you. *That belongs squarely in the purview of the Circuit Court in the event Mr. Ratliff sees fit to bring such a case. In my opinion he would lose such a case* due to an easement by necessity clearly existing through his property but that point truly is irrelevant to you decision making.

(Ex. F (emphasis added)).

Ultimately, the BOZA granted a road variance application that was premised on the conclusion that Oconee County has a prescriptive easement over 585 & 599 Ellenburg. This decision is currently on appeal and the existence of a prescriptive easement is at issue in this case.

Because this lawsuit concerns what rights, if any, Oconee County has over 585 Ellenburg and 599 Ellenburg, throughout discovery the Defendants have consistently referred to and used the Henderson Plat against Plaintiffs' position, arguing that the Henderson Plat is evidence of a public right-of-way. (Deposition James Ratliff 30-37, 130-132 (Oct. 5, 2023), excerpts attached as **Exhibit G**). This clearly connects the Law Firm's representation of Lucretia Morgan and James Ratliff in the purchase of 585 Ellenburg with this matter.

Basis for Disqualification

James Ratliff's and Lucretia Morgan's purchase of 585 Ellenburg is substantially related to this current action. The accuracy of the Henderson Plat that was prepared as part of that transaction is contested by Plaintiffs and directly at issue in this suit to determine the County's rights over property in front of 585 and 599 Ellenburg. James Ratliff and Lucretia Morgan were not told about the new

purported right-of-way added to the Henderson Plat and were not walked through the title policy exceptions that included this purported right-of-way. (Aff. Morgan ¶¶ 10-11; Aff. Ratliff ¶¶ 9-10).

Pursuant to Rule 1.9(a), RPC, Rule 407, SCACR:

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

This conflict is imputed to other attorneys in the Law Firm under Rule 1.10, RPC, Rule 407, SCACR.

In *Townsend v. Townsend*, 323 S.C. 309 (1996), the Supreme Court expounded on when a matter is substantially related:

“In determining whether the matter is ‘substantially related,’ one should consider, among other things, whether the affected lawyer ‘would have or *reasonably could have* learned confidential information in the first representation that would be of significance in the second.’”

Townsend, 323 S.C. at 317. The court went on to conclude that the matters under review in *Townsend* were substantially related because the lawyer “reasonably could have gained information in the first matter that will be relevant in the second matter.” *Id.* That is the case here. The undersigned raised these concerns to Attorney Holliday, but these concerns have not been addressed. (Letter David Paavola to Andrew Holliday (May 17, 2024), attached as **Exhibit H**; Response Email Andrew Holliday to David Paavola (May 21, 2024), attached as **Exhibit I**),

During the course of the Law Firm’s prior representation, the Law Firm possessed confidential information about Plaintiffs. Based on the Law Firm’s prior representation of Plaintiffs, the Law Firm has or reasonably could have confidential information that is of significance in this matter. *See Townsend v. Townsend*, 323 S.C. 309, 317, 474 S.E.2d 424, 429 (1996).

The Law Firm now represents Defendants Globe and Farmes on matters that are substantially related to its prior representation and whose interests are materially adverse to James Ratliff and Lucretia Morgan. (Affidavit of Williams O. Higgins, Esq. ¶ 9(g), attached as **Exhibit J**). As a result of these circumstances, there is a reasonable risk that confidential information obtained during Law Firm's prior representation of Plaintiffs is material to this matter, including, but not limited to, specific information regarding the existence of a public right of way. The Law Firm has not obtained informed consent in writing from Plaintiffs as required by Rule 1.9(a), RPC, Rule 407, SCACR.

Law Firm's representation of Defendants is a conflict of interest pursuant to Rule 1.9(a), RPC, SCACR 407. (Higgins Aff. ¶ 9(h)), Ex. J). William Higgins has served as an ethics expert witness in legal malpractice, motions to disqualify, and other matters concerning application of the rules of professional conduct. He is a former chair of the South Carolina Bar's Ethics Advisory Committee and Professional Responsibility Committee, and chaired the Ethics 2000 subcommittee, which developed the Bar's proposal for rules of professional conduct. (Higgins Aff. ¶ 2, Ex. J). Mr. Higgins has also practiced commercial real estate law for over thirty years and teaches real estate transactions at the Joseph F. Rice School of Law University of South Carolina. In Mr. Higgins's opinion, James Ratliff and Lucretia Morgan's purchase of 585 Ellenburg and the present lawsuit are substantially related for purposes of Rule 1.9(a), meaning a conflict of interest exists for the Law Firm's representation of Globe and Farmes. (Higgins Aff. ¶ 10(a)). Because the Law Firm has not obtained written consent, it is prohibited from continued representation of Defendants Globe & Farmes in this matter. (Higgins Aff. ¶ 10(c)).

Based on the foregoing, Plaintiffs respectfully request that the Court grant their motion and enter an Order disqualifying attorney Andrew Holiday, Esquire and the law firm of Derrick, Ritter, Williams

& Morris, P.A. from continuing to represent Defendants Globe and Farnes in this matter. Plaintiff does not object to attorney Larry Brandt and the law firm of Larry C. Brandt, P.A. from continuing to represent the Defendants.

Timing of Motion

While this motion has been raised near the close of discovery and trial, any delay in raising this issue does not absolve the clear conflict that exists. If the Court finds the Law Firm was required to obtain prior written consent before representing Globe and Farnes, it was the Law Firm's obligation when it ran its conflict check to approach James Ratliff and Lucretia Morgan to obtain written consent. The Law Firm has known about this conflict longer than Plaintiffs. It is not Ratliff and Morgan's responsibility to raise conflict concerns and approach the Law Firm to inform it of the conflict.

Additionally, this motion will not work prejudice because Globe and Farnes have been represented by Larry Brandt throughout the entirety of this litigation and in the BOZA hearings.

This Motion is further supported by the pleadings on file with the Court, the South Carolina Rules of Civil Procedure, the South Carolina Rules of Professional Conduct, the laws and statutes of South Carolina, and whatever supporting affidavits and memoranda of law that may be submitted to this Court. The undersigned counsel hereby certifies, pursuant to Rule 11, that he communicated in writing with opposing counsel and attempted to resolve this matter prior to filing this motion.

Respectfully submitted,

s/ David L. Paavola

David L. Paavola (S.C. Bar No. 100714)
Mark A. Bible, Jr. (S.C. Bar No. 101624)
Kenison, Dudley & Crawford, LLC
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Columbia, South Carolina 29201
Office: (864) 242-4899

Email: paavola@conlaw.com
Counsel for Plaintiffs

June 4, 2024
Columbia, SC

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	AFFIDAVIT OF LUCRETIA B.
Plaintiffs,	)	MORGAN
v.	)	
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, LUCRETIA B. MORGAN who, being first duly sworn, deposes and states the following:

1. My name is Lucretia B. Morgan, and I am a Plaintiff in this action. I am a citizen and resident of Oconee County, South Carolina. I am over the age of eighteen and have personal knowledge of the matters stated herein.
2. In December of 2020, I purchased 585 Ellenburg Road (Tax Map #150-00-01-099, hereinafter "585 Ellenburg") along with James Ratliff.
3. In that purchase, I was represented by Attorney Emma W. Morris with Derrick, Ritter, Williams & Morris, P.A. (collectively, the "Law Firm").
4. When James Ratliff and I purchased 585 Ellenburg, the bank required a new survey. (Email Randy Shaw to Lucretia Morgan (Nov. 2, 2020), attached as **Exhibit 1**). It is my understanding that a survey of 585 Ellenburg was prepared in 1974 and was recorded in Oconee County in 1997 at Plat Book 61, Page 577, attached as **Exhibit 2** (the "1974 Plat").

ELECTRONICALLY FILED - 2024 Jun 04 11:21 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

5. In my review of the 1974 Plat, I do not see any indication that a public right-of-way exists on 585 Ellenburg.
6. As part of the purchase of 585 Ellenburg, Michael Henderson with Cornerstone of Seneca, Inc. was hired to prepare a survey. (Email Jeff Bright, Michael Henderson (Nov. 23, 2020), attached as **Exhibit 3**).
7. I was informed by the Law Firm that this new survey must be sent to the Planning Commission and recorded with the deed, which could delay the closing. (Email Lorie Stephens to Lucretia Morgan (Nov. 16, 2020), attached as **Exhibit 4**). I specifically remember this email exchange because the seller was eager to close so they could use the funds for a separate property. I did not think a survey was needed but the bank required it and I did not know that I had the option to not record the survey.
8. Mr. Henderson's plat is dated November 23, 2020, and recorded in Oconee County at B754, Page 6, attached as **Exhibit 5**, (the "Henderson Plat").
9. The Henderson Plat includes notations along the section of 585 Ellenburg closest to the road of "RW" and "Ellenburg Road WA-42 Subject to R/W Public." I do not see these same notations on the 1974 Plat.
10. The Law Firm did not review the 1974 Plat and the Henderson Plat with me and did not bring to my attention any changes from the 1974 Plat to the Henderson Plat.
11. The Law Firm provided title insurance as part of our purchase of 585 Ellenburg. In my current review of the title policy, there is an exception from coverage for "Easement and right of way for Ellenburg Road as shown on the new plat to record." (Exceptions attached as **Exhibit 6**). The Law Firm did not review these exceptions

from title coverage when we closed on the purchase of 585 Ellenburg and did not specifically mention this purported right of way along Ellenburg Road.

12. The Henderson Plat has been used by Defendants in this case for the purpose of arguing that a public right-of-way exists across 585 Ellenburg.
13. I had no interactions with Attorney Andrew Holliday as part of closing on 585 Ellenburg.
14. I only recently became aware that the Law Firm's participation in my closing of 585 Ellenburg creates a conflict of interest for the Law Firm in this lawsuit and I requested my attorney to review this potential conflict.
15. I am not willing to waive this conflict of interest with the Law Firm and Attorney Holliday representing Defendants in this action.



Lucretia B. Morgan

Subscribed and sworn to before me
this 2nd day of June 2024.


Notary Public for South Carolina

My Commission Expires: 7-24-2025



Exhibit 1

ELECTRONICALLY FILED - 2024 Jun 04 11:21 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

From: Randy Shaw <rshaw@c1stbank.com>
Sent: Monday, November 2, 2020 2:28 PM
To: Lucretia Morgan
Subject: RE: Offer letter

Got it Lucretia. Thanks

I will seek approval subject to the survey and also subject to an appraisal. The appraiser will need a current survey of exactly what you are purchasing.

Thanks
Randy

From: Lucretia Morgan <lbm1969@gmail.com>
Sent: Monday, November 2, 2020 9:08 AM
To: Randy Shaw <rshaw@c1stbank.com>
Subject: Offer letter

<<< EXTERNAL EMAIL - Think before you CLICK on links or attachments! >>>

Good morning Randy.

Attached is a copy of the signed offer letter for the property. Is there anything else you need from our side?

We would like to close as soon as possible but of course we need to get the survey done first. Not sure how long that's going to take.

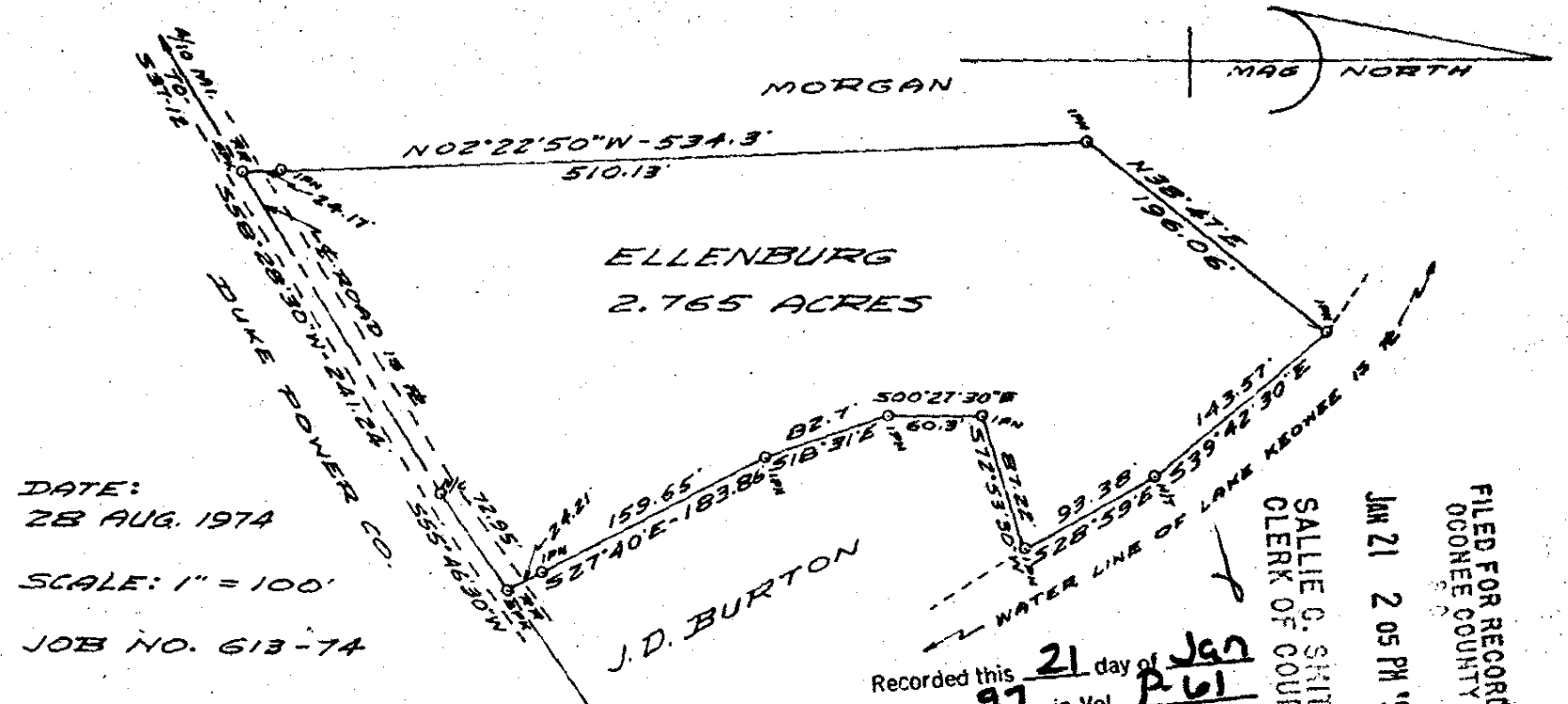
Thanks,
Lucretia Morgan

Disclaimer: This message is intended only for specified recipients. If you are not the intended recipient, you are notified that disclosing, copying, distributing, or taking any action regarding, the contents of this information is strictly prohibited. This communication represents the originator's personal views, which may not reflect those of Community First Bank. Security Warning: This message is being sent over an unsecured medium (the Internet). Recipients should not reply to this message with sensitive or confidential account information. If the need arises to communicate sensitive or confidential account information, customers should visit or contact the nearest office. If you received this email in error, please immediately notify postmaster@c1stbank.com

Exhibit 2

PROPERTY OF: T. B. & MABLE F. ELLENBURG
KEOWEE COMMUNITY To: Terry V Ellenburg
OCONEE COUNTY
SOUTH CAROLINA Deed 897 P & 210

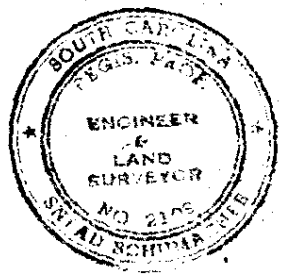
RW
5-1/2" 000720



DATE:
28 AUG. 1974

SCALE: 1" = 100'

JOB NO. 613-74



FILED FOR RECORD
OCONEE COUNTY

JAN 21 2 05 PM '97

SALLIE C. SMITH
CLERK OF COURT

Recorded this 21 day of Jan
A. D., 19 97 in Vol. P 61
Page 577 and Certified:

Sallie C. Smith
C.C.C.P.G.S.

OCONEE COUNTY, S.C.

SCHUMACHER ENGINEERING SERVICE
SNEAD SCHUMACHER
CIVIL ENGINEER • LAND SURVEYOR
South Carolina Professional Registration No. 2105
POST OFFICE BOX NO. 512 WALHALLA, S. C.

225

ELECTRONICALLY FILED - 2024 Jun 04 11:21 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

Exhibit 3



Lucretia Morgan <lbm1969@gmail.com>

Re: 185 Boondock Trail and 585 Ellenburg Road Seneca, SC

2 messages

Jazzy Jeff Bright <jbright3@gmail.com>
To: Michael Henderson <csi1977mlh@gmail.com>
Cc: Lucretia Morgan <lbm1969@gmail.com>

Mon, Nov 23, 2020 at 3:21 PM

Emmie Morris in Seneca is handling the closing. That sounds good to me on the payment.

Thanks again. Also, let me know what day works for you on the other property at [185 Boondock Trail](#).

On Mon, Nov 23, 2020 at 3:09 PM Michael Henderson <csi1977mlh@gmail.com> wrote:

Good Afternoon,

I will send you an invoice along with the plat when I finish it. I am planning on having it ready tomorrow. Who is the attorney that is handling this closing?

I do not have electronic payment service, so a check will need to be sent once you get the invoice.

Thanks,

Michael

From: Jeff Bright <jbright3@gmail.com>
Sent: Monday, November 23, 2020 12:04 PM
To: Michael Henderson <csi1977mlh@gmail.com>
Subject: Re: [185 Boondock Trail](#) and [585 Ellenburg Road Seneca, SC](#)

And I would like to schedule the other property at [185 Boondock Trail](#) to be surveyed please. I can meet you to show you where the 1 acre 1/2 will be. Also can I go ahead and pay you for today.

Sent from my iPhone

On Nov 23, 2020, at 11:58 AM, Jeff Bright <jbright3@gmail.com> wrote:

Go ahead a start.

Sent from my iPhone

On Nov 23, 2020, at 11:40 AM, Michael Henderson <csi1977mlh@gmail.com> wrote:

Mr. Bright,

I reviewed the property to be surveyed. The boundary perimeter is approximately 1650 linear feet, which would have a survey fee of \$950.00, if they are not problems on the ground with encroachments or overlaps. If you will email me a confirmation to start ASAP, I will have the crew out there this afternoon.

Best regards,

Michael L Henderson

From: Jeff Bright <jbright3@gmail.com>
Sent: Monday, November 23, 2020 11:00 AM
To: csi1977mlh@gmail.com
Subject: Fwd: 185 Boondock Trail and 585 Ellenburg Road Seneca, SC

Sent from my iPhone

Begin forwarded message:

From: Jeff Bright <jbright3@gmail.com>
Date: November 23, 2020 at 10:51:45 AM EST
To: csi1977ml@gmail.com
Subject: Fwd: 185 Boondock Trail and 585 Ellenburg Road Seneca, SC

The first property which is 585 Ellenburg Road is the one that's needed ASAP.

Sent from my iPhone

Begin forwarded message:

Next, my mother in law is selling this property

Parcel ID 150-00-01-099

Tax ID 14555

Neighborhood	HARBOR OAKS
Property Address	585 Ellenburg Rd Seneca, SC 29672
Legal Description	MapPlatB P61 MapPlatP 577 E OF S C 183 MH 3051 HERE
	(Note: Not to be used on legal documents)
Acreage	2.76
Class	102785
Tax District/Area	011
Legal Residence	No This property is being sold to JAMES L. RATLIFF AND LUCRETIA B. MORGAN 547 Knox Road Seneca, SC 29672

Right now this is the 1st one that needs to be done. They need a new survey for the bank.

All that certain piece, parcel or tract of land, with improvements thereon, lying and being situated in the Keowee Community, Oconee County, South Carolina, containing **Two and 765/1000 (2.765) ACRES**, more or less, as shown on a Plat prepared by Snead Schumacher, PR #2109, dated August 28, 1974 and recorded in Plat Book P-61, page 577, records of

Oconee County, South
Carolina. This is a
portion of the land
conveyed to Rhonda
Ellenburg by Deed of
Distribution of the
Estate of Terry Vess
Ellenburg, Probate
Case #2006-ES-
37-00-436,
recorded on the 17th
day of April, 2007 in Deed
Book 1579, at page 289-
291 in records for
Oconee County,
South Carolina.

ELECTRONICALLY FILED - 2024 Jun 04 11:21 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

Jazzy Jeff Bright <jbright3@gmail.com>
To: Lucretia Morgan <lbm1969@gmail.com>

Mon, Nov 23, 2020 at 3:21 PM

[Quoted text hidden]

From: Lori Stephens <lori@drwmlaw.com>
Sent: Tuesday, November 17, 2020 3:58 PM
To: Lucretia Morgan
Subject: Re: Closing

Ok, no problem. Kim Crenshaw handles the bank closings, so I have given her your file and she will be working on the closing paperwork with the bank. If you have any questions, please contact her at kctdraw@gmail.com.

Thanks!

On Tue, Nov 17, 2020 at 3:44 PM Lucretia Morgan <lbm1969@gmail.com> wrote:
Hey Lori,

Yes we are.

Thanks,
Lucretia

On Tue, Nov 17, 2020 at 2:09 PM Lori Stephens <lori@drwmlaw.com> wrote:
Hey Lucretia, just double-checking that y'all are borrowing money from Community First on this transaction?

Thanks!

On Mon, Nov 16, 2020 at 9:47 AM Lori Stephens <lori@drwmlaw.com> wrote:
OK, that will delay the closing date. New surveys have to be sent to the Planning Commission for approval before they can be recorded with the deed. I'm at their mercy as to how long that approval takes. I think we should delay closing to be sure we give adequate time to get that process completed.

On Sat, Nov 14, 2020 at 8:02 AM Lucretia Morgan <lbm1969@gmail.com> wrote:
Hey Lori.

Yes the survey is scheduled for this Monday.

Thanks,
Lucretia

On Fri, Nov 13, 2020 at 3:45 PM Lori Stephens <lori@drwmlaw.com> wrote:
Hey Lucretia, just double-checking with you on the survey and appraisal that you mentioned. You guys weren't having a new survey done were you?

Thanks,

On Fri, Nov 13, 2020 at 9:06 AM Lori Stephens <lori@drwmlaw.com> wrote:
Derrick, Ritter, Williams and Morris

On Thu, Nov 12, 2020 at 6:15 PM Lucretia Morgan <lbm1969@gmail.com> wrote:
Hi Lori,

Yes we will bring certified bank checks. Who should we make the check out to?

Thanks,
Lucretia

On Thu, Nov 12, 2020 at 2:33 PM Lori Stephens <lori@drwmlaw.com> wrote:
Hi Lucretia, I am getting the details worked out for your closing on 11/23. I received the earnest money today. Will you be bringing a certified bank check to the closing?

Thanks,

--

Lori Stephens
Paralegal
Derrick, Ritter, Williams & Morris, P.A.
Attorneys at Law
[107 North Fairplay Street](#) - P.O. Box 795
Seneca, SC 29679
Ph: 864-882-2747
Fax: 864-882-2705

TO OUR VALUED CLIENTS AND BUSINESS ASSOCIATES:

EFFECTIVE TUESDAY, JUNE 23, 2020

Due to the increasing numbers of Covid-19 cases in South Carolina, and more particularly in Oconee County, and in order to maximize the health and safety of our clients and staff, our office is currently limiting visitation only to those who have a scheduled appointment AND are physically required to be in our office (i.e., to sign documents that require an original signature). Our attorneys and staff remain in the office and continue to undertake work for our clients. However, we ask you to send documents electronically, utilize email correspondence and phone calls, and otherwise avoid in-person visits whenever possible. We are grateful for your patience and your understanding as we continue to use our extreme

Exhibit 5

ELECTRONICALLY FILED - 2024 JUN 04 11:21 AM - OCONEE - COMMON PLAS - CASE#202202109447

PLAT # B-12418
DISK # C:\DWG_1_2020 NAME: MORGAN-LUCRETIA
FB # FNA PG 11232020

SPC SC GRID NORTH

LAKE KEOWEE

PROPERTY LINE FOLLOWS 800 MSL CONTOUR.
POSSIBLE FLOOD EASEMENT TO 810 MSL CONTOUR.



ELLENBURG ROAD LOCATION

800 MSL CONTOUR ON 1974 REFERENCE PLAT

I. ROD FD. AXLE

Note:
Oconee County has a 25 foot NATURAL BUFFER EASEMENT measured from the 800 foot Mean Sea Level contour. This contour line is an infinitely irregular position line changing over time due to erosion and the 25' offset is approximated.

LOCATION MAP (NTS)

FRANCIS RATLIFF

DB 1941 PAGE 304
PB P-38 PAGE 81
TMP 150-00-01-100

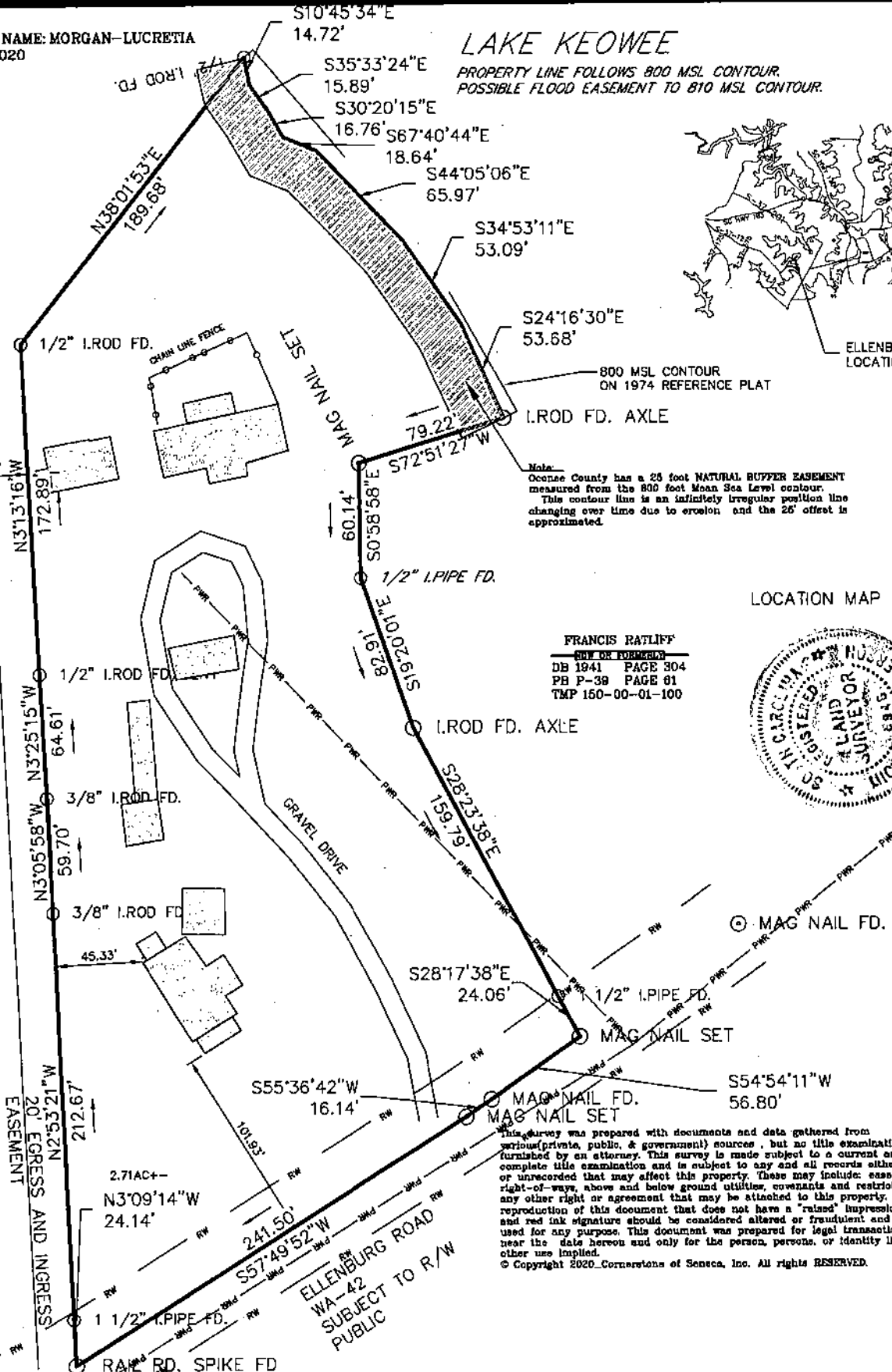


LUCRETIA MORGAN
DB 2403 PAGE 198
PB A298 PAGE 10
TMP 150-00-01-313

LARRY BRUNZLICK
DB 2038 PAGE 338
PB B58 PAGE 5
TMP 150-00-01-103

FILED OCONEE COUNTY SC
RECORDED
2020 DEC -4 PM 3:52

BK B754 PG 6



This survey was prepared with documents and data gathered from various (private, public, & government) sources, but no title examination was furnished by an attorney. This survey is made subject to a current and complete title examination and is subject to any and all records either recorded or unrecorded that may affect this property. These may include: easements, right-of-ways, above and below ground utilities, covenants and restrictions, and any other right or agreement that may be attached to this property. Any reproduction of this document that does not have a "raised" impression SEAL and red ink signature should be considered altered or fraudulent and not to be used for any purpose. This document was prepared for legal transactions on or near the date hereon and only for the person, persons, or identity listed. No other use implied.
© Copyright 2020, Cornerstone of Seneca, Inc. All rights RESERVED.

CORNERSTONE OF SENECA, INC.
800 WHITWORTH CIRCLE
SENECA, SC 29672
PAYMENTS MAILED TO
PO BOX 1071
CLEMSON, SC 29633
PHONE: 864/882-8478
EMAIL: cs0977mih@gmail.com



© Copyright 2020 Cornerstone of Seneca, Inc. All rights RESERVED.
MICHAEL L. HENDERSON, PS 6946

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS 3 SURVEY AS SPECIFIED THEREIN. PROPERTY SUBJECT TO ANY AND ALL EASEMENTS ON RECORD. THIS DOCUMENT DOES NOT TRANSFER TITLE NOR NECESSARILY FOLLOW TITLE LINES.

See Deed 2433 pg. 1
PLAT PREPARED FOR:
JAMES L. RATLIFF
LUCRETIA B. MORGAN

TAX MAP PARCEL #: 150-00-01-099
DESCRIPTION: THIS IS THE PROPERTY DESCRIBED IN DEED BOOK 1589 PAGE 289 AND SHOWN IN

REFERENCE PLAT BOOK P61 PAGE 577. RECORDED IN THE COUNTY RECORDS OF OCONEE.

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
TOWNSHIP OF WAGENER
CITY OF

AREA OF PARCEL: 2.71 ACRES +-

DATE: NOVEMBER 23, 2020 REVISED ON:

Recorded this 4 day of Dec 20 20
Vol B754 page 6 and Certified
Register of Deeds, OCONEE County.

SCALE: 1"=40'

EXEMPTION FROM REVIEW PROCESS
The survey shown hereon is a
RESURVEY of an existing lot of
record as recorded in Plat Book
page

RATLIFE 000163

0" 1" 2" 3" 4" 5" 6" 7" 8" 9"

R-000216

Exhibit 6

ALTA OWNER'S POLICY SCHEDULE B

File Number:
20-310

Exceptions from Coverage

Policy Number:
813064040-222166323

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. Taxes for the year 2021, which are a lien, but not yet due and payable, and taxes for subsequent years.
2. The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.
3. Mortgage from James L. Ratliff and Lucretia Morgan to Community First Bank, dated December 3, 2020, filed for record on December 4, 2020 in Book 4063, Page 171, in the principal sum of \$300,000.00.
4. Easement(s) to Blue Ridge Electric Cooperative recorded in Book 8-U at Page 170.
5. Floodage easement to flood land below the 810-foot contour, recorded in Deed Book 9-Y, page 349.
6. Easement and right of way for Ellenburg Road as shown on new plat to record.
7. 25-foot Natural Buffer easement as shown on new plat to record.
8. Easement and right of way for electric lilnes as shown on new plat to record.

NOTE: The exception(s) in Schedule B omit(s) any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status or national origin as provided in 42 U.S.C. § 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. § 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

ELECTRONICALLY FILED - 2024 Jun 04 11:21 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

Exhibit B

ELECTRONICALLY FILED - 2024 Jun 04 11:21 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

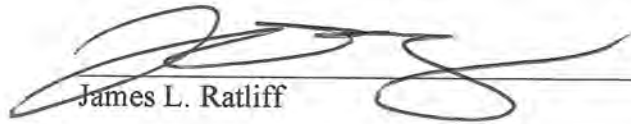
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	AFFIDAVIT OF JAMES L. RATLIFF
Plaintiffs,	)	
v.	)	
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, JAMES L. RATLIFF who, being first duly sworn, deposes and states the following:

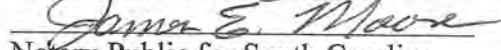
1. My name is James L. Ratliff, and I am a Plaintiff in this action. I am a citizen and resident of Oconee County, South Carolina. I am over the age of eighteen and have personal knowledge of the matters stated herein.
2. In December of 2020, I purchased 585 Ellenburg Road (Tax Map #150-00-01-099, hereinafter "585 Ellenburg") along with Lucretia Morgan.
3. In that purchase, I was represented by Attorney Emma W. Morris with Derrick, Ritter, Williams & Morris, P.A. (collectively, the "Law Firm").
4. When Lucretia Morgan and I purchased 585 Ellenburg, it is my understanding that the bank required a new survey. It is my understanding that a survey of 585 Ellenburg was prepared in 1974 and was recorded in Oconee County in 1997 at Plat Book 61, Page 577, attached as **Exhibit 1** (the "1974 Plat").
5. In my review of the 1974 Plat, I do not see any indication that a public right-of-way exists on 585 Ellenburg.

6. As part of the purchase of 585 Ellenburg, I understand that Michael Henderson with Cornerstone of Seneca, Inc. was hired to prepare a survey. I understand that the Law Firm directed this survey to be recorded. I did not think a survey was needed but the bank required it and I did not know that I had the option to not record the survey.
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13. I only recently became aware that the Law Firm's participation in my closing of 585 Ellenburg creates a conflict of interest for the Law Firm in this lawsuit and I requested my attorney to review this potential conflict.
14. I am not willing to waive this conflict of interest with the Law Firm and Attorney Holliday representing Defendants in this action.


James L. Ratliff

Subscribed and sworn to before me
this 2nd day of June 2024.


Notary Public for South Carolina

My Commission Expires: 7-24-2025



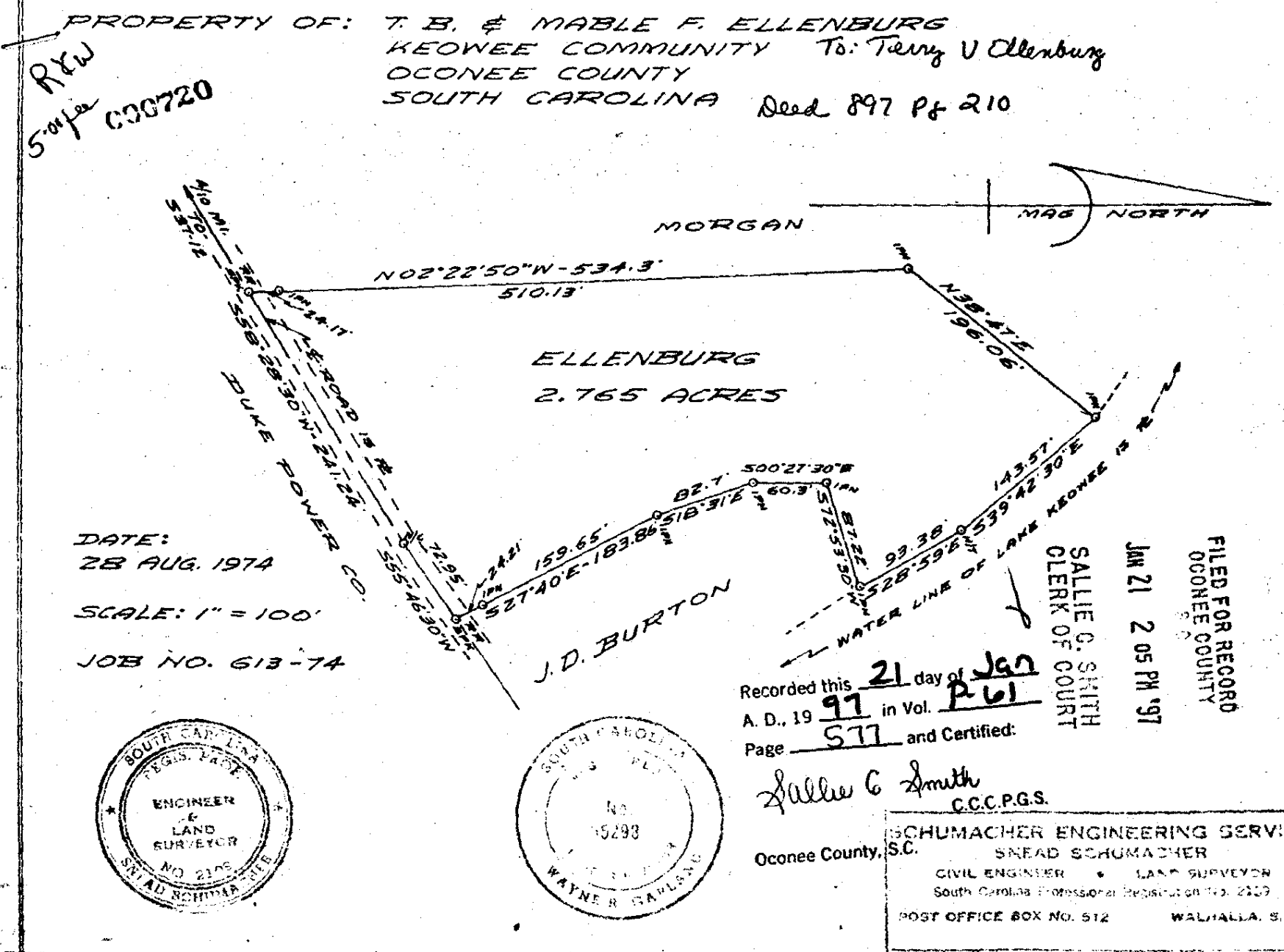


Exhibit 2

ELECTRONICALLY FILED - 2024 JUN 04 11:21 AM - OCONEE - COMMON PLAS - CASE#202202100447

PLAT # B-12418
DISK # C:\DWG_1_2020 NAME: MORGAN-LUCRETIA
FB # FNA PG 11232020

SPC SC GRID NORTH

LAKE KEOWEE

PROPERTY LINE FOLLOWS 800 MSL CONTOUR.
POSSIBLE FLOOD EASEMENT TO 810 MSL CONTOUR.



ELLENBURG ROAD LOCATION

800 MSL CONTOUR ON 1974 REFERENCE PLAT

I. ROD FD. AXLE

Note:
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LOCATION MAP (NTS)

FRANCIS RATLIFF

DB 1941 PAGE 304
PB P-38 PAGE 81
TMP 150-00-01-100

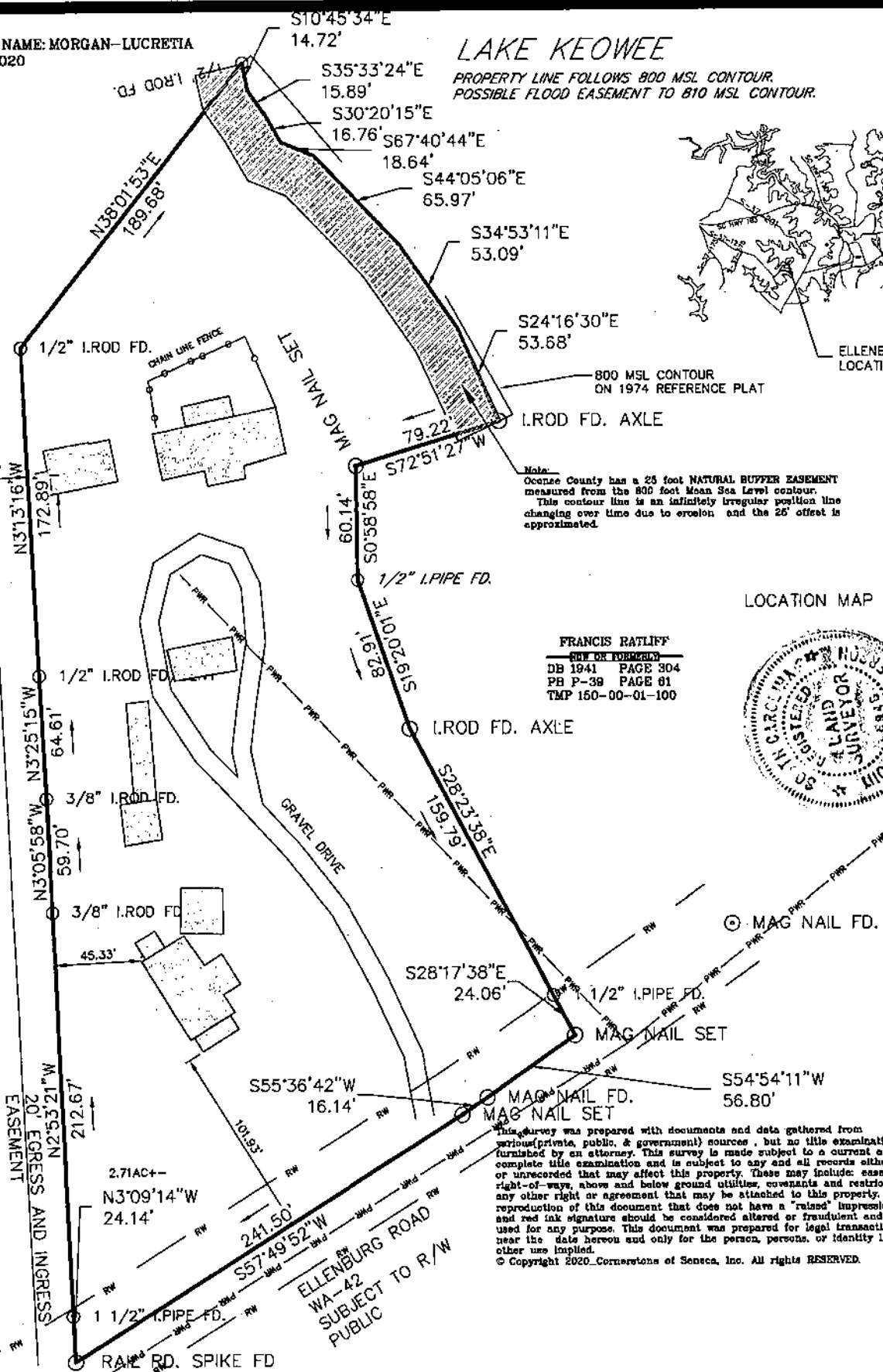


LUCRETIA MORGAN
DB 2403 PAGE 198
PB A298 PAGE 10
TMP 150-00-01-313

LARRY BRUNZLICK
DB 2038 PAGE 338
PB B58 PAGE 5
TMP 150-00-01-103

FILED OCONEE COUNTY SC
2020 DEC -4 PM 3:52

BK B754 PG 6



This survey was prepared with documents and data gathered from various (private, public, & government) sources, but no title examination was furnished by an attorney. This survey is made subject to a current and complete title examination and is subject to any and all records either recorded or unrecorded that may affect this property. These may include: easements, right-of-ways, above and below ground utilities, covenants and restrictions, and any other right or agreement that may be attached to this property. Any reproduction of this document that does not have a "raised" impression SEAL and red ink signature should be considered altered or fraudulent and not to be used for any purpose. This document was prepared for legal transactions on or near the date hereon and only for the person, persons, or identity listed. No other use implied.

© Copyright 2020, Cornerstone of Seneca, Inc. All rights RESERVED.

CORNERSTONE OF SENECA, INC.
800 WHITWORTH CIRCLE
SENECA, SC 29672
PAYMENTS MAILED TO
PO BOX 1071
CLEMSON, SC 29633
PHONE: 864/882-8478
EMAIL: cs0977mih@gmail.com



Drawn
2500
009059

See Deed 2433 pg. 1
PLAT PREPARED FOR:
JAMES L. RATLIFF
LUCRETIA B. MORGAN

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STATE OF SOUTH CAROLINA
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TOWNSHIP OF WAGENER
CITY OF

AREA OF PARCEL: 2.71 ACRES +

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Recorded this 4 day of Dec 20 20
Vol B754 page 6 and Certified
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RESURVEY of an existing lot of
record as recorded in Plat Book
page 000163

RATLIFE 000163

0" 1" 2" 3" 4" 5" 6" 7" 8" 9"

R-000222

Exhibit 3

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7. 25-foot Natural Buffer easement as shown on new plat to record.
8. Easement and right of way for electric lines as shown on new plat to record.

NOTE: The exception(s) in Schedule B omit(s) any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status or national origin as provided in 42 U.S.C. § 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. § 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

ELECTRONICALLY FILED - 2024 Jun 04 11:21 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

Exhibit C

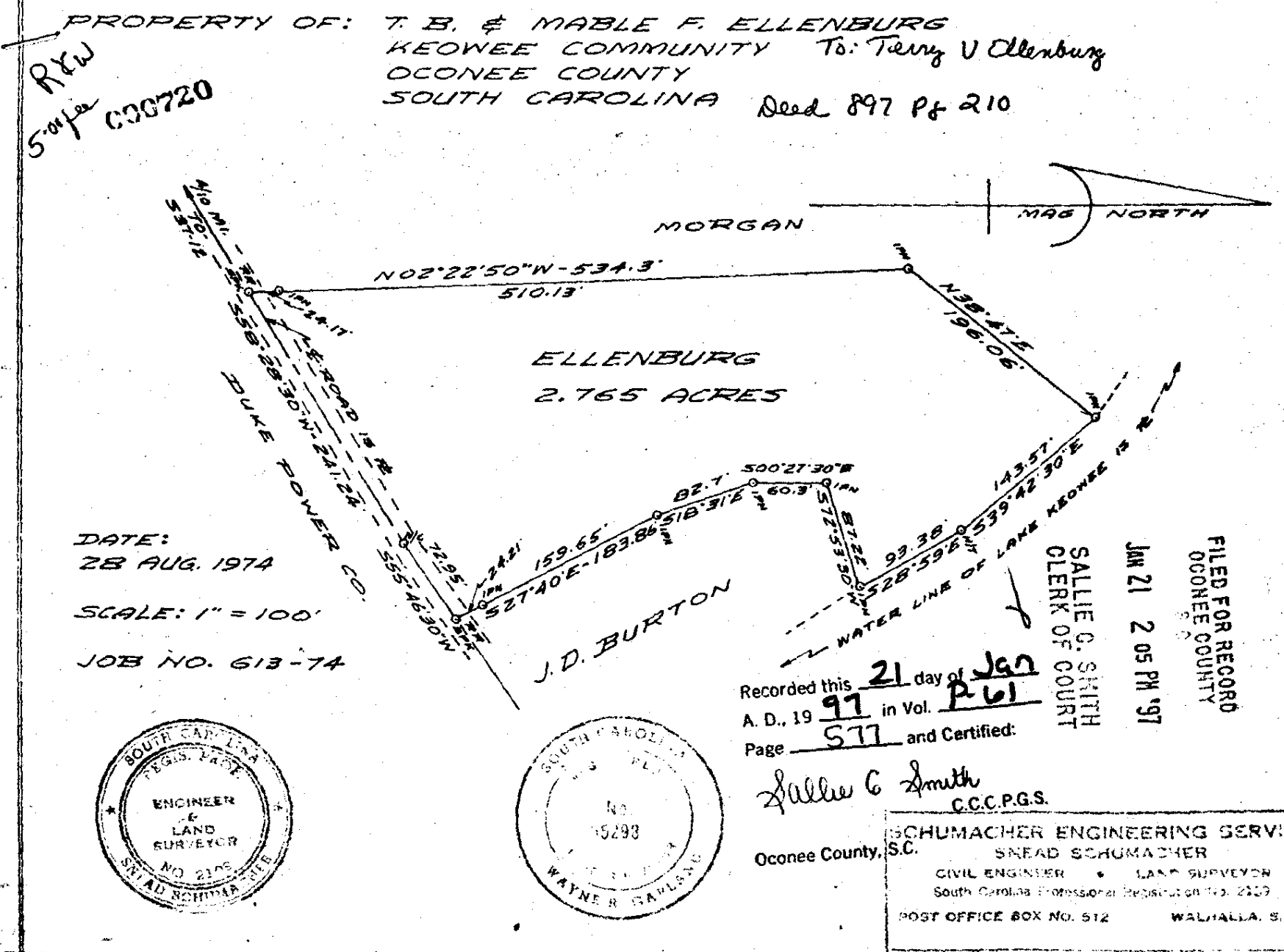


Exhibit D

ELECTRONICALLY FILED - 2024 JUN 04 11:21 AM - OCONEE - COMMON PLAS - CASE#202202109447

PLAT # B-12418
DISK # C:\DWG_1_2020 NAME: MORGAN-LUCRETIA
FB # FNA PG 11232020

SPC SC GRID NORTH

LAKE KEOWEE

PROPERTY LINE FOLLOWS 800 MSL CONTOUR.
POSSIBLE FLOOD EASEMENT TO 810 MSL CONTOUR.



ELLENBURG ROAD LOCATION

800 MSL CONTOUR ON 1974 REFERENCE PLAT

I. ROD FD. AXLE

Note:
Oconee County has a 25 foot NATURAL BUFFER EASEMENT measured from the 800 foot Mean Sea Level contour. This contour line is an infinitely irregular position line changing over time due to erosion and the 25' offset is approximated.

LOCATION MAP (NTS)

FRANCIS RATLIFF

DB 1941 PAGE 304
PB P-38 PAGE 81
TMP 150-00-01-100

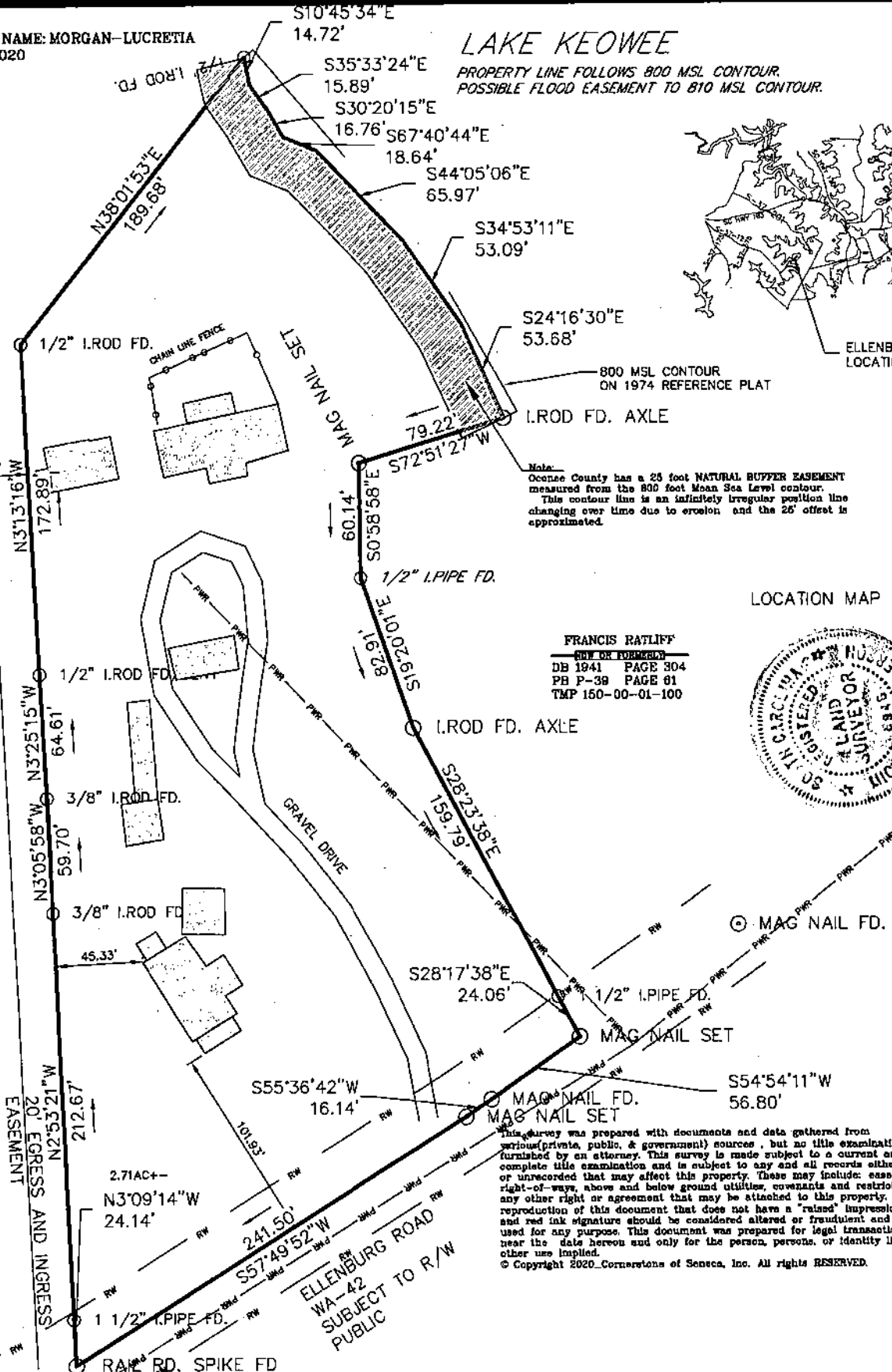


LUCRETIA MORGAN
DB 2403 PAGE 198
PB A298 PAGE 10
TMP 150-00-01-313

LARRY BRUNZLICK
DB 2038 PAGE 338
PB B58 PAGE 5
TMP 150-00-01-103

FILED OCONEE COUNTY SC
2020 DEC -4 PM 3:52

BK B754 PG 6



This survey was prepared with documents and data gathered from various (private, public, & government) sources, but no title examination was furnished by an attorney. This survey is made subject to a current and complete title examination and is subject to any and all records either recorded or unrecorded that may affect this property. These may include: easements, right-of-ways, above and below ground utilities, covenants and restrictions, and any other right or agreement that may be attached to this property. Any reproduction of this document that does not have a "raised" impression SEAL and red ink signature should be considered altered or fraudulent and not to be used for any purpose. This document was prepared for legal transactions on or near the date hereon and only for the person, persons, or identity listed. No other use implied.
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CORNERSTONE OF SENECA, INC.
800 WHITWORTH CIRCLE
SENECA, SC 29672
PAYMENTS MAILED TO
PO BOX 1071
CLEMSON, SC 29633
PHONE: 864/882-8478
EMAIL: cs0977mih@gmail.com



See Deed 2433 pg. 1
PLAT PREPARED FOR:
JAMES L. RATLIFF
LUCRETIA B. MORGAN

TAX MAP PARCEL #: 150-00-01-099
DESCRIPTION: THIS IS THE PROPERTY DESCRIBED IN DEED BOOK 1589 PAGE 289 AND SHOWN IN

REFERENCE PLAT BOOK P61 PAGE 577. RECORDED IN THE COUNTY RECORDS OF OCONEE.

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
TOWNSHIP OF WAGENER
CITY OF

AREA OF PARCEL: 2.71 ACRES +-

DATE: NOVEMBER 23, 2020 REVISED ON:

Recorded this 4 day of Dec 20 20
Vol B754 page 6 and Certified
Register of Deeds, OCONEE County.

SCALE: 1"=40'

EXEMPTION FROM REVIEW PROCESS
The survey shown hereon is a
RESURVEY of an existing lot of
record as recorded in Plat Book
page 000163

RATLIFF 000163

0" 1" 2" 3" 4" 5" 6" 7" 8" 9"

R-000225

JOHN'S MARINE SERVICE, INC., ET AL.

VS.

ORIGINAL

OCONEE COUNTY BOARD OF ZONING APPEALS, ET AL.

4/25/22

LEGAL EAGLE

Post Office Box 5682

Greenville, South Carolina 29606

864-467-1373

depos@legaleagleinc.com

FILED FROM NCALY/FILED-2022JUN 28 9:49:1AM-OCONEE-COMMUNION PEAS-CASE#2022CH37003967

1 MR. CHAIRMAN:

2 Okay. Does the applicant have any -- any further
3 input?

4 MR. LEE:

5 Absolutely.

6 MR. CHAIRMAN:

7 Any response to --

8 MR. LEE:

9 All right. So --

10 MR. CHAIRMAN:

11 Please state your name, please, sir.

12 MR. LEE:

13 I am Andy Lee.

14 MR. CHAIRMAN:

15 Andy?

16 MR. LEE:

17 Andy Lee.

18 MR. CHAIRMAN:

19 Andy Lee.

20 MR. LEE:

21 So just to cover a couple of things. It is -- the
22 amount of misinformation is -- out there is
23 absolutely astounding. I read online today where I
24 went out and I met Jimmy a couple years back and
25 while he was working on a boat I had him sign some

1 papers where I stole some -- some property from him.
2 So I -- I -- I get the public's concern. I would --
3 I would suggest to you that the bulk of it is
4 inaccurate information. We have a plat, if we will
5 look at, let me get mine opened up -- to cover this
6 too, I did -- I sat with Larry all day today and we
7 pulled plats back to the -- to the 70 -- early 70's.
8 The prescriptive easement is on every single plat,
9 on every single piece of road, down that road and
10 has been up until 2021 when the last one was sold
11 which was Jimmy. So it's been acknowledged by
12 everyone along there however many times literally
13 every single piece of property is sold. So if the -
14 - there -- there is no question of whether it exists
15 or not, it exists in -- on many, many, many, many
16 plats and documentation. It's -- it's -- there is
17 no question of whether it exists. The question was
18 also raised is why is it that the -- it goes from 20
19 foot down to 18? Well, if you know anything about
20 Ocone County someone had talk about -- talking
21 about the evil developer if I'm a out of state guy,
22 my family got our grant from the King. So,
23 everybody in this room I'm probably more local than
24 anybody here, okay. But the reason that is was back
25 in the day the older county roads, they didn't have



Meeting agenda
Monday, April 25, 2022 6:00pm

1. Call to order
2. Approval of minutes: 03/28/2022
3. Brief statement about rules and procedures
4. Special exception application #SE22-003 – Faulk & Foster – Victoria Farmer is requesting a special exception to construct a 172' monopole telecommunications tower (182' top of lightning rod) TMS#285-00-05-001 an unaddressed parcel with the closest address of 315 Hopewell Church Rd. Westminster, SC 29693.
5. Variance application #VA 21-011-Continuation from 1/24/2022 BZA hearing postponement: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.
6. Adjourn

**Oconee County
Board of Zoning
Appeals**

Council Chambers
415 South Pine Street
Walhalla, S.C. 29691

www.oconeesc.com

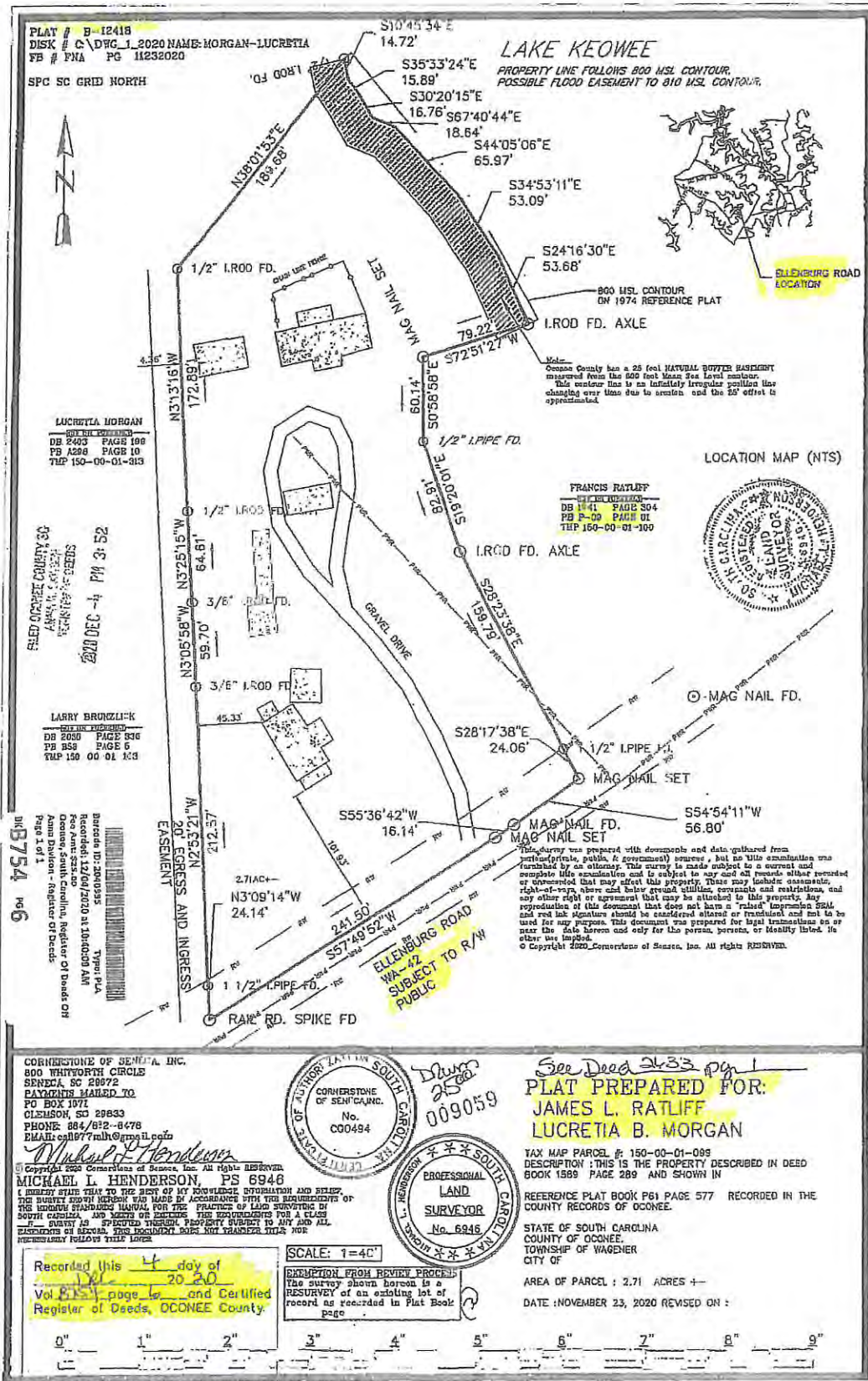
YouTube: "YourOconee"

Staff contact

846-638-4218
planninginfo@oconeesc.com

BOARD MEMBERS

Jim Codner, Chairman, District I	Marty McKee, District IV
Gwen Fowler, District II	Bill Gilster, District III
John Eager, Vice Chairman, At-Large	Tim Mays, District V
Bill Decker, At-Large	





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Bill Decker, At-Large	

James Coley

From: Andrew Holliday <andrewkentholliday@gmail.com>
Sent: Monday, April 25, 2022 12:43 PM
To: James Coley
Subject: Ellenburg Road - Ratliff

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Mr. Coley,

I have attached the message below for the BZA meeting tonight. I thought I would be able to attend but now am unable to do so. It is my hope that you will present it to the Board.

Board Representatives,

I write to you as I am unable to attend tonight's meeting. I would ask that you approve the variance request #VA 21-011 as requested by Ridgewater Engineering based on the plain text of Oconee County Code of Ordinances Section 38-7.1.

While you are obligated to balance many factors I do not see this decision as a difficult one. The first three questions you must consider seem to me to be very straightforward and should be easy yes votes.

The property is clearly extraordinary, unusual, and unique in that it has an incredibly narrow isthmus. The size of this isthmus is why this variance request is presently before you. Due to the unique and exceptional conditions pertaining to the narrowness of this isthmus, these conditions do not generally apply to other properties in the area. Few similar properties exist around the circumference of Lake Keowee but to the extent similar properties do exist, they are developed and have homes built on them. Because of the narrowness of the isthmus, the developer is unable to provide the County with the required fifty foot right of way for the entrance of the neighborhood. The County's present regulations do effectively prohibit and unreasonably restrict the use of the property. Without a variance, the property owner will be prohibited from the reasonable development and utilization of their property.

The fourth question you must answer is more difficult but that is mostly due to the ridiculous amount of misunderstandings, rumors, and outright lies being told about this variance request. The most dangerous untruth being told with regard to this variance request is that this developer is decreasing the size of the current road and seizing property from Mr. Ratliff. You and the developer do not have the authority to seize Mr. Ratliff's property for this purpose nor would the road size be decreased. The size of the proposed road is clearly shown on Page 7 the backup material provided for this meeting as Graphic 4 which shows the proposed paving/repaving. This graphic clearly shows the asphalt area will at least double in size and provide Mr. Ratliff access to the concrete pad serving his business effectively doubling the size of the paved area. These drawings do not show that Mr. Ratliff will be "cut off" as has been asserted. The doubling of paved surfaces adjacent to his business does not sound like a substantial detriment to Mr. Ratliff or a substantial detriment to the operations of his business. It has been claimed that the granting of this variance will prevent trucks from reaching Mr. Ratliff and prevent him from putting boats into or pulling boats out of the lake. Both of these claims can not be true if graphic 4 is accurate. There have also been claims that dangerous conditions will be present on the road if this variance is granted. If the paved area near Mr. Ratliff's property is doubled presumably any safety concerns would be reduced. Mr. Ratliff's claims regarding safety ring especially hollow when considering that his business is the cause of large trucks to be traversing Ellenburg Road in the first place.

I am not aware of any substantial arguments relating to detriments to the public good made by Mr. Ratliff or others but to the extent they assert such, I would disagree. Mr. Ratliff's opposition to this variance seem personal and pecuniary and not focused on the public good. My opinion is that he is seeking to extort this developer and I think he expects to be paid off to drop his opposition to this developer. I also believe it is clear that the character of the district will not be harmed by the granting of this variance. If the variance is granted, the proposed subdivision will be similar in character to the vast majority of the surrounding district. The only outlier in this area is the commercial operation run by Mr. Ratliff.

Most importantly, the ownership of the road and the easements or lack thereof is immaterial to your decision. You do not have the authority to determine the ownership of the road nor should you. That belongs squarely in the purview of the Circuit Court in the event Mr. Ratliff sees fit to bring such a case. In my opinion he would lose such a case due to an easement by necessity clearly existing through his property but that point truly is irrelevant to you decision making.

Lastly, I hope you will fairly consider these four factors alone and disregard the numerous red herrings and misrepresentations that have been presented to you. The location of the road in relation to the 804 line is immaterial to this variance since the county regulation in question (the imposition of a requirement for a fifty foot right of way) has nothing to do with the 804 line and only Duke Energy is the only entity that could object to use of land below the 804 line. Likewise, the ownership of the road is immaterial as the variance only applies to the developer's property and as previously covered this developer can not seize Mr. Ratliff's property. A private agreement between the developer and Mr. Ratliff is also immaterial because they are unable to grant themselves an exception from County regulations as only you have that power. You are only considering a variance and not the merit of the proposed development. A variance is merely an exception to a rule and I believe this situation clearly warrants an exception to the County's requirement for a fifty foot right of way.

Thanks,

Andrew Holliday

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
C.A. NO. 2022-CP-37-00447

FRANCIS J. RATLIFF, EDWARD J. RATLIFF, JR.,
JAMES L. RATLIFF, LUCRETIA B. MORGAN.
SHERRI AKERS CRISP, AMY CAWTHORN,
PLAINTIFFS,

- V -

OCONEE COUNTY, GLOBE, A SOUTH CAROLINA
LIMITED PARTNERSHIP, FARMES,
A SOUTH CAROLINA LIMITED PARTNERSHIP,
DEFENDANTS.

D E P O S I T I O N

WITNESS: JAMES "JIMMY" RATLIFF
DATE: OCTOBER 5, 2023
TIME: 10:10 A.M.
LOCATION: KENISON, DUDLEY & CRAWFORD, LLC
704 EAST MCBEE AVENUE
GREENVILLE, SOUTH CAROLINA 29601
REPORTED BY: CHERYL PRIMM, PROFESSIONAL COURT REPORTER
KALEN WILLIAMS, PROFESSIONAL COURT REPORTER
LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 A. Never.

2 (Whereupon, the below-described
3 document was marked as Defendant's
4 Exhibit No. 1.)

5 BY MR. LOGAN:

6 Q. Okay. I'm going to show you what's been marked as
7 Exhibit 1 to your deposition. If you'll take a look at
8 that, and then I'm going to have some questions to ask
9 you.

10 (Witness views document.)

11 BY MR. LOGAN:

12 Q. All right. If you'll look at the first page of the
13 Exhibit, do you recognize the property that's being
14 shown on that page, on that plat?

15 A. Yes.

16 Q. Okay. And do you know the address of that property?

17 A. I think it's the 585.

18 Q. 585, okay. And it says, (as read) Plat prepared for
19 James Ratliff and Lucretia Morgan.

20 Is that correct?

21 A. Yes.

22 Q. Okay. And it has a recording date then at the bottom
23 left of, it looks like, December the 4th of 2020.

24 Do you see that?

25 A. I can't really see it, but -- yes, I do see it.

1 Q. Okay. And there appears to be a driveway coming off of
2 Ellenburg Road that makes a circle; do you see that?

3 A. Yes.

4 Q. And then above the circle, there is a building or two
5 buildings; do you see that?

6 A. Uh-huh.

7 Q. What are those buildings?

8 A. That's a mobile home and a shed.

9 Q. Mobile home and a shed, okay.

10 And what's in between, where that driveway makes a
11 circle? Is that a home?

12 A. That's a shed.

13 Q. That's a shed, okay.

14 And on the left side of that gravel drive, that
15 appears to be a home; is that correct?

16 A. That's a shed.

17 Q. That's a shed, all right.

18 Is there a home on that property?

19 A. Yes.

20 Q. Where is the home?

21 A. It's right here (indicating).

22 Q. Are you showing me this part right here (indicating)?

23 A. That's the shed.

24 Q. You showing me this (indicating)?

25 A. Yeah. And that's a shed beside it and then that's a

1 old, dilapidated home.

2 Q. This is a old dilapidated home (indicating)?

3 A. Yes.

4 Q. Okay. And does anybody live at that old ---

5 A. No.

6 Q. --- dilapidated home?

7 A. It's unlivable.

8 Q. It's unlivable. And this is 585 (indicating)?

9 A. Yes.

10 Q. All right. What is that property used for?

11 A. For living on. I mean ---

12 Q. And who lives there?

13 A. Me and Lucretia.

14 Q. And where is your house, or do you have a house that
15 you live in?

16 A. The trailer.

17 Q. It's the trailer. Y'all live in the trailer there?

18 A. Yes.

19 Q. And her father lives in that ---

20 A. Yes.

21 Q. --- trailer, as well, okay. All right.

22 And what is this dark patch here (indicating)?

23 A. Not sure. This is like the first time I've seen this.

24 Q. Do you recall asking this surveyor to prepare a plat
25 for you and Ms. Morgan?

1 A. I don't recall.

2 Q. You don't recall. And this plat is recorded in deed
3 book B-754, page 6, of the Oconee County records.
4 Do you recall why this plat was made?

5 A. I think when -- Community First set that up, I believe,
6 when I got a loan -- when we had got a loan for it.
7 They -- I think they did that for some reason. I
8 didn't even want a plat because I knew where the pins
9 were.

10 Q. So you ---

11 A. I didn't even look at this (indicating).

12 Q. You didn't look at the plat, okay. All right.

13 And so, apparently, you took out a loan and this
14 property was used as security?

15 A. No. We just took out a loan for -- yeah, we just got a
16 loan for it. I don't know why they even asked for a
17 plat.

18 Q. Has that loan been paid off?

19 A. No.

20 Q. So did the business get a loan or did you and
21 Ms. Morgan get a loan?

22 A. Me and Ms. Morgan.

23 Q. Okay. Do you know what you used the loan for?

24 A. No. I would have to go back and look.

25 Q. Well, this is only three years ago. So you don't

1 recall anything about it?

2 A. I might have got -- used the business to get it. I
3 can't remember.

4 Q. Okay. And what was the lender involved?

5 A. Community First.

6 Q. Community. And that is in Oconee County?

7 A. Yes.

8 Q. In Walhalla?

9 A. Seneca.

10 Q. Seneca, okay. And this plat shows a right-of-way --
11 shows that property being subject to a right-of-way; is
12 that correct, for Ellenburg Road?

13 A. It looks like they messed up on that 'cause there's no
14 right-of-way on any plats down through there. I'm not
15 sure why they put that on there.

16 Q. Well, did you see that they had put that ---

17 (Cross talk)

18 BY MR. LOGAN:

19 Q. Please let me finish.

20 You see on this plat that there is shown a right-
21 of-way for Ellenburg Road; is that correct?

22 A. It appears to be.

23 Q. All right. When you saw this plat, did you contact the
24 surveyor or bring to anybody's attention your belief
25 that there was no right-of-way that crosses that

1 property?

2 A. I did.

3 Q. And who did you bring that to their attention?

4 A. I think we contacted the surveyor.

5 Q. All right. And that was Mr. Henderson?

6 A. I think so.

7 Q. And what was Mr. Henderson's response?

8 A. I'm not sure.

9 Q. Okay. Did you ask him to change the plat?

10 A. We do want it changed, yes.

11 Q. Have you asked him to change it?

12 A. I think we -- can't remember.

13 Q. But you were aware as of when you got a copy of this
14 plat dated December of 2020, that there was shown a
15 right-of-way for Ellenburg Road crossing a portion ---

16 A. No.

17 Q. --- of your ---

18 MR. PAAVOLA: You've got to let him finish his
19 question.

20 THE WITNESS: Sorry.

21 BY MR. LOGAN:

22 Q. When you saw this plat, whether you believe it or not,
23 it showed a right-of-way for Ellenburg Road, correct?

24 A. Yes.

25 Q. Okay. So at that time, you knew that there was a

1 right-of-way claimed for Ellenburg Road ---

2 MR. PAAVOLA: Object to form.

3 BY MR. LOGAN:

4 Q. --- across this property, 585?

5 MR. PAAVOLA: Object to form.

6 BY MR. LOGAN:

7 A. I didn't ever see the plat.

8 Q. You never saw ---

9 A. I never ---

10 Q. --- the plat?

11 A. --- looked at the plat.

12 Q. Well, you've seen it since this lawsuit was filed,
13 haven't you?

14 A. I see it now, yes.

15 Q. So this is the first time you're telling me that you
16 have seen this plat showing a right-of-way for
17 Ellenburg Road across 585?

18 A. No.

19 Q. All right. When was the first time you saw it?

20 A. When we had the first lawsuit. The first time we went
21 to court.

22 Q. Is that -- be the action before it ---

23 A. When they started yelling and saying, this is a
24 right-of-way and blah, blah, blah.

25 Q. Also part of that is a deed, if you'll flip that page

1 over, from Mr. and Ms. Bearden to Edward J. Ratliff and
2 Francis J. Ratliff, who I understand are your parents
3 or were your parents; is that correct?

4 A. Yes.

5 Q. Okay.

6 MR. PAAVOLA: And just for the record, it looks
7 like this is a one page -- I don't know if there's
8 another page, but the full deed's not here and ---

9 MR. LOGAN: Well, we can certainly -- I don't know
10 what happened to the full deed.

11 MR. PAAVOLA: That's fine. I'm just making -- for
12 the record, just to note we're just looking at one
13 page.

14 MR. LOGAN: Whatever the second page says, it
15 says, because this came off of public records.

16 BY MR. LOGAN:

17 Q. And this deed is recorded in deed book 14-I, at page
18 102. And is that property described in that deed the
19 properties that you've identified as being the property
20 on this plat?

21 A. No.

22 Q. It's not?

23 A. Well, I don't know. Which one you got?

24 Q. The deed is right there in front of you. The
25 description there and then it's right behind where the

1 Q. Yeah.

2 A. I think it was like '07 or '08 maybe.

3 Q. Okay. Do you know if, during the development of Harbor
4 Oaks, portions of Ellenburg Road were damaged?

5 A. I don't recall.

6 Q. You don't remember, you know, a whole bunch of dump
7 trucks and concrete trucks cracking up the road?

8 A. It didn't look too bad to me.

9 Q. Are you familiar with who developed Hart Road?

10 A. John Hamrick.

11 Q. Do you know about the development, Plainridge Pointe?

12 A. I'm not sure where that's at.

13 Q. Okay.

14 A. I've heard of it.

15 Q. Okay.

16 A. If I saw it, I would.

17 Q. Do you have any idea, roughly, where it is? South
18 towards Seneca? North towards High Falls?

19 A. I have no idea. There are so many subdivisions. I
20 don't -- I mean, that's hard to do.

21 Q. Okay. Can I have you look at Exhibit 1, just the first
22 page?

23 A. (Witness complies.)

24 Q. Do you have Exhibit 1 in front of you?

25 A. Yeah.

1 Q. Do you know when you would have contacted Mr. Henderson
2 to have him remove the Ellenburg Road, WA-42, subject
3 to right of way, public, at the -- at the bottom of
4 this? Do you see that at the bottom, center?

5 A. Yeah.

6 Q. When would you have contacted Mr. Henderson to have
7 that removed?

8 A. I don't recall.

9 Q. Would it have been six months ago? Two years ago?
10 Immediately after getting a survey done?

11 A. I didn't ever look at the survey, because I knew where
12 the pins were.

13 Q. Okay.

14 A. I didn't realize they had put a right of way on it
15 until later.

16 Q. Okay.

17 A. Until all of this come up, actually.

18 Q. But you have no recollection of when you contacted him
19 to remove that from the survey?

20 A. I don't remember, no.

21 Q. Did he ever tell you that the county made him put that
22 on there?

23 A. I think they -- I think I do remember something about
24 them saying that they had to put that on all of them.

25 Q. Who's they?

1 A. Maybe the surveyor said that, maybe.

2 Q. So Mr. Henderson would have told you that, that the
3 county made him put it on?

4 A. Maybe. I can't recall.

5 Q. You never would have said that to somebody else, that
6 he said that you ---

7 A. I wouldn't -- I wouldn't think so.

8 Q. If you hadn't seen this until this lawsuit got started,
9 based on your prior testimony today, how would you have
10 contacted him before that?

11 A. I'm not sure. That's why I said I'm not sure when I
12 contacted him. It might have been after I saw it. I
13 don't remember the date.

14 Q. Can you look at the second page of Exhibit 1?

15 A. (Witness complies.)

16 Q. Can you read the last paragraph of that deed, just
17 above the stamps?

18 A. I can't even see it.

19 Q. You can't see it?

20 A. I can't, no.

21 Q. Okay. Where it starts, this conveyance?

22 A. I can barely see.

23 Q. So can you -- can you read that paragraph for me?

24 A. I cannot, no.

25 Q. Why not?



**KENISON, DUDLEY
& CRAWFORD, LLC**
ATTORNEYS AT LAW

David L. Paavola
Of Counsel
Licensed in SC
1122 Barnwell Street, Suite B
Columbia, SC 29201
864.242.4899
paavola@conlaw.com

May 17, 2024

VIA EMAIL

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Seneca, SC 29679
Email: andrew@drwmlaw.com

RE: Frances J. Ratliff, et al. v. Oconee County, et al.
Case Number: 2022-CP-37-00447

Andrew:

I just learned that your firm represented Jimmy Ratliff and Lucretia Morgan in their 2020 purchase of 585 Ellenburg Road and issued them a title insurance policy on the property. Because this property is directly at issue in the current declaratory judgment action, this raises ethical concerns for my clients.

Under Rule 1.9 Duties to Former Clients, SCRPC, & Rule 1.10 Imputation of Conflict, SCRPC, if a prior representation is substantially related to the current matter, then the lawyer must obtain informed written consent from the former client. In *Townsend v. Townsend*, 323 S.C. 309 (1996), the Supreme Court expounded on when a matter is substantially related:

“In determining whether the matter is ‘substantially related,’ one should consider, among other things, whether the affected lawyer ‘would have or *reasonably could* have learned confidential information in the first representation that would be of significance in the second.’”

Townsend, 323 S.C. at 317. The Court went on to conclude that the matters under review in *Townsend* were substantially related because the lawyer “reasonably could have gained information in the first matter that will be relevant in the second matter.” *Id.* This appears to be the case here.

In the first matter, your firm had a duty of loyalty to see that Ratliff’s and Morgan’s interests were protected in the purchase of 585 Ellenburg. Ratliff and Morgan are now challenging the accuracy of documents created as part of their purchase—the Henderson Plat. Additionally, the

County and your clients have repeatedly used the Henderson Plat to advance a position in this litigation that is directly adverse to your firm's former clients. This would seem to violate the duties of loyalty and confidentiality because there is a reasonable possibility that information gained in the first matter is relevant to this current matter.

For this reason, I am requesting that you review these concerns and provide your response within a week so that we may bring this matter to the court's attention ahead of any trial in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Paavola', with a stylized flourish at the end.

David L. Paavola

DLP/as

Exhibit I

Re: Frances Ratliff, et al v. Oconee County, et al

Andrew Holliday <andrew@drwmlaw.com>

Tue 5/21/2024 9:05 AM

To: David Paavola <paavola@conlaw.com>

Cc: Angelia Shaw <shaw@conlaw.com>; Mark Bible <bible@conlaw.com>; Larry Brandt - Attorney <larry@larrybrandtlaw.com>;

Jim Logan <logan@loganandjolly.com>

 1 attachments (10 MB)

Jay Ratliff at BZA.mp4;

David,

Thank you for your letter. I find it hard to believe that you just became aware of this fact given that the deed and plat make it quite clear that our firm performed this closing, your clients have been aware of my representation for years, and this plat has been discussed numerous times in the several years of litigation in this matter. I doubt the Court will believe that you were just made aware of this fact on the eve of trial either.

While I do not know the details of this closing, I would agree with you that pursuant to Rule 1.10 that any conflict of our firm's attorneys would be imputed to me. That said, I have discussed the same with my partners and we do not believe that we have a conflict pursuant to Rule 1.9. We do not believe that the current declaratory judgment action is substantially related to the Ratliff's closing several years ago. Notably, your letter relies on the assumption that we would have obtained "confidential information" or "could have gained information in the first matter that would be relevant in the second matter". This could not be further from the truth in that title exams and other relevant services with regards to a closing rely exclusively on public information. All public information in this matter including the Henderson Plat and Oconee County's records indicate that Ellenburg Road is a public road and our prior representation is consistent with this position. Notably, your clients procured the Henderson Plat which shows Ellenburg Road as a public road. As you likely know, closing attorneys, title abstractors, surveyors, and title companies rely solely on public records. Likewise, information that is not publicly recorded is unable to be certified by title companies and closing attorneys.

If you were to review Comment #3 of Rule 1.9 you would find that "Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. ... Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations, but would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. **Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying.** Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. ... A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services."

Likewise, the facts of *Townsend* are substantially different than in the instant case. In *Townsend*, the attorney was disqualified from serving as a party's counsel in a post-marital custody matter where he had previously served as the Guardian ad Litem in the underlying divorce action for the parties' minor child. It is clear from my reading of *Townsend* that the Court acted appropriately in removing the attorney

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R-000248

who attempted to represent one party when he had previously been the Guardian ad Litem for the same parties.

What is not clear to me is how that case is germane to your current objection to my representation of my client. There is nothing contained in the declaratory judgment pleadings you filed that is substantially related to our firm's closing. You are asking for a declaratory judgment that is inconsistent with numerous publicly recorded documents that indicate Ellenburg Road is a public road. This requested relief is only at odds with your client's prior position as no one and no other entity has ever wavered about the public nature of Ellenburg Road. As noted above, the Henderson Plat, was commissioned by your clients and was subsequently publicly recorded. I can not fathom how there is a duty of confidentiality with regards to a document like the Henderson plat whose sole purpose is to put the public on notice of a person's ownership of property and any associated facts with regards to that property. Likewise, I cannot understand the parallels between *Townsend* and this matter. Lastly, I did not previously understand that your clients were "challenging the accuracy of documents created as part of their purchase" as your complaint does not even mention the closing performed by our office, the Henderson Plat, otherwise indicate any inaccuracy with regards to the 2020 closing, nor does it state any issue with regards to the title insurance policy issued.

Thanks,

Andrew Holliday

Andrew K. Holliday

Attorney at Law

Derrick, Ritter, Williams, & Morris, P.A.

Post Office Box 795

Seneca, South Carolina 29679

Office: (864) 882-2747

Fax: (864) 882-2705

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On Fri, May 17, 2024 at 11:24 AM Angelia Shaw <shaw@conlaw.com> wrote:

R-000249

Dear Mr. Holliday:

Attached please find correspondence from Mr. Paavola regarding the above-referenced matter.

Sincerely,



Angelia Shaw

Paralegal

KENISON, DUDLEY & CRAWFORD, LLC

1122 Barnwell St., Suite B.

Columbia, SC 29201

Email: shaw@conlaw.com

Main: (864) 242-4899

Direct: (803) 400-8342

Website: www.conlaw.com

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Exhibit J

ELECTRONICALLY FILED - 2024 Jun 04 11:21 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Civil Action No.: 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	AFFIDAVIT OF
	)	WILLIAM O. HIGGINS
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farnes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	
	)	

Personally appeared before me William O. Higgins who, first being duly sworn, deposes and states as follows:

1. I, the undersigned, William O. Higgins, being first duly sworn, give this Affidavit to the Court and hereby state that the information contained herein is true and correct to the best of my knowledge and belief.

2. I practice law in Columbia, South Carolina, with the law firm of Graybill, Lansche & Vinzani, LLC. I have been engaged in the private practice of law in Columbia since 1985. A significant portion of my practice is devoted to real estate and other transactional matters. I also devote significant professional time to legal ethics and lawyer conduct matters, including conflicts of interest. I currently serve on the South Carolina Bar's Ethics Advisory Committee and Professional Responsibility Committee, and I am a former Chairman of both of those committees. I chaired the South Carolina Bar's Professional Responsibility Committee's "Ethics 2000" subcommittee, which developed the Bar's proposal with respect to the Rules of Professional Conduct for lawyers in South Carolina. I have been a frequent lecturer and presenter at various continuing legal education programs dealing with real estate and transactional matters and with legal ethics. I serve as a faculty member for the South Carolina Legal Ethics and Practice Program "Ethics School" jointly sponsored by the South Carolina Supreme Court's Office of Disciplinary Counsel

Woff

R-000251

and the South Carolina Bar's Professional Responsibility Committee, and I teach the conflicts of interest portion of that program. I have taught the Real Estate Transactions I course at the Joseph F. Rice School of Law University of South Carolina since 2017.

3. I have served as an expert witness or consultant on multiple prior occasions on legal malpractice cases, motions to disqualify, and other matters involving the application of the South Carolina Rules of Professional Conduct ("SCRPC"), Rule 407 of the South Carolina Appellate Court Rules ("SCACR"), and specifically the issue of conflicts of interest.

4. I hold a BS degree in business from Presbyterian College, a JD degree from the University of South Carolina School of Law, and an LL.M. degree in taxation from New York University School of Law. I hold an "AV" rating from Martindale Hubbell, and I am included in the Best Lawyers in America for both real estate and ethics and professional responsibility.

5. As a result of my education, training, and experience as a practicing lawyer, I am familiar with (i) the degree of skill, care, knowledge, and judgment usually possessed and exercised by practicing lawyers in South Carolina in representing clients, i.e., the "standard of care," and (ii) the application of the SCRPC, and specifically, the rules related to conflicts of interest.

6. This Affidavit is being given in connection with Plaintiffs' Motion to Disqualify Attorney and Law Firm (the "Motion to Disqualify") filed by Kenison, Dudley & Crawford, LLC ("KD&C"), counsel for the Plaintiffs, seeking to disqualify Andrew Holliday, Esquire ("Mr. Holliday") and the law firm of Derrick, Ritter, Williams & Morris, P.A. (the "Law Firm") from representing Defendants Globe, A South Carolina Limited Partnership, and Farnes, A South Carolina Limited Partnership (collectively, "Defendants") in this matter (the "Current Litigation") on the basis of a conflict of interest pursuant to Rule 1.9 and Rule 1.10, SCRPC.

7. I have reviewed copies of documents provided to me by KD&C, including:

- a. Plaintiff's Summons and Complaint for Declaratory Judgment dated and filed June 17, 2022 (the "Complaint"), with the following attached exhibits:

- i. Exhibit A – Amended Complaint (Appeal from the Board of Zoning Appeals) in the case captioned, John’s Marine Services, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon v. Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC, Case No. 2022-CP-37-00396, with attached exhibits;
- b. Answer of Defendants, Globe, A South Carolina Limited Partnership, and Farnes, A South Carolina Limited Partnership dated and filed July 21, 2022;
- c. Answer of Oconee County to Plaintiffs’ Complaint for Declaratory Judgment dated and filed July 27, 2022;
- d. Plat of 2.765 acres entitled, Property Of: T. B. & Mable F. Ellenburg, Keowee Community, Oconee County, South Carolina, prepared by Snead Schumacher, Professional Land Surveyor, Schumacher Engineering Service, dated August 28, 1974, and recorded January 21, 1997, in the Office of the Register of Deeds for Oconee County, South Carolina, in Plat Book P-61 at page 577 (the “1974 Plat”);
- e. Plat of 2.71 acres, more or less, TMS #150-00-01-099, prepared for James L. Ratliff and Lucretia B. Morgan by Michael L. Henderson, Professional Land Surveyor #6946, Cornerstone of Seneca, Inc., dated November 23, 2020, and recorded December 4, 2020, in the Office of the Register of Deeds for Oconee County, South Carolina, in Book B754 at page 6 (the “Henderson Plat”);
- f. Title to Real Estate (Deed) from Rhonda Ellenburg conveying 2.71 acres located in Wagener Township, Oconee County, South Carolina, Oconee County TMS #150-00-01-099 (the “585 Ellenburg Road Property”), to James L. Ratliff and Lucretia B. Morgan, as joint tenants with rights of survivorship, and not as tenants in common, dated December 3, 2020, and recorded December 4, 2020, in the Office of the Register of Deeds for Oconee County, South Carolina, in Book 2633 at page 1;

- g. HUD-1 Settlement Statement dated December 3, 2020, for the purchase of 585/591 Ellenburg Road, Seneca, South Carolina 29662, by James L. Ratliff and Lucretia Morgan from Rhonda J. Ellenburg;
- h. Commonwealth Land Title Insurance Company Owner's Policy No. 97968-1-20-310-2021.813064040-222166323 issued by Emma W. Morris, listing James L. Ratliff and Lucretia Morgan as the insured, and covering the 585 Ellenburg Road Property (the "Owner's Title Insurance Policy");
- i. Excerpt (Cover Page, pp. 78, 79) of Oconee County Board of Zoning Appeals ("BOZA") Transcript of Hearing held April 25, 2022, with attached Oconee County BOZA Meeting agenda, Monday, April 25, 2022, 6:00 p.m., and 1974 Plat;
- j. Oconee County BOZA Meeting agenda, Monday, April 25, 2022, 6:00 p.m. and email from Andrew Holliday to James Coley dated April 25, 2022, 12:43 p.m., regarding Ellenburg Road – Ratliff and the Board of Zoning Appeals meeting;
- k. Excerpt (Cover Page, pp. 30-37, 130-132) from Deposition of James "Jimmy" Ratliff taken on October 5, 2023;
- l. Letter dated May 17, 2024, from David L. Paavola to Andrew K. Holliday, Esquire, regarding possible conflict of interest ("KD&C Letter to Mr. Holliday");
- m. Responsive email from Andrew Holliday to David Paavola, with copy to Angelia Shaw, Mark Bible, Larry Brandt, Jim Logan, dated May 21, 2024 ("Mr. Holliday Response Email");
- n. Affidavit of Lucretia B. Morgan dated June 2, 2024, with attachments;
- o. Affidavit of James L. Ratliff dated June 2, 2024, with attachments;

[collectively, the "Documents"].

- 8. I have also discussed this matter with David L. Paavola at KD&C.
- 9. Based on the foregoing, I offer the following observations and opinions:

- a. Plaintiffs, James L. Ratliff and Lucretia B. Morgan, engaged Emma W. Morris at the Law Firm to assist them in the purchase of the 585 Ellenburg Road Property (the “Real Estate Purchase Transaction”) from Rhonda J. Ellenburg, which was financed by Community First Bank (the “Lender”) and closed on December 3, 2020 (the “Closing”).
- b. Emma W. Morris and Mr. Holliday are lawyers in the Law Firm.
- c. The Henderson Plat was recorded by the Law Firm in connection with the Real Estate Purchase Transaction. The Henderson Plat referenced the 1974 Plat, but also depicted a public right-of-way along the 585 Ellenburg Road Property, with the notation of “Ellenburg Road WA-42 Subject to R/W Public”, which was not depicted on the 1974 Plat. That right-of-way based on the Henderson Plat was also listed as a title exception on the Owner’s Title Insurance Policy.
- d. In the public comments submitted to the Oconee County BOZA for the April 25, 2022, hearing, Mr. Holliday submitted an email to James Coley seeking approval of the variance (the “Holliday-to-Coley Email”). In the Holliday-to-Coley Email, Mr. Holliday made detrimental comments about the Plaintiff, James L. Ratliff, the Law Firm’s former client.
- e. It is undisputed that a client-attorney relationship was formed between the Plaintiffs, Lucretia B. Morgan and James L. Ratliff, and Emma W. Morris and the Law Firm in connection with the Real Estate Purchase Transaction.
- f. Pursuant to Rule 1.9(a), SCRPC, Rule 407, SCACR, “A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.” This conflict is imputed to other attorneys in the firm under Rule 1.10(a), SCRPC, Rule 407, SCACR.

- g. Mr. Holliday is a partner in the Law Firm, and the Law Firm now represents the Defendants, Globe and Farnes, on matters that are substantially related to the Law Firm's prior representation of the Plaintiffs, Lucretia B. Morgan and James L. Ratliff, and whose interests are materially adverse to said Plaintiffs.
- h. The Law Firm's representation of Defendants, Globe and Farnes, is a conflict of interest pursuant to Rule 1.9(a), SCRPC, 407, SCACR, and this conflict is imputed to Mr. Holliday under Rule 1.10(a), SCRPC, Rule 407, SCACR.
- i. Neither Mr. Holliday nor the Law Firm have obtained informed consent in writing from the Plaintiffs, Lucretia B. Morgan and James L. Ratliff, as required by Rule 1.9, SCRPC, Rule 407, SCACR.
- j. In analyzing a potential prohibited conflict under Rule 1.9(a) with respect to a transactional matter, the fundamental inquiry is whether the subsequent representation, in this instance Mr. Holliday's representation of the Defendants, Globe and Farnes, in the Current Litigation, "can be justly regarded as a changing of sides in the matter in question". (See last sentence of Comment 2 to Rule 1.9, SCRPC.)
- k. Mr. Holliday's written comments in the Holliday-to-Coley Email clearly indicate that he has "changed sides" and become an adversary to the Plaintiffs, Lucretia B. Morgan and James L. Ratliff, in a matter substantially related to the 585 Ellenberg Road Property. In my opinion, the duty of loyalty captured in Rule 1.9(a) prohibits this changing of sides without the said Plaintiffs' informed consent.
- l. The Current Litigation involves a determination of rights with respect to the 585 Ellenburg Road Property. The Law Firm represented the Plaintiffs, Lucretia B. Morgan and James L. Ratliff, in the acquisition of that same real estate less than two (2) years prior to the filing of the Current Litigation. The Henderson Plat was clearly significant in the Real Estate Purchase Transaction and that very Plat has been raised

by Mr. Holliday on behalf of the Defendants, Globe and Farnes, in support of a position materially adverse to the Plaintiffs, Lucretia B. Morgan and James L. Ratliff. Rule 1.9(a) serves to protect the Plaintiffs from having the Law Firm (or any of its attorneys) represent any of the Defendants in the Current Litigation given that the subject matter in the Current Litigation is, in material part, the 585 Ellenburg Road Property, together with the significance of the Henderson Plat in both the Real Estate Purchase Transaction and in the Current Litigation.

10. In summary, I am of the opinion that:
- a. The Real Estate Purchase Transaction and the Current Litigation are substantially related matters for purposes of Rule 1.9(a). The Henderson Plat was an integral component of the Real Estate Purchase Transaction, and it is a relevant, perhaps even significant, document in the Current Litigation. Pursuant to Rule 1.9(a), Mr. Holliday should not be allowed to continue his role in the Current Litigation without the informed consent of the Plaintiffs, Lucretia B. Morgan and James L. Ratliff;
 - b. Plaintiffs, Lucretia B. Morgan and James L. Ratliff, are former clients of the Law Firm;
 - c. The Law Firm has a conflict of interest pursuant to Rule 1.9(a), SCRPC, Rule 407, SCACR, that prevents it from representing the Defendants, Globe and Farnes, in the Current Litigation; that conflict is imputed to Mr. Holliday pursuant to Rule 1.10(a), SCRPC, Rule 407, SCACR; and the Law Firm and Mr. Holliday are prohibited from representing the Defendants, Globe and Farnes, in the Current Litigation;
 - d. Pursuant to Rules 1.9(a) and 1.10(a), SCRPC, Rule 407, SCACR, in this instance, the Motion to Disqualify should be granted.

11. I reserve the right to supplement, amend, or modify the opinions set forth herein based on additional information which may come to my attention.

William O. Higgins
William O. Higgins

SWORN to before me this
4th day of June, 2024.

Jacob Shuler Barker (L.S.)
Notary Public of South Carolina
Print Notary Name: Jacob Shuler Barker
My Commission Expires: November 6, 2024



STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
Case No. 2022-CP-37-00447

Frances K. Ratliff, Edward J. Ratliff, Jr.,
James L. Ratliff, Lucretia B. Morgan,
Sherri Akers Crisp, Amy Cawthon

Plaintiffs,

vs.

Oconee County, Globe, A South Carolina
Limited Partnership, Farmes, A South
Carolina Limited Partnership

Defendants.

**MEMORANDUM IN OPPOSITION OF
DISQUALIFICATION**

TO DAVID PAAVOLA, ATTORNEY FOR THE PLAINTIFFS:

It is admitted that the undersigned and Emma Morris are partners in the Law Firm named Derrick, Ritter, Williams & Morris, P.A. (the "Firm"). In December 2020, attorney Emma Morris and the Firm represented James L. Ratliff and Lucretia B. Morgan in the purchase of 585 Ellenburg Road, tax map parcel #150-00-01- 099. As part of this transaction, Michael Henderson of Cornerstone of Seneca, Inc. was hired by the Plaintiffs to prepare a survey that was eventually recorded in Oconee County (the "Henderson Plat"). This lawsuit seeks to determine what rights, if any, Oconee County has over 585 and 599 Ellenburg Road. Plaintiffs claim the Henderson Plat is in error by indicating a public right-of-way across 585 Ellenburg. However, Plaintiff's Complaint does not in fact challenge "the accuracy of documents created as part of their purchase"

Pursuant to Rule 1.10, SCRPC any conflict of our firm's attorneys would be imputed to all attorneys of that firm. The undersigned in consultation with his partners and upon receiving the advice of counsel (Affidavit of Harvey Watson attached hereto as Exhibit 1) do not believe that the Firm have a conflict pursuant to Rule 1.9, SCRPC. The undersigned does not believe that the current declaratory judgment action is substantially related to the Ratliff's closing several years ago. Plaintiff's argument relies on the assumption that the Firm would have obtained "confidential information" or "could have gained information in the first matter that would be relevant in the second matter". This could not be further from the truth in that title exams and other relevant services with regards to a closing rely exclusively on public information. Closing attorneys, title abstractors, surveyors, and title companies rely solely on public records. Likewise, information that is not publicly recorded is unable to be certified by title companies and closing attorneys. All public information in this matter including the Henderson Plat and Oconee County's records indicate that Ellenburg Road is a public road and the Firm's prior representation is consistent with this position. Plaintiffs procured as part of the closing as a perquisite from their lender, they selected and paid Mr. Henderson for his survey, and the Henderson Plat which shows Ellenburg Road as a public road.

Additionally, the ALTA Owners Policy attached as **Exhibit 6 of Lucretia Morgan's Affidavit and Exhibit 3 of James Ratliff's Affidavit attached to the Motion to Disqualify further make it clear that the Firm took the position at the 2020 closing that Ellenburg Road was a public road and the Plaintiffs accepted title to it as such, without objection.**

Comment #3 to Rule 1.9, SCRPC indicates that "Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. ... Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations, but would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. **Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying.** Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. ... A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services."

Plaintiffs are asking for a declaratory judgment that is inconsistent with numerous publicly recorded documents that indicate Ellenburg Road is a public road. This requested relief is only at odds with your Plaintiff's prior position as no one and no other entity has ever wavered about the public nature of Ellenburg Road. As such, the Firm is not "switching sides." There is a duty of confidentiality with regards to a document like the Henderson plat whose sole purpose is to put the public on notice of a person's ownership of property and any associated facts with regards to that property.

Lastly, Plaintiff's claims of "just being made aware" of this purported conflict ring especially hollow as they are raised on the eve of trial. Plaintiffs would have been aware of the undersigned's involvement in this manner no later than July 22, 2021 when the Answer of Globe and Farnes was filed. Further, Plaintiffs would have been aware that the room where depositions were taken in this matter on October 30, 2023 was the same room where they closed on their purchase of 585 Ellenburg Road in 2020. Plaintiff seems to have filed this motion in bad faith to prejudice Defendants Globe and Farnes on the eve of trial in an attempt to use the provisions of the South Carolina Rules of Professional Conduct as a sword against the Undersigned.

Respectfully submitted,

s/Andrew Holliday

Andrew K. Holliday (S.C. Bar #101754)

Derrick, Ritter, Williams & Morris P.A.

Post Office Box 795

Seneca, South Carolina 29679

P: (864) 882-2747

andrew@drwmlaw.com

Attorneys for Defendants,

Globe and Farmes

June 10, 2024

Walhalla, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
Case No. 2022-CP-37-00447

Frances K. Ratliff, Edward J. Ratliff, Jr.,
James L. Ratliff, Lucretia B. Morgan,
Sherri Akers Crisp, Amy Cawthon

Plaintiffs,

vs.

Oconee County, Globe, A South Carolina
Limited Partnership, Farmes, A South
Carolina Limited Partnership

Defendants.

**AFFIDAVIT OF
HARVEY M. WATSON III**

PERSONALLY APPEARED BEFORE ME, Harvey M. Watson, II, who, first being duly sworn, deposes and says that:

1. I am over the age of 18 years and competent to make this affidavit.
2. I have been licensed as a South Carolina lawyer since 2004, with more than a decade on each of the SC Bar's Professional Responsibility Committee and the Ethics Advisory Committee, having served as Chair of the latter from 2020-2022.
3. From 2006 – 2008, a significant portion of my legal practice was devoted to acting as a closing attorney for residential real estate transactions. Since 2008, I have been consulting with, advising, and representing both individual lawyers and law firms with respect to compliance with Federal and South Carolina law and applicable SC Rules of Professional Conduct in the context of their real estate practice generally.
4. I have also represented lawyers and law firms with respect to individual real estate transactions that are the subject of civil litigation, and in defense of lawyers being investigated by the South Carolina Office of Disciplinary Counsel in response to

allegations of misconduct. I have been presenter at Continuing Legal Education seminars, including those organized by a title insurance company, on topics related to ethics within the context of real estate practice.

5. I have been asked to provide this Affidavit in connection with Plaintiff's Motion to Disqualify Andrew Holliday, who is counsel for Defendants Globe and Farnes in the above-captioned matter. Specifically, I have been asked to apply my training, experience, and knowledge to address the issue of whether Mr. Holliday has an imputed conflict of interest in the above-captioned matter as the result of another lawyer within his firm having served as the closing attorney for the purchase of 585 Ellenburg Road by Plaintiffs James L. Ratliff and Lucretia B. Morgan, and if so, whether that conflict requires or justifies his disqualification.
6. I have reviewed documents associated with the above-captioned matter, to include the Summons and Complaint,¹ Answer of Defendants, Plaintiff's Motion to Disqualify Attorney and Law Firm, including all supporting exhibits attached to that motion, and the mortgage in favor of Community First Bank given by Plaintiffs James L. Ratliff and Lucretia B. Morgan, recorded on December 4, 2020 in the Oconee County ROD in Book 4063 at Page 171. I have further discussed those documents and other information with Mr. Holliday.
7. Based on that information, it is my professional opinion that no such conflict of interest exists because the current litigation regards an issue that is not "substantially related" to the prior representation of another lawyer in connection with purchase of the property.

¹ I note that Plaintiff's filed a motion seeking permission to file an Amended Complaint, but that motion was denied by Order dated June 5, 2024.

Further, even if the matters were deemed substantially related, disqualification of Mr. Holliday would not be necessary or appropriate under the circumstances.

Rule 1.9, SCRPC, Rule 407, SCACR

8. Rule 1.9 describes continuing duties of loyalty and confidentiality that are owed to former clients. In this instance, Plaintiffs James L. Ratliff and Lecretia B. Morgan are properly treated as if they were Mr. Holliday's former clients because they were represented by another lawyer in the same firm during their purchase of 385 Ellenburg Road in 2020. The nature and extent of duties arising under Rule 1.9 that are owed to former clients, however, are limited.
9. To wit, Rule 1.9(a) limits the prohibition on representation adverse to a former client to only such circumstances wherein the lawyer represents a party in "a substantially related matter in which that person's interests are materially adverse to the interests of the former [client]."
10. Rule 1.9 does not "provide[] absolute and indefinite protection to the interests of former clients by forbidding any later representation adverse to a former client" because a rule formulated in that manner "would prove too restrictive by limiting the availability of quality legal services to other parties." Nathan M. Crystal, Annotated South Carolina Rules of Professional Conduct, p. 171 (2021 ed.). Instead, "Rule 1.9... balances the former client's interests in loyalty and confidentiality against other interests."
11. The comments to Rule 1.9 clarify the considerations for whether the prior client matter is "substantially related" to the current proceedings.

No Attack Upon Prior Work

12. Plaintiff's current motion and supporting documents focus on the nature and existence of a survey and plat prepared in conjunction with their purchase of the property, even though the complaint in this action never mentioned the same.

13. Rule 1.9, Comment 1 makes clear that a lawyer would have a conflict if they were seeking to undermine their own prior work. However, the materials provided by Plaintiffs make clear that the survey and plat were not the direct work of closing counsel:

(a) Plaintiff Morgan's affidavit directly states, "the bank required a new survey." Exhibit 1 to that affidavit shows an interaction between Ms. Morgan and her lender wherein the lender's employee states "I will seek approval subject to the survey..." confirming it was a lender prerequisite for closing on this property.

(b) That same affidavit's Ex. 3 evidences Ms. Morgan directly engaging a licensed surveyor of her own choosing, with the surveyor asking who the attorney would be for the closing. Exhibit 4 then shows an exchange between law firm staff and Ms. Morgan, wherein the firm was unsure whether a survey was being done in connection with the closing just three days prior to the surveyor's planned work in that regard.

(c) The surveyor in question thereafter prepared a plat labeled (accurately) as follows:

Plat Prepared For:
James L. Ratliff
Lucretia B. Morgan

14. Lender survey requirements, and the recording thereof, as a condition of loan approval and closing are standard and routine under similar circumstances as presented here, with the most recent prior survey of the subject property being more than four decades old as of intended closing.

15. Importantly, state law recognizes the authority of a lien holder to require or cause a plat to be recorded. S.C. Code § 30-5-230 (“It shall be lawful for the owner of any real property... *or for any holder of a lien thereon* to have a plat thereof... recorded in the office of the register of deeds...”)(emphasis added).
16. One benefit of recording is likewise set forth in statute, with S.C. Code § 30-5-250 allowing for a mortgage to reference a recorded plat within its requisite legal description, thereby achieving desired and required public notice as to the parcel serving as collateral for the mortgage while avoiding the necessity of meticulously setting forth the metes and bounds to do so. Another benefit, as counsel for the Plaintiff was advised prior to their motion via letter from Mr. Holliday, was that “information that is not publicly recorded is unable to be certified by title companies and closing attorneys.”
17. As Rule 1.9, Comment 2 states, “The scope of a ‘matter’ for purposes of this Rule may depend on the facts of a particular situation or transaction” and “The lawyer’s involvement in a matter can also be a question of degree.”
18. Stated succinctly, the nature and scope of the prior representation under the operative facts was focused on transfer of ownership of the property to James L. Ratliff and Lecretia B. Morgan, as part of which their closing attorney would have been aware of, but not directly involved in the substance of, or the actual preparation thereof, a survey of the property being done as a lender condition for closing.
19. Plaintiffs have not brought this action seeking a determination as to the quality or appropriateness of the closing attorney’s representation at closing in any respect,

including as to review or recording of the plat discussed herein.² To the contrary, the pleadings in this matter make clear from its outset two years ago, and continuing until very recently, that the issue Plaintiffs seek to have decided is whether there is a certain disputed easement on their property.

Mr. Holliday has not “changed sides”

20. Rule 1.9, Comment 2 concludes by stating “The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.”
21. For purposes of closing the purchase of the property, a survey was prepared by a third party licensed professional at the direction of James L. Ratliff and Lucretia B. Morgan. That survey reflected that Ellenburg Rd. (WA-42) was a county road and subject to a public right of way.
22. On its face, the survey was reliable to a sufficient degree to justify submission of the same for recording in the public records by Mr. Holliday’s law firm, as demanded by the client and lender.
23. Exhibit 6 to Lucretia B. Morgan’s Affidavit (which also appears as Ex. 3 to James L. Ratliff’s affidavit) that is attached to the Motion to Disqualify is an excerpt from an ALTA Owner’s Policy completed in connection with the closing. That policy further

² If Plaintiffs have objections as to the content of the plat prepared by their surveyor, South Carolina Regulation 49-420(B) makes clear it is not the closing attorney who remains responsible therefore:

The proper execution of surveying, platting and mapping procedures and all other details of a survey are the direct responsibility of the Surveyor whose seal and signature shall appear on the plat or map to be prepared. The fact that a plat or map is approved by a planning department or accepted by Clerk of Court for recordation in no way relieves the surveyor whose seal appears upon the drawing of the full responsibility to make certain that the plat or map meets the requirements of these standards.

confirms the law firm's position at the time, and the Plaintiff's acquiescence regarding the same at the time, as to the existence of an "Easement and right of way for Ellenburg Road."

24. As such, Mr. Holliday is taking a position *consistent* with his partner's prior position in connection with the loan closing. It is therefore *the Plaintiffs* who are changing sides, now taking a position adverse to their position as of the time of closing with respect to the accuracy of the plat and the easement reflected thereon.
25. Present adversity is not sufficient alone to evidence a "changing sides" as contemplated by Rule 1.9. Not all adversity is improper adversity, as "not all related matters are substantially related for Rule 1.9 purposes." SC Bar Ethics Adv. Op. 10-03. In that matter, one lawyer with a firm conducted a transaction related to the contract of sale between two parties, and later another lawyer with the firm represented the Homeowner's Association against the former client to seek enforcement of covenants and restrictions on the property. The opinion determined that such a fact pattern did not alone constitute "substantially related" representation under Rule 1.9.
26. Such a situation is analogous here, where the prior representation was mere transfer of interests, with the subsequent adverse matter involving the underlying nature/extent of rights and obligations related to the property itself.
27. Previously, the State Supreme Court held that first representing a borrower in a residential transaction, only to later represent the lender in foreclosure proceedings against that former client, "does not create an appearance of impropriety" a formerly applicable standard that is higher than the "substantially related" test articulated in Rule 1.9 currently. *In re Anonymous*, 298 S.C. 163, 378 S.E.2d 821 (1989).

No Risk of Confidential Information Disclosure

28. Rule 1.9, comment 3 states:

Matters are “substantially related” for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.”

29. The law firm would have acquired some confidential information in connection with the closing transaction, such as financial information from the lender, etc. However, the information gained by the firm as to title and encumbrances upon the property in question all remain publicly recorded information that remains generally known and available to the public.

30. Given the extreme and unreasonable delay in raising this objection to Mr. Holliday’s involvement, any prior threat of the possibility of him having confidential information has long since lapsed. There has been no allegation that Mr. Holliday has shared information improperly, and if he has not done so in two years’ time involved in this case, then the risk is not sufficient to justify disqualification.

31. Even if Plaintiffs were to suddenly allege he had shared confidential information improperly, that would undermine the justification for disqualification at present, as “Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying.”

Plaintiff’s Timing and Intent

32. Even if the Court determined that there was a risk of the firm having confidential information, as the introductory “Scope” portion of the SC Rules of Professional Conduct make clear when it states that a “violation of a Rule does not necessarily

warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation.” Rule 407, Scope, ¶ 7.

33. Further, it appears to represent a case study in the manner of conduct specifically warned about in the Rules of Professional Conduct. *Id.* (“Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons.”)
34. That same paragraph also supports the Court reaching the conclusion that the Rules of Professional Conduct do not imply that everyone seeking enforcement of the rule in this collateral proceeding is justified in seeking to enforce the rules. *Id.* (“The fact that a Rule is a just basis for a lawyer’s self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule.”)
35. Plaintiffs have stated that the involvement of current co-counsel for Defendants Globe and Farnes (Mr. Brandt) would be sufficient to avoid any prejudicial effects attendant to disqualification of Mr. Holliday. (Motion, p. 8). However, the timing and manner in which Plaintiffs have attempted to insert new issues and interfere with the attorney-client relationship between Mr. Holliday and his clients on the very eve of trial is evidence of abusive and improper conduct itself. See Rule 4.4(a) (“In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person...”).
36. Disqualification of counsel at this juncture would entail and constitute an obvious unfair and prejudicial effect upon Mr. Holliday’s clients, who have purposefully elected to have more than a single lawyer handling their defense from the outset of this matter.

37. In recognition of that extreme prejudicial effect, the South Carolina Supreme Court has held that “an order granting a motion to disqualify a party’s attorney in a civil case affects a substantial right and may be immediately appealed” under S.C. Code §14-3-330. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). Conversely denial of such a motion is not immediately appealable. *Energys Del., Inc. v. Hopkins*, 401 S.C. 615, 738 S.E.2d 478 (2013).

CONCLUSION

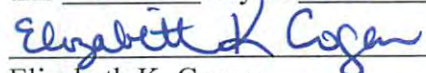
38. In summary, no imputed conflict of interest exists because the current litigation regards an issue (“Does an easement exist?”) that is not “substantially related” to the scope of prior representation in connection with purchase of the property. That prior matter merely concerned transfer of all rights and interests (whatever they were) to buyer while perfecting the lender’s secured interest in the collateral via undisputed metes and bounds referenced on the recorded Henderson plat.

39. Further, even if the matters were deemed substantially related, disqualification would not be appropriate under the circumstances because of the unreasonable delay in raising the concern, the substantial prejudice that would be suffered if the motion were granted, and the timing of the motion that is consistent with intentional imposition of such prejudice as a practical, if not intentional, matter.

Further the affiant sayeth not.



Sworn and subscribed to before me
this 10 day of June, 2024.



Elizabeth K. Cogan

Notary Public for South Carolina

My Commission Expires: 11-2-2033

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	PLAINTIFFS'
v.	)	MOTION IN LIMINE TO
	)	ESTABLISH ADMITTED FACTS
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farnes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

Pursuant to Rules 103 and 104 of the South Carolina Rules of Evidence, and Rules 8, 36, SCRPC, Plaintiffs hereby move the Court to establish the admitted facts for the trial in this matter.

In its Answer, Oconee County admitted Plaintiffs' allegation that the County paved only a portion of Ellenburg Road in the 1980's to approximately the western edge of 585 Elenburg and installed an End of County Maintenance sign at this location.

Plaintiffs' Complaint ¶ 10:

10. Upon information and belief, at some point before or around the mid-1980's, Oconee County paved a portion of Ellenburg Road from Knox Road to approximately the western edge of 585 Ellenburg, at which location Oconee County installed an "End of County Maintenance" sign.

Oconee County's Answer ¶ 4:

4. Oconee County admits, based upon information and belief, the allegations contained in Paragraph 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Plaintiffs' Complaint.

Accordingly, this fact is admitted and the County is precluded from challenging this fact in trial pursuant to Rule 8(b), SCRCP. *Motors Ins. Corp. v. State by & ex rel. Dep't of Highways & Pub. Transp.*, 313 S.C. 279, 281, 437 S.E.2d 555, 556-57 (Ct. App. 1993) (“Allegations made in a complaint that are not denied in the answer are deemed admitted.” (citing SCRCP 8(d); *Fidelity Trust & Mortgage Co. v. Davis*, 158 S.C. 400, 155 S.E. 622 (1930)). “The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts [that] are admitted by the pleadings are taken as true against the pleader for the purpose of the action.” *Town of Kingstree v. Chapman*, 405 S.C. 282, 747 S.E.2d 494 (2013).

Additionally, Oconee County made the following admissions in response to Plaintiffs’ requests for admission:

1. Admit that Oconee County does not own the fee for the roadbed of Ellenburg Road in front of 585 Ellenburg Road or 599 Ellenburg Road.

Response: Admitted.

2. Admit that Oconee County does not have any recorded easements along Ellenburg Road in front of 585 Ellenburg Road or 599 Ellenburg Road.

Response: Admitted.

4. Admit that Oconee County has no records of ever having paved or patched the roadway in front of 585 Ellenburg Road or 599 Ellenburg Road.

Response: Admitted.

Pursuant to Rule 36(b), SCRCP, “Any matter admitted under this rule is conclusively established unless the court, on motion permits withdrawal or amendment of the admission.” Accordingly, these facts should be established as admitted at the outset of trial and the Defendants prevented from introducing evidence to contract these admitted facts.

Respectfully submitted,

s/David L. Paavola

David L. Paavola (S.C. Bar No. 100714)

Mark A. Bible, Jr. (S.C. Bar No. 101624)

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Counsel for Plaintiffs

June 10, 2024
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan, Sherri	)	
Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' OBJECTIONS TO
v.	)	DEFENDANTS' DESIGNATIONS OF
	)	OCONEE COUNTY 30(b)(6)
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

Plaintiffs object to the following deposition designations of Oconee County's 30(b)(6)

Deposition by Defendants as hearsay:

155:3-18; 23-25

159:9-160:16

161:2-16

172:2-175:5

176:4-23

178:19-180:15

181:16-182:14

182:23-184:13

185:12-23

190:15-191:11

200:4-201:14

202:21-203:4

203:15-204:7

206:11-207:21

232:19-24

Respectfully submitted,

s/ David L. Paavola

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June 13, 2024
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' POST TRIAL MOTION
v.	)	TO ALTER OR AMEND THE FINDINGS
	)	OF FACT AND CONCLUSIONS OF
Oconee County, Globe, A South Carolina	)	LAW; MOTION TO ALTER OR AMEND
Limited Partnership, Farmes, A South	)	JUDGMENT
Carolina Limited Partnership,	)	
	)	
Defendants.	)	

Pursuant to South Carolina Rules of Civil Procedure 52 and 59, Plaintiffs Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon (“Plaintiffs”) hereby move the Court to alter or amend its findings of fact and conclusions of law and judgment in its August 6, 2024 Order on the grounds set forth herein.

I. Background

The trial of this declaratory judgment action took place in Oconee County over three days on June 12-14, 2024. This case concerns what rights, if any, Oconee County has over the portion of modern day Ellenburg Road that runs in front of 585 Ellenburg and 599 Ellenburg (the “Private Driveway”). Ellenburg Road dead ends at 599 Ellenburg.

Plaintiffs filed this declaratory judgment action seeking “a declaration that Oconee County **does not** have a prescriptive easement over the Private Driveway,” (Compl. at 2), following an April 25, 2022 Oconee County Board of Zoning Appeals (the “BOZA”) hearing during which the BOZA granted a road variance application that was premised on the conclusion that Oconee County has a prescriptive easement over the entirety of Ellenburg Road including the Private Driveway. Plaintiffs appealed this

BOZA decision. (*John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon v. Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC, Globe, a South Carolina Limited Partnership, and Farnes, a South Carolina Limited Partnership*, Case No. 2022-CP-37-00396, Appellate Case No. 2022-001796). During the pendency of this appeal. Plaintiffs filed this action so that the question of whether Oconee County has a prescriptive easement over the Private Driveway could be properly adjudicated.

Throughout this litigation, Oconee County has only advanced two theories as to how it came to hold what it has characterized as a maintenance easement over the Plaintiffs' properties on Ellenburg Road: (1) Ellenburg Road was previously a state-maintained road that reverted to the County when Lake Keowee was created, (see e.g., Def. Mem Law at 2 (Jan 15, 2024)); and (2) the County has performed continuous uninterrupted maintenance on the Ratliff family's section of Ellenburg Road for a sufficient time period to give the County a prescriptive maintenance easement, though its records are devoid of any maintenance activities on the Private Driveway, (Designated Trial Testimony Kyle Reid and designated deposition exhibits 29 and 30 showing maintenance records). Even during trial, Oconee County never presented testimony or evidence that it held rights over the Private Driveway by way of public dedication. Accordingly, the Order should be amended to find that Oconee County failed to prove a public dedication; the burden of proof of easement entitlements rests with the party, in this case Oconee County, claiming an easement across property of another.

II. There Are No Findings to Support Public Dedication of Ellenburg Road.

The Order does not include factual findings that show public dedication of the Private Driveway or any portion of Ellenburg Road in general. As such, the Court should alter or amend its finding that

Ellenburg Road is a publicly dedicated road and also define the extent, purpose and/or limits of such dedication, if any.

Defendants presented no evidence during trial that historic Ellenburg Road was ever expressly dedicated to Oconee County before the creation of Lake Keowee, and no evidence that modern Ellenburg Road or the Private Driveway were ever expressly or impliedly dedicated after the creation of Lake Keowee. In fact, prior to trial, Oconee County had always taken the position that its rights over 585 & 599 Ellenburg arose out of a prescriptive easement by longtime maintenance, or alternatively because Ellenburg Road was a state road before Lake Keowee and the road reverted to the County after flooding for the lake. During trial, Defendants abandoned both arguments in favor of a new theory of historic dedication.

Absent express dedication, the Defendants have the burden to prove dedication by conduct of the landowner that clearly, convincingly, and unequivocally indicates an intention to create a public right¹:

[N]ot only be an intention on the part of the owner to dedicate a property to the public use, but that such intention must be manifested in a positive and unmistakable manner. It need not be made by deed or other writing, but may be effectually and validly made by acts or verbal declarations. It also may be implied from long use by the public of the land claimed to be dedicated. *Absent an express gift, one who asserts a dedication must demonstrate conduct on the part of the landowner clearly, convincingly and unequivocally indicating his intention to create a right in the public.*

Anderson v. Hemingway, 269 S.C. 351, 354, 237 S.E.2d 489, 490 (1977) (citations omitted, emphasis added).

¹ Importantly, the Plaintiffs' property boundary extends, more or less, to the centerline of the Private Drive. Thus, Oconee County's burden to show the existence of a dedication to the public would require evidence of dedication by the Plaintiffs and/or predecessors in title to the Plaintiffs' property comprising the Private Drive.

Dedications being an exceptional and a peculiar mode of passing title to interest in land, the proof must usually be strict, cogent, and convincing and the acts proved must be inconsistent with any construction other than that of dedication.

Id. (citation omitted).

The Order does not identify what facts support a finding of express or implied public dedication by Plaintiffs, or any of their predecessors in interest to 585 Ellenburg and 599 Ellenburg. The only facts cited in the Order are historic plats and deeds stating “public road,” none of which evidence the public use or nature of the roadway extending to the Private Driveway. Conversely, Plaintiffs entered just as many plats and deed into evidence as Defendants showing this same roadway was not identified as a public road by Plaintiffs’ predecessors in title. Additionally, there are no facts indicating that Oconee County ever accepted modern Ellenburg Road into the public road system until after the creation of Lake Keowee when it created a public road inventory. Acceptance can sometimes be shown by maintenance, under certain circumstances, but Oconee County presented no maintenance records reaching to 585 Ellenburg or 599 Ellenburg. Testimony at trial from Jay Ratliff indicated that Oconee County did not pave Ellenburg Road until the mid-1980s after Lake Keowee was created. Oconee County presented no competing evidence of ever having paved Ellenburg Road before that date. Further, Defendants entered no evidence that any portion of the Private Driveway had ever been paved by Oconee County, and, in fact, Oconee County admitted that it had no records of ever having paved or patched the Private Driveway. Map notations of a slightly improved roadway cannot be found, without more supporting evidence, to have been public acts of acceptance of a roadway into the public system.

Further, the Order does not address how the payment of taxes factors into the question of dedication. South Carolina courts have ruled that the payment of real property taxes is one factor to evaluate intent to dedicate, *id.* at 356, 237 S.E.2d at 491, and here, the evidence is that Plaintiffs have

paid real property taxes on their full property for years and there is no deduction or credit for the dimensions of Ellenburg Road the County claims rights over. The Ratliff and Ellenburg families' acts in paving their section of Ellenburg Road and maintaining it at their own expense for decades is also contrary to any intent to dedicate. The Order fails to set forth findings for any acts of dedication on behalf of any current owners of 585 or 599 Ellenburg or their predecessors in title. Maps alone are insufficient to prove dedication. *Id.* at 355, 237 S.E.2d at 490.

Plaintiffs request that the Order be altered or amended to either set forth specific facts showing public dedication, or altered or amended to find that the Private Driveway was never publicly dedicated.

III. Assuming Ellenburg Road Is a Public Road, the Private Driveway Was Abandoned After Creation of Lake Keowee.

Assuming for the sake of argument that the road in front of 585 & 599 Ellenburg is found to have been dedicated prior to the creation of Lake Keowee, a public road can be abandoned either through the statutory process or by common law abandonment. *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 318-319, 433 S.E.2d 875, 884 (Ct. App. 1992) (recognizing the statutory abandonment scheme does not replace common law abandonment but provides a formal process with less demanding proof of “best interests of all concerned” rather than “intent to abandon”). Plaintiffs admit they have not filed a statutory abandonment but contend that even if Oconee County had rights over modern Ellenburg Road at one time, it abandoned its rights through common law abandonment.

Common law abandonment can be inferred from all of the facts and circumstances of the case and need not be express:

It is well settled that an easement may be lost by abandonment and in determining such question the intention of the owner to abandon is the primary inquiry. The intention to abandon need not appear by express declaration, but may be inferred from all of the facts and circumstances of the case. It may be inferred from the acts and conduct of the owner and the nature and situation of the property, where there

appears some clear and unmistakable affirmative act or series of acts clearly indicating, either a present intent to relinquish the easement, or purpose inconsistent with its further existence.

Carolina Land Co. v. Bland, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975).

An easement created by dedication may be abandoned by unequivocal acts showing a clear intent to abandon. To constitute abandonment, the use for which the property is dedicated must become impossible of execution, or the object of the use must wholly fail. Generally, a mere misuser or nonuser does not constitute abandonment of land dedicated to public use.

K&A Acquisition Group, LLC v. Island Pointe, LLC, 383 S.C. 563, 577, 682 S.E.2d 252, 259 (2009) (quoting *City of Myrtle Beach v. Parker*, 260 S.C. 475, 486, 197 S.E.2d 290, 295-96 (1973) (internal quotation marks omitted)).

Additionally, state law at the time Lake Keowee was created allowed counties to abandon county roads which in their discretion were rendered unserviceable after the creation of Lake Keowee. 1967 S.C. Acts 1819-20 (Act No. 813), attached as **Exhibit 1**. As such, Oconee County did not need to undertake any formal action or court approval to determine and abandon its maintenance of the now dead-end road that after the flooding for Lake Keowee served only as access for T.B. Ellenburg's remaining six acres of land (modern day 565-599 Ellenburg). Oconee County did in fact take steps to abandon land pursuant to Act 813 below the 804 boundary to Duke as part of the creation of Lake Keowee. (Quit Claim Deed Book 10-N, Page 21, attached as **Exhibit 2**). After the creation of Lake Keowee, the only private landowner at the dead end of Ellenburg Road was T.B. Ellenburg, whose property was completely surrounded by the lake and remaining property owned by Duke. Mr. Ellenburg didn't sell any portion of his remaining land until 1974. After the County deeded lands below the 804 contour line and the portions of Ellenburg Road that were flooded to Duke, it would be consistent with these acts for the County to then determine the location of its maintenance and install an End of County

Maintenance sign just before reaching the Ellenburg property, the only remaining private landowner on this dead end section of road that later became Ellenburg Road. The County's acts in the 1980's of paving only up to 565 Ellenburg and placing an End of County Maintenance sign at this location are evidence of its determination that the remainder of the road was no longer serviced by the County.

Concerning common law abandonment, here, the historic public purpose for traveling to the end of modern Ellenburg Road, and past it, was to access properties along the loop road that connected old State Highway 183 to High Falls, High Falls Church, or State Highway 201. Once Lake Keowee was created and the loop became flooded, this purpose no longer existed and it became impossible to reach High Falls, High Falls Church, or State Highway 201 through Ellenburg Road. After the creation of Lake Keowee, there was no longer any public purpose to drive down to the dead end of Ellenburg Road where there are only private landowners.

There is no question the loop road that is now underwater was abandoned. The question for the Court was how much of modern Ellenburg Road was abandoned as well. The evidence presented by Plaintiffs during trial of Oconee County's intent to abandon shows that: (1) all maintenance activities in front of 585 & 599 at least as far back as when the Ratliff family purchased 599 Ellenburg in 1981, including paving by the Ratliffs and Ellenburgs in mid to late 1980's, have been performed by owners of 585 & 599 Ellenburg; (2) Oconee County stopped paving Ellenburg Road in the mid to late 1980's at or near 565 Ellenburg Road; (3) Oconee County placed an "End of County Maintenance" sign at or near 565 Ellenburg Road and kept it at that location for decades until it was briefly moved, possibly in 2015; (4) Oconee County has expended no public funds to maintain the roadway in front of 585 & 599 Ellenburg Road and all such costs have been foisted onto the private landowners; (5) Oconee County has collected taxes on the entire road surface in front of 585 & 599 Ellenburg Road; (6) Oconee County

repaved Ellenburg Road on or around 2012 and again stopped paving at 565 Ellenburg; and (7) Oconee County has no records of ever having performed any maintenance in front of 585 or 599 Ellenburg. During trial, numerous photographs were entered into evidence showing a fence that was installed by Duke on the Globe/Farmes side of Ellenburg Road. The testimony at trial was that the Ratliffs treated this fence as the boundary of the property they maintained and used for their business and the County never informed the Ratliffs that they were operating John's Marine on a public road. These acts are consistent with abandonment.

Oconee County testimony during trial reflected the County's intent to abandon as reflected by the existence, or lack thereof, of any evidence of maintenance by the County of the roadway in front of 585 & 599 Ellenburg. During testimony, the County admitted it does not own the fee to the road, it has no recorded easements, and it has no records of ever having paved or patched the road in front of 585 & 599 Ellenburg. The only evidence of maintenance by Oconee County on Ellenburg Road is that the County stopped paving at 565 Ellenburg in 2012, and the closest maintenance record on Ellenburg Road is 565 Ellenburg. Tax maps were entered into evidence showing that from 1986 to 2008, Ellenburg Road was reflected in County records as stopping at 565 Ellenburg Road, the same location as the End of County Maintenance sign and the same location that County employees informed the Ratliffs that County maintenance ended during the meeting in 2009. Taken together, all of the evidence shows clear intent to abandon the section of Ellenburg Road in front of 585 & 599 Ellenburg.

Abandonment of the public right does not mean that Globe and Farmes lose their private rights to access their property, it simply means the public no longer has public rights of access and burdens of maintenance costs. In abandonment scenarios, all private landowners retain their rights of access to their properties. Abandonment only means Oconee County has no public rights over the road.

Accordingly, the Order should be altered or amended to find that after the creation of Lake Keowee, Oconee County abandoned the roadway in front of 585 Ellenburg and 599 Ellenburg.

IV. The Order Should be Altered or Amended to Find No Prescriptive Easement.

This case began because the BOZA adopted Oconee County's position presented to BOZA during several variance hearings that Oconee County has a prescriptive easement over the entirety of Ellenburg Road including the Private Driveway by longtime county maintenance. This was the entire reason Plaintiffs filed a declaratory judgment action. (Compl. ¶¶ 24-30). The Order does not specifically address the question of whether Oconee County has a prescriptive easement over Ellenburg Road and specifically the Private Driveway. Further, to the extent Oconee County was entitled to a prescriptive easement across the subject property (which is disputed by Plaintiffs and has not been proven by Defendants), the extent, purpose and limits of any such easement have not been defined by Order of this Court.

Oconee County admitted that it does not own the fee for the roadbed in front of 585 Ellenburg Road or 599 Ellenburg Road; it admitted that it does not have any recorded easements along Ellenburg Road in front of 585 Ellenburg Road or 599 Ellenburg Road; and it admitted that it has no records of ever having paved or patched the roadway in front of 585 Ellenburg Road or 599 Ellenburg Road.

The determination of the existence of an easement is a question of fact in a law action. *Bundy v. Shirley*, 412 S.C. 292, 302, 772 S.E.2d 163, 168 (2015). "A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner." *Id.* (quoting *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 419, 633 S.E.2d 136, 141 (2006)). To establish a prescriptive easement Oconee County must show:

- i. Continued and uninterrupted use or enjoyment of the right for a period of twenty years;
- ii. The identity of the thing enjoyed; and
- iii. Use or enjoyment which is either adverse or under claim or right.

Bundy v. Shirley, 412 S.C. 292, 304, 772 S.E.2d 163, 169-70 (2015). A prescriptive easement must be proven by clear and convincing evidence. *Id.* at 306, 772 S.E.2d at 170-71. The proponent of the easement carries the burden of proof. *Id.* at 306, 772 S.E.2d at 170.

“In order to establish a prescriptive easement, the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years.” *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016). “‘Open’ generally means that the use is not made in secret or stealthily. It may also mean that it is visible or apparent.” *Id.* “‘Notorious’ generally means that the use is actually known to the owner, or is widely known in the neighborhood.” *Id.* at 234, 797 S.E.2d at 392 (citing Restatement (Third) of Property (Servitudes) § 2.17(h) (2000)).

Plaintiffs believe the Court indicated on the record that Oconee County did not prove that it held a prescriptive easement over Ellenburg Road in front of 585 Ellenburg Road and 599 Ellenburg Road. Plaintiffs request that the Order be altered or amended to include findings of fact and conclusions of law that Oconee County does not have a prescriptive easement over the roadway running in front of 585 Ellenburg Road and 599 Ellenburg Road. Without abandoning the foregoing positions and arguments, to the extent the Court fails to alter or amend its findings to deny the existence of a prescriptive easement in favor of Oconee County as requested herein, at minimum, the Order should be altered or amended to define the extent, purpose and limits of the purported easement.

V. Ellenburg Road is Not A Historic South Carolina State Highway.

The Order does not include findings of fact and conclusions of law as to whether Ellenburg Road is a historic state road that reverted to Oconee County after the creation of Lake Keowee.

Defendants have consistently maintained that Ellenburg Road was a historic state road that reverted to Oconee County with the creation of Lake Keowee. In fact, the Order cites Jay Ratliff's presentation to the BOZA stating his admittedly mistaken belief that Ellenburg Road was a former state highway. (Order at 2). During trial, Yelena Kalashnikova testified on behalf of the South Carolina Department of Transportation. Ms. Kalashnikova testified that Ellenburg Road has never been in the state highway system. She testified that Ellenburg Road was not a state roadway before or after the creation of Lake Keowee.

Plaintiffs request that the Order be altered or amended to include factual findings that Ellenburg Road was not in the state highway system prior to, or after, the creation of Lake Keowee, it did not revert to Oconee County with the flooding for Lake Keowee, and it is not currently a state roadway.

VI. Plaintiffs Request A Ruling on Hearsay Objections in Oconee County Testimony.

Oconee County testified by deposition designation. Plaintiffs objected to certain designated testimony on hearsay grounds. (Plaintiffs' Objections to Defendants' Designations of Oconee County 30(b)(6) (June 13, 2024)). Plaintiffs request that the Court make specific findings in the Order as to which, if any, of the objected to testimony is part of the record. This is necessary to preserve the record for appeal.

VII. Access to John's Marine By Its Patrons Does Not Make the Private Driveway Public.

In various places, the Order concludes that access to John's Marine by members of the public makes Ellenburg Road a public road. (Order at 3, 7). The testimony in the record from members of the

Ratliff Family, having lived on the property since the 1980s, and from Laurie Ellenburg Bright, who lived at 585 Ellenburg Road for 40 years prior to it being sold to Ratliffs, was that the only persons that drive down to the dead end of Ellenburg Road are owners, visitors to the owners, and patrons of John's Marine.

Visitors to John's Marine for boat services do not transform Ellenburg Road into a public road. Permissive, recreational, or sporadic use does not imply an intent to dedicate to the public. *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995) (“[D]edication may not be implied from the permissive, sporadic, and recreational use of property.”). In *Mack*, the dirt road at issue was used by the public “to deliver mail; to travel to a saw mill and a flour mill; to swim, fish, and attend baptismal services and school parties at a pond . . . to erect and maintain utilities; and to have emergency access to Mack's property.” *Id.* at 238-39, 464 S.E.2d at 126. Yet, none of these uses ripened to public dedication. *Id.*; see also *Cleland v. Westvaco Corp.*, 314 S.C. 508, 509, 431 S.E.2d 264, 265 (Ct. App. 1993) (evidence of fifty years of public use of a dirt road to reach the river did not amount to dedication). Testimony at trial was that the only persons that travel to 585 & 599 Ellenburg Road are landowners, family members, and invitees of John's Marine for boat service, clearly a recreational activity. These uses do not amount to public use and implied dedication.

Accordingly, Plaintiffs request that the Order be altered or amended to correct this error of law.

VIII. The Court Should Reopen the Record to take Evidence on the Existence of Rail Spike Set in the Asphalt.

The Order cites testimony of Elliott Quinn about the existence of one historic rail spike set in the road on his survey near the 585 Ellenburg property line and 575 Ellenburg Road mailbox. Mr. Quinn was asked if the roadway was milled before paving would he expect rail spikes to survive milling and repaving and he testified he would expect this process would destroy or cover historic rail spikes. Mr.

Quinn did not testify that in fact the road was milled by the Ratliffs in the 1980's and he did not testify that asphalt could not have been placed on the roadway without milling. He also did not testify to actual condition of the roadway at the current location of the rail spike.

The sole railroad spike on Mr. Quinn's survey is located across from 575 Ellenburg Road and the attached photographs show that the spike at this location is below the current pavement, either having been uncovered at some point in the past or having deteriorated at that location. (Photographs attached as **Exhibit 3**). This fact has no bearing on whether the Ratliffs paved the road in the 1980's.

As this testimony had a tendency to be misleading, Plaintiffs request the record be opened to enter the photographs attached as **Exhibit 3** and testimony if required to verify the date and location of these photographs, so that the record will be complete and not misleading.

IX. Additional Items to Correct in the Order.

There are a number of other misstatements in the Order that should be corrected.

Paragraph 1 states that the 1946 Deed Book 5-R references Ellenburg Road. This deed does not state "Ellenburg Road." Laurie Ellenburg Bright testified that the name Ellenburg Road did not come into existence until after the creation of Lake Keowee.

Likewise, Paragraph 3, the 1947 deed reference does not state Ellenburg Road as stated in the Order.

Paragraph 11 indicates that Plaintiffs offered no evidence to explain how they could dispossess Defendants of land which they own the fee. As stated above, the abandonment has no impact on Defendants' ability to access its property as a private landowner. Plaintiffs were not required to prove any facts related to dispossession of property. As such, this reference should be removed from the Order.

Paragraph 15 states that Ms. Kalashnikova testified that the SCDOT had records in its possession that in her opinion showed Ellenburg Road as a public roadway. This misstates Ms. Kalashinkova's testimony. She did not offer an opinion as to whether Ellenburg Road was public or private roadway. She testified that Ellenburg Road was not a state road and as a DOT employee she had no ability to opine as to the public or private nature of the road.

Paragraph 16 states that Oconee County has claimed that the Private Driveway is a public County road. To Plaintiffs' knowledge, Oconee County has never claimed that the Private Driveway is a public road but only that Oconee County has an easement over the Private Driveway to perform maintenance.

Respectfully submitted,

s/ David L. Paavola

David L. Paavola (S.C. Bar No. 100714)

Mark A. Bible, Jr. (S.C. Bar No. 101624)

Kenison, Dudley & Crawford, LLC

1122-B Barnwell Street

Columbia, South Carolina 29201

Office: (864) 242-4899

Email: paavola@conlaw.com

Counsel for Plaintiffs

August 15, 2024
Columbia, SC

Acts and Joint Resolutions

OF THE

GENERAL ASSEMBLY

OF THE

State of South Carolina

REGULAR SESSION OF 1967

First Part

of Fifty-fifth Volume of Statutes at Large

(The Acts and Joint Resolutions of 1968 will
Constitute the Second Part)

PRINTED UNDER DIRECTION OF
LEWIE GRIFFITH MERRITT
CODE COMMISSIONER

(R328, S427)

No. 812

An Act To Authorize The School District Of Oconee County To Borrow Not Exceeding Seventy-Five Thousand Dollars For School Purposes, And To Provide For The Payment Thereof.

Be it enacted by the General Assembly of the State of South Carolina :

SECTION 1. School District of Oconee County may borrow certain money.—The Board of Trustees of the School District of Oconee County is hereby authorized to borrow not exceeding seventy-five thousand dollars for additional public school facilities. The amount borrowed shall be evidenced by a note of the School District to be executed by the Chairman of the Board of Trustees and the Treasurer of Oconee County. The note shall bear interest at a rate not to exceed four per cent per annum and shall be payable in five successive, equal, annual installments; *provided*, that the District may reserve the right to anticipate a part, or all, of any note at any time after the payment of the first annual installment.

SECTION 2. Payment.—For the payment of the note issued pursuant to this act the Auditor of Oconee County shall levy and the Treasurer shall collect an annual tax on all of the taxable property of the District sufficient to retire the note and interest due thereon. Before any tax is levied or collected the treasurer shall apply the surplus funds from all school bond accounts to the payment of the indebtedness due on the note. The full faith, credit and taxing power of the School District is irrevocably pledged to the payment of the indebtedness provided for in this act.

SECTION 3. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 10th day of May, 1967.

(R364, H1717)

No. 813

An Act To Authorize The State Highway Department To Abandon Or Alter Highways Rendered Unserviceable By The Keowee-Toxaway Project In Oconee And Pickens Counties, And To Define The Powers And Authority Of The Counties Affected By The Construction Of Such Project.

Be it enacted by the General Assembly of the State of South Carolina :

SECTION 1. Abandonment of highways near Keowee-Toxaway project.—The State Highway Department may abandon such State highways, or sections thereof, in the locality of the Keowee-Toxaway Project which, as in its discretion, may be rendered unserviceable by the construction and operation of the Keowee-Toxaway Project; and may contract with the Duke Power Company for the accomplishment of all work that may be necessary in connection with the abandoning, raising, altering, rebuilding, reconstructing, and relocating of any highways, bridges, and structures which may be affected by the construction of such project. Such contracts shall provide for reimbursement to the State Highway Department for all costs in connection therewith; and the State Highway Department may determine the terms, conditions, and monetary considerations for the acquisition by the Duke Power Company of such lands and rights of way forming State highways or portions thereof, including all rights of the public for road purposes, as well as the reversionary rights of the counties in which located, or for the damaging of such rights of way. The State Highway Department may execute any contracts or agreements, or, if in judicial proceedings, any stipulations with the Duke Power Company, and may execute and deliver all necessary deeds, or other conveyances, which will be required in connection with the relocation, alteration, abandonment, or other things concerning roads, bridges, or other facilities on the properties of the State; and such deeds or conveyances shall include any and all reversionary interests in such highway rights of way of any counties or other political subdivisions of the State; *provided*, however, that such abandonments, conveyances, or relocations shall not require advertising, judicial approval, or any other requirement prior to effecting accomplishment. *Provided*, that prior to abandoning or relocating any road or bridge in the State Secondary Highway System, the county delegation of the county in which such highway is located shall be notified.

SECTION 2. Powers of county commissioners.—The county commissioners, or other authorities over roads and revenues of the counties, may exercise, with respect to county roads and rights of way that will be affected by reason of the construction of the Keowee-Toxaway Project, the same powers and authority as are given to the State Highway Department, with respect to State highways and rights of way, in Section 1.

No. 814]

OF SOUTH CAROLINA
LOCAL AND TEMPORARY LAWS—1967

1821

SECTION 3. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 16th day of May, 1967.

(R730, H1806)

No. 814

An Act To Provide For The Levy Of Taxes And Make Appropriations In Oconee County For School And County Purposes; To Provide For The Borrowing Of Money In Anticipation Of The Collection Of Taxes; And To Make Appropriations And Direct The Expenditure Thereof For The Fiscal Year Beginning July 1, 1967.

Be it enacted by the General Assembly of the State of South Carolina :

SECTION 1. The Auditor of Oconee County is hereby authorized and directed to levy, with the approval of a majority of the legislative delegation, and the treasurer to collect, a sufficient millage on taxable property of Oconee County to meet ordinary county purposes herein appropriated for the year beginning July 1, 1967, and ending June 30, 1968, and a sufficient levy for the payment of any outstanding bonded indebtedness.

SECTION 2. From the general fund of the county and the revenue derived under the provisions of Section 1 of this act, the following appropriations are hereby made, to be expended in conformity with the directions herein specified :

Item 1.

A-1. County Work Camp	\$ 24,000.00
A-2. Roads, Bridges, Rock Crusher, labor and replacement of parts, trucks and machinery; Paved Roads and resurfacing old paved roads, <i>provided</i> , each and every road paved shall be set up by project number, and it shall be the duty of the Supervisor to see that proper records are kept on each project, showing expenditures and to what purposes; New Equipment	253,000.00

The above amount shall come from any surplus gasoline tax and the general fund of the county.

21

STATE OF SOUTH CAROLINA }
COUNTY OF OCONEE

File No.

RIGHTS OF WAY

21

KNOW ALL MEN BY THESE PRESENTS that the COUNTY BOARD OF COMMISSIONERS, OCONEE COUNTY, SOUTH CAROLINA, under authority of Act #813 of the Acts and Joint Resolutions of South Carolina, 1967,

hereinafter called "Grantor", in consideration of the sum of Five (\$5.00)

Dollars, to Grantor in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto DUKE POWER COMPANY, a corporation organized under the laws of the State of North Carolina, hereinafter called Grantee," all ----- certain ----- of land more particularly described as follows:

those certain lands and rights of way forming County roads and portions thereof, including all rights of the public for road purposes as well as the reversionary rights of the County in which there is located any land or rights of way, which are to be flooded by the Grantee in Lake Keowee up to and including the 804 contour line and in Lake Jocassee up to and including the 1115 contour line, both of which lakes are a part of the Grantee's Keowee-Toxaway Project, Federal Power Commission license #2503.

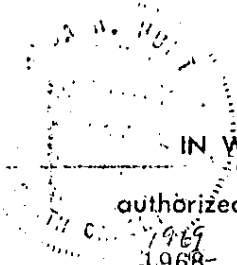
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CLERK OF SUPERIOR COURT
SOUTH CAROLINA

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto Grantee hereinabove named, its successors and assigns forever.

And Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto Grantee hereinabove named, and Grantee's successors and assigns, against itself and its successors and assigns, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

24



IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized officials, this the 6 day of July in the year of our Lord 1968 and in the 192nd year of the Independence of the United States of America.

ATTEST:

COUNTY BOARD OF COMMISSIONERS,
OCONEE COUNTY, SOUTH CAROLINA

Ann D. Over
Assistant-Secretary Clerk

By Norman L. Hubbard
President Chairman

Signed, Sealed and Delivered in the Presence of:

Betty Smith
Virginia L. Litley

STATE OF SOUTH CAROLINA }
COUNTY OF OCONEE }

PERSONALLY appeared before me Virginia L. Litley and made oath that he saw the within named COUNTY BOARD OF COMMISSIONERS, OCONEE COUNTY, SOUTH CAROLINA, by Norman L. Hubbard, Chairman, President, and Ann D. Over, Clerk, Secretary, sign, seal and as its act and deed deliver the within written instrument, and that he with Betty C. Smith witnessed the execution thereof.

SWORN to before me this 6 day of Jan, 1969
Anda R. Hunt
Notary Public

RECORDED 31 DAY OF Jan 1969
ROY D. HARDEN, C. C. P. & Q. B.
OCONEE COUNTY, S. C.







R-000299



Sep 17 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2022-CP-37-00447

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers
Crisp, Amy Cawthon,

Appellants,

v.

Oconee County, Globe, A South Carolina Limited Partnership, Farnes, A South Carolina
Limited Partnership,

Respondents.

NOTICE OF APPEAL

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon (“Appellants”) appeal the Honorable R. Lawton McIntosh’s Order and Judgment, entered August 6, 2024, attached as **Exhibit 1**. Appellants received notice of entry of the order on August 6, 2024, and filed a Motion to Alter or Amend the Order and Judgment on August 15, 2024. Appellant’s Motion to Alter or Amend the Order and Judgment was denied by order dated August 19, 2024, attached as **Exhibit 2**. Appellants also appeal the Order denying Appellants’ Motion for a jury trial entered January 18, 2024, attached as **Exhibit 3**; the Order denying Appellants’ Motion to Amend their Complaint entered June 5, 2024, attached as **Exhibit**

4; and the Order denying Appellants' Motion to disqualify counsel for Respondents, entered June 10, 2024, attached as **Exhibit 5**.

s/ David L. Paavola

David L. Paavola, SC Bar No.: 100714
Mark A. Bible, Jr. SC Bar No.: 101624
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Attorney for Appellants

September 17, 2024

Other counsel of record:

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*Attorneys for Respondents, Globe, a
South Carolina Limited Partnership, and
Farnes, a South Carolina Limited Partnership*

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Email: logan@loganandjolly.com

Attorney for Respondent, Oconee County

Sep 17 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2022-CP-37-00447

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers
Crisp, and Amy Cawthon,

Appellants,

v.

Oconee County, Globe, A South Carolina Limited Partnership, Farnes, A South Carolina
Limited Partnership,

Respondents,

PROOF OF SERVICE

I certify that the Notice of Appeal has been served on James W. Logan, Jr., counsel for Respondent Oconee County, by email sent to his primary e-mail address listed in the Attorney Information System, logan@loganandjolly.com and on Larry C. Brandt and Andrew K. Holliday, counsel for Respondents, Globe, a South Carolina Limited Partnership, and Farnes, a South Carolina Limited Partnership, by email sent to their primary e-mail addresses listed in the Attorney Information System, larry@larrybrandtlaw.com and andrew@drwmlaw.com, on September 17, 2024. See attached email.

The undersigned also certifies that I have filed the Notice of Appeal with the Clerk of Court for Oconee County Court of Common Pleas via electronic filing.

s/ David L. Paavola

David L. Paavola, SC Bar No.: 100714
Mark A. Bible, Jr. SC Bar No.: 101624
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bible@conlaw.com

Attorney for Appellants

September 17, 2024

Ratliff, et al, v. Oconee County, et al Re Notice of Appeal

From Angelia Shaw <shaw@conlaw.com>

Date Tue 9/17/2024 5:02 PM

To Andrew Holliday <andrew@drwmlaw.com>; Jim Logan <logan@loganandjolly.com>;
larry@larrybrandtlaw.com <larry@larrybrandtlaw.com>

Cc David Paavola <paavola@conlaw.com>; Mark Bible <bible@conlaw.com>

 6 attachments (5 MB)

20240912_Notice of Appeal (COA).pdf; Ex. 1 Form 4 and Order (8.6.2024).pdf; Ex. 2 Form 4 (8.19.2024).pdf; Ex. 3 Form 4 (1.18.2024).pdf; Ex. 4 Form 4 (6.5.2024).pdf; Ex. 5 Form 4 (6.10.2024).pdf;

Counsel:

Attached please find Plaintiffs' Notice of Appeal and Exhibits for service in accordance with Rule 203, SCACR. This notice will be filed in the Court shortly.

Sincerely,



Angelia Shaw

Paralegal

KENISON, DUDLEY & CRAWFORD, LLC

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022 CP-37-00447

Frances J. Ratliff, et al.

Oconee County, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Andrew K. Holliday, Larry C. Brandt, and James W. Logan, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

RECEIVED

Sep 17 2024

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMONS PLEAS
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	
	)	

ORDER

RECEIVED**Sep 17 2024****SC Court of Appeals**

Case No.: 2022-CP-37-00447

The above captioned matter came before me, the undersigned, at the regularly scheduled term of Common Pleas Court for Oconee County, South Carolina, commencing on June 12, 2024 as a non-jury matter and was heard over the course of three days in which numerous witnesses testified and a plethora of deeds and plats of record pertaining to Ellenburg Road (WA-42) were admitted into evidence (Defendants' Exhibit 1).

Upon conclusion of the trial, the Court took the matters presented under consideration and, after giving its careful consideration and attention to all of the evidence, particularly the deeds and plats contained in Defendants' Exhibit 1, the Court makes the following findings of fact:

FINDINGS OF FACT

1. Ellenburg Road, also known and designated as WA-42 by Oconee County, has been a public road since at least 1946 as evidenced by deed of J.J. Younce to Larkin Mayfield, Jr., recorded in Deed Book 5-R, Page 190 records of Oconee County. That deed specifically refers to Ellenburg Road as a public road.

2. An express easement or deeded right-of-way for any portion of Ellenburg Road (WA-42) conveying the roadway or an easement for the roadway to any governmental entity over the subject properties evidently does not exist.
3. The deed of J.J. Younce to Eugene J. Kelley, dated November 17, 1947 and recorded in Deed Book 5-Y, Page 283, also references what is now referred to as Ellenburg Road and again describes it as a public road.
4. Other deeds and plats admitted into evidence as part and parcel of Defendants' Exhibit 1 clearly show what is now Ellenburg Road or portions thereof and refer to the road as a public road, county road and/or an unnamed paved road. Even members of the Ratliff family commissioned a plat and placed it of record clearly delineating Ellenburg Road as a public or a county road (Plat Book B-754 at Page 6, Records of Oconee County, South Carolina).
5. Oconee County Roads and Bridges employees testified and presented documentary evidence that the portion of Ellenburg Road not inundated by the waters of Lake Keowee had been maintained by the County to present date (from Knox Road to the border of Defendants' property) and the County considered Knox Road to be a public roadway all the way from Knox Road to the end of the pavement at the border of Defendants' property.
6. As indicated during the cross examination of Jay Ratliff, the spokesman for the Ratliff family at the BZA hearing on November 30, 2021, he clearly stated that Ellenburg Road, according to his memory, originally ran from what is now Knox Road, formerly S.C. Highway 183, to High Falls Church and was a state highway until a major portion of Ellenburg Road, WA-42, was inundated by the waters of Lake Keowee. He also

acknowledged at that time that the portion of Ellenburg Road not flooded by the waters of Lake Keowee devolved to Oconee County pursuant to law.

7. Other maps in evidence were also presented attesting to the fact that Ellenburg Road was a publicly dedicated roadway running from Knox's Store on what is now Knox Road (old SC 183) to High Falls Church and tied in and/or intersected with other public roadways in the community. Evidence further showed that once Lake Keowee was built, a major portion of Ellenburg Road, WA-42, was inundated by the waters of Lake Keowee; however, the westernmost portion of Ellenburg Road extended from Knox Road to the property of Defendants and has continued to be used by the general public to access Harbor Oaks Subdivision as well as John's Marine Service. Also, it was and is the only access to Defendants' property as is shown on Plat Book B291 at Page 1 by which Defendants' property was conveyed to Defendants by Crescent Communities on December 3, 2008.
8. There is also evidence that at sometime there was an End of County Maintenance sign at the end of the pavement at the border of Defendants' property; however, there was a lot of controversy concerning the sign in that there were allegations that there had been an End of County Maintenance sign at the top of the hill where the Ratliff property began. Witnesses attesting to the sign being located at the top of the hill, however, testified that the sign was white with black lettering. Further, Plaintiffs and witnesses called on their behalf regarding the location and description of this sign differed from one another. Conversely, Oconee County employees testified such signs used by Oconee County were green in color with white lettering, and a photo showing such a County sign, at one time, on Defendants' property where the pavement ends was also entered into evidence. Defense witnesses testified and County records entered into evidence show that the End of County

Maintenance sign was only at a single location, at the end of the asphalt and located upon Defendant's property.

9. The evidence also shows that numerous deeds and plats of property included in Defendants Exhibit 1 show Ellenburg Road (WA-42) as an Oconee County maintained roadway from Knox Road to the end of the asphalt at the border of Defendants' property where the pavement ends.
10. A photograph of an End of County Maintenance sign where the pavement stopped at the border of Defendants' property was also entered into evidence. No photo was introduced into evidence showing any other End of County Maintenance sign at any other location.
11. It is also undisputed that the northernmost portion of the previous paving which is at issue to the beginning of Defendants' property is owned approximately to the centerline of said roadway by the Plaintiffs and the southernmost half of the disputed road is owned by Defendants. Plaintiffs, however, never offered any evidence or attempted to explain how they could dispossess the Defendants of land to which they owned the fee.
12. The Ratliffs also claim that in or about 2009 they had a meeting with Prince Brown, a road department technician with Oconee County, who represented to them that the County did not maintain that part of Ellenburg Road that ran in front of the Ratliff property. Prince Brown is deceased, however, and was not available to testify or refute the allegations of Plaintiffs, but even if he did make such statements there is/was no evidence presented by the Plaintiffs that Mr. Brown had the authority to make the alleged representations and/or that he was duly empowered or authorized to abandon maintenance on public roadways belonging to the County or, in essence, to give away public assets [*City of Myrtle Beach v. Parker* 260 S.C. 475, 197 S.E.2d 290 (Sup. Ct. 1973)]. Again, the Ratliffs admitted that

they only owned to the approximate center of the disputed portion of the roadway and Defendants owned the other approximate half, notwithstanding that they are now claiming “ownership” of all of the road as it being their private driveway.

13. The Plaintiffs also testified that their father had, in conjunction with T. B. Ellenburg (a prior owner of a portion of the subject real estate in question and for whom the Road is named) paved the road in the 1980s. None of the Plaintiffs could place an absolute date on when this occurred and they produced no records for this paving. The only maintenance records produced were for gravel and concrete which were placed solely on the Plaintiff’s property and not within the roadbed. Plaintiffs further testified that they were unaware of any survey of their property from the “Bearden Plat” of 1973 until 2020. Plaintiff’s expert witness, surveyor Eliotte Quinn, additionally testified about finding the historical pins set in the asphalt, which included a rail road spike, a common practice in the 1970s. Mr. Quinn further testified in his expert opinion that any later repaving would have destroyed or at least covered these magnetic nails and rail road spikes. Therefore, the Plaintiff’s claims of their father paving the road are simply not credible.
14. It is also uncontroverted that no action has ever been brought by anyone to close any portion of Ellenburg Road pursuant to *S.C. Code §57-9-10* and the same was stipulated to by the Plaintiffs.
15. Ms. Kalashnikova of the South Carolina Department of Transportation testified that although the South Carolina Highway Department did not have any records of Ellenburg Road ever being in the state inventory, it did have records which, in her opinion, showed that the road was a public roadway.

16. There was also testimony and evidence presented that Oconee County has, to present date, claimed such portion of the roadway in question as a public County road and has on several occasions mowed the shoulders, cleaned out the ditches and did some sporadic maintenance thereon.
17. Although the maintenance records for that portion of the roadway over which abandonment was alleged was somewhat sparse, there was absolutely no showing that County had abandoned and/or relocated the highway to a new location nor that abutting property owners had built fences around any portion of the roadway and/or otherwise obstructed the roadway. In fact, it was the County's claim that it was in their system for maintenance all the way from Knox Road to the border of Globe and Farnes' property.

CONCLUSIONS OF LAW

The Defendants assert that the only way to close a public road is by compliance with S.C. Code §57-9-10 pursuant to the holding of the cases of *S.C. Dept. of Transportation v. Henson Family Holdings, LLC, et al.*, 361 S.C. 649, 606 S.E.2d 781 (2004) and *Town of Kingstree v. Chapman*, 405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013), and all parties agree that no action has been brought by anyone to close any portion of Ellenburg Road pursuant to that statutory process. The Court, however, is of the opinion that the claim of abandonment under common law is independent of said statute. Accordingly, over the objections of Defendants, the Plaintiffs were granted full opportunity to be fully heard on the grounds of abandonment; however, the Court finds that there is no evidence that Oconee County abandoned the road by unequivocal acts showing a clear intent to abandon.

There are four (4) cases that are controlling and determinative on the "abandonment" issue under common law. In the first case, the South Carolina Supreme Court, in *Wessinger v. Goza*,

231 S.C. 607; 99 S.E.2d 395 (1957), held that a basic tenant of common law is that once a public road, always a public road and even an abandoned highway may not be closed without the consent of the persons whose property fronts thereon or over whose land it passes. In the present case, Ellenburg Road is still being used as a public road for access to properties along and on both sides of Ellenburg Road, including the Plaintiffs' property used by the "public" for "public" purposes to deliver and pick-up their boats at John's Marine Service, Inc., which specifically includes the portion of the Plaintiffs' real property directly across from a portion of the Farmes and Globe real property. As such the entirety of the portion of Ellenburg Road, having not been inundated by the waters of Lake Keowee, is still possible to traverse and the use of the same has not wholly failed. There has been neither a discontinuance of the public road in question nor an abandonment of that road and no sufficient evidence of any abandonment of that road has been shown by clear and convincing evidence. There is no evidence that the use for which the property was dedicated has become impossible or that the object of the use for which the property is dedicated has failed. Any past/present use of this road is totally consistent with the declared purpose of dedication and, therefore, will not support a charge of abandonment. At best for the Plaintiffs there is conflicting evidence of the discontinuance of maintenance at some portions of Ellenburg Road, but no evidence of any abandonment as defined by the applicable case authorities exists. Oconee County has never abandoned any portion of Ellenburg Road! The real property owner (Globe and Farmes) of approximately one half of the underlying fee on which Ellenburg Road is located as well as the strip property to southeastern side of the road directly across from the Ratlif property has never consented to the abandonment of that section and intends to use that public road for access to the public development of its property purchased from Crescent Communities SC, LLC!

The second case is *K & A Acquisition Group, LLC, v. Island Pointe, LLC*, 383 S.C. 563; 682 S.E.2d 252 (2009). In that case, the Department of Transportation (DOT) and the City of Folly Beach sought a declaration that a tract of land on a neighboring island that was part of a former toll road remained a public right of way. In its opinion, the Supreme Court of South Carolina made the following statements:

- A. "...we find the "old" Folly Beach Road was dedicated to the public and this public easement remained intact after the new road was created and until the SCDOT affirmatively abandoned the route of the former toll road.
- B. "...[W]e disagree that the "discontinuance" or relocation of the route was sufficient to constitute abandonment. The terms "discontinuance" and "abandonment" are not synonymous."
- C. "*Ord v. Fugate*, 207 Va. 752, 152 S.E.2d 54, 59 (1967) (noting that discontinuance of public road should not carry the same effect as abandonment and stating "under the present statutes the discontinuance of a secondary road means merely that it is removed from the state secondary road system. Discontinuance of a road is a determination only that it no longer serves public convenience warranting its maintenance at public expense. The effect of discontinuance upon a road is not to eliminate it as a public road or to render it unavailable for public use."
- D. "...a party must "show the abandonment by clear and unequivocal evidence. An abandonment occurs where the use for which the property is dedicated becomes impossible of execution, or where the object of the use for which the property is dedicated wholly fails. Any use which is not inconsistent with the declared purpose of a dedication will not support a charge of abandonment." (Emphasis added).

- E. “‘The rights of purchasers under a map and of the general public cannot be lost by the unauthorized acts of the governing or controlling officials of the municipality, or by their neglect, but only by legal abandonment by the public as well as the officials.’ 26 C.J.S. *Dedication* s 63 at page 552.” (Emphasis added).
- F. “An easement created by dedication may be abandoned by unequivocal act showing a clear intent to abandon. To constitute abandonment, the use for which the property is dedicated must become impossible for execution or the object of the use must wholly fail. Generally, a mere misuser or nonuser does not constitute abandonment of land dedicated to public use.” (Emphasis added).
- G. By way of example, the Court quoted the case of *Williams v. Woodward*, 240 S.W.2d 94 (Ky.Ct.App. 1951) which held that the State Highway Department abandoned roadway and relocated new highway, abutting property owners built fences around roadway and otherwise obstructed it, and roadway had not been used to any substantial extent by the public for some years are examples of an abandonment of a highway. (Emphasis added).
- H. The case of *Hart v. Town of Shafter*, 348 Ill.App.3d 713, 284 Ill.Dec. 699, 810 N.E.2d 489, 491 (2004) the Court cited with approval the statement that “[A]n abandonment will be found only where the public has acquired the legal right to another road or where the necessity for another road has ceased to exist.” (Emphasis added).
- I. See also the final two (2) cases: *Carolina Land Co. v. Bland*, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975) and *Judy v. Kennedy*, 398 S.C. 471, 728 S.E.2d 484 (2012).

Based upon this controlling authority, the Court finds that there is no evidence that Oconee County has abandoned the road by clear and unequivocal acts showing a clear intent to abandon. Accordingly, Plaintiffs' petition to have the road deemed abandoned and closed is denied. Further, Ellenburg Road from its intersection of Knox Road to the border of the Defendant's property is a public road until such time as a party obtains a Court ordered closure of all or some portion of the same or in the event Oconee County, through some clear and unequivocal act, abandons the same.

IT IS SO ORDERED this _____ day of _____, 2024.

The Honorable R. Lawton McIntosh,
Presiding Judge, Oconee County,
Tenth Judicial Circuit



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Judgment and Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-08-06 13:37:55 page 16 of 16

ELECTRONICALLY FILED - 2024 Aug 06 1:42 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

R-000321

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Francis J. Ratliffe et al.
PLAINTIFF(S)

Oconee County et al.
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

**PLAINTIFF'S POST-TRIAL MOTIONS TO ALTER OR AMEND ARE DENIED WITHOUT NECESSITY OF A FORMAL HEARING. NO FORMAL ORDER REQUESTED.
COURT NOTES THAT PLAINTIFF DID NOT CAUSE THIS MOTION TO BE SERVED ON THE UNDERSIGNED.**

This order ☐ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

RECEIVED
Sep 17 2024
SC Court of Appeals

Circuit Court Judge

2155

Judge Code

Date**For Clerk of Court Office Use Only**

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT**Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-08-19 12:34:28 page 3 of 3

ELECTRONICALLY FILED - 2024 Aug 19 1:53 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

R-000324

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Frances J Ratliff et al
PLAINTIFF(S)

Oconee County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs motion for jury trial is denied. No formal order is required.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/18/2024 .

RECEIVED
Sep 17 2024
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-01-18 10:32:31 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Frances J Ratliff et al
PLAINTIFF(S)

Oconee County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs motion to amend the complaint is denied due to the lateness of the motion in relation to the trial date scheduled for Wednesday June 12th, 2024.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/05/2024 .

RECEIVED
Sep 17 2024
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-06-05 09:29:04 page 3 of 3

ELECTRONICALLY FILED - 2024 Jun 05 9:42 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

R-000330

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Frances J Ratliff et al
PLAINTIFF(S)

Oconee County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs motion to disqualify attorney Holliday is denied based upon memorandum and affidavits submitted. Oconee County's motion to stay is denied. No formal order is required unless requested by counsel. If a formal order is requested, attorney Holliday is to prepare a formal order relating to the motion to disqualify and attorney Paavola is to prepare an order relating to the motion to stay.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/10/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

RECEIVED
Sep 17 2024
SC Court of Appeals

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-06-10 13:09:56 page 3 of 3

ELECTRONICALLY FILED - 2024 Jun 10 1:23 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

R-000333

RECEIVED
May 16 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2022-CP-37-00447

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers
Crisp, Amy Cawthon,

Appellants,

v.

Oconee County, Globe, A South Carolina Limited Partnership, Farnes, A South Carolina
Limited Partnership,

Respondents.

NOTICE OF APPEAL

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon (“Appellants”) appeal the Honorable R. Lawton McIntosh’s Order and Judgment, entered August 6, 2024, attached as **Exhibit 1**. Appellants received notice of entry of the order on August 6, 2024, and filed a Motion to Alter or Amend the Order and Judgment on August 15, 2024. Appellants’ Motion to Alter or Amend the Order and Judgment was denied by order dated August 19, 2024, attached as **Exhibit 2**. Appellants also appeal the Order denying Appellants’ Motion for a jury trial entered January 18, 2024, attached as **Exhibit 3**; the Order denying Appellants’ Motion to Amend their Complaint entered June 5, 2024, attached as **Exhibit**

R-000334

4; and the Order denying Appellants' Motion to disqualify counsel for Respondents, entered June 10, 2024, attached as **Exhibit 5**.

Appellants filed an initial Notice of Appeal in this matter on September 17, 2024. Respondents moved for dismissal based on a pending motion for attorney fees and costs. On November 8, 2024, this Court granted the motion to dismiss without prejudice. The trial court ruled on Respondents' motion for attorney fees and costs on April 17, 2025. This appeal follows.

s/ David L. Paavola

David L. Paavola, SC Bar No.: 100714
Mark A. Bible, Jr. SC Bar No.: 101624
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Attorneys for Appellants

May 16, 2025

Other counsel of record:

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*Attorneys for Respondents, Globe, a
South Carolina Limited Partnership, and
Farmes, a South Carolina Limited Partnership*

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Attorney for Respondent, Oconee County

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 16 2025

SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2022-CP-37-00447

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers
Crisp, and Amy Cawthon,

Appellants,

v.

Oconee County, Globe, A South Carolina Limited Partnership, Farnes, A South Carolina
Limited Partnership,

Respondents,

PROOF OF SERVICE

I certify that the Notice of Appeal has been served on James W. Logan, Jr., counsel for Respondent Oconee County, by email sent to his primary e-mail address listed in the Attorney Information System, logan@loganandjolly.com and on Larry C. Brandt and Andrew K. Holliday, counsel for Respondents, Globe, a South Carolina Limited Partnership, and Farnes, a South Carolina Limited Partnership, by email sent to their primary e-mail addresses listed in the Attorney Information System, larry@larrybrandtlaw.com and andrew@drwmlaw.com, on May 16, 2025.

The undersigned also certifies that I have filed the Notice of Appeal with the Clerk of Court for Oconee County Court of Common Pleas via electronic filing.

s/ David L. Paavola

David L. Paavola, SC Bar No.: 100714
Mark A. Bible, Jr. SC Bar No.: 101624
KENISON, DUDLEY & CRAWFORD, LLC
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Attorney for Appellants

May 16, 2025

RECEIVED

May 16 2025

SC Court of Appeals

ELECTRONICALLY FILED - 2024 Aug 06 1:42 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022 CP-37-00447

Frances J. Ratliff, et al.

Oconee County, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Andrew K. Holliday, Larry C. Brandt, and James W. Logan, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMONS PLEAS
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	ORDER
Plaintiffs,	)	
v.	)	
	)	
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	Case No.: 2022-CP-37-00447
Defendants.	)	
	)	

The above captioned matter came before me, the undersigned, at the regularly scheduled term of Common Pleas Court for Oconee County, South Carolina, commencing on June 12, 2024 as a non-jury matter and was heard over the course of three days in which numerous witnesses testified and a plethora of deeds and plats of record pertaining to Ellenburg Road (WA-42) were admitted into evidence (Defendants' Exhibit 1).

Upon conclusion of the trial, the Court took the matters presented under consideration and, after giving its careful consideration and attention to all of the evidence, particularly the deeds and plats contained in Defendants' Exhibit 1, the Court makes the following findings of fact:

FINDINGS OF FACT

1. Ellenburg Road, also known and designated as WA-42 by Oconee County, has been a public road since at least 1946 as evidenced by deed of J.J. Younce to Larkin Mayfield, Jr., recorded in Deed Book 5-R, Page 190 records of Oconee County. That deed specifically refers to Ellenburg Road as a public road.

2. An express easement or deeded right-of-way for any portion of Ellenburg Road (WA-42) conveying the roadway or an easement for the roadway to any governmental entity over the subject properties evidently does not exist.
3. The deed of J.J. Younce to Eugene J. Kelley, dated November 17, 1947 and recorded in Deed Book 5-Y, Page 283, also references what is now referred to as Ellenburg Road and again describes it as a public road.
4. Other deeds and plats admitted into evidence as part and parcel of Defendants' Exhibit 1 clearly show what is now Ellenburg Road or portions thereof and refer to the road as a public road, county road and/or an unnamed paved road. Even members of the Ratliff family commissioned a plat and placed it of record clearly delineating Ellenburg Road as a public or a county road (Plat Book B-754 at Page 6, Records of Oconee County, South Carolina).
5. Oconee County Roads and Bridges employees testified and presented documentary evidence that the portion of Ellenburg Road not inundated by the waters of Lake Keowee had been maintained by the County to present date (from Knox Road to the border of Defendants' property) and the County considered Knox Road to be a public roadway all the way from Knox Road to the end of the pavement at the border of Defendants' property.
6. As indicated during the cross examination of Jay Ratliff, the spokesman for the Ratliff family at the BZA hearing on November 30, 2021, he clearly stated that Ellenburg Road, according to his memory, originally ran from what is now Knox Road, formerly S.C. Highway 183, to High Falls Church and was a state highway until a major portion of Ellenburg Road, WA-42, was inundated by the waters of Lake Keowee. He also

acknowledged at that time that the portion of Ellenburg Road not flooded by the waters of Lake Keowee devolved to Oconee County pursuant to law.

7. Other maps in evidence were also presented attesting to the fact that Ellenburg Road was a publicly dedicated roadway running from Knox's Store on what is now Knox Road (old SC 183) to High Falls Church and tied in and/or intersected with other public roadways in the community. Evidence further showed that once Lake Keowee was built, a major portion of Ellenburg Road, WA-42, was inundated by the waters of Lake Keowee; however, the westernmost portion of Ellenburg Road extended from Knox Road to the property of Defendants and has continued to be used by the general public to access Harbor Oaks Subdivision as well as John's Marine Service. Also, it was and is the only access to Defendants' property as is shown on Plat Book B291 at Page 1 by which Defendants' property was conveyed to Defendants by Crescent Communities on December 3, 2008.
8. There is also evidence that at sometime there was an End of County Maintenance sign at the end of the pavement at the border of Defendants' property; however, there was a lot of controversy concerning the sign in that there were allegations that there had been an End of County Maintenance sign at the top of the hill where the Ratliff property began. Witnesses attesting to the sign being located at the top of the hill, however, testified that the sign was white with black lettering. Further, Plaintiffs and witnesses called on their behalf regarding the location and description of this sign differed from one another. Conversely, Oconee County employees testified such signs used by Oconee County were green in color with white lettering, and a photo showing such a County sign, at one time, on Defendants' property where the pavement ends was also entered into evidence. Defense witnesses testified and County records entered into evidence show that the End of County

Maintenance sign was only at a single location, at the end of the asphalt and located upon Defendant's property.

9. The evidence also shows that numerous deeds and plats of property included in Defendants Exhibit 1 show Ellenburg Road (WA-42) as an Oconee County maintained roadway from Knox Road to the end of the asphalt at the border of Defendants' property where the pavement ends.
10. A photograph of an End of County Maintenance sign where the pavement stopped at the border of Defendants' property was also entered into evidence. No photo was introduced into evidence showing any other End of County Maintenance sign at any other location.
11. It is also undisputed that the northernmost portion of the previous paving which is at issue to the beginning of Defendants' property is owned approximately to the centerline of said roadway by the Plaintiffs and the southernmost half of the disputed road is owned by Defendants. Plaintiffs, however, never offered any evidence or attempted to explain how they could dispossess the Defendants of land to which they owned the fee.
12. The Ratliffs also claim that in or about 2009 they had a meeting with Prince Brown, a road department technician with Oconee County, who represented to them that the County did not maintain that part of Ellenburg Road that ran in front of the Ratliff property. Prince Brown is deceased, however, and was not available to testify or refute the allegations of Plaintiffs, but even if he did make such statements there is/was no evidence presented by the Plaintiffs that Mr. Brown had the authority to make the alleged representations and/or that he was duly empowered or authorized to abandon maintenance on public roadways belonging to the County or, in essence, to give away public assets [*City of Myrtle Beach v. Parker* 260 S.C. 475, 197 S.E.2d 290 (Sup. Ct. 1973)]. Again, the Ratliffs admitted that

they only owned to the approximate center of the disputed portion of the roadway and Defendants owned the other approximate half, notwithstanding that they are now claiming “ownership” of all of the road as it being their private driveway.

13. The Plaintiffs also testified that their father had, in conjunction with T. B. Ellenburg (a prior owner of a portion of the subject real estate in question and for whom the Road is named) paved the road in the 1980s. None of the Plaintiffs could place an absolute date on when this occurred and they produced no records for this paving. The only maintenance records produced were for gravel and concrete which were placed solely on the Plaintiff's property and not within the roadbed. Plaintiffs further testified that they were unaware of any survey of their property from the “Bearden Plat” of 1973 until 2020. Plaintiff's expert witness, surveyor Eliotte Quinn, additionally testified about finding the historical pins set in the asphalt, which included a rail road spike, a common practice in the 1970s. Mr. Quinn further testified in his expert opinion that any later repaving would have destroyed or at least covered these magnetic nails and rail road spikes. Therefore, the Plaintiff's claims of their father paving the road are simply not credible.
14. It is also uncontroverted that no action has ever been brought by anyone to close any portion of Ellenburg Road pursuant to *S.C. Code §57-9-10* and the same was stipulated to by the Plaintiffs.
15. Ms. Kalashnikova of the South Carolina Department of Transportation testified that although the South Carolina Highway Department did not have any records of Ellenburg Road ever being in the state inventory, it did have records which, in her opinion, showed that the road was a public roadway.

16. There was also testimony and evidence presented that Oconee County has, to present date, claimed such portion of the roadway in question as a public County road and has on several occasions mowed the shoulders, cleaned out the ditches and did some sporadic maintenance thereon.
17. Although the maintenance records for that portion of the roadway over which abandonment was alleged was somewhat sparse, there was absolutely no showing that County had abandoned and/or relocated the highway to a new location nor that abutting property owners had built fences around any portion of the roadway and/or otherwise obstructed the roadway. In fact, it was the County's claim that it was in their system for maintenance all the way from Knox Road to the border of Globe and Farnes' property.

CONCLUSIONS OF LAW

The Defendants assert that the only way to close a public road is by compliance with S.C. Code §57-9-10 pursuant to the holding of the cases of *S.C. Dept. of Transportation v. Henson Family Holdings, LLC, et al.*, 361 S.C. 649, 606 S.E.2d 781 (2004) and *Town of Kingstree v. Chapman*, 405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013), and all parties agree that no action has been brought by anyone to close any portion of Ellenburg Road pursuant to that statutory process. The Court, however, is of the opinion that the claim of abandonment under common law is independent of said statute. Accordingly, over the objections of Defendants, the Plaintiffs were granted full opportunity to be fully heard on the grounds of abandonment; however, the Court finds that there is no evidence that Oconee County abandoned the road by unequivocal acts showing a clear intent to abandon.

There are four (4) cases that are controlling and determinative on the "abandonment" issue under common law. In the first case, the South Carolina Supreme Court, in *Wessinger v. Goza*,

231 S.C. 607; 99 S.E.2d 395 (1957), held that a basic tenant of common law is that once a public road, always a public road and even an abandoned highway may not be closed without the consent of the persons whose property fronts thereon or over whose land it passes. In the present case, Ellenburg Road is still being used as a public road for access to properties along and on both sides of Ellenburg Road, including the Plaintiffs' property used by the "public" for "public" purposes to deliver and pick-up their boats at John's Marine Service, Inc., which specifically includes the portion of the Plaintiffs' real property directly across from a portion of the Farmes and Globe real property. As such the entirety of the portion of Ellenburg Road, having not been inundated by the waters of Lake Keowee, is still possible to traverse and the use of the same has not wholly failed. There has been neither a discontinuance of the public road in question nor an abandonment of that road and no sufficient evidence of any abandonment of that road has been shown by clear and convincing evidence. There is no evidence that the use for which the property was dedicated has become impossible or that the object of the use for which the property is dedicated has failed. Any past/present use of this road is totally consistent with the declared purpose of dedication and, therefore, will not support a charge of abandonment. At best for the Plaintiffs there is conflicting evidence of the discontinuance of maintenance at some portions of Ellenburg Road, but no evidence of any abandonment as defined by the applicable case authorities exists. Oconee County has never abandoned any portion of Ellenburg Road! The real property owner (Globe and Farmes) of approximately one half of the underlying fee on which Ellenburg Road is located as well as the strip property to southeastern side of the road directly across from the Ratlif property has never consented to the abandonment of that section and intends to use that public road for access to the public development of its property purchased from Crescent Communities SC, LLC!

The second case is *K & A Acquisition Group, LLC, v. Island Pointe, LLC*, 383 S.C. 563; 682 S.E.2d 252 (2009). In that case, the Department of Transportation (DOT) and the City of Folly Beach sought a declaration that a tract of land on a neighboring island that was part of a former toll road remained a public right of way. In its opinion, the Supreme Court of South Carolina made the following statements:

- A. "...we find the "old" Folly Beach Road was dedicated to the public and this public easement remained intact after the new road was created and until the SCDOT affirmatively abandoned the route of the former toll road.
- B. "...[W]e disagree that the "discontinuance" or relocation of the route was sufficient to constitute abandonment. The terms "discontinuance" and "abandonment" are not synonymous."
- C. "*Ord v. Fugate*, 207 Va. 752, 152 S.E.2d 54, 59 (1967) (noting that discontinuance of public road should not carry the same effect as abandonment and stating "under the present statutes the discontinuance of a secondary road means merely that it is removed from the state secondary road system. Discontinuance of a road is a determination only that it no longer serves public convenience warranting its maintenance at public expense. The effect of discontinuance upon a road is not to eliminate it as a public road or to render it unavailable for public use."
- D. "...a party must "show the abandonment by clear and unequivocal evidence. An abandonment occurs where the use for which the property is dedicated becomes impossible of execution, or where the object of the use for which the property is dedicated wholly fails. Any use which is not inconsistent with the declared purpose of a dedication will not support a charge of abandonment." (Emphasis added).

- E. “‘The rights of purchasers under a map and of the general public cannot be lost by the unauthorized acts of the governing or controlling officials of the municipality, or by their neglect, but only by legal abandonment by the public as well as the officials.’ 26 C.J.S. *Dedication* s 63 at page 552.” (Emphasis added).
- F. “An easement created by dedication may be abandoned by unequivocal act showing a clear intent to abandon. To constitute abandonment, the use for which the property is dedicated must become impossible for execution or the object of the use must wholly fail. Generally, a mere misuser or nonuser does not constitute abandonment of land dedicated to public use.” (Emphasis added).
- G. By way of example, the Court quoted the case of *Williams v. Woodward*, 240 S.W.2d 94 (Ky.Ct.App. 1951) which held that the State Highway Department abandoned roadway and relocated new highway, abutting property owners built fences around roadway and otherwise obstructed it, and roadway had not been used to any substantial extent by the public for some years are examples of an abandonment of a highway. (Emphasis added).
- H. The case of *Hart v. Town of Shafter*, 348 Ill.App.3d 713, 284 Ill.Dec. 699, 810 N.E.2d 489, 491 (2004) the Court cited with approval the statement that “[A]n abandonment will be found only where the public has acquired the legal right to another road or where the necessity for another road has ceased to exist.” (Emphasis added).
- I. See also the final two (2) cases: *Carolina Land Co. v. Bland*, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975) and *Judy v. Kennedy*, 398 S.C. 471, 728 S.E.2d 484 (2012).

Based upon this controlling authority, the Court finds that there is no evidence that Oconee County has abandoned the road by clear and unequivocal acts showing a clear intent to abandon. Accordingly, Plaintiffs' petition to have the road deemed abandoned and closed is denied. Further, Ellenburg Road from its intersection of Knox Road to the border of the Defendant's property is a public road until such time as a party obtains a Court ordered closure of all or some portion of the same or in the event Oconee County, through some clear and unequivocal act, abandons the same.

IT IS SO ORDERED this _____ day of _____, 2024.

The Honorable R. Lawton McIntosh,
Presiding Judge, Oconee County,
Tenth Judicial Circuit



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Judgment and Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-08-06 13:37:55 page 16 of 16

ELECTRONICALLY FILED - 2024 Aug 06 1:42 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

R-000354

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

RECEIVED

May 16 2025

SC Court of Appeals

Francis J. Ratliffe et al.

PLAINTIFF(S)

Oconee County et al.

DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF'S POST-TRIAL MOTIONS TO ALTER OR AMEND ARE DENIED WITHOUT NECESSITY OF A FORMAL HEARING. NO FORMAL ORDER REQUESTED.

COURT NOTES THAT PLAINTIFF DID NOT CAUSE THIS MOTION TO BE SERVED ON THE UNDERSIGNED.

This order ☐ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2155

Judge Code

Date**For Clerk of Court Office Use Only**

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT**Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-08-19 12:34:28 page 3 of 3

ELECTRONICALLY FILED - 2024 Aug 19 1:53 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

R-000357

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Frances J Ratliff et al
PLAINTIFF(S)

Oconee County et al
DEFENDANT(S)

RECEIVED

May 16 2025

SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

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☐ Other

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IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs motion for jury trial is denied. No formal order is required.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/18/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-01-18 10:32:31 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Frances J Ratliff et al
PLAINTIFF(S)

Oconee County et al
DEFENDANT(S)

May 16 2025

SC Court of Appeals

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☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs motion to amend the complaint is denied due to the lateness of the motion in relation to the trial date scheduled for Wednesday June 12th, 2024.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/05/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Oconee Common Pleas

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Case Number: 2022CP3700447

Type: Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-06-05 09:29:04 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP3700447

Frances J Ratliff et al
PLAINTIFF(S)

Oconee County et al
DEFENDANT(S)

RECEIVED
May 16 2025

SC Court of Appeals

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☐ Other

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IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs motion to disqualify attorney Holliday is denied based upon memorandum and affidavits submitted. Oconee County's motion to stay is denied. No formal order is required unless requested by counsel. If a formal order is requested, attorney Holliday is to prepare a formal order relating to the motion to disqualify and attorney Paavola is to prepare an order relating to the motion to stay.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/10/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Oconee Common Pleas

Case Caption: Frances J Ratliff , plaintiff, et al VS Oconee County , defendant, et al

Case Number: 2022CP3700447

Type: Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-06-10 13:09:56 page 3 of 3

ELECTRONICALLY FILED - 2024 Jun 10 1:23 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700447

R-000366

State of South Carolina
County of Oconee

Court of Common Pleas

Frances J. Ratliff, et al)	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2022-CP-37-00447
	)	
Oconee County, et al	)	
	)	
<u>Defendant.</u>	)	

January 17, 2024
Walhalla, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

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

David L. Paavola, Esquire
Attorney for the Plaintiff

Larry C. Brandt, Esquire
Attorney for the Defendant

Andrew K. Holliday, Esquire
Attorney for the Defendant

James W. Logan, Jr., Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

No Witnesses.

E X H I B I T SNO.DESCRIPTIONID.EVD.

No Exhibits.

- - -

P R O C E E D I N G S

- - -

THE COURT: All right.

MR. PAAVOLA: May it please the Court, Your Honor? David Paavola on behalf of plaintiff, the Ratliff family, in its dispute with Oconee County. And again, as you said, we're here on plaintiff's motion for a jury trial.

We were in front of Your Honor a few months ago on a discovery dispute, but just for some brief background on the case for Your Honor's benefit. My clients live at the end of Ellenburg Road -- at the end of Ellenburg Road. They own the center of the road, and the defense, Globe and Farmes, owns the other half of the road.

This is a declaratory judgment action, which seeks to answer the question what rights -- determine what rights, if any, Oconee County has over the section of Ellenburg Road in front of my client's property.

THE COURT: And do you think a jury is going to be able to do that?

MR. PAAVOLA: Your Honor, under the Declaratory Judgement Act, factual disputes are permitted to be provided to a jury.

1 THE COURT: Again, do you think a jury is going
2 to be able to figure that out?

3 MR. PAAVOLA: I think -- I think the jury can
4 figure out facts ---

5 THE COURT: I think it's a pretty complex legal
6 question myself.

7 MR. PAAVOLA: Well, there are -- there are
8 both. So there's factual disputes that a jury can
9 handle, and there's legal disputes the Court's going
10 to need to handle. So we're certainly not asking
11 for everything in the case to be answered by a jury.

12 THE COURT: So you want an advisory jury?

13 MR. PAAVOLA: No. The -- if there are factual
14 disputes of a declaratory judgment action, those
15 factual disputes can be answered by a fact finder, a
16 jury.

17 THE COURT: Well, tell -- so then how -- how
18 are you envisioning this if I go ahead -- if I grant
19 your motion, which I -- to be honest with you, I'm
20 not really inclined to do. If I do, what are you
21 asking that I do? That I fashion some -- something
22 so the jury can make factual findings from which I
23 make a conclusion or the jury makes the ultimate
24 decision?

25 MR. PAAVOLA: So the -- the jury will make the

1 factual findings upon which your legal decision
2 would be based. So there are factual disputes, a
3 Court or a jury is going to have to make those. And
4 if we're getting -- or entitled to a jury to hear
5 those factual disputes, then they would make the
6 determination of facts, and you apply the law and
7 make the determination on the case.

8 THE COURT: Well, do you know what facts are in
9 dispute that they need to make a call on that you
10 would ask me to send to the jury?

11 MR. PAAVOLA: Yeah, absolutely. And we've laid
12 forth -- set forth in our memo, but the county
13 essentially has two theories as to how they have the
14 easement over our client's property. First is, that
15 it was historically a state road before Lake Keowee
16 was created. And because it was a state road, once
17 the lake was created, the state abandoned it and it
18 became a county road. There are factual disputes
19 about that question. We -- in this case, we
20 subpoenaed DOT to give us records about Ellenburg
21 Road, was it ever a state road? And their subpoena
22 response is that it was never a state maintained
23 road. It's not a state road. We deposed the
24 county. Their position is, it was a state road and
25 that's how we got it, is one of their positions.

1 They said in their deposition that, oh, the DOT
2 employee told us it was a state road. Of course,
3 I've never been given the documents for that. And
4 the county admitted in the deposition that we don't
5 have any documents showing that. We just have this
6 one e-mail. Post deposition, I received additional
7 discovery that had the e-mails in there. And there
8 is an e-mail from a DOT employee saying what they
9 say it says, that -- that Highway 201 was, in fact,
10 part of Ellenburg Road or Ellenburg Road was part of
11 Highway 201.

12 THE COURT: Say that again, please.

13 MR. PAAVOLA: Ellenburg Road was part of
14 historical Highway 201 ---

15 THE COURT: Okay.

16 MR. PAAVOLA: --- state road.

17 THE COURT: Okay.

18 MR. PAAVOLA: However, the maps that we have,
19 the DOT communications say the opposite, that
20 Highway 201 was not part of Ellenburg Road. In
21 fact, we're deposing the DOT in two weeks with these
22 questions. So there is certainly a factual dispute
23 on that. They say we admit it was a state road at a
24 prior common pleas court hearing. That's -- that's
25 not true. My client was making general comments

1 about his address where he grew up, but his --
2 his -- his comments to the deposer can't make it
3 either a state road or not a state road. We --
4 there are a number of sworn affidavits I included in
5 attachment to our memo stating that an "end of
6 county maintenance" sign was located on Ellenburg
7 Road. It was north I believe -- west of my client's
8 property. Before it ---

9 THE COURT: When you say that, I'm not hearing
10 you. I'm sorry.

11 MR. PAAVOLA: Yeah, sorry. I have a number of
12 affidavits we've attached to our memo ---

13 THE COURT: Yes, sir.

14 MR. PAAVOLA: --- stating that there was an
15 "end of county maintenance" sign before you reach
16 our client's property for years and years.

17 THE COURT: Okay.

18 MR. PAAVOLA: We have attached a few of the tax
19 maps from the county over the decades that also show
20 the road on the map ending before my client's
21 property. The same location where there's a sign is
22 supposed to have been. And then we have -- I also
23 attached a deposition transcript from Camrez Bonrick
24 (phonetic) who is married to one of my clients. Met
25 with the county in 2009. They marked the tax map

1 where the county maintenance ended. It was the same
2 place as the tax maps show. Same place as the
3 affidavits show. So we've provided all of that.
4 There's definitely a fact dispute that whether our
5 section was ever a state road. We don't think it
6 was. And the county's never treated it as a county
7 maintained road.

8 So that's their first theory is that the state
9 road got reverted to the county. Their second
10 theory is that, well, that's not true. We've been
11 performing maintenance on it for long enough to get
12 a prescriptive easement. You have to have
13 continuous uninterrupted maintenance for a period of
14 20 years. It has to been proven by clear and
15 convincing evidence, but they can't do that in this
16 case. Our clients paved the road in the mid-1980s
17 and have maintained it since and have lived there
18 continuously.

19 THE COURT: Tell me that again. I'm sorry.

20 MR. PAAVOLA: My clients paved their -- their
21 section of Ellenburg Road in the mid-1980s ---

22 THE COURT: Okay.

23 MR. PAAVOLA: --- and have maintained it
24 continuously for almost 40 years.

25 THE COURT: Has it been blocked off from the

1 public in any manner like ---

2 MR. PAAVOLA: Well, the people who come -- the
3 people who come down there are -- they have a
4 business down at the end of the road that maintains
5 both, so, obviously, they're -- it's our business to
6 make an honest business to us. That's it. And the
7 road dead ends there. It doesn't go anywhere else.

8 THE COURT: Okay.

9 MR. PAAVOLA: So those are factual disputes.
10 If they're going to win on a prescriptive easement,
11 they have to prove that they've maintained or
12 they've done maintenance for 20 consecutive years.
13 There's no documents showing that, and the testimony
14 they have is just hearsay from employees. So, yes,
15 there are factual disputes that need to be resolved
16 by a fact finder.

17 And so as set forth in our memo and I would
18 just say on the motion for a jury trial, obviously,
19 it's in Your Honor's discretion to be able to --
20 discretion to do a Rule 39(b) in the Declaratory
21 Judgment Act.

22 Then the last point I have, there's really
23 inadvertence that we didn't request a jury trial.

24 THE COURT: Say ---

25 MR. PAAVOLA: Really inadvertence that we

1 didn't request a jury trial when we filed it in June
2 of 2022.

3 THE COURT: Rule 38?

4 MR. PAAVOLA: Huh?

5 THE COURT: Rule 38?

6 MR. PAAVOLA: Right. Rule 38. So ---

7 THE COURT: Doesn't it also say if you don't,
8 it waives it?

9 MR. PAAVOLA: Well -- well, that's right, Your
10 Honor, but we're -- that's why I'm referring to the
11 other Rule 39 that you have discretion to grant it.
12 It's the same -- we filed this case really as a
13 placeholder because at the same time we were
14 appealing the lower circuit appeals variance
15 request, so we appealed that to the Circuit Court.

16 We filed this case in the event that we'd have
17 to come to Circuit Court to get this declaratory
18 judgment answered by the Court, what rights the
19 county has. That was suggested in something to me
20 that answers that we have filed this case at the
21 same time we filed the appeal. And that appeal was
22 the focus of our -- all of our efforts, all of us,
23 really until November '22 when it was denied by the
24 Circuit Court, and then we appealed that to the
25 Court of Appeals. That briefing process in the

1 spring of '23, June of '23. And this case began in
2 earnest in the spring of '23, which is the
3 discovery. Of course, depositions were in August of
4 '23, and we filed this motion in October. So even
5 though we filed the case in June of '22, it really
6 didn't begin until really the middle of '23, so this
7 is not untimely. And there's no prejudice. They
8 haven't identified any prejudice to them or delay in
9 the case as a result of our request for a jury
10 trial.

11 THE COURT: Well, I mean, I can -- I've done
12 numerous, numerous jury trials either as a lawyer or
13 a judge. And some of these issues, I'm just not
14 sure that -- it may be a little bit confusing for a
15 jury, but what -- what's your position? Obviously,
16 you don't want a jury trial.

17 MR. BRANDT: Your Honor, our position is that
18 it was a state roadway or a public road, state or
19 county. And if you go back in to T.B. Ellenburg,
20 to the fellow who named the road Ellenburg Road
21 after, I guess, some time after the late or maybe
22 even before, but you find references to "unnamed
23 paved road." You find references to Ellenburg Road
24 in there as "public roadway."

25 THE COURT: Well, let me ask you this: Be that

1 as it may because we're not trying it here today.

2 MR. BRANDT: Yes, sir.

3 THE COURT: But this is before you, I thought,
4 on the plaintiff's motion to have us ---

5 MR. BRANDT: Yes.

6 THE COURT: --- pick a jury and let the jury
7 make a decision in this case. And what I'm hearing
8 now is that, no, we just want the jury to make
9 factual findings, but not any legal conclusions; is
10 that -- is that correct?

11 MR. PAAVOLA: Well, the jury is going to be
12 deciding the facts that are at issue for it and, you
13 know, whether that meets the legal elements of a
14 prescriptive easement are pieces we need for the
15 Court.

16 THE COURT: I mean, do you want the jury -- and
17 so I understood you and I just want to get this
18 clear, that you're asking for -- that there's not a
19 big -- any kind of prescriptive easement or there
20 never was a dedication of a road?

21 MR. PAAVOLA: This is a slightly unique posture
22 in the case because it's their burden, and so -- and
23 they have to come in and prove that -- they have to.

24 THE COURT: So -- but wait just a minute. What
25 I'm asking is, if I'm preparing the verdict form and

1 we're giving the case to the jury. And in this
2 case, do you find that plaintiff's entitled to X, Y,
3 and Z because -- that they're entitled to a
4 prescriptive easement or dedication or what -- what
5 would be the verbiage that I use?

6 MR. PAAVOLA: It's going to be more specific to
7 the factual issues, such as: Has the county proven
8 by clear and convincing evidence that they ---

9 THE COURT: Say what?

10 MR. PAAVOLA: Has the county proven by clear
11 convincing evidence that they've had continuous
12 uninterrupted maintenance of this section of
13 Ellenburg Road for the 20 years? That's the kind of
14 question that would have to go to the jury. Not
15 that that's the easement. I think that has to be
16 the Court's determination ultimately, but the
17 factual dispute. They say they've maintained it.
18 We say they haven't. That's a factual dispute.
19 They say it's a state road. We say it's not a state
20 road.

21 THE COURT: So that's what I was asking a
22 minute ago. You want there to be factual findings,
23 but not legal conclusions by the jury?

24 MR. PAAVOLA: Yeah, I think it's a mixture of
25 fact and law in this case and declaratory judgement.

1 THE COURT: What would be the mixture? Whether
2 or not they held it for a prescriptive period would
3 be "yes" or "no" and that's a factual question.
4 What would be the other one? The next question of
5 law in fact.

6 MR. PAAVOLA: I mean, Your Honor has to
7 ultimately make the ruling on prescriptive easement.
8 So I don't think the jury could say that as a matter
9 of law there is an easement. They can say whether
10 they maintained it or not, and then Your Honor has
11 to make the determination on whether that easement
12 applies to the facts.

13 THE COURT: So, basically, you find it's it a
14 fact -- you want the jury to make findings of fact
15 so I can make the conclusions of law from those
16 findings?

17 MR. PAAVOLA: Yes. The jury make the finding
18 of fact -- decisions on the factual basis in
19 dispute. It simply is a matter of law. There's no
20 dispute -- factual dispute, then Your Honor could do
21 all of it.

22 THE COURT: I understand. All right. Now, as
23 to his request for a jury trial, what is your
24 position?

25 MR. BRANDT: I think equitable in nature. He's

1 not entitled to one because if you interpreting
2 here, the statute and the application to the facts,
3 and we're not taking ---

4 THE COURT: How would the applications and
5 interpretation of a statute be equitable?

6 MR. BRANDT: Because 1962, the Court or the
7 State passed that statute on the road closures.

8 THE COURT: Okay.

9 MR. BRANDT: And there was -- and nobody has
10 ever filed or asked for a road closure down there.
11 The county says they've been maintaining it.
12 They're getting down to the point wanting to argue
13 with the extent of the maintenance.

14 Now, they don't contest the road has always
15 been -- Ellenburg Road was -- is WA42 now. The
16 county has a sign out there, WA42. Numerous plats
17 with that on it. We're at the end of the road.
18 There's no more beyond us. And, of course, the way
19 it came up is that we needed an ordinance of
20 basically a -- with a zoning board. We needed them
21 to relax. We wanted an exception for them to let us
22 instead of having to have a 50-foot road down to --
23 I think it was 30 -- about 32 feet, 30 point -- 31.8
24 feet, and we come around and access our property.
25 No other way to get there.

1 Ellenburg Road originally started on the old
2 183 before the lake was built at WA42, and it
3 went -- well, it wasn't WA42, and it went across to
4 High Falls Church and tied in with another public
5 road. In fact, it tied in with two of them. But as
6 you came down the road, when you got to our entrance
7 to where our property is, it splits. One went
8 around this way; one went around that way, but that
9 one section was always together.

10 They don't contest the entirety of WA42 or
11 Ellenburg. They don't contest that. They admit it.
12 They're saying though that they had a conversation
13 and was told that the county would not maintain or I
14 don't know what was said. We have no record of
15 that, but the employee out there. Anybody can't
16 find it, except what the Ratliff's testified the
17 conversation took place. And, of course, it doesn't
18 matter what the county employee may have told them.
19 He doesn't have a right to give away county assets.
20 He was totally without authority.

21 THE COURT: Let me go back though, and I hear
22 that. And I hear what he's saying, but it seems to
23 me -- I mean, I'm a little confused about how -- how
24 this should be a jury trial. I know that under the
25 Declaratory Judgment Action and I understand the

1 factual finding and stuff, but you say this is
2 equitable. I don't see that either, unless you
3 can ---

4 MR. BRANDT: Well, the law is kind of cloudy, I
5 mean, as to what it is.

6 THE COURT: Okay.

7 MR. BRANDT: And -- but it -- it -- you go back
8 and you don't have any case directly on point with
9 this issue. But you look at it, and there's clearly
10 a case -- a South Carolina case, and I don't know
11 that I've cited it in my memo, but it clearly says
12 that interpretation rights under deeds basically.
13 Well, deeds is an equitable matter. But what ---

14 THE COURT: Seems to me really.

15 MR. BRANDT: --- but what you -- what you have
16 to do is: Basically, if you have one that's a
17 question of mixed law, I guess, fact, whatever, then
18 you have to basically -- it's classified as to what
19 the main underlying issue is. The underlying issue
20 is: They didn't comply with the state statute to
21 close the road.

22 THE COURT: Well, isn't it more the relief that
23 you're seeking that -- that -- that kind of
24 determines whether it's legal or equitable that
25 ultimately ---

1 MR. BRANDT: Yeah, but I think that's -- I
2 think that's a question for the Court. There's
3 nothing for the jury to decide. They can't waive
4 that statute, the jury can't.

5 THE COURT: Well, I understand that.

6 MR. BRANDT: And -- and so we have -- without
7 going into great detail, I cited some of it, but I
8 really cited the case of City of Myrtle Beach in my
9 memo. In there, one of their ground -- things they
10 want to put up is and have the jury base this
11 finding of what the status of the road is, based on
12 the conversation with the county employee, not the
13 supervisor, not the county counsel, but they admit
14 that there's no -- never been an action brought
15 pursuant to that statute. The notices haven't been
16 sent, and that's been -- it's pretty specific in
17 that statute as to what's required.

18 So I don't understand if the -- the jury can't
19 say, "We find these facts based on a conversation or
20 whatever." And then turn around and say they didn't
21 have to comply with the road, so they -- the jury's
22 got nothing to do here. It's all the bench. It's a
23 legal question for -- for the Court to determine
24 without a jury.

25 THE COURT: Have y'all ever considered letting

1 them ask for equity to make the call in this case?

2 MR. BRANDT: I would -- I would've consented to
3 that. Yeah.

4 THE COURT: He's well-versed in real estate and
5 I have some real estate knowledge, but I certainly
6 don't have as much as he does, neither does Judge
7 Maddox or Sprouse. I don't -- have you considered
8 that option of just going to the master and letting
9 him make the call?

10 MR. PAAVOLA: We've not discussed that, Your
11 Honor.

12 MR. BRANDT: But, anyway, we say there's
13 nothing for a jury to do here, because even if you
14 take the facts that they're arguing and, of course,
15 we -- we have record deeds and everybody in the
16 case, the South Carolina law is: If you buy a piece
17 of property, you basically take knowledge of your
18 chain of title. And it's completing the chain of
19 title, even from T.B. Ellenburg who deeded the other
20 people, that public record. Didn't call it
21 Ellenburg Road or WA42, but it's clear that's what
22 they're talking about here.

23 Once it gets into the public domain, it -- that
24 statute, since '62, has made the exclusive way to
25 get it out of the public.

1 THE COURT: You're talking about the road
2 closing statute?

3 MR. BRANDT: Yes. It's a road closing statute.
4 Now, the statute -- now there's a regulation. I
5 think it was passed in like 2013. The regulation of
6 South Carolina Highway Department I guess came up
7 with -- with anyway, but the regulations in effect
8 tie us back to the statute. Don't have any contest
9 that the legislature or whomever -- the regulatory
10 authority doesn't have the right to do that. And it
11 says if you're going to close the road, you got to
12 read it. You have got to -- not only the statute
13 says it. You got to advertise it in the newspaper.

14 THE COURT: You got to get county counsel
15 approval.

16 MR. BRANDT: You got to give everybody --
17 everybody in -- in line has got -- would have an
18 interest in it. And that is -- that case I cited in
19 my memo -- can't recall it right now. Getting kind
20 of old. I don't have a good memory.

21 THE COURT: Kind of?

22 MR. BRANDT: Yeah. Yeah, who are you?

23 THE COURT: I'm kidding.

24 MR. BRANDT: Yeah. But, anyway, it's a waste
25 of Court resources and time to empanel a jury when a

1 jury, whatever they find is fact, doesn't excuse the
2 underlying issue. And that is, did you comply with
3 the state statutory procedure in road closures? And
4 it's not been done. And the county thought, and I
5 don't understand their argument, is: Well, it's a
6 state road to here and there's a bunch of other
7 people bought property up here, depending on that
8 state road down there. I mean, Crescent -- Crescent
9 property developed a couple of subdivisions up to
10 where. And one subdivision's got a bunch of houses
11 in there. They've got to have that portion of the
12 road, obviously, to get to their property.

13 And then the Ratliff's are saying, well, it
14 only serves us, but the property line -- our
15 property now, which was Duke's, and their property,
16 the line -- the property line goes to the
17 approximate middle of the paved portion, that
18 roadway, which is all the way down to the entrance
19 to our land.

20 And so I -- I just think it's a -- it's -- you
21 know, you're going to empanel a jury to come in and
22 make findings. And my opinion is just totally
23 irrelevant. It doesn't matter what Prince Brown
24 said in the -- the Myrtle Beach case. You know,
25 they had a -- that case dealt with a road that had a

1 bridge, and the bridge got destroyed somehow. I
2 can't remember. But, anyway, it was shown on --
3 shown to the person on a zoning map that road
4 stubbed off at the bridge. And they performed no
5 maintenance on it for years. And it said that the
6 zoning guy is not holding on the status of that
7 road, and they said that's still a public road. And
8 so I ask you to please read Myrtle Beach carefully
9 that I cited. And ---

10 THE COURT: Let me -- let you say this, and
11 then I'm going to hear from you, Mr. Paavola.

12 MR. BRANDT: And he -- anyway, and they -- of
13 course, they held there that they couldn't -- that
14 road was not closed. And it said that you -- even
15 that once it's in the public domain, a lack of
16 traffic along that roadway, in essence, does not
17 close it either. It's not abandonment. And that's
18 why that -- you know, that Henderson holding case is
19 cited that said the purpose of the statute was to
20 basically clarify everything for everybody.

21 Early in my career, I had one case in Seneca
22 where the map of the original town of Seneca when it
23 was laid out, came within a foot of my guy's house
24 in a subdivision.

25 THE COURT: Do what now?

1 MR. BRANDT: It was an old plat, a map of the
2 town of Seneca.

3 THE COURT: Okay.

4 MR. BRANDT: And the line for Cherry Street, as
5 it was drawn out on that map, came within one foot
6 of the corner of my client's house. So we had to go
7 through the procedure of running it in the
8 newspaper, sending out notices to all the people,
9 and had to trace Cherry Street, even the un -- un --
10 undeveloped portion of Cherry Street. Cherry Street
11 was just stubbed off. And we had to get everybody
12 down the line of Cherry Street and make them parties
13 to the closure. And we got it closed, but, I mean,
14 that's the kind of things that you run into.

15 And, of course, back before the -- before the
16 '62, when the statute came in, you had all of these
17 old ways of trying to do it and going in and say,
18 well, you abandoned it. And there's no desire, I
19 mean, but people were still using it, but the public
20 entity didn't -- had abandoned maintenance on it.
21 And that's the whole purpose of that 57-9-10.

22 So I think -- don't mean to belay it. Our --
23 our position is simply this: No matter what the
24 facts are, that statute wasn't complied with, so
25 it's not closed. It is -- it's still in the public

1 domain. And if you question whether it was ever in
2 the public domain, there's -- there's a plethora of
3 documentary evidence through deeds, even T.B.
4 Ellenburg, down the Ellenburg change where that
5 road's referenced as a public road.

6 THE COURT: Thank you, sir.

7 MR. HOLLIDAY: Your Honor, if it's okay, Jim
8 and myself would like to share a couple of thoughts,
9 as well. We'll be a little bit more ---

10 THE COURT: Who wants to speak? Mr. Logan?

11 MR. HOLLIDAY: Yes.

12 THE COURT: He's asking -- you -- you're asking
13 him to ask me to let you speak?

14 MR. LOGAN: No.

15 THE COURT: That's the first time.

16 MR. LOGAN: No. He can speak for himself. I
17 may or may not have anything to say based upon what
18 Mr. Brandt has already done, so he can go ahead. If
19 you -- if you even need my permission to allow him,
20 which you do not.

21 THE COURT: I thought he was saying that, but
22 I -- I misunderstood.

23 MR. HOLLIDAY: No. No. Myself and previously
24 he had said he wanted to say something, and I
25 haven't followed up with him since -- since

1 Mr. Brandt's statements.

2 I think your initial reaction of not being
3 inclined to grant this is -- is the correct one.
4 Mr. Paavola said a little while ago that he was
5 entitled to a jury trial. That's just not true. As
6 you're aware and you cited earlier, Rule 38 says
7 unless that is requested within 10 days of the last
8 pleading being filed, it is waived.

9 Now, he is correct that Rule 39 does allow you
10 to grant that, but he's not entitled to a jury
11 trial. And for all the reasons that you and
12 Mr. Brandt and Mr. Paavola previously discussed,
13 it's a terrible idea. It would -- it would be a
14 mess with regards to the Court and determining the
15 jury form and trying to figure out what's the jury
16 deciding.

17 Frankly, I do like your idea referring it to
18 the master, and I think all of us would be in favor
19 of that. And I know that the factual issues aren't
20 really germane to whether there's a jury trial or
21 not, but there's a -- there's a couple that I wanted
22 to address.

23 The plaintiffs -- and -- and Larry touched on
24 this briefly. The plaintiffs completely ignore the
25 fact that our clients own half of this road, they

1 own half the road, and they would have no lawful
2 access to their property down this road because our
3 clients and our client's predecessor in interest due
4 to impress him, haven't granted an easement. There
5 -- there is no easement allowing them access.
6 There's no right-of-way allowing them access because
7 it never existed because it's a public road. That's
8 a separate argument, but they -- they have no way to
9 lawfully access their property down this road. We
10 own half the road.

11 So in addition to that, Exhibit 5 to
12 Mr. Paavola's complaint or to his motion is a tax
13 map. For whatever reason, we've had conversations
14 and I -- I can't get this through to him. A tax map
15 isn't going to show roads in a official capacity.
16 It exists for the assessor to identify parcels and
17 tax them. The county roads map has Ellenburg Road
18 on it, which is -- it exists to show roads. I
19 haven't made that click yet.

20 Also, if you go to page six of Mr. Paavola's
21 motion, you'll see him reference Exhibit 8, which he
22 says is the only plat ever prepared of 599 Ellenburg
23 Road. That's simply not true. It's the only
24 recorded plat. Mr. Ratliff had a plat prepared in
25 2021 by Michael Henderson. And Exhibit 2 to his

1 deposition, shows a subdivision plat where
2 Mr. Ratliff proposed to subdivide 599 Ellenburg into
3 two parcels, A & B, with a house on one and a shop
4 on the other. The shop is where John's Marine, the
5 business that Mr. Paavola is referencing, is
6 located.

7 The interesting thing about that subdivision
8 plat in 2021 is that Mr. Henderson identified
9 Ellenburg Road as WA42, a public road. That's a
10 plat that Mr. Ratliff paid for.

11 Additionally, there's another plat prepared, I
12 believe in 2020, that was part of Mr. Henderson's
13 deposition. Once again, Mr. Ratliff paid for,
14 identifies WA42, Ellenburg Road, as a public road.
15 So he's paid for two plats, two surveys of his own
16 property that identified WA42 as a public road.
17 Never complained about it then. Never sought to
18 close the road to Larry's point, and so there's --
19 there's just been no real dispute about whether it
20 was a public road until our clients wanted to
21 develop Arrowhead Point, which is what we're calling
22 it, which is the dead end part of the road.

23 And here's where the prejudice comes in that
24 Mr. Paavola is saying, you know, there is no
25 prejudice. At every step at three separate BZA

1 hearings online, in the news, the Ratliff's have
2 sought to make --

3 THE COURT: BCA?

4 MR. HOLLIDAY: BZA, Board of Zoning Appeals.

5 THE COURT: Okay.

6 MR. HOLLIDAY: And I believe you heard the
7 appeal of that from the BZA when you denied
8 Mr. Paavola's appeal, which he subsequently sent to
9 Columbia. I -- I believe you ---

10 MR. BRANDT: Maddox heard that.

11 MR. HOLLIDAY: Was it Maddox?

12 MR. BRANDT: It was Maddox.

13 MR. HOLLIDAY: Okay.

14 THE COURT: My skillful review on zoning is so
15 narrow that there's not much anyway.

16 MR. HOLLIDAY: So the -- the number of
17 affidavits that have been generated and some of
18 which, even attached to Mr. Paavola's motion today,
19 the amount of just consternation and sometimes just
20 outright falsehoods. I mean, I hate to go that far,
21 but, I mean, he's told people we're stealing
22 property from him. It's been all over different
23 social media sites. I mean, granting him a jury
24 trial would -- would just be another opportunity for
25 him to have a spectacle, and that is where it

1 prejudices our clients. And so for the prejudicial
2 reasons and for just the rules based reasons that
3 he's not entitled to one, you should deny his
4 motion.

5 THE COURT: Mr. Logan, do you -- do you want to
6 say anything?

7 MR. LOGAN: I think it's been covered, Your
8 Honor. My main focus was noncompliance with the
9 road closure statute. This action is not a road
10 closing action. There's just been no -- no
11 compliance with that. And I think that in and of
12 itself ought to end it.

13 THE COURT: Go ahead.

14 MR. PAAVOLA: Yes, Your Honor. Very quick.
15 The -- the whole argument on the road closure
16 statute, that presumes the road was a state road, a
17 public road, at some point in time. That's -- this
18 -- that's where we are. We're on this dispute
19 whether it was ever a state road, so the abandonment
20 only matters if it was a public road. Well, that's
21 not proven yet.

22 THE COURT: The state -- is it state or county?
23 Is there a difference in the statute?

24 MR. PAAVOLA: Their theory is that it was a
25 state road, but what I put in my memo and what I

1 provided to the Court is, the state's saying it was
2 never a state road. So there's no documents or
3 evidence that it was ever a public road at any point
4 in time, which you would need to invoke the -- the
5 abandonment of road statute. And even if we got to
6 abandonment of road statute, perhaps allowing my
7 client to pave, invest, maintain the road for 40
8 years, is enough to -- to be an abandonment.

9 Plats, Mr. Brandt is incorrect. So the -- the
10 plats of my client's property, the recorded plats,
11 there's a -- the word "road" is on there, but it's
12 never identified as a public road. It's never
13 identified as a public right-of-way, so he's
14 incorrect. There are no plats when it was
15 subdivided, I think it was 1974 or around there, by
16 T.B. Ellenburg. He owned a whole -- he donated
17 some -- some land went to the lake. Some of this
18 remained land. Eventually, subdivided at the same
19 time. There's no public right list on that. Was
20 there a road there? There's a road there. There
21 are other types of roads that are not public roads.
22 There are private roads, as well, which is really
23 what's indicted on the DOT map to create Lake
24 Keowee. Again, there's a lot information. We've
25 not provided it all to the Court to argue about

1 that, but it is a dispute.

2 Yeah -- yes. The only plat that's recorded of
3 599 is the one I provided to the Court. He's right.
4 Mr. Henderson prepared two other plats of my
5 client's property. He wrote the words public -- I
6 think he wrote "a public right-of-way" or something
7 on there. Although, he was deposed, and the
8 question was posed to him, "Okay. What documents
9 show to you that this is a public right-of-way?"

10 He said, "There are no documents. I didn't
11 look at anything. It was simply the fact that it is
12 a road, and I presumed it was a public road."

13 So his testimony completely undercuts the fact
14 that they think these plats somehow create an
15 easement. They -- he testified clearly he cannot --
16 I, as the surveyor, cannot create an easement. I
17 can't create that public right-of-way. I just -- I
18 thought it was there, so I wrote it down. That's
19 essentially what he said. We provided a -- a
20 snippet of his testimony to Your Honor.

21 And then prejudice, you know, I take issue with
22 everything he said about us creating a spectacle.
23 That's not true. Clearly, this impacts my client
24 significantly. He has a business down there. I
25 think we have arguments and issues that a jury can

1 hear and can decide and so that's why we request the
2 Court to grant a jury trial on those issues, Your
3 Honor.

4 THE COURT: Thank you.

5 MR. LOGAN: His comments have created something
6 I do need to respond to. Then and earlier, he made
7 a comment about his clients have paved this section
8 of the road. The record establishes that his
9 clients may have filled a pothole from time to time.
10 There's no testimony that I'm aware of that they
11 ever went down there and paved the road like it was
12 supposed to be done. And they're using it today, so
13 they didn't pave it. They may have filled in a
14 pothole. They may have cut some grass along the
15 road or on the edges of the road, but this -- this
16 use of the word "paving" is a red herring and should
17 not be considered by the Court. And did you -- what
18 was that other point you wanted to make?

19 MR. BRANDT: Could I add something?

20 THE COURT: Go ahead.

21 MR. LOGAN: I'm sorry. Thank you, Judge.

22 THE COURT: Sure. Go ahead.

23 MR. BRANDT: Well, talk about prejudice.

24 Obviously, I represent Globe and Farmes, and they're
25 real estate developers. And they've got a plan for

1 that point out there at Arrowhead to have a
2 subdivision out there. And they're upset,
3 certainly, about the traffic may be used in this
4 public road, but they bought their property from
5 Duke Power. And Duke Power even granted them an
6 easement, and they felt like they had an old -- old
7 road bids in that subdivision, the property they
8 own.

9 The longer this thing stays in litigation, the
10 more my people get hurt, because, you know, a day
11 late, a dollar short. And the costs mount up.
12 Things do change. And so time is essence -- of
13 essence to us to be able to move forward with our
14 project. So the longer they can hang this up in
15 court or the longer it is in court to be decided,
16 they can't develop the property. So there's
17 prejudice to our people because the purpose of which
18 we wanted -- we bought the property is being
19 frustrated by time.

20 THE COURT: Mr. Paavola, you have the burden,
21 so I want to give you the last argument. Go ahead.

22 MR. PAAVOLA: Your Honor, just on the -- on the
23 paving issue. Mr. Logan is incorrect. We have
24 consistently testified that our ---

25 THE COURT: Those are issues for the trial.

1 MR. PAAVOLA: Well, I just want to make it --
2 he brought it up, so my clients have testified.

3 THE COURT: I don't need to hear all of that.
4 Let me tell both sides this: I am not inclined to
5 give y'all a jury trial in this case. I think it's
6 confusing. I don't think it's good use of our
7 resources. And I think any of the trial judges can
8 make those factual calls and reach the right
9 conclusions based on the case y'all present to them,
10 including myself.

11 I would encourage you to consider referring
12 this to the master in equity for several reasons.
13 One, you control your destiny as far as time in the
14 case. The master in equity deals with a lot more
15 property issues than I do or the other circuit court
16 judges, but I'm going to read back through the
17 submissions before I make that final call. I'm just
18 telling you, I don't think I'm going to give you one
19 right now. Okay. With that being said, I'll give
20 you my decision by week's end.

21 MR. PAAVOLA: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. LOGAN: Thank you, Your Honor.

24 (At 2:40 p.m., the proceedings concluded.)

25 * * * * *

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Oconee County, South Carolina, on the 17th day of January, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 8, 2024

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
Frances J. Ratliff, Edward J. Ratliff, Jr.,	)	Case No. 2022-CP-37-00447
James L. Ratliff, Lucretia B. Morgan,	)	
Sherri Akers Crisp, Amy Cawthon,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' NOTICE OF
v.	)	PUBLICATION OF THE AUGUST 9,
	)	2023 DEPOSITION OF OCONEE
	)	COUNTY
Oconee County, Globe, A South Carolina	)	
Limited Partnership, Farmes, A South	)	
Carolina Limited Partnership,	)	
	)	
Defendants.	)	
NOT	)	

Plaintiffs hereby designate the following excerpts from the August 9, 2023 deposition of Oconee County, to be published for trial along with Deposition Exhibits 2, 4, 5, 6, 7, 8, 12, 13, 16, 20, 23, 27, 28, 29, 30:

BY MR. PAAVOLA:
(County Dep. 5:18-20)

Q. Mr. Coley, would you please state your name for the record?

A. James Coley.

(County Dep. 10:10-19)

Q. Okay. And then you were also designated for topic number 6, and topic number 6 is tax maps for Oconee County from 1986 to 2008. Are you prepared to talk about that topic today?

A. Yes.

Q. And then you were additionally designated for topic 16, which is GIS tax maps for Oconee County from 2010 to the present. Are you prepared to talk about that topic today?

A. Yes.

County Dep. 11:11-14:5)

Q. And then 11 is -- you were also designated on -- with Mr. Reid on 11, answers to discovery requests served on Oconee County. Are you prepared to talk about that topic today?

A. Yes.

Q. Okay. Mr. Coley, I gather that you currently work for Oconee County. Is that right?

A. Yes.

Q. Okay. And what is your job title?

A. The director of the planning department.

Q. How long have you been director of the planning department?

A. November of '21.

Q. Okay. How long in total have you worked for Oconee County?

A. Since November of '21.

Q. What were you doing before November of '21?

A. I was working for Georgetown County.

Q. Okay. And what was your role at Georgetown County?

A. I was the project manager for capital projects.

Q. Let me back -- go back to your current role. Go ahead and describe for me what your -- generally, what your job duties are in your current role with Oconee County.

A. To review plans and zoning actions for the county.

Q. Okay. When you -- when you say "review plans," what does that mean?

A. It could be residential, industrial, or commercial in nature.

Q. Plans for development?

A. Yes.

Q. What other types of plans? Is it just development?

A. Any number of things.

Q. Such as?

A. Residential, commercial, or industrial.

Q. Okay. When you say, "review plans," what does that -- does that entail?

A. Confirming the plans presented are in compliance with the code of ordinances.

Q. Okay. And what about for the zoning? You said you review zoning actions. Tell me about what those job duties entail.

A. Reviewing rezoning actions or current zoning for properties that are designated in certain zoning districts.

Q. Okay. And that includes variances?

A. It does.

Q. Okay. And so were you involved in the variance request related to Ellenburg Road I guess made by Ridgewater Engineering?

A. Yes.

Q. Okay. What was your role in that variance request?

A. I was the staff liaison for the request.

Q. Okay. And what does that mean to be a staff liaison for it?

A. I was the county's person who was at the hearing.

Q. Okay. Does that mean -- did you interact with the requesting parties?

A. Yes.

Q. We'll look at some of those e-mails. At the hearing, what was your role at the hearing?

A. To give the staff opinion and to be available to the board for any questions.

Q. Okay. And did you give the staff opinion at the hearing?

A. It was presented in writing.

Q. Okay. So the staff opinion is a written document; is that right?

A. Yes.

(County Dep. 34:19-25; 35:1-8)

Deposition Exhibit 2

Q. Okay. And then the next document is a plat and -- the final page of Exhibit 2 is a plat, and it -- in the middle of the plat in the bottom or middle section, it says, recorded this 9th day of 23 September 1974 in volume P-39 page 67. Do you see that?

A. Yes.

Q. Okay. So I'm just trying to get to the point of this -- you're comfortable that this plat is the plat referenced in the deeds and as related to 565 Ellenburg Road; is that fair?

A. Yes.

Q. All right. Also, tax map number is currently 150-00-01-103, correct?

A. Yes.

(County 39:1-18, 22-25; 40:3-11)

Q. Do you see any indication on this plat that Oconee County has a right-of-way anywhere on this plat?

A. I can't speak to that.

Q. What was your knowledge of plats and experience reading plats?

A. I look at plats every day.

Q. Okay. So you have knowledge of how to read a plat and what -- the indications on the plat and whatnot?

A. Yes.

Q. All right. So in your experience, in your knowledge and looking at this plat, do you see an indication that Oconee County has a right-of-way indicated on this plat?

A. There's no requirement for a survey to indicate that.

Q. That's not my question. Please answer my question.

A. I don't think I understand your question.

Q. So in your experience, in your knowledge and looking at this plat, do you see an indication that Oconee County has a right-of-way indicated on this plat?

Q. Okay. You can answer my question, please.

A. Would you like to rephrase it?

Q. No. I would like you to answer my question.

A. I'm not sure I understand.

Q. Okay. Do you see -- the question is really not going to change. It's, do you see any written indication on this plat that Oconee County has a right-of-way?

A. No.

(County Dep. 51:10-14;

Deposition Exhibit 4

Q. Okay. And the next document, final page in this Exhibit 4, is a plat, and in the middle, it has a recorded stamp. It references P-61, page 577. Do you see that?

A. Yes.

(Oconee 52:24-53:2)

Q. Okay. So I'm -- what I'm trying to get to is this plat -- you agree with me this plat is -- what is currently owned today as 585 Ellenburg Road?

A. Yes.

(County 54:3-12, 23-25)

Q. Okay. The plat for 565 Ellenburg Road in Exhibit 2 is dated it looks like August 28, 1974. Do you see that?

A. I don't. Oh, sorry. Yes.

Q. Okay. Is that the same date as this plat for 585 Ellenburg Road?

A. Yes.

Q. It looks like they were platted at the same time. I'm just -- would you agree with at least that?

A. Yes.

(County 54:23-56:3)

Now we're looking back at Exhibit 4, which is a plat for 585 Ellenburg Road?

A. Okay.

Q. And that lists a 2.765 acre property that's being platted, right?

A. Yes.

Q. And it says Ellenburg on the property, right?

A. Yes.

Q. Okay. Again, do you see an indication of the existence of a road on this plat?

A. I can barely make it out, but yeah, I can see the existence of a road on this plat.

Q. Okay. It looks like the word "road" is written there. Do you agree with that?

A. Yes.

Q. Okay. Are you able to tell where the property line is in relation to the road?

A. It's difficult to make out.

Q. Okay. Are you able to make, like, a guess or -- I'm not trying to make you guess, but I mean a -- does the property line appear to go over the road, or are you able to tell?

A. It would appear the center line of the road is the property line. I couldn't be 100 percent confident.

Q. Okay. Yeah, I understand. Again, on this plat, it does not indicate that Oconee County has a right-of-way on that road. It's not indicated here. Is that fair?

A. That's fair.

(County 56:7-58:5, 11, 14-19)

Q. Okay. I've handed you what's been marked as Exhibit 5, and this is a plat that was prepared for James Ratliff and Lucretia Morgan. Do you see that at the bottom?

A. Yes.

Q. Okay. And this is recorded in book B754, page 6. Do you see that on the top?

A. Yes.

Q. Okay. It references tax map parcel 150-00-01-099, right?

A. 150-00-01-099.

Q. Okay. And that's the same number for 585 Ellenburg Road, correct?

A. I think it was.

Q. And this also -- this plat also references plat book P61, page 577. Do you see that reference?

A. Yes.

Q. Okay. And are you comfortable that's the plat we just looked at in Exhibit 4 for 585 Ellenburg Road from 1974?

A. Uh-huh.

Q. Okay. Would you agree with me that is the same plat?

A. The reference?

Q. Yes.

A. Yes.

Q. Okay. And it looks like it has a date that was prepared in, I suppose, late November, November 23, 2020, at the bottom. At the very bottom, there's a date, November 23, 2020.

Do you see that?

A. I do not.

Q. Okay. It's to the right side.

A. November 23, 2020, yes.

Q. All right. On this plat, is a road indicated?

A. Yes.

Q. And what road is that?

A. Ellenburg Road.

Q. Okay. And this indication, it says, Ellenburg Road, WA-42, correct?

A. Yes.

Q. And then it also says, subject to right-of-way public. Did I read that correctly?

A. Yes.

Q. Okay. So the previous plat we looked at didn't -- did not have the indication saying, subject to right-of-way public, did it?

THE DEPONENT: Correct.

Q. Okay. So this phrase was added or new to this plat in 2020. Would you agree?

A. It's a different plat by a different surveyor.

Q. Right. But would you agree the words are – these words are new or different than the previous plat?

A. They are different.

(County Dep. 60:22-61:12)

Deposition Exhibit 6

Q. Mr. Coley, I've handed you what has been marked as Exhibit 6. The first page is another image from the tax assessor's office and qPublic. Do you see that?

A. Yes.

Q. And this has a parcel ID of 150-00-01-100, correct?

A. Yes.

Q. And it has a property address of 599 Ellenburg Road. Do you see that?

A. Yes.

Q. Okay. And this is the parcel with the John's Marine business on it. Is that your understanding?

A. Yes.

(County Dep. 63:23-64:14)

Q. Okay. This is the -- a deed and the chain of title for 599 Ellenburg Road, right?

A. Yes.

Q. Okay. Referencing that the Ratliffs came to own the property -- well, I didn't give you a date, but on page 2 of the -- of the deed from Bearden, it listed date of -- in the middle there, do you see a date? It says witnesses -- witness our hand -- I can't read all of that -- 7th of May, it looks like, 1981.

A. I think that's how I would interpret it, but I can't be 100 percent.

Q. On the first page of this deed -- sorry -- first page of this deed, it does have a recorded stamp there, and it says, May 7, 1981, right?

A. Yes.

(County 65:9-67:3)

The last page of Exhibit 6 has a plat that says it was recorded in P-39, page 61. Do you see that?

A. Volume P-39.

Q. Okay. I want to make sure that you're comfortable that this plat is a plat of 599 Ellenburg Road. Would you agree with that?

A. I don't know if it was addressed at the time, but it's the same piece of property.

Q. Right. It's the -- it doesn't have maybe an address on this plat, but through the deeds you looked at --

A. Yes.

Q. -- this is the plat that's referenced, right?

A. Yes.

Q. Okay. And, again, it's also dated August 28, 1974. Do you see that at the top right?

A. August 28, 1974.

Q. Yes. So it appears that the three plats we looked at for 565 Ellenburg, 585 Ellenburg, and now 599 Ellenburg all were platted by -- or platted on the same date. Is that fair?

A. Yes.

Q. All right. In the middle of this plat for 599 Ellenburg, we see the property is listed as Bearden and 1.225 acres, correct?

A. Yes.

Q. All right. And we see a similar -- do you see it indicated -- a road indicated on this plat?

A. I see an indication for road.

Q. Okay. Road. And it has a little arrow possibly pointing to the property line?

A. Yes.

Q. Okay. And then T.B. Ellenburg is to the left of the Bearden platted property, right?

A. Yes.

Q. Okay. And then Duke Power Company is listed below the property line; is that fair?

A. Yes.

Q. Okay. Again, on this plat, there's no indication or written words that say Oconee County has a right-of-way over this road, is there?

A. No.

(County Dep. 67:23-68:9)

Deposition Exhibit 7

Q. Mr. Coley, I have handed you what has been marked as Exhibit 7. This is a plat -- I'm trying to see if I can see when it was prepared here. It looks like -- boundary survey for Crescent Communities, and possibly dated July -- July of 2003. Is that fair?

A. Yes.

Q. Okay. This shows the three properties we were looking at previously, which was 565, 585, and 599 Ellenburg Road. Those three are shown on this plat; is that fair?

A. Yes.

(County Dep. 70:14-24)

The words "maintenance right-of-way" are to the west of 565 Ellenburg Road, right?

A. Yes.

Q. They are not below -- those words are not written below 565 Ellenburg, or 585, or 599 Ellenburg Road?

A. They're written where they're written.

Q. Right. That's just to the west of 565 Ellenburg Road?

A. Okay.

Q. Is that right? Do you agree?

A. They are in that location.

(County Dep. 78:23-79:10)

Deposition Exhibit 8

Q. Okay. I'm going to ask you about -- you were designated for the tax maps for Oconee County, and we were provided with tax maps from your office or the tax assessor's office in Oconee County, and they, when they provided and printed them out for us, provided a date at the bottom. And so I know you didn't write this number. I'm just going to represent to you that's -- they told us what they -- they wrote the date at the bottom as to what the tax map was in your system, and I don't know if there's any other way to verify it, but I just wanted to show you some of these and ask you questions about this.

(County Dep. 80:8-11; 81:3-7, 12-14)

This one appears to be, at the bottom right, marked 1986. Do you see that?

A. I do.

Q. Okay. And so there's -- there's three properties next to it. It's hard to read what they -- what they say, but are you comfortable agreeing that that's -- those are the 565 to 599 Ellenburg?

A. It seems very likely.

Now, I don't see any kind of road indicated on this tax map to those properties. Do you?

A. I do not.

(County Dep. 81:23-82:24)

This map was provided by the county. It's a tax map from 1988. Do you see that in the bottom right corner?

A. I do.

Q. Okay. And it looks like there's a revision box you can actually read on this map, and it has a 4 revision date of 5/23/1989. Do you see that?

A. I do.

Q. All right. Are you able to locate the properties on this tax map from 565 Ellenburg to 599

Ellenburg?

A. Yes.

Q. Okay. Can you go ahead and just flag them for us? Would you agree with me that in this tax map you're looking at, there's no indicated road reaching those three properties?

A. Correct.

Q. The next tax map that we've been provided from your office says 1991 at the bottom right corner. Do you see that?

A. Yes.

Q. And the revision date box, it appears to be mostly there, but I don't -- the last date I see there is May 23, 1989. Do you see that?

A. Yes.

(County Dep. 83:9-19, 22-84:10)

Q. But, Mr. Coley, this is the tax map from the tax assessor's office that they wrote on as 1991. Do you see that?

A. I do.

Q. Okay. And it has a revision date that matches the date of the previous?

A. Yes.

Q. All right. And so on this map, do you see the subject properties, 565 Ellenburg through 599 Ellenburg?

A. Yes.

Now, on this map, we -- there is -- there's an indication that -- at least we see a road, I would say -- do you agree -- that's labeled WA-42? Do you see that?

A. Yes.

Q. All right. So for the first time, there's now a road listed on his tax map, correct?

A. There's a road shown there, yeah.

Q. And the road end appears to be boxed at the west of 565 Ellenburg?

A. Yes.

Q. Okay. It does not go all the way to the end of today's 599 Ellenburg, right?

A. Correct.

(County Dep. 84:15-85:21)

Q. All right. Mr. Coley, I have handed you the next page of this exhibit, which is a tax map provided by Oconee County tax assessor's office that is, in the bottom right corner, identified as 1993. Do you see that?

A. I do.

Q. And, again, in the revisions box on the bottom left, it looks like the last revision still was made in 1989.

A. Correct.

Q. And you're able to find this -- the three subject properties, 565 to 599 Ellenburg Road?

A. Yes.

Q. If you please would just put a flag next to them, I'd appreciate that. Again, this map continues to have a WA-42 road indicated on it, correct?

A. There's an indication there, but I can't read it.

Q. It is blurry. I guess I'm assuming it says WA-42, but any reason to doubt that's what it is?

A. No.

Q. Okay. Again, it indicates and shows it stopping west of 565 Ellenburg or right at the property line of 565 Ellenburg, correct?

A. That's what it says.

Q. The next page of this exhibit is a tax map provided by the county assessor's office that has an indication in the bottom right corner of the year of 1995.

Do you see that?

A. I do.

(County Dep. 86:8-87:1)

Q. Yeah. Okay. In this tax map, are you able to see the properties 565 Ellenburg --

A. Yes.

Q. -- to 599 Ellenburg?

A. Yes.

Q. Could you please flag those? And there does appear to be a road reaching -- there's an indication of Knox Road. Do you see that, Knox Road?

A. I do see Knox Road.

Q. And coming off of Knox Road is another road, which, again, it may be blurry, but it appears to be the same WA-42?

A. Yes.

Q. And that reaches the three properties, right?

A. Yes.

Q. And, again, it is indicated as ending west or along the property line of 565 Ellenburg Road, right?

A. Yes.

(County Dep. 87:12-21; 88:5-20)

The next page of this exhibit that I've handed you is a tax map provided by the county tax assessor's office with an indication in the bottom right corner of 1996. Do you see that?

A. I do.

Q. And here, the revisions date is unfortunately cut off, so we don't have that, but are you able to locate the subject properties --

A. Yes.

Q. Okay. Is there a road reaching those -- the 565 Ellenburg Road?

A. Yes.

Q. Okay. Are you able to read the name of that road?

A. No.

Q. Okay. Any reason to think anything other than WA-42?

A. No.

Q. It appears that, perhaps, there's a -- perhaps, it now says Ellenburg Road right at the entrance. It's hard to read, though. Do you -- are you able to read that either way?

A. No.

Q. Again, this tax map in 1996 shows that road ending west of 565 Ellenburg, correct?

A. It shows a road there, yeah.

(County Dep. 89:11-91:18)

Q. The next page of this exhibit is a tax map from the Oconee County tax assessor's office, and indicated at the bottom right is 1997. Do you see that?

A. I do.

Q. Now we can see the revisions box again. Do you see that?

A. I do.

Q. And I don't see any revisions after that 1993 or '95 date, do you?

A. No.

Q. You are able to identify or locate the 565 to 599 Ellenburg Road, right?

A. Yes.

Q. Okay. And the road name, if it's there, it's blurry?

A. Correct.

Q. Same on this map. The road ends on the west of 565 Ellenburg or on the property line?

A. Yes.

Q. I've handed you the next page of this exhibit, a tax map provided by Oconee County assessor's office that has a date indicated at the bottom right as 1998. Do you see that?

A. Yes.

Q. We'll look at the revisions box. Again, there doesn't appear to be any revisions since the previous maps we looked at, does it?

A. No.

Q. Okay. And are you able to locate 565 to 599 Ellenburg Road?

A. Yes.

Q. Okay. Again, the road name is not clearly copied on here, but there is a road from Knox Road to 565 Ellenburg, right?

A. Yes.

Q. Okay. And it stops, again, west of 565 Ellenburg?

A. Uh-huh.

Q. I've handed you the next document provided by the Oconee County tax assessor's office, which they indicated was a tax map from 2000.

Do you see that in the bottom right?

A. Yes.

Q. And revisions date box, again, I don't see any revisions from the last.

A. No.

Q. Okay. Are you able to find the properties 565 to 599 Ellenburg?

A. Yes.

Q. And there is a road that goes from Knox Road to 565 Ellenburg; is that right?

A. Yes.

Q. You can't read it today, I don't think, can you?

A. No.

Q. But it stops on the western edge of 565 Ellenburg, doesn't it?

A. Yes.

(County Dep. 92:24-97:6)

So I've handed you the next page of the exhibit, a tax map provided by Oconee County tax assessor's office, and they have written on the bottom right corner of tax map from 2001? Do you see that?

A. Yes.

Q. There is a revisions box, and I don't see a new revision date beyond the 1995 --

A. I think we've sorted that.

Q. Okay. I think it was '95, right?

A. Yes.

Q. Yeah. And you're able to locate 565 to 599 Ellenburg Road, right?

A. Yes.

Q. And, again, there is a road connecting between Knox Road and 565 Ellenburg indicated on this map, correct?

A. Yes.

Q. And it ends west -- on the western property line of 565 Ellenburg?

A. Yes.

Q. We can't read the name of it, but any reason to doubt it's WA-42?

A. No.

Q. Okay. The next page of this exhibit is a tax map from Oconee County assessor's office that they indicated in the bottom right was from 2002. Do you see that?

A. I do.

Q. The revision date's box, again, was cut off, so we don't know if there's a revision there.

A. Correct.

Q. Were you able to identify 565 to 599 Ellenburg Road on this map?

A. Yes.

Q. Okay. And there is a road connecting from Knox Road to 565 Ellenburg, correct?

A. Yes.

Q. And it ends on the western edge of 565 Ellenburg?

A. Yes.

Q. The next page I'm handing you and showing you is a county tax map from Oconee County tax assessor's office that they've indicated in the bottom right is from 2003. Do you see that?

A. Yes.

Q. No new revision dates in the box, right?

A. Right.

Q. Okay. And it's a bit blurry, but are you able to identify where --

A. Yes.

Q. -- 565 to 599 Ellenburg Road are?

A. Yes.

Q. Okay. No change in the road between Knox Road and 565 Ellenburg, is there?

A. No.

Q. Okay. So it ends west of 565 Ellenburg?

A. Yes.

Q. The next page I'm handing you is a document – a tax map from the Oconee County tax assessor's office, and they've indicated that the tax map was dated 2005 in the bottom right. Do you see that?

A. Yes.

Q. Again, I don't see any new revision dates in the revisions box. Do you?

A. No.

Q. Are you able to identify 565 to 599 Ellenburg?

A. Yes.

Q. And there is a road -- the road names are not legible on this map, right?

A. Right.

Q. But you're able to identify Knox Road, aren't you?

A. Yes.

Q. All right. And there's a road between Knox Road and 565 Ellenburg?

A. Yes.

Q. And no change to the depiction of this road on the tax map, is there?

A. No.

Q. It still ends west of 565?

A. Yes.

Q. I've handed you the next page of this exhibit. This is a map provided by the Oconee County tax assessor's office. It indicates that this map is the tax map from 2008 in the bottom right-hand corner. Do you see that?

A. Yes.

Q. And there are no -- I don't see any revision dates. Do you?

A. No.

Q. This is slightly more legible. Are you able to identify 565 to 599 Ellenburg Road?

A. Yes.

Q. And there is -- you're able to identify Knox Road, correct?

A. Yes.

Q. And there is a road connecting Knox Road that runs to 565 Ellenburg. Do you see that?

A. Yes.

Q. No change since the prior map?

A. No.

Q. And it's west of 565 Ellenburg?

A. Yes.

(County Dep. 119:6-121:13)

Deposition Exhibit 12

Q. I've handed you Exhibit 12. This is Bates stamped Oconee 449. This is an e-mail from yourself to Kyle Reid on December 13, 2021. Do you see that?

A. I do.

Q. Okay. And it references in the first sentence a site visit. Do you see that?

A. I do.

Q. Okay. Do you recall visiting the site -- I think maybe you recalled earlier a site visit with Mr. Reid, and yourself, and possibly Mr. Root?

A. Yes.

Q. Okay. You were asking -- you're asking in this e-mail to Mr. Reid to pull any maintenance records, project design drawings, and other materials that would help establish county ownership based on maintenance for a prescriptive easement. Did I read that correctly?

A. Yes.

Q. Did Mr. Reid pull documents and provide them to you?

A. I don't recall.

Q. Okay. You have no recollection of whether Mr. Reid brought documents to this site visit?

A. I do not.

Q. Okay. If he had brought documents to that site visit, would you have kept a copy of those documents?

A. No.

Q. Do you think Mr. Reid would have kept a copy of those documents?

A. You can ask him.

Q. Do you have any understanding of whether Mr. Reid kept a copy of these documents?

A. I don't know.

Q. Okay. Did you discuss with Mr. Reid maintenance records for Ellenburg Road at the site visit?

A. I don't recall.

Q. Have you ever discussed maintenance records with Mr. Reid on Ellenburg Road?

A. Yes.

Q. Okay. And what were those discussions?

A. About the existence of maintenance records for Ellenburg Road.

Q. And what -- did you discuss specific maintenance requests on specific properties?

A. I don't recall.

Q. Okay. What do you recall about the discussions?

A. That they happened.

Q. Okay. Do you recall generally that there are -- there was maintenance?

A. Yes.

Q. Okay. Do you have any recollection of any discussions of maintenance at or near 585 Ellenburg Road, 565 -- I'm sorry -- 585 Ellenburg Road or 599 Ellenburg Road?

A. No.

(County Dep. 122:11-17; 123:22-125:25)

Deposition Exhibit 13

Q. I've handed you what has been marked as Exhibit 13. It's a document Bates stamped Oconee 507, and this is an e-mail chain between yourself and Lucretia Morgan, and Jimmy Ratliff, and it looks like Andy Lee. Do you see that?

A. I do.

Q. -- Oconee 507. In the second paragraph, you write, in addition, the county has reviewed their position and maintains that Oconee County does have a prescriptive easement to the end of paving on Ellenburg Road. Did I read that correctly?

A. Yes.

Q. Okay. So what review did the county conduct between December 1st and January 19th?

A. I don't know. I can't recall.

Q. Were you part of that review?

A. Potentially.

Q. Do you have any recollection sitting here today whether you were part of that review?

A. I couldn't recall.

Q. Okay. You state that Oconee County maintains its position that it has a prescriptive easement to the end of paving on Ellenburg Road, right?

A. Yes.

Q. Okay. What is that statement based on?

A. I don't recall, but I would assume it would be discussions with our county attorney and roads department.

Q. And I don't want to ask you about what – your discussions with your counsel, but do you have any documents that you know of that this statement was based on?

A. I don't recall.

Q. Who at the county looked at this question? Was it yourself, Mr. Reid, or somebody else?

A. I would assume that it was Mr. Reid, and our county attorney, Mr. Root, and myself.

Q. Okay. And so the -- what do you recall that you looked at specifically, if anything?

A. I don't recall.

Q. Who made the determination that Oconee County maintains this position that it has a prescriptive easement on Ellenburg Road?

A. I don't recall.

Q. Do you know if you made that determination?

A. I did not.

Q. Did Mr. Reid make that termination?

A. I couldn't recall.

Q. Are you aware of any statements made by any owner of 565 Ellenburg through 599 Ellenburg at any time indicating to the county that it was granted a prescriptive easement over the -- over the roadway in front of those properties?

A. No.

Q. Have you ever seen any documents indicating that the landowners of those same properties ever dedicated the roadway in front of the properties to Oconee County?

A. I don't recall

(County Dep. 143:18-20)

Q. Mr. Reid, would you please state your full name for the record?

A. William Kyle Reid.

(County 145:17-146-6; 147:2-10, 21-25)

Q. Okay. Are you currently employed with Oconee County?

A. Yes, sir.

Q. And what is your job title?

A. Assistant director of Public Works.

Q. How long have you been the assistant director of Public Works?

A. I believe since 2017. 2000 -- no, sorry. It's 2016. Sorry.

Q. Okay. And just generally, what are your job duties as the assistant director of Public Works for Oconee County?

A. I run the road department and then help various other departments with construction and engineering-type questions or projects.

Q. Okay. I'm just -- what are some typical types of maintenance activities that you would be overseeing or handling?

A. Vegetation removal along county right-of-ways and easements, asphalt repair, paving, putting in culvert pipe, ditching, gravel road maintenance, signs, and construction projects, and reviewing subdivision plans for -- to see that they meet the county ordinances, and other duties.

Q. All right. How long have you worked at Oconee County?

A. 14 years.

Q. All right. So back to -- what is that -- 2000 --

A. '09.

(County Dep. 152:11-19, 153:1)

Have you personally looked at the question of whether Oconee County has a prescriptive easement or any type of rights over the roadway in front of 585 Ellenburg and 599 Ellenburg Road?

A. Yes.

Q. Okay. And have you come to a conclusion on that question?

A. Yes.

Q. And what is your conclusion?

That we do have a prescriptive easement

(County Dep. 153:14-154:18)

Q. Okay. And your conclusion is the county has an easement over the roadway in front of 585 Ellenburg and 599 Ellenburg?

A. Yes.

Q. Okay. And so what is that -- what documents is that based on?

A. Not documents. Not based on documents.

Q. Okay. So what is it based on?

A. The collective history of the road department.

Q. Okay. So when you say, collective history of the road department, what do you mean by that?

A. Asking employees if they remember or recall doing maintenance at the specified area over the time that they've been employed at the road department.

Q. Okay. And so you undertook to ask employees that question, whether they've performed maintenance in front of 585 or 599 Ellenburg Road?

A. Yes.

Q. Did you document your questions and responses you got from certain employees?

A. I did not.

Q. Okay. So you've not summarized those responses. Is that fair to say?

A. No, sir.

Q. Okay. So it's something that you just have in your mind? Do you recall which employees told you what?

A. I do not recall who told me what, not in my mind, as far as their responses, just in my mind as far as did they do maintenance.

(County Dep. 163:2-166:1)

Q. Have you personally ever performed any maintenance on Ellenburg Road?

A. Yes, sir.

Q. Okay. And what was that? What maintenance was that?

A. I was on the road when we paved it back around 2012.

Q. Okay. You were on the crew that was helping to pave it?

A. No, sir. I was out on the job.

Q. Okay. You were -- was your -- were you oversight or managing the paving?

A. Yes.

Q. Well, tell me about that paving. That was in 2012, on or about 2012?

A. Yes, sir.

Q. Okay. And what section of Ellenburg Road was the paving taking place?

A. In front of the newer Crescent subdivision. I can't remember the name of it.

Q. Okay. Did it --

A. Back to Knox Road.

Q. Okay. Did it reach 565 Ellenburg Road?

A. No, sir.

Q. Okay. So then also by -- because of that, it would have -- it wouldn't have reached 585 or 599 Ellenburg Road, right?

A. No.

Q. Okay. Do you remember how far it went down Ellenburg Road, what the last address was?

A. It was -- it was right at the entrance of the -- the subdivision road on the right, Harbor -- I can't recall.

Q. It looks like a Harbor Oaks subdivision or something like that.

A. I can't recall exactly.

Q. All right. Is there a reason that the road wasn't paved I'll say all the way to the end?

A. Yes.

Q. And why is that?

A. Vehicles parked out in the road.

Q. Okay. So you're saying from -- from the entrance of that subdivision to the end of the road, there were vehicles that were preventing you from paving the rest of the roadway?

A. No, just -- just at the end.

Q. At the very --

A. Just at -- just in front of the 599, I believe, address, the boat.

Q. Okay. So there were boats parked there, so your testimony today is that that prevented you from paving the section of Ellenburg Road in front of 599? Is that what you're saying?

A. Yes.

Q. Okay. Any other reason?

A. The -- the area in front of the subdivision was the worst part of the road.

Q. Did you pave in front of 585 Ellenburg Road?

A. No, sir.

Q. Okay. And why didn't you pave in front of 585 Ellenburg Road?

A. I was told by Mack Kelly, who was over the road department at the time, to get that worst area in front of the subdivision.

Q. Did he tell you specifically not to pave in front of 585 Ellenburg Road?

A. Yes, sir.

Q. Okay. And what was his reason for telling you not to pave there?

A. It had been an ongoing issue with having boats and things in the road.

Q. In front of 585 Ellenburg Road?

A. Down in that general vicinity, 599, a little bit back. I can't -- if you want to clarify where in front of these addresses --

(County Dep. 166:10-170:20)

Deposition Exhibit 20

Q. This is a document Bates stamped Oconee 60 through 66. This first page, which is Bates stamped Oconee 60 -- this is the first page of the document I handed you. Page 1. Do you recognize this as -- I mean, this is a -- kind of a mailbox stand -- maybe it's not a mailbox stand, but 565, do you see that?

A. To the best of my -- what I recall, around the tree line down toward John's Marine was where vehicles were parked that day.

Q. Okay. So was the -- was the paving project just one day?

A. No. The day that I called Mr. Kelly to ask him how far he wanted us to go, which was before we started digging out the patch and repaving the road.

Q. Okay. So you're -- what you're telling me is that from 565 Ellenburg Road all the way to the end, your recollection is that there were boats or cars parked from -- all the way to the end of Ellenburg Road, which prevented the paving?

A. No.

Q. Okay. So that --

A. That was what -- the information I gave Mack and Mack's response to me.

Q. He said what?

A. Get the worst area of the road.

Q. Okay. So did he tell you to stop at 565 Ellenburg Road?

A. No, sir. He told me to get the worst area of the road.

Q. Okay. You made the decision to stop at 565 Ellenburg Road?

A. I told him where the worst area was, and he said go from there.

Q. Okay. So did you not pave all the way to the end of Ellenburg Road because he directed you to get the worst area or because of some other reason?

A. To not do the whole road because of the things being in the road at the end, to go as far as I did to get the worst area or as far as we could.

Q. Did you ever ask any landowners of 565 through 599 Ellenburg Road whether or not they could move their vehicles so you could conduct paving activities?

A. No, sir.

Q. Okay. Any other -- so that was one time in 2012 you were on the paving oversight -- oversight crew, I guess, or manager, right?

A. Yes.

Q. Any other maintenance that you've been on personally on Ellenburg Road since that time?

A. Not that I've been personally on the road.

Q. Okay. Or before that time. Is that the only time you've ever helped conduct maintenance on Ellenburg Road?

A. No, sir.

Q. Okay. What other time?

A. I was not there on Ellenburg Road. Dale Owens was our inspector, and they were striping the road, and she called me asking where we wanted to stop the striping on Ellenburg Road.

Q. Okay. Dale is a female?

A. Yes.

Q. Okay. And do you remember about when that conversation took place, about what year?

A. It's -- to the best of my recollection, it was -- it wasn't long after the road was paved. It seemed like less than a year.

Q. Okay. So in the 2012-2013 time frame?

A. '13, yeah. 2013. Maybe 2014, but it didn't seem that long.

Q. All right. And what did you tell Dale Owens about where to stop the striping?

A. I was in my office, left, asked -- went and spoke with Mack, told him it was the same scenario. He just said stop as far as you can where they can turn around and get back out.

Q. You said you told Mack it was the same scenario, meaning what?

A. Vehicles at the end of the road.

Q. So there were motor vehicles in the middle of the road?

A. Yes. Well, in the road. I don't know about middle.

Q. Again, did you ever -- did you ask the landowner -- were you out there physically?

A. No, sir.

Q. So Dale was out there?

A. Yes, sir.

Q. Did anyone -- Dale or anyone else ask the landowners whether they could move their vehicles so that the striping could continue?

A. Not to my knowledge.

Q. Looking at this image on Oconee 60 and just in your own general knowledge, you -- would you agree that the lane -- center line striping ends, you know, around this area of 565 Ellenburg Road and does not continue to the end?

A. I'm not sure what's adjacent, except for seeing the mailbox there, so if that is the property of 566, yes.

Q. I guess, generally, if I asked you, is there certain line -- center line striping all the way to the end of Ellenburg Road --

A. No, sir.

Q. Okay. You're aware that there's not striping there?

A. If you want to pose it again, I won't --

Q. You -- your understanding, as you sit here today, there is not center line striping all the way to the end of Ellenburg Road, right?

A. No, sir.

(County Dep. 171:5-172:1)

Q. Right. Okay. Any other maintenance activities that you were involved in on Ellenburg Road outside of the paving and the center line striping?

A. Yes, sir.

Q. Okay. What else?

A. More recently, since this has all came to be, we had our mowing crew go down there to mow on their route, and they were stopped, and I told them just to -- to see if the road was -- if it was necessary for the safety of the road, and they said it wasn't, so I told them just to turn around and go back out.

Q. Okay. And you are talking about after the -- after the pendency of this lawsuit or the variance application? That's what you're talking about?

A. Yes. Around June of this year.

Q. 2023?

A. Yes, sir.

Q. Any other maintenance activities that you have been involved in with on Ellenburg Road in your – while you've worked for the county?

A. No, sir.

(County 198:17-199:24)

Deposition Exhibit 23

Q. All right. 23 -- Mr. Reid, I've handed you what has been marked as Exhibit 23. This is the county's responses to the plaintiffs' first set of requests for admission. Have you seen this document before?

A. Yes.

Q. Okay. The first question asks if the county does not own the fee for the roadbed of Ellenburg Road. It admits that. That's your understanding, right?

A. Yes.

Q. Okay. And, also, the second question asks whether the county has any recorded easements, and the county admits that it does not have any recorded easements. Is that your understanding today?

A. At 585 and 599, no.

Q. That's right. The 585 -- I'm sorry. You're right. I'm shortcutting the question, but -- so is it your understanding today that the county does not have any recorded easements on Ellenburg Road in front of 585 and 599 Ellenburg Road?

A. No, sir.

Q. All right. Question 3 asks about the county's paving the roadway in front of 585 and 599, and the county denies that -- that statement. What records does the county have, if any, that it has ever paved the roadway in front of 585 and 599 Ellenburg Road?

A. None to my knowledge.

Q. Okay. So there are no records showing that Oconee County has paved in front of these two addresses; is that right?

A. None to my knowledge.

(County Dep. 201:25-202:5)

Q. Question 4, which I think may be -- you just answered for me. It is admitted -- the county admits it does not have any records of ever having paved or patched the roadway in front of 585 and 599?

A. Correct.

(County Dep. 204:8-206:1)

Deposition Exhibit 16

Q. 7 asks about the "End of County Maintenance" sign, its location around 575 Ellenburg Road. Have you seen the affidavit from Ms. Laurie Ellenburg Bright, which is Exhibit -- I think it's 16. Exhibit 16. Please pull that out and let me know when you get there.

A. Okay.

Q. You've seen this document before by Ms. Bright?

A. Yes.

Q. Okay. And are you aware she's stating that she grew up or resided at 591 Ellenburg for proximately 40 years? Paragraph 3, do you see that?

A. Yes.

Q. Okay. In paragraph 6, she says she recalled the "End of County Maintenance" sign between 575 Ellenburg Road and 585 Ellenburg Road and drove past it for years. Do you see that?

A. Yes.

Q. Does the county have any documents to dispute her testimony here that the "End of County Maintenance" sign was actually located at 575 or 585 Ellenburg Road?

A. Not to my knowledge.

Q. Okay. Did you ever talk to Ms. Bright?

A. I had heard this story, but I cannot recall who had told me, but it was when I was out at Ellenburg Road.

Q. You heard a story about, like --

A. The sign being at 575 and the cows drinking out of it.

Q. Okay. The bathtub cattle waterer?

A. Yes.

Q. Okay. But you didn't -- have you spoken to Ms. Bright before?

A. I do not recall speaking to Ms. Bright.

Q. All right. You didn't reach out to her as part of this process for this -- for today, did you?

A. No, sir.

Q. Okay. Any reason to dispute Ms. Bright's testimony here that the maintenance -- the sign was, at some point, located at -- between 575 and 585?

A. No, sir.

(County Dep. 208:4-209:10)

Q. Okay. And is S-201 the same as Ellenburg Road?

A. That's what they told me.

Q. DOT told you that?

A. Yes.

Q. Okay. And that's reflected in the documents they gave you; is that right?

A. Yes.

Q. Okay. Has that informed your understanding of whether Ellenburg Road is part of the county system now?

A. No.

Q. No. Okay. Well, do you have an understanding of how the -- if that was a state road at some point in time, how it came to be from a state road system into a prescriptive easement for Oconee County?

A. No.

Q. And you don't have any understanding of how that would have happened?

A. No, sir.

Q. Okay. Did you look into that?

A. Yes.

Q. Okay. What did you find?

A. The DOT did not provide me with any -- that information.

Q. Okay. Does Oconee County have any information about how that came to be?

A. No -- or not to my knowledge.

Q. You looked for that?

A. Yes.

Q. Didn't find anything?

A. No, sir.

(County Dep. 222:17-25)

Deposition Exhibit 27

Q. I'm handing you what has been marked as Exhibit 27. 27 is Bates stamped with Oconee 445 to 448. Go ahead and look at -- look through this document, and let me know when you had a chance to look through it.

A. Okay.

Q. Okay. So the first e-mail from Sheila O'Kelley to yourself in January of 2022, do you see that e-mail, the first page?

(County Dep. 223:12-23)

Q. Okay. On the next page, she e-mails you on December 13th and indicates attached is a list of work orders that I found for Ellenburg Road. Did I read that correctly?

A. Yes.

Q. Okay. So then on those -- the last two pages just appears to be what she attached to her e-mail. Is that -- is that fair to say?

A. Yes.

Q. Okay. So she's found it looks like three work orders?

A. One, two, three, four, five.

(County 225:24-226:17)

Q. All right. In Cartegraph, we see -- this first one says inspect road signs, right? That's 10064.

A. Yes.

Q. And that does -- that indicates Ellenburg Road, right?

A. Yes.

Q. In 2013. But it doesn't indicate where on Ellenburg Road, does it?

A. No.

Q. So you said there were some signs moved and put up and down on -- at the -- near John's Marine, but this doesn't indicate whether that's -- these signs were on John's Marine or the Knox Road side of it?

A. No, sir.

Q. Okay. Same with the next one, cut brush and vines. It doesn't indicate where on Ellenburg Road that work was taking place, does it?

A. No, sir.

(County 226:25-227:18; 228:7-9)

Q. Okay. We've got this first. It says requested by Doyle, issue with drainage. This does not -- do you know where this location is?

A. No, sir.

Q. Okay. I think I have another document that may show us, so we'll wait on that. But none of the three of these are -- are indicated, at least, on this as being any -- being 565 Ellenburg Road to the end, are they?

A. Not on these specifically, no.

Q. Right. Okay. And then this -- the last page of this document, Oconee 448, there's an asterisk that says -- next to this -- I don't know if this last work order has a number or not, but it says -- this would be the closest work order toward the end of the road. Do you see that?

A. Yes.

Q. Okay. So the new system, ArcGIS, doesn't have any work orders near 565 to 599 Ellenburg Road?

A. No.

(County Dep. 229:3-7)

Deposition Exhibit 28

Q. Okay. So this Exhibit 28 -- this top e-mail -- it's a different -- I mean it's the same e-mail we sent -- looked at earlier, I think. Ms. O'Kelley is sending the FOIA request.

A. Uh-huh.

(County Dep. 230:7-22)

Q. Midway in the package, there's -- there's a big color sheet that looks like it's possibly work order systems. Is this the ArcGIS system?

A. Yes.

Q. And this is the same work order description we saw earlier --

A. Yes.

Q. -- but this is actually on the map, right?

A. Right.

Q. Okay. This shows it's not --

A. Before.

Q. Okay. This shows it's not -- does not -- this work order, in particular, does not reach 565 Ellenburg, right?

A. No, sir.

(County Dep. 231:8-23)

Q. Got it. Okay. I'll just go ahead and go there. So that work order is from Doug Cooper. It says a pothole in front of 166 Ellenburg?

A. Yes.

Q. Okay. And so that says 166 Ellenburg, and you're saying that's -- that's incorrect?

A. Yes.

Q. That should be what?

A. 566.

Q. 566. Okay. Which is on the other -- the south side of Ellenburg Road; is that right?

A. Yes.

Q. Okay. That's the closest you have to 585 and 599, right?

A. As far as the description is on that, yes, sir.

(County Dep. 234:9, 16-234:25)

Deposition Exhibit 29 and Exhibit 30

Q. I'm handing you 29 and 30.

Q. All right. 29 looks -- I think we just were maybe looking at partial -- a partial section of this in the previous exhibit, but it says Cartegraph System at the top left. Do you see that? Let me know when you've had a chance to look it.

A. No, I'm good.

Q. Okay. This at the top left says Cartegraph System. Is this --

A. Yes.

(County Dep. 236:12-23)

Q. All right. So I'm looking at route. It has Ellenburg Road in the route column, right?

A. Yes.

Q. And correct me if I'm wrong, but I'm not seeing anywhere where it specifies a specific address on Ellenburg Road for any of these work orders.

A. No. None of these do that I can see.

Q. So we're not able to tell, at least from this spreadsheet, whether any of these activities were - were all the way down in front of 585 or 599 Ellenburg Road, are we?

A. No.

(County Dep. 237:20-238:2, 8-10)

Q. All right. And then the next document, 30, this two-page document does not have any label of what -- what it is, so do you know -- recognize this document?

A. Yes.

Q. And what is this document?

A. This is Access, I'm pretty sure.

Q. Okay. So you think this is the Access Database?

Q. That was the oldest database that you -- the county has, right?

A. Yes.

(County 238:23-240:4)

The second column has what looks like 669 Ellenburg Road. Do you know what that -- what that -- what that's - that -- I'm not aware of a 669 Ellenburg. Are you?

A. No.

Q. Okay. Do you know why that's put in there?

A. No, sir.

Q. About -- I don't know -- partway down the first page, there's a number. It says 12461. Do you see that? I imagine it's a work order number, possibly. Is that what that is, you think?

A. Yes.

Q. Okay. It does have Edward Ratliff on there. Do you see that?

A. Yes.

Q. And it doesn't have a column heading, but we have a December 2003. It was presumably a date.

A. Yes.

Q. This indicates a tree across blocking traffic. A tree sticking out in the road some and will need to be taken care of.

A. That's two.

Q. Okay. I'm sorry. The one for Edward Ratliff says, tree across road blocking traffic?

A. Yes.

Q. Okay. It doesn't indicate where the tree was, does it?

A. Okay.

Q. It could have been anywhere on Ellenburg Road?

A. Yes.

(County Dep. 240:24-242:4, 12-18)

Q. All right. And then I see a couple of entries with a Brian, I think, Mercedes at 565 Ellenburg Road for, like -- the first page is one that -- the second work order from the bottom for an apron tie-in, and then on page 2, work order number 27274, Brian Mercedes, for possibly calling about potholes or -- is that potholes or something else? Do you know?

A. What it says is potholes that need patched, for someone to give him a call about the road maybe possibly overlaid.

Q. Okay. Any records that Oconee County ever patched any of the roadway in front of 565 Ellenburg?

A. That -- that work order should have been the potholes being done, and they should have been 5/1/08.

Q. So is there -- are there other documents that would show the work was done and what happened with this request that we haven't seen?

A. Not to my knowledge from back then.

Q. So no additional records, is that what you're saying?

A. No.

Q. I'm sorry. I didn't hear you.

A. No, sir.

Q. Okay. And then there's work order 31194. Donnie Moore, it says, replace a dead end sign with a no out sign. That's -- that doesn't relate to any kind of county maintenance, does it?

A. No.

Q. Mr. Reid, that is the extent of the work orders I have seen and the documents that we have been provided. Do you have knowledge of any other documents reflecting work orders on Ellenburg Road that we haven't looked at?

A. No, sir.

(County Dep. 260:9-23)

Q. Okay. If the state -- if it was not a state road, would that matter to you? Would that change your understanding of what type of rights Oconee County has in front of my clients' property?

A. No, sir.

Q. Okay. So what is the county's understanding of how Ellenburg Road came to be part of the county road system?

A. Maintenance over years is all we've got.

Q. Okay. Do you have any information on origin of the beginning of the maintenance?

A. No, sir.

Q. How it came about?

A. No, sir. Just the gentlemen there doing the work.

(County Dep. 261:20-4-6, 263:6-14)

Q. Okay. Have we -- are there maps that we haven't looked at today that have that information on it?

A. Yes.

Q. Is there any indication on any of those maps you're aware of showing that Ellenburg Road, the section from 585 to 599, is an Oconee County-maintained section?

A. No.

Q. Nothing different than what we've seen today?

A. They are different. They're just -- there's no indication of who maintains the road, if that's the question.

Respectfully submitted,

s/ David L. Paavola

David L. Paavola (S.C. Bar No. 100714)

Mark A. Bible, Jr. (S.C. Bar No. 101624)

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Counsel for Plaintiffs

June 10, 2024
Columbia, SC

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE CASE NO. 2022-CP-37-00447

Frances J. Ratliff, Edward J. Ratliff, Jr.,
James L. Ratliff, Lucretia B. Morgan,
Sherri Akers Crisp, Amy Cawthon,

Plaintiffs,

vs.

Oconee County, Globe, A South Carolina
Limited Partnership, Farmes, A South
Carolina Limited Partnership,

Defendants.

30(b)(6) DEPOSITION OF OCONEE COUNTY
GIVEN BY
JAMES COLEY AND
WILLIAM KYLE REID

DATE TAKEN: August 9, 2023
TIME BEGAN: 10:06 a.m.
TIME ENDED: 4:21 p.m.
LOCATION: Logan & Jolly, LLP
 1805 North Boulevard
 Anderson, South Carolina 29621
REPORTED BY: Kaylyn K. Brantner
 Court Reporter
 Notary Public

Exhibit 33 (Document).....257

(It is hereby stipulated and agreed by
and among counsel for the respective parties
that this deposition is being taken in
accordance with the South Carolina Rules of
Civil Procedure, and that the deponent does
not waive reading and signing of this
deposition.)

- - -

JAMES COLEY, after having been first
duly sworn, was examined and testified as
follows:

- - -

(Exhibit Number 1 marked for
identification.)

EXAMINATION

BY MR. PAAVOLA:

Q. Mr. Coley, would you please state your name for the
record?

A. James Coley.

Q. Okay. And, Mr. Coley, have you ever been deposed
before?

A. Yes.

Q. Okay. So the rules require me to give some
instructions each time we do a deposition, and I'll

1 ditch-to-ditch right-of-way, maintenance of
2 right-of-way, prescriptive easement, or any other
3 road designations along Ellenburg Road in front of
4 585 or 599 Ellenburg Road.)

5 THE DEPONENT: That's correct.

6 EXAMINATION RESUMED

7 BY MR. PAAVOLA:

8 Q. Are you prepared to testify about that topic today?

9 A. Yes.

10 Q. Okay. And then you were also designated for topic
11 number 6, and topic number 6 is tax maps for Oconee
12 County from 1986 to 2008.

13 Are you prepared to talk about that topic today?

14 A. Yes.

15 Q. And then you were additionally designated for topic
16 7, which is GIS tax maps for Oconee County from
17 2010 to the present.

18 Are you prepared to talk about that topic today?

19 A. Yes.

20 Q. And then you were, I guess, co-designated with Mr.
21 Reid on topic 9, which is communications with a
22 number of folks listed out as Globe or Farmes, Andy
23 Lee, Lake Keowee Real Estate, Ridgewater
24 Engineering and Surveying, John Hamrick, South --
25 that should say Carolina Department of

1 Transportation.

2 Are you prepared to talk about communications that
3 you are familiar with related to those entities?

4 A. Yes.

5 Q. Okay. And then topic 10, you were also designated
6 to talk about communications with Duke Energy
7 pertaining to any property modifications along
8 Ellenburg Road.

9 Are you prepared to talk about that topic today?

10 A. Yes.

11 Q. And then 11 is -- you were also designated on --
12 with Mr. Reid on 11, answers to discovery requests
13 served on Oconee County.

14 Are you prepared to talk about that topic today?

15 A. Yes.

16 Q. Okay. Mr. Coley, I gather that you currently work
17 for Oconee County. Is that right?

18 A. Yes.

19 Q. Okay. And what is your job title?

20 A. The director of the planning department.

21 Q. How long have you been director of the planning
22 department?

23 A. November of '21.

24 Q. Okay. How long in total have you worked for Oconee
25 County?

1 A. Since November of '21.

2 Q. What were you doing before November of '21?

3 A. I was working for Georgetown County.

4 Q. Okay. And what was your role at Georgetown County?

5 A. I was the project manager for capital projects.

6 Q. Let me back -- go back to your current role.

7 Go ahead and describe for me what your --

8 generally, what your job duties are in your current
9 role with Oconee County.

10 A. To review plans and zoning actions for the county.

11 Q. Okay. When you -- when you say "review plans,"
12 what does that mean?

13 A. It could be residential, industrial, or commercial
14 in nature.

15 Q. Plans for development?

16 A. Yes.

17 Q. What other types of plans?

18 Is it just development?

19 A. Any number of things.

20 Q. Such as?

21 A. Residential, commercial, or industrial.

22 Q. Okay. When you say, "review plans," what does that
23 -- does that entail?

24 A. Confirming the plans presented are in compliance
25 with the code of ordinances.

1 Q. Okay. And what about for the zoning? You said you
2 review zoning actions. Tell me about what those
3 job duties entail.

4 A. Reviewing rezoning actions or current zoning for
5 properties that are designated in certain zoning
6 districts.

7 Q. Okay. And that includes variances?

8 A. It does.

9 Q. Okay. And so were you involved in the variance
10 request related to Ellenburg Road I guess made by
11 Ridgewater Engineering?

12 A. Yes.

13 Q. Okay. What was your role in that variance request?

14 A. I was the staff liaison for the request.

15 Q. Okay. And what does that mean to be a staff
16 liaison for it?

17 A. I was the county's person who was at the hearing.

18 Q. Okay. Does that mean -- did you interact with the
19 requesting parties?

20 A. Yes.

21 Q. We'll look at some of those e-mails.

22 At the hearing, what was your role at the hearing?

23 A. To give the staff opinion and to be available to
24 the board for any questions.

25 Q. Okay. And did you give the staff opinion at the

1 hearing?

2 A. It was presented in writing.

3 Q. Okay. So the staff opinion is a written document;
4 is that right?

5 A. Yes.

6 Q. Okay. And so you were there to answer questions if
7 there were any?

8 A. Correct.

9 Q. Do you recall if you answered any questions on this
10 topic?

11 A. I can't recall.

12 Q. Okay. Did you relocate to Oconee County from
13 Georgetown County for this particular job you have
14 now?

15 A. Yes.

16 Q. So tell me about your -- you were telling me that
17 you worked for Georgetown County as a project
18 manager of capital projects; is that right?

19 A. Yes.

20 Q. And tell me, just generally, about that role, what
21 your responsibilities were.

22 A. To execute capital projects on behalf of Georgetown
23 County.

24 Q. Okay. And what does that mean, to execute capital
25 projects?

1 A. Yes.

2 Q. Plat of survey prepared, and it's giving a name,
3 dated August 28, 1974, and recorded in plat book
4 B-39 at page 67.

5 Do you see that?

6 A. I would say it looks like a P instead of a B.

7 Q. Okay. P-39 at page 67.

8 Do you agree with me?

9 A. Yes.

10 Q. Okay. And the next page of this deed in the middle
11 at the bottom dates it as September of 1974.

12 Do you see that?

13 A. I'm looking for it.

14 Q. I'm sorry. The bottom -- it actually writes it
15 kind of backwards. Witness my hand and seal this
16 6th day of September in the year of our Lord one
17 thousand nine hundred and seventy-four.

18 A. Yes.

19 Q. Okay. And then the next document is a plat and --
20 the final page of Exhibit 2 is a plat, and it -- in
21 the middle of the plat in the bottom or middle
22 section, it says, recorded this 9th day of
23 September 1974 in volume P-39 page 67.

24 Do you see that?

25 A. Yes.

1 Q. Okay. So I'm just trying to get to the point of
2 this -- you're comfortable that this plat is the
3 plat referenced in the deeds and as related to 565
4 Ellenburg Road; is that fair?

5 A. Yes.

6 Q. All right. Also, tax map number is currently
7 150-00-01-103, correct?

8 A. Yes.

9 Q. Okay. And this plat also has -- so it has a
10 recorded date in the middle. At the top left, it
11 has a date.

12 Do you see where it says, date, 28 August 1974?

13 A. It's sort of hard to read, but it's in the top --

14 Q. Left section. 28 A-U-G, period, 1974.

15 A. Yes.

16 Q. Okay. And then it is a parcel here that's labeled
17 Morgan, and it says three acres.

18 Do you see that?

19 A. I do.

20 Q. It identifies the property next door -- I guess
21 it's below the -- on the plats below, it's T.B.
22 Ellenburg.

23 Do you see that name?

24 A. I do see that name.

25 Q. Okay. And then if you look at the side of the

1 Q. Do you see any indication on this plat that Oconee
2 County has a right-of-way anywhere on this plat?

3 A. I can't speak to that.

4 Q. What was your knowledge of plats and experience
5 reading plats?

6 A. I look at plats every day.

7 Q. Okay. So you have knowledge of how to read a plat
8 and what -- the indications on the plat and
9 whatnot?

10 A. Yes.

11 Q. All right. So in your experience, in your
12 knowledge and looking at this plat, do you see an
13 indication that Oconee County has a right-of-way
14 indicated on this plat?

15 A. There's no requirement for a survey to indicate
16 that.

17 Q. That's not my question. Please answer my question.

18 A. I don't think I understand your question.

19 MR. PAAVOLA: Please read my question back.

20 (The question was read back by the reporter as
21 follows:

22 Q. So in your experience, in your knowledge and
23 looking at this plat, do you see an indication that
24 Oconee County has a right-of-way indicated on this
25 plat?)

EXAMINATION RESUMED

BY MR. PAAVOLA:

Q. Okay. You can answer my question, please.

A. Would you like to rephrase it?

Q. No. I would like you to answer my question.

A. I'm not sure I understand.

Q. Okay. Do you see -- the question is really not going to change. It's, do you see any written indication on this plat that Oconee County has a right-of-way?

A. No.

Q. All right. And then you mentioned -- I think you mentioned there's no requirement for plats to indicate right-of-ways. Is that what you said?

A. Yeah. You can ask her to read it back, I guess.

Q. No. I mean, it's my -- I'm asking it again.

A. Do you want me to restate the answer you didn't like?

Q. Mr. Coley, what are the requirements in Oconee County to list right-of-ways on plats?

A. There are not any requirements.

Q. Okay. None whatsoever?

A. No. So survey requirements are set by the South Carolina LLR.

1 A. Yes.

2 Q. All right. And in the middle of the page, it also
3 has a tax map number, and this is -- ends in 099.
4 Do you see that?

5 A. Yes.

6 Q. And that's the same tax map number as 585 Ellenburg
7 Road.
8 Do you agree?

9 A. Yes.

10 Q. Okay. And the next document, final page in this
11 Exhibit 4, is a plat, and in the middle, it has a
12 recorded stamp. It references P-61, page 577.
13 Do you see that?

14 A. Yes.

15 Q. And that's the same plat referenced in this deed we
16 just looked at, isn't it?

17 A. I don't know.

18 Q. Okay. You can look. You can compare them.

19 MR. LOGAN: What deed are you looking at? When was it
20 recorded?

21 MR. PAAVOLA: It's recorded at -- the deed we just had.

22 MR. LOGAN: Excuse me?

23 MR. PAAVOLA: What are you asking?

24 MR. LOGAN: I'm asking, you have a deed --

25 MR. PAAVOLA: Yes.

1 MR. LOGAN: -- and are asking him questions when that was
2 recorded?

3 MR. PAAVOLA: Yes.

4 MR. LOGAN: Give me the recording information.

5 MR. PAAVOLA: I handed it -- do you have a copy? It's
6 897, page 210.

7 MR. LOGAN: 897 what? 210?

8 MR. PAAVOLA: Uh-huh.

9 MR. LOGAN: Okay. I gotcha.

10 EXAMINATION RESUMED

11 BY MR. PAAVOLA:

12 Q. All right. Mr. Coley, I was just trying to tie
13 together this plat with these deeds and this
14 property, so I was asking you whether the plat, the
15 last page of Exhibit 4 -- do you see it? It has a
16 recording of page 6 -- book 6 -- P-61, page 577.
17 Do you see that?

18 A. Which one do you want me to go --

19 Q. P-61 -- it is that one. P-61, 577. Yes. Okay.
20 And I was just asking you to verify that that's the
21 same plat referenced in this deed I showed you in
22 this --

23 A. Yes.

24 Q. Okay. So I'm -- what I'm trying to get to is this
25 plat -- you agree with me this plat is -- what is

1 currently owned today as 585 Ellenburg Road?

2 A. Yes.

3 Q. Okay. And the tax map 150-00-01-099, right?

4 MR. LOGAN: What -- which number -- what are you looking
5 at to coordinate all of this?

6 THE DEPONENT: He's wanting to check -- I'm sorry. I'll
7 let him explain it himself. I think it's this tax
8 map --

9 MR. LOGAN: All right.

10 EXAMINATION RESUMED

11 BY MR. PAAVOLA:

12 Q. I just wanted the county to verify that this is --
13 they agree that this plat goes with 585 Ellenburg
14 Road.

15 A. Yes.

16 Q. All right. Looking at this plat, it has a date of
17 August 28, 1974.

18 Do you see that on the --

19 A. August 28, 1974.

20 Q. Yes. And that's the same date as the prior plat we
21 looked at for 565 Ellenburg Road, right?

22 A. In which exhibit?

23 Q. In Exhibit --

24 A. 2?

25 Q. Yeah, Exhibit 2, the last page of Exhibit 2, the

1 plat for 565 Ellenburg Road.

2 A. I have different dates.

3 Q. Okay. The plat for 565 Ellenburg Road in Exhibit 2
4 is dated it looks like August 28, 1974.

5 Do you see that?

6 A. I don't. Oh, sorry. Yes.

7 Q. Okay. Is that the same date as this plat for 585
8 Ellenburg Road?

9 A. Yes.

10 Q. It looks like they were platted at the same time.
11 I'm just -- would you agree with at least that?

12 A. Yes.

13 Q. Okay. In this plat, it says -- it has a -- it says
14 2.7 --

15 MR. LOGAN: Which plat?

16 MR. PAAVOLA: I'm sorry. 585 Ellenburg Road, Exhibit 4.

17 MR. LOGAN: Okay.

18 THE DEPONENT: The Exhibit 2 and the Exhibit 4, the last
19 page of the -- so this date and this date?

20 EXAMINATION RESUMED

21 BY MR. PAAVOLA:

22 Q. Yes. Okay.

23 Now we're looking back at Exhibit 4, which is a
24 plat for 585 Ellenburg Road?

25 A. Okay.

1 Q. And that lists a 2.765 acre property that's being
2 platted, right?

3 A. Yes.

4 Q. And it says Ellenburg on the property, right?

5 A. Yes.

6 Q. Okay. Again, do you see an indication of the
7 existence of a road on this plat?

8 A. I can barely make it out, but yeah, I can see the
9 existence of a road on this plat.

10 Q. Okay. It looks like the word "road" is written
11 there.

12 Do you agree with that?

13 A. Yes.

14 Q. Okay. Are you able to tell where the property line
15 is in relation to the road?

16 A. It's difficult to make out.

17 Q. Okay. Are you able to make, like, a guess or --
18 I'm not trying to make you guess, but I mean a --
19 does the property line appear to go over the road,
20 or are you able to tell?

21 A. It would appear the center line of the road is the
22 property line. I couldn't be 100 percent
23 confident.

24 Q. Okay. Yeah, I understand.

25 Again, on this plat, it does not indicate that

1 Oconee County has a right-of-way on that road.
2 It's not indicated here. Is that fair?

3 A. That's fair.

4 (Exhibit Number 5 marked for identification.)

5 EXAMINATION RESUMED

6 BY MR. PAAVOLA:

7 Q. Okay. I've handed you what's been marked as
8 Exhibit 5, and this is a plat that was prepared for
9 James Ratliff and Lucretia Morgan.
10 Do you see that at the bottom?

11 A. Yes.

12 Q. Okay. And this is recorded in book B754, page 6.
13 Do you see that on the top?

14 A. Yes.

15 Q. Okay. It references tax map parcel 150-00-01-099,
16 right?

17 A. 150-00-01-099.

18 Q. Okay. And that's the same number for 585 Ellenburg
19 Road, correct?

20 A. I think it was.

21 Q. And this also -- this plat also references plat
22 book P61, page 577.

23 Do you see that reference?

24 A. Yes.

25 Q. Okay. And are you comfortable that's the plat we

1 just looked at in Exhibit 4 for 585 Ellenburg Road
2 from 1974?

3 A. Uh-huh.

4 Q. Okay. Would you agree with me that is the same
5 plat?

6 A. The reference?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. And it looks like it has a date that was
10 prepared in, I suppose, late November, November 23,
11 2020, at the bottom. At the very bottom, there's a
12 date, November 23, 2020.

13 Do you see that?

14 A. I do not.

15 Q. Okay. It's to the right side.

16 A. November 23, 2020, yes.

17 Q. All right. On this plat, is a road indicated?

18 A. Yes.

19 Q. And what road is that?

20 A. Ellenburg Road.

21 Q. Okay. And this indication, it says, Ellenburg
22 Road, WA-42, correct?

23 A. Yes.

24 Q. And then it also says, subject to right-of-way
25 public.

1 Did I read that correctly?

2 A. Yes.

3 Q. Okay. So the previous plat we looked at didn't --
4 did not have the indication saying, subject to
5 right-of-way public, did it?

6 MR. LOGAN: Are you talking about the designation
7 right-of-way public?

8 MR. PAAVOLA: The words, subject to right-of-way --

9 MR. LOGAN: Yeah.

10 MR. PAAVOLA: -- public. Yeah.

11 THE DEPONENT: Correct.

12 EXAMINATION RESUMED

13 BY MR. PAAVOLA:

14 Q. Okay. So this phrase was added or new to this plat
15 in 2020. Would you agree?

16 A. It's a different plat by a different surveyor.

17 Q. Right. But would you agree the words are -- these
18 words are new or different than the previous plat?

19 A. They are different.

20 Q. Okay. And this also indicates -- or would you
21 agree that it indicates the property line that goes
22 over the roadway?

23 There's roadway indicated on the plat, isn't there,
24 RW, or is that not roadway?

25 A. That would be the right-of-way.

1 A. I couldn't speak to that.

2 Q. Okay. How would you determine that?

3 A. Ask the surveyor.

4 Q. Okay. If he says Oconee County asked him to put
5 those -- these words on there, who at Oconee County
6 would have asked -- would have directed that
7 change?

8 A. I don't know.

9 MR. LOGAN: Are you marking this as an exhibit?

10 MR. PAAVOLA: Yes. Thank you.

11 (Exhibit Number 6 marked for identification.)

12 EXAMINATION RESUMED

13 BY MR. PAAVOLA:

14 Q. Okay. Last time with this exercise. We'll do this
15 one more time for 599 Ellenburg Road. Then we'll
16 take a break after this if that's fine with you.
17 I've handed you what has been marked as Exhibit 6.

18 MR. LOGAN: This is 6?

19 MR. PAAVOLA: 6.

20 EXAMINATION RESUMED

21 BY MR. PAAVOLA:

22 Q. Mr. Coley, I've handed you what has been marked as
23 Exhibit 6.

24 The first page is another image from the tax
25 assessor's office and qPublic.

1 Do you see that?

2 A. Yes.

3 Q. And this has a parcel ID of 150-00-01-100, correct?

4 A. Yes.

5 Q. And it has a property address of 599 Ellenburg
6 Road.

7 Do you see that?

8 A. Yes.

9 Q. Okay. And this is the parcel with the John's
10 Marine business on it.

11 Is that your understanding?

12 A. Yes.

13 MR. LOGAN: The parcel with what?

14 MR. PAAVOLA: John's Marine business.

15 EXAMINATION RESUMED

16 BY MR. PAAVOLA:

17 Q. And it has the current owner as Francis Ratliff, et
18 al.

19 Do you see that?

20 A. Yes.

21 Q. Okay. And 1.23 acres, approximately?

22 A. Yes.

23 Q. All right. The second document in Exhibit 6 is a
24 Deed of Distribution, and it's recorded in book
25 1941, page 304.

1 recorded in book 14-I, page 102.

2 Do you see that?

3 A. I do.

4 Q. And that's the same deed referenced in this Deed of
5 Distribution we looked at just a minute ago, right?

6 A. Yes.

7 Q. Okay. And is this deed -- it's hard to read, but
8 it's -- in the middle, it says to Edward -- paid by
9 Edward J. Ratliff and Frances J. Ratliff.

10 Do you see that?

11 A. I see the name.

12 Q. Yes. Okay. And it describes the property in that
13 third paragraph that reads, all that certain piece.
14 Do you see that paragraph?

15 A. Yes.

16 Q. And it also references Plat Book P-39, page 61?

17 A. Yes.

18 Q. And it references this being an identical property
19 conveyed to Nancy Bearden by deed of T.B. Ellenburg
20 dated 8/30/74 recorded in Deed Book 12-A, page 476.
21 Did I read that correctly?

22 A. I think so.

23 Q. Okay. This is the -- a deed and the chain of title
24 for 599 Ellenburg Road, right?

25 A. Yes.

1 Q. Okay. Referencing that the Ratliffs came to own
2 the property -- well, I didn't give you a date, but
3 on page 2 of the -- of the deed from Bearden, it
4 listed date of -- in the middle there, do you see a
5 date?

6 It says witnesses -- witness our hand -- I can't
7 read all of that -- 7th of May, it looks like,
8 1981.

9 A. I think that's how I would interpret it, but I
10 can't be 100 percent.

11 Q. On the first page of this deed -- sorry -- first
12 page of this deed, it does have a recorded stamp
13 there, and it says, May 7, 1981, right?

14 A. Yes.

15 Q. Okay. The next document in Exhibit 6 is a deed
16 that's four pages, and it's identified as Book
17 12-A, page 476.

18 Do you see that?

19 A. 12-A, 476.

20 Q. Which appears to be from T.B. Ellenburg to Nancy --
21 I think that's Bearden?

22 A. Yes.

23 Q. Okay. And then, again, that first page of this
24 deed, in the middle paragraph, it references a
25 1.225 acre parcel, Plat Book P-39, page 61.

1 Do you see that?

2 A. Yes.

3 Q. And, again, I'm just trying to tie these documents
4 together until we get to the last document in page
5 -- in Exhibit 5, which is a plat, and it --

6 A. This is Exhibit 6 we're talking about.

7 Q. You're right. I grabbed the wrong one. This is
8 Exhibit 6. Thank you.

9 The last page of Exhibit 6 has a plat that says it
10 was recorded in P-39, page 61.

11 Do you see that?

12 A. Volume P-39.

13 Q. Okay. I want to make sure that you're comfortable
14 that this plat is a plat of 599 Ellenburg Road.
15 Would you agree with that?

16 A. I don't know if it was addressed at the time, but
17 it's the same piece of property.

18 Q. Right. It's the -- it doesn't have maybe an
19 address on this plat, but through the deeds you
20 looked at --

21 A. Yes.

22 Q. -- this is the plat that's referenced, right?

23 A. Yes.

24 Q. Okay. And, again, it's also dated August 28, 1974.
25 Do you see that at the top right?

1 A. August 28, 1974.

2 Q. Yes. So it appears that the three plats we looked
3 at for 565 Ellenburg, 585 Ellenburg, and now 599
4 Ellenburg all were platted by -- or platted on the
5 same date.

6 Is that fair?

7 A. Yes.

8 Q. All right. In the middle of this plat for 599
9 Ellenburg, we see the property is listed as Bearden
10 and 1.225 acres, correct?

11 A. Yes.

12 Q. All right. And we see a similar -- do you see it
13 indicated -- a road indicated on this plat?

14 A. I see an indication for road.

15 Q. Okay. Road.
16 And it has a little arrow possibly pointing to the
17 property line?

18 A. Yes.

19 Q. Okay. And then T.B. Ellenburg is to the left of
20 the Bearden platted property, right?

21 A. Yes.

22 Q. Okay. And then Duke Power Company is listed below
23 the property line; is that fair?

24 A. Yes.

25 Q. Okay. Again, on this plat, there's no indication

1 or written words that say Oconee County has a
2 right-of-way over this road, is there?

3 A. No.

4 MR. LOGAN: Object to the form.

5 You can answer it.

6 EXAMINATION RESUMED

7 BY MR. PAAVOLA:

8 Q. As far as you know, do the -- does the owner of
9 this 599 Ellenburg pay taxes on the entire 1.225
10 acres?

11 A. I couldn't tell you how taxes are calculated or
12 paid.

13 Q. Okay. And you have no reason to know one way or
14 the other, right?

15 A. I couldn't tell you how taxes are calculated or
16 paid.

17 MR. PAAVOLA: Let's take a brief break, just five
18 minutes, if you want.

19 (Recess taken.)

20 (Exhibit Number 7 marked for identification.)

21 EXAMINATION RESUMED

22 BY MR. PAAVOLA:

23 Q. Mr. Coley, I have handed you what has been marked
24 as Exhibit 7. This is a plat -- I'm trying to see
25 if I can see when it was prepared here. It looks

1 like -- boundary survey for Crescent Communities,
2 and possibly dated July -- July of 2003.

3 Is that fair?

4 A. Yes.

5 Q. Okay. This shows the three properties we were
6 looking at previously, which was 565, 585, and 599
7 Ellenburg Road.

8 Those three are shown on this plat; is that fair?

9 A. Yes.

10 Q. And it looks like the indicated owner of 565 is
11 Robert Morgan, the indicated owner of 585 is Terry
12 Ellenburg, and then, again, the owner of 599 is
13 Edward J. Ratliff.

14 Do you see that?

15 A. Yes.

16 Q. Okay. And then this shows, also, an area 15.37
17 acres on the top, which we've referred to as
18 Arrowhead Point at various times, possibly, in this
19 litigation.

20 Are you familiar with that property?

21 A. Yes.

22 Q. Is that fine if I use the word "Arrowhead Point"?
23 Is that -- or do you have another name for it?

24 A. That's fine.

25 Q. Okay. Arrowhead Point runs -- a bit of it runs

1 and I think you might have said Kyle Reid, but --
2 and tell me if this is a question for Mr. Reid.
3 Does the county maintain a list of roads that it
4 has a responsibility to maintain?

5 A. That would be a question for Mr. Reid.

6 Q. Okay. The words "maintenance right-of-way" are --
7 let me see if I -- I know this doesn't have any
8 compass designations, but they are to the --

9 A. The compass is on the left-hand side.

10 Q. Where is it? Sorry.

11 A. I can show you on this one if you'd like. Here.

12 Q. Okay. So it could be the west of 565 Ellenburg
13 Road?

14 The words "maintenance right-of-way" are to the
15 west of 565 Ellenburg Road, right?

16 A. Yes.

17 Q. They are not below -- those words are not written
18 below 565 Ellenburg, or 585, or 599 Ellenburg Road?

19 A. They're written where they're written.

20 Q. Right. That's just to the west of 565 Ellenburg
21 Road?

22 A. Okay.

23 Q. Is that right? Do you agree?

24 A. They are in that location.

25 Q. And according to your testimony earlier, the only

1 -- as per Roads and Bridges, is that something you
2 would know about or Mr. Reid?

3 A. I couldn't speak to it.

4 Q. All right. Well, I'm going to wait, and then I'll
5 show it to Mr. Reid. That's what I thought you
6 would say.

7 As well, I've got some Google images of the area at
8 599 Ellenburg Road that purport to show an end of
9 county maintenance sign.

10 Is that something that you have knowledge of or --

11 A. No.

12 Q. Do you have any knowledge -- there is a document
13 called boundary line agreement between Duke Energy
14 of the Carolinas and Farmes and Globe, the other
15 parties in this litigation.

16 Do you have any knowledge of that boundary line
17 agreement?

18 A. I do not.

19 Q. Okay. Were you involved at all in any discussions
20 about a boundary line agreement between those
21 parties?

22 A. Not that I can recall.

23 Q. Okay. I'm going to ask you about -- you were
24 designated for the tax maps for Oconee County, and
25 we were provided with tax maps from your office or

1 the tax assessor's office in Oconee County, and
2 they, when they provided and printed them out for
3 us, provided a date at the bottom. And so I know
4 you didn't write this number. I'm just going to
5 represent to you that's -- they told us what they
6 -- they wrote the date at the bottom as to what the
7 tax map was in your system, and I don't know if
8 there's any other way to verify it, but I just
9 wanted to show you some of these and ask you
10 questions about this. I've got lots of copies of
11 these, but I'll just --

12 MR. LOGAN: You said county tax maps for '86 through '08.
13 Do these tax maps fall within the category --

14 MR. PAAVOLA: What was that?

15 MR. LOGAN: Do these tax maps fall within the category of
16 '86 through '08?

17 MR. PAAVOLA: They do.

18 MR. LOGAN: Okay.

19 MR. PAAVOLA: I think what I'll do is make this all one
20 Exhibit at the end, if you're okay with that.

21 EXAMINATION RESUMED

22 BY MR. PAAVOLA:

23 Q. Let me just ask you about Exhibit -- let's see
24 which one I wanted to ask about, but --

25 MR. LOGAN: This is the one that you gave him?

1 MR. PAAVOLA: Yeah, the first one I handed you.

2 MR. LOGAN: '86?

3 MR. PAAVOLA: Let's make this Exhibit -- let's make it
4 all Exhibit 8.

5 (Exhibit Number 8 marked for identification.)

6 EXAMINATION RESUMED

7 BY MR. PAAVOLA:

8 Q. This one appears to be, at the bottom right, marked
9 1986.

10 Do you see that?

11 A. I do.

12 Q. Okay. And what I've been calling the subject
13 properties -- are you able to locate 565 through
14 599 Ellenburg Road on this tax map?

15 A. No.

16 Q. Maybe I'll just let you help -- let you mark it for
17 us. I've got some flags if you want to help me
18 mark these.

19 So in the top -- I'm pointing, Mr. Coley, to the
20 top right.

21 Do you see the -- it's probably easier to see the
22 Arrowhead Point property, you know, or somewhat
23 that outline.

24 Do you see that?

25 A. Are you talking about this piece right here?

1 Q. Yeah.

2 A. Yeah.

3 Q. Okay. And so there's -- there's three properties
4 next to it. It's hard to read what they -- what
5 they say, but are you comfortable agreeing that
6 that's -- those are the 565 to 599 Ellenburg?

7 A. It seems very likely.

8 Q. Okay. It seems likely. It looks right. Okay.
9 Would you mind marking it with the flags for us so
10 later, when we're looking at it -- just somewhere
11 near there.

12 Now, I don't see any kind of road indicated on this
13 tax map to those properties. Do you?

14 A. I do not.

15 Q. Okay. Do you know when that community was created?

16 A. I do not.

17 Q. Okay. Do you have an understanding of if it was
18 before or after 1986?

19 A. It would be my understanding it was before 1986.

20 Q. Okay. Let me hand you the next map that we were
21 provided by your tax office, and if you don't mind,
22 let me just do this so we can keep them in order.
23 This map was provided by the county. It's a tax
24 map from 1988.

25 Do you see that in the bottom right corner?

1 A. I do.

2 Q. Okay. And it looks like there's a revision box you
3 can actually read on this map, and it has a
4 revision date of 5/23/1989.

5 Do you see that?

6 A. I do.

7 Q. All right. Are you able to locate the properties
8 on this tax map from 565 Ellenburg to 599
9 Ellenburg?

10 A. Yes.

11 Q. Okay. Can you go ahead and just flag them for us?
12 Would you agree with me that in this tax map you're
13 looking at, there's no indicated road reaching
14 those three properties?

15 A. Correct.

16 Q. The next tax map that we've been provided from your
17 office says 1991 at the bottom right corner.
18 Do you see that?

19 A. Yes.

20 Q. And the revision date box, it appears to be mostly
21 there, but I don't -- the last date I see there is
22 May 23, 1989.

23 Do you see that?

24 A. Yes.

25 Q. Okay. So I don't --

1 MR. LOGAN: Refer to the -- this is 1991.

2 MR. PAAVOLA: Yeah. I'm referring to the revision box at
3 the bottom.

4 MR. LOGAN: You haven't identified this yet. That's the
5 only thing I was pointing out to you.

6 MR. PAAVOLA: I thought I did.

7 EXAMINATION RESUMED

8 BY MR. PAAVOLA:

9 Q. But, Mr. Coley, this is the tax map from the tax
10 assessor's office that they wrote on as 1991.
11 Do you see that?

12 A. I do.

13 Q. Okay. And it has a revision date that matches the
14 date of the previous?

15 A. Yes.

16 Q. All right. And so on this map, do you see the
17 subject properties, 565 Ellenburg through 599
18 Ellenburg?

19 A. Yes.

20 Q. All right. If you'd please mark those with a flag,
21 I'd appreciate it.

22 Now, on this map, we -- there is -- there's an
23 indication that -- at least we see a road, I would
24 say -- do you agree -- that's labeled WA-42?

25 Do you see that?

1 A. Yes.

2 Q. All right. So for the first time, there's now a
3 road listed on his tax map, correct?

4 A. There's a road shown there, yeah.

5 Q. And the road end appears to be boxed at the west of
6 565 Ellenburg?

7 A. Yes.

8 Q. Okay. It does not go all the way to the end of
9 today's 599 Ellenburg, right?

10 A. Correct.

11 MR. LOGAN: Are you through with this one?

12 MR. PAAVOLA: Yes.

13 EXAMINATION RESUMED

14 BY MR. PAAVOLA:

15 Q. All right. Mr. Coley, I have handed you the next
16 page of this exhibit, which is a tax map provided
17 by Oconee County tax assessor's office that is, in
18 the bottom right corner, identified as 1993.
19 Do you see that?

20 A. I do.

21 Q. And, again, in the revisions box on the bottom
22 left, it looks like the last revision still was
23 made in 1989.

24 A. Correct.

25 Q. And you're able to find this -- the three subject

1 properties, 565 to 599 Ellenburg Road?

2 A. Yes.

3 Q. If you please would just put a flag next to them,
4 I'd appreciate that.

5 Again, this map continues to have a WA-42 road
6 indicated on it, correct?

7 A. There's an indication there, but I can't read it.

8 Q. It is blurry.

9 I guess I'm assuming it says WA-42, but any reason
10 to doubt that's what it is?

11 A. No.

12 Q. Okay. Again, it indicates and shows it stopping
13 west of 565 Ellenburg or right at the property line
14 of 565 Ellenburg, correct?

15 A. That's what it says.

16 Q. The next page of this exhibit is a tax map provided
17 by the county assessor's office that has an
18 indication in the bottom right corner of the year
19 of 1995.

20 Do you see that?

21 A. I do.

22 Q. And this one has a revisions box as well.

23 Do you see the revisions box?

24 A. I do.

25 Q. And it appears this -- it appears to show the

1 latest revision as January 17th, and that could
2 either be 1993 or 1998. I'm not sure.

3 Do you have an understanding of what year that is?

4 A. '90-something.

5 Q. Yeah. I guess it's not '98 because it's only '95,
6 so possibly '93.

7 A. I'd say it would either be '93 or '95.

8 Q. Yeah. Okay. In this tax map, are you able to see
9 the properties 565 Ellenburg --

10 A. Yes.

11 Q. -- to 599 Ellenburg?

12 A. Yes.

13 Q. Could you please flag those?

14 And there does appear to be a road reaching --
15 there's an indication of Knox Road.

16 Do you see that, Knox Road?

17 A. I do see Knox Road.

18 Q. And coming off of Knox Road is another road, which,
19 again, it may be blurry, but it appears to be the
20 same WA-42?

21 A. Yes.

22 Q. And that reaches the three properties, right?

23 A. Yes.

24 Q. And, again, it is indicated as ending west or along
25 the property line of 565 Ellenburg Road, right?

1 A. Yes.

2 Q. It looks like now we've got -- we had the three
3 properties before. It looks like now we've got a
4 -- possibly a fourth property along the lake side
5 that -- it doesn't show how big it is, but possibly
6 565 was -- was separated and platted separately.
7 Do you know what I'm talking about --

8 A. I do.

9 Q. Okay. We didn't look at that revision, but that
10 was before -- that appears to be a revision, at
11 least, I guess from the previous map.
12 The next page of this exhibit that I've handed you
13 is a tax map provided by the county tax assessor's
14 office with an indication in the bottom right
15 corner of 1996.

16 Do you see that?

17 A. I do.

18 Q. And here, the revisions date is unfortunately cut
19 off, so we don't have that, but are you able to
20 locate the subject properties --

21 A. Yes.

22 Q. -- 565 Ellenburg to 599 Ellenburg?
23 If you would flag those, I would appreciate it.
24 And there is a road reaching those three
25 properties, right?

1 A. Yes.

2 MR. LOGAN: Object to the form. It reaches one of them.

3 EXAMINATION RESUMED

4 BY MR. PAAVOLA:

5 Q. Okay. Is there a road reaching those -- the 565
6 Ellenburg Road?

7 A. Yes.

8 Q. Okay. Are you able to read the name of that road?

9 A. No.

10 Q. Okay. Any reason to think anything other than
11 WA-42?

12 A. No.

13 Q. It appears that, perhaps, there's a -- perhaps, it
14 now says Ellenburg Road right at the entrance.
15 It's hard to read, though.

16 Do you -- are you able to read that either way?

17 A. No.

18 Q. Again, this tax map in 1996 shows that road ending
19 west of 565 Ellenburg, correct?

20 A. It shows a road there, yeah.

21 Q. And it shows it ending at that 565 property line,
22 right?

23 MR. LOGAN: Is 555 the one you're talking about?

24 MR. PAAVOLA: 565.

25 MR. LOGAN: 565, is that the one you're talking about?

1 MR. PAAVOLA: Right.

2 EXAMINATION RESUMED

3 BY MR. PAAVOLA:

4 Q. It shows the road stopping there, correct?

5 A. Yeah.

6 MR. LOGAN: Are you through with this one?

7 MR. PAAVOLA: Yeah.

8 (Discussion held off the record.)

9 EXAMINATION RESUMED

10 BY MR. PAAVOLA:

11 Q. The next page of this exhibit is a tax map from the
12 Oconee County tax assessor's office, and indicated
13 at the bottom right is 1997.

14 Do you see that?

15 A. I do.

16 Q. Now we can see the revisions box again.

17 Do you see that?

18 A. I do.

19 Q. And I don't see any revisions after that 1993 or
20 '95 date, do you?

21 A. No.

22 Q. You are able to identify or locate the 565 to 599
23 Ellenburg Road, right?

24 A. Yes.

25 Q. Okay. And the road name, if it's there, it's

1 blurry?

2 A. Correct.

3 Q. Same on this map. The road ends on the west of 565
4 Ellenburg or on the property line?

5 A. Yes.

6 Q. I've handed you the next page of this exhibit, a
7 tax map provided by Oconee County assessor's office
8 that has a date indicated at the bottom right as
9 1998.

10 Do you see that?

11 A. Yes.

12 Q. We'll look at the revisions box.
13 Again, there doesn't appear to be any revisions
14 since the previous maps we looked at, does it?

15 A. No.

16 Q. Okay. And are you able to locate 565 to 599
17 Ellenburg Road?

18 A. Yes.

19 Q. Okay. Again, the road name is not clearly copied
20 on here, but there is a road from Knox Road to 565
21 Ellenburg, right?

22 A. Yes.

23 Q. Okay. And it stops, again, west of 565 Ellenburg?

24 A. Uh-huh.

25 Q. I've handed you the next document provided by the

1 Oconee County tax assessor's office, which they
2 indicated was a tax map from 2000.

3 Do you see that in the bottom right?

4 A. Yes.

5 Q. And revisions date box, again, I don't see any
6 revisions from the last.

7 A. No.

8 Q. Okay. Are you able to find the properties 565 to
9 599 Ellenburg?

10 A. Yes.

11 Q. And there is a road that goes from Knox Road to 565
12 Ellenburg; is that right?

13 A. Yes.

14 Q. You can't read it today, I don't think, can you?

15 A. No.

16 Q. But it stops on the western edge of 565 Ellenburg,
17 doesn't it?

18 A. Yes.

19 Q. But it also actually does appear to be possibly a
20 new road coming off of Ellenburg Road to the -- I
21 guess it's the south that wasn't there on the
22 previous map.

23 Is that --

24 A. Yes.

25 Q. Is that fair?

1 Do you know what that road is called?

2 A. I do not.

3 MR. RATLIFF: Knox Campground.

4 EXAMINATION RESUMED

5 BY MR. PAAVOLA:

6 Q. Okay. There appears to be some additional
7 developments.

8 Even though a revision date is not indicated, there
9 does appear to be something new, at least right
10 there at the -- that road coming off of Ellenburg
11 Road, right?

12 A. Yes.

13 MR. BRANDT: So we have a '99?

14 MR. LOGAN: He just finished with 2000.

15 MR. BRANDT: What?

16 MR. LOGAN: He just finished with 2000, Larry.

17 MR. BRANDT: Well, that's the 2000 he gave me, but I
18 haven't gotten a '99.

19 Have you got a '99?

20 MR. PAAVOLA: I don't know. I've only got what I've got.

21 EXAMINATION RESUMED

22 BY MR. PAAVOLA:

23 Q. Okay. I don't think there's a '99.

24 So I've handed you the next page of the exhibit, a
25 tax map provided by Oconee County tax assessor's

1 office, and they have written on the bottom right
2 corner of tax map from 2001?

3 Do you see that?

4 A. Yes.

5 Q. There is a revisions box, and I don't see a new
6 revision date beyond the 1995 --

7 A. I think we've sorted that.

8 Q. Okay. I think it was '95, right?

9 A. Yes.

10 Q. Yeah.

11 And you're able to locate 565 to 599 Ellenburg
12 Road, right?

13 A. Yes.

14 Q. And, again, there is a road connecting between Knox
15 Road and 565 Ellenburg indicated on this map,
16 correct?

17 A. Yes.

18 Q. And it ends west -- on the western property line of
19 565 Ellenburg?

20 A. Yes.

21 Q. We can't read the name of it, but any reason to
22 doubt it's WA-42?

23 A. No.

24 Q. Okay. The next page of this exhibit is a tax map
25 from Oconee County assessor's office that they

1 indicated in the bottom right was from 2002.

2 Do you see that?

3 A. I do.

4 Q. The revision date's box, again, was cut off, so we
5 don't know if there's a revision there.

6 A. Correct.

7 Q. Were you able to identify 565 to 599 Ellenburg Road
8 on this map?

9 A. Yes.

10 Q. Okay. And there is a road connecting from Knox
11 Road to 565 Ellenburg, correct?

12 A. Yes.

13 Q. And it ends on the western edge of 565 Ellenburg?

14 A. Yes.

15 Q. The next page I'm handing you and showing you is a
16 county tax map from Oconee County tax assessor's
17 office that they've indicated in the bottom right
18 is from 2003.

19 Do you see that?

20 A. Yes.

21 Q. No new revision dates in the box, right?

22 A. Right.

23 Q. Okay. And it's a bit blurry, but are you able to
24 identify where --

25 A. Yes.

1 Q. -- 565 to 599 Ellenburg Road are?

2 A. Yes.

3 Q. Okay. No change in the road between Knox Road and
4 565 Ellenburg, is there?

5 A. No.

6 Q. Okay. So it ends west of 565 Ellenburg?

7 A. Yes.

8 Q. The next page I'm handing you is a document -- a
9 tax map from the Oconee County tax assessor's
10 office, and they've indicated that the tax map was
11 dated 2005 in the bottom right.

12 Do you see that?

13 A. Yes.

14 Q. Again, I don't see any new revision dates in the
15 revisions box.

16 Do you?

17 A. No.

18 Q. Are you able to identify 565 to 599 Ellenburg?

19 A. Yes.

20 Q. And there is a road -- the road names are not
21 legible on this map, right?

22 A. Right.

23 Q. But you're able to identify Knox Road, aren't you?

24 A. Yes.

25 Q. All right. And there's a road between Knox Road

1 and 565 Ellenburg?

2 A. Yes.

3 Q. And no change to the depiction of this road on the
4 tax map, is there?

5 A. No.

6 Q. It still ends west of 565?

7 A. Yes.

8 Q. I've handed you the next page of this exhibit.
9 This is a map provided by the Oconee County tax
10 assessor's office. It indicates that this map is
11 the tax map from 2008 in the bottom right-hand
12 corner.

13 Do you see that?

14 A. Yes.

15 Q. And there are no -- I don't see any revision dates.
16 Do you?

17 A. No.

18 Q. This is slightly more legible.
19 Are you able to identify 565 to 599 Ellenburg Road?

20 A. Yes.

21 Q. And there is -- you're able to identify Knox Road,
22 correct?

23 A. Yes.

24 Q. And there is a road connecting Knox Road that runs
25 to 565 Ellenburg.

1 Do you see that?

2 A. Yes.

3 Q. No change since the prior map?

4 A. No.

5 Q. And it's west of 565 Ellenburg?

6 A. Yes.

7 Q. Maybe we can read -- it's WA-42, right?

8 A. Most likely.

9 Q. Most likely. It's hard to read.

10 And then I've handed you the last page in this
11 exhibit, and this is more of a GIS-looking map.

12 Is that fair to say?

13 A. Potentially.

14 MR. BRANDT: I don't mean to interrupt you. The
15 significance of these numbers, 2008, all these, is
16 that the year?

17 THE DEPONENT: Yes.

18 MR. PAAVOLA: Yeah.

19 MR. BRANDT: Okay.

20 EXAMINATION RESUMED

21 BY MR. PAAVOLA:

22 Q. Okay. This map was provided to us, and I may not
23 have the date, but I believe -- I believe the date
24 that the county assessor's office indicates is
25 2010.

1 MR. LOGAN: Is this marked?

2 MR. PAAVOLA: No, it's not an exhibit.

3 (Exhibit Number 12 marked for identification.)

4 EXAMINATION RESUMED

5 BY MR. PAAVOLA:

6 Q. I've handed you Exhibit 12. This is Bates stamped
7 Oconee 449. This is an e-mail from yourself to
8 Kyle Reid on December 13, 2021.

9 Do you see that?

10 A. I do.

11 Q. Okay. And it references in the first sentence a
12 site visit.

13 Do you see that?

14 A. I do.

15 Q. Okay. Do you recall visiting the site -- I think
16 maybe you recalled earlier a site visit with Mr.
17 Reid, and yourself, and possibly Mr. Root?

18 A. Yes.

19 Q. Okay. You were asking -- you're asking in this
20 e-mail to Mr. Reid to pull any maintenance records,
21 project design drawings, and other materials that
22 would help establish county ownership based on
23 maintenance for a prescriptive easement.

24 Did I read that correctly?

25 A. Yes.

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1 Q. Did Mr. Reid pull documents and provide them to
2 you?

3 A. I don't recall.

4 Q. Okay. You have no recollection of whether Mr. Reid
5 brought documents to this site visit?

6 A. I do not.

7 Q. Okay. If he had brought documents to that site
8 visit, would you have kept a copy of those
9 documents?

10 A. No.

11 Q. Do you think Mr. Reid would have kept a copy of
12 those documents?

13 A. You can ask him.

14 Q. Do you have any understanding of whether Mr. Reid
15 kept a copy of these documents?

16 A. I don't know.

17 Q. Okay. Did you discuss with Mr. Reid maintenance
18 records for Ellenburg Road at the site visit?

19 A. I don't recall.

20 Q. Have you ever discussed maintenance records with
21 Mr. Reid on Ellenburg Road?

22 A. Yes.

23 Q. Okay. And what were those discussions?

24 A. About the existence of maintenance records for
25 Ellenburg Road.

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1 Q. And what -- did you discuss specific maintenance
2 requests on specific properties?

3 A. I don't recall.

4 Q. Okay. What do you recall about the discussions?

5 A. That they happened.

6 Q. Okay. Do you recall generally that there are --
7 there was maintenance?

8 A. Yes.

9 Q. Okay. Do you have any recollection of any
10 discussions of maintenance at or near 585 Ellenburg
11 Road, 565 -- I'm sorry -- 585 Ellenburg Road or 599
12 Ellenburg Road?

13 A. No.

14 Q. Okay. Did you ever discuss project design drawings
15 with Mr. Reid?

16 A. Yes.

17 Q. And what were those discussions with Mr. Reid
18 about?

19 A. General roadway design at the property line between
20 the Arrowhead property and the adjacent Ratliff
21 property.

22 Q. Okay. This is in relation to the variance request?

23 A. Yes.

24 Q. Okay. Anything in relation to the existence of an
25 easement?

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1 A. No, not that I recall.

2 Q. And why were you asking Mr. Reid to provide
3 documents that would help establish county
4 ownership based on maintenance for prescriptive
5 easement?

6 A. To the best of my recollection, we were looking for
7 confirmation for the variance hearing.

8 (Exhibit Number 13 marked for identification.)

9 EXAMINATION RESUMED

10 BY MR. PAAVOLA:

11 Q. I've handed you what has been marked as Exhibit 13.
12 It's a document Bates stamped Oconee 507, and this
13 is an e-mail chain between yourself and Lucretia
14 Morgan, and Jimmy Ratliff, and it looks like Andy
15 Lee.

16 Do you see that?

17 A. I do.

18 Q. Okay. It looks like the first e-mail starts at the
19 bottom of page 507. It's dated December 1, 2021.

20 Do you see that?

21 A. I do.

22 Q. Okay. And it's titled a BZA Update?

23 A. Yes.

24 Q. And this appears to be your recounting of the Board
25 of Zoning Appeals meeting, and you indicate the

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1 county will need to clarify the confusion on the
2 ownership of Ellenburg Road to include prescriptive
3 easement status, county maintenance records,
4 history, and platting.

5 Did I read that correctly?

6 A. Yes.

7 Q. So the county had -- was undertaking the review of
8 these things after that -- the Board of Zoning
9 meeting on -- maybe it was December 1st.

10 Is that fair?

11 A. It would have been that Monday, whatever date that
12 was.

13 Q. Okay. Maybe it was the 29th.

14 And then on January 19th, your e-mail on the first
15 page Bates stamped Oconee 507, it provides an
16 update to your previous e-mail, correct?

17 A. Say that again. I was still --

18 Q. Yeah. The e-mail on January 19th to all of the
19 same individuals from yourself in the middle of the
20 page on --

21 A. There we go. Yeah.

22 Q. -- Oconee 507. In the second paragraph, you write,
23 in addition, the county has reviewed their position
24 and maintains that Oconee County does have a
25 prescriptive easement to the end of paving on

1 Ellenburg Road.

2 Did I read that correctly?

3 A. Yes.

4 Q. Okay. So what review did the county conduct
5 between December 1st and January 19th?

6 A. I don't know. I can't recall.

7 Q. Were you part of that review?

8 A. Potentially.

9 Q. Do you have any recollection sitting here today
10 whether you were part of that review?

11 A. I couldn't recall.

12 Q. Okay. You state that Oconee County maintains its
13 position that it has a prescriptive easement to the
14 end of paving on Ellenburg Road, right?

15 A. Yes.

16 Q. Okay. What is that statement based on?

17 A. I don't recall, but I would assume it would be
18 discussions with our county attorney and roads
19 department.

20 Q. And I don't want to ask you about what -- your
21 discussions with your counsel, but do you have any
22 documents that you know of that this statement was
23 based on?

24 A. I don't recall.

25 Q. Who at the county looked at this question? Was it

1 yourself, Mr. Reid, or somebody else?

2 A. I would assume that it was Mr. Reid, and our county
3 attorney, Mr. Root, and myself.

4 Q. Okay. And so the -- what do you recall that you
5 looked at specifically, if anything?

6 A. I don't recall.

7 Q. Who made the determination that Oconee County
8 maintains this position that it has a prescriptive
9 easement on Ellenburg Road?

10 A. I don't recall.

11 Q. Do you know if you made that determination?

12 A. I did not.

13 Q. Did Mr. Reid make that termination?

14 A. I couldn't recall.

15 Q. Are you aware of any statements made by any owner
16 of 565 Ellenburg through 599 Ellenburg at any time
17 indicating to the county that it was granted a
18 prescriptive easement over the -- over the roadway
19 in front of those properties?

20 A. No.

21 Q. Have you ever seen any documents indicating that
22 the landowners of those same properties ever
23 dedicated the roadway in front of the properties to
24 Oconee County?

25 A. I don't recall.