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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough,
Circuit Court Judge

Appellate Case No. 2025-001719

Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson,
Michael Jefferson, Sr., Rashica Coakley, and Ann Bailem Simmons,

Appellants,

v.

County of Charleston, Town of Mount Pleasant, DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC, Marie P. Howard, Lewis B. Howard, Jr., Lanelle P. Johnson, William Bailem, Sr., X Syvier Lynn Johnson, Sonia Maria Simmons, Kenneth Davis, Juanita Nelson, Titus Howard, Myeisha Howard, James Howard, And John Doe and Jane Doe, fictitious names used herein to designate the unknown heirs at law, distributes, and/or devisees of all persons who are minors or members of the Armed Forces of the United States of America, as contemplated By the Soldiers' and Sailors' Relief Act, 1940,as Amended, and all persons entitled to claim under and through any of them

Defendants,

of which County of Charleston, Town of Mount Pleasant, DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC are the

Respondents.

**RECORD ON APPEAL
VOLUME III of III**

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2023-CP-10-00947

HENRY BAILEM, IV, JOSEPH BAILEM,)
SHEILA BAILEM, DIANE JEFFERSON,)
MICHAEL JEFFERSON, SR., RASHICA)
COAKLEY, AND ANN BAILEM)
SIMMONS,)

DEFENDANT TOWN OF MOUNT
PLEASANT'S NOTICE OF MOTION,
MOTION, AND MEMORANDUM OF
LAW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

Plaintiffs,

vs.

COUNTY OF CHARLESTON,)
TOWN OF MOUNT PLEASANT, DRB)
GROUP SOUTH CAROLINA, LLC f/k/a)
DAN RYAN BUILDERS SOUTH)
CAROLINA, LLC, MARIE P. HOWARD,)
LEWIS B. HOWARD, JR., LANELLE P.)
JOHNSON, WILLIAM BAILEM, SR.,)
X. SYVIER LYNN JOHNSON, SONIA)
MARIA SIMMONS, KENNETH DAVIS,)
JUANITA NELSON, TITUS HOWARD,)
AND JOHN DOE AND JANE DOE,)
fictitious names used herein to designate the)
unknown heirs at law, distributes, and/or)
devisees of all persons claiming under or)
through the devisees, and any such persons)
who are minors or members of the Armed)
Forces of the United States of America, as)
contemplated by the Soldiers' and Sailors')
Relief Act, 1940, as Amended, and all)
persons entitled to claim under and through)
any of them,)

Defendants.

YOU WILL PLEASE TAKE NOTICE that Defendant Town of Mount Pleasant
(hereinafter, "TOMP"), by and through its undersigned attorneys and pursuant to Rule 56 of the
South Carolina Rules of Civil Procedure, hereby respectfully move this Honorable Court for an

Order granting judgment as a matter of law in the favor of TOMP and: (1) dismissing Plaintiffs' Amended Complaint with prejudice; or (2) in the alternative, finding as a matter of law, TOMP has acquired John Ballam Road by adverse possession.

This Motion is based upon the following grounds:

1. There are no genuine issues of material fact as to the essential elements of Plaintiffs' causes of action for declaratory judgment and quiet title;
2. As to Plaintiffs' Third Cause of Action for adverse possession, Plaintiffs cannot prove by clear and convincing evidence that their possession of the subject property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period. Furthermore, a claim for adverse possession cannot run against the state or its duly constituted political subdivisions;
3. As to Plaintiffs' Fourth Cause of Action for inverse condemnation, Plaintiffs cannot prove the elements of the claim, including: (1) affirmative conduct by TOMP, (2) that effected a taking, and (3) that the taking is for public use. In other words, Plaintiffs cannot prove "an affirmative, aggressive, and positive act" by TOMP as it relates to John Ballam Road;
4. Plaintiffs' claims against TOMP are barred based upon the applicable statute of limitations;
5. Plaintiffs' claims against TOMP are barred based upon the doctrine of laches;
6. Plaintiffs' claims against TOMP are barred based upon the doctrine of equitable estoppel; and
7. In the alternative, TOMP is entitled to judgement as a matter of law on its counterclaim of adverse possession.

INTRODUCTION

This action arises out of the disputed status of a 50' right-of-way known and designated as John Ballam Road, located off of Six Mile Road in Mount Pleasant, South Carolina (hereinafter, "John Ballam Road"). *See* Pl. Amend. Comp., filed with this Court on June 6, 2024. Plaintiffs in this matter allege that John Ballam Road has been improperly treated as a public right-of-way, despite the dedication statement contained on a plat entitled "Plat of Lands of John Ballam Estate" dated July 23, 1986 and recorded on October 24, 1986 with the Office of the Register of Deeds for Charleston County in Plat Book BK at Page 135 (hereinafter, the "Plat") and the improvements made to John Ballam Road by County of Charleston (hereinafter, "Charleston County") and TOMP. *Id.* at ¶ 14. The named Plaintiffs in this action are descendants of John (a/k/a Sandy) and Flora Ballam and consist of:

- Henry Bailem, IV, owner of Lot 5 on the Plat which is located on the corner of John Ballam Road and Six Mile Road (1420 Six Mile Road, Mount Pleasant, SC 29466). *Id.* at ¶ 15.
- Joseph Bailem and his wife, Shelia Bailem, owners of Lot 4 on the Plat (2236 John Ballam Road, Mount Pleasant, SC 29466). *Id.* at ¶ 17.
- Michael Jefferson, Sr. and his wife, Diane Jefferson, owners of Lot 3 on the Plat (2242 John Ballam Road, Mount Pleasant, SC 29466). *Id.* at ¶ 18.
- Rashica Coakley, heir of the Estate of Florence Coakley, owner of Lot 2 on the Plat (2248 John Ballam Road, Mount Pleasant, SC 29466). *Id.* at ¶ 19.
- Ann Bailem Simmons, owner of Lot 1 on the Plat (2254 John Ballam Road, Mount Pleasant, SC 29466). *Id.* at ¶ 20.

Plaintiffs contend that John Ballam Road was intended to be a private road dedicated to the owners of the Plaintiffs' properties, not for use by the public. *Id.* at ¶¶ 25 and 53. Plaintiffs

brought this action after the sale and proposed development of the property adjacent to John Ballam Road, now owned by Defendant DRB Group South Carolina, LLC (hereinafter, “DRB”). *See* Dep. of H. Bailem, p. 25: 5-11, attached as **Exhibit A**. Plaintiffs filed this action seeking, in part, for this Court to declare John Ballam Road a private road owned and solely to be used by the Plaintiffs, rather than a public right-of-way as shown on the Plat. *See* Pl. Amend. Comp. ¶¶ 55 and 115. Pled in the alternative, Plaintiffs also allege that they have acquired John Ballam Road from TOMP by adverse possession and assert a cause of action for inverse condemnation against TOMP as it relates to John Ballam Road. *Id.* at ¶¶ 108 – 127. In response to the Plaintiffs’ Amended Complaint, TOMP asserted its own counterclaim for adverse possession of John Ballam Road. *See* Def. TOMP Ans. to Amend. Comp. ¶ 62 – 70, filed with this Court on June 27, 2024.

STATEMENT OF FACTS

Plat of Lands of John Ballam Estate

On or around July of 1986, the heirs of the Estate of John Ballam sought to subdivide the family property located off of Six Mile Road in Mount Pleasant, Charleston County, South Carolina (formerly bearing TMS No.: 561-00-00-060 and shown as Lot 30 on a plat recorded in Plat Book B, Page 46) to create individual lots for certain members of the Bailem (formerly, Ballam) family. *See* Pl. Amend. Comp. ¶ 23 – 25. At this time, the heirs of the Estate of John Ballam and owners of this property were Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers. *See* Pl. Res. to Def. TOMP’s RFA ¶ 2, attached as **Exhibit B**. To properly subdivide the property, the family retained the services of James G. Pennington, P.L.S., a licensed land surveyor (hereinafter, “Pennington”), to survey the property and to draft a plat subdividing the property. *See* Pl. Amend. Comp. ¶ 23 and Dep. of J. Pennington, p. 11:10-15, attached as **Exhibit C**. The property was initially intended to be subdivided into four lots; however, the family later requested

the property to be subdivided into five lots. *See* Dep. of D. Jefferson, pp. 9:25; 10:1-22, attached as **Exhibit D**. In order for the subdivision to meet Charleston County requirements, access to the newly created properties also needed to be established as part of the subdivision of the property. *See* Dep. of J. Pennington, p. 54:5-16. Although various drafts of the Plat appear to have been prepared by Pennington, only the final Plat was signed by Pennington. *See* Pl. Amend. Comp. Exhibit 1(B), (C), and (D). The final Plat was also signed by the Charleston County Planning Director and Clerk of Council noting that the Charleston County Planning Board approved the Plat on October 7, 1986:

THESE LOTS 1 - 5 MEET
HEALTH DEPARTMENT STANDARDS
FOR A MODIFIED CONVENTIONAL
SUB-SURFACE DISPOSAL SYSTEM ONLY.

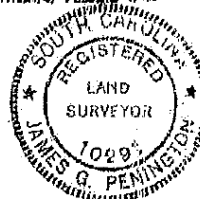
This approval in no way obligates
the County of Charleston to
maintain the right-of-way until
it has been constructed to County
standards.

APPROVED FINAL PLAT
James H. Pennington
CLERK, CHARLESTON COUNTY COUNCIL
David H. Pennington
DIRECTOR OF PLANNING
CHARLESTON COUNTY PLANNING BOARD
DATE OCT 7, 1986
#11829

PLAT
OF LANDS OF
JOHN BALLAM ESTATE
LOCATED
LIBERTY HILL AREA OF CHRIST CHURCH PARISH
CHARLESTON COUNTY, SOUTH CAROLINA
DATE: 7-23-86
SCALE: 1" = 100'
100 50 0 100 200

I, JAMES Q. PENNINGTON, A REGISTERED SURVEYOR OF THE STATE OF SOUTH CAROLINA,
HEREBY CERTIFY THAT I HAVE EXAMINED THE PROPERTY AND MY RECORDS, THAT THIS PLAT
REPRESENTS THE TRUE DIMENSIONS OF THE PROPERTY, THE NECESSARY RECORDS HAVE
BEEN EXAMINED & THE PRECISION IS 1:10,000

James Q. Pennington
JAMES Q. PENNINGTON, R.L.S. NO. 10291
SURVEY ENGINEERING, INC. P.O. BOX 31017
CHARLESTON, SC 29417 871-8171



Id.

The Plat also depicts a 50' right-of-way designated and labeled as "John Ballam Road 50' R/W" and contains the following dedication statement regarding John Ballam Road:

DEDICATION:

"WE HEREBY DEDICATE THIS 50' ROAD RIGHT OF WAY FOR THE USE OF THE PUBLIC FOREVER. WE HEREBY DEDICATE THIS 20' DRAINAGE EASEMENT TO THE USE OF THE PUBLIC FOREVER. THE APPROVAL OF THIS PLAT IN NO WAY OBLIGATES THE COUNTY OF CHARLESTON TO ACCEPT THE EASEMENT FOR MAINTENANCE OR CONSTRUCTION."

Henry Bailem
HENRY BAILEM

Rebecca Jefferson
REBECCA JEFFERSON

Estelle Capers
ESTELLE CAPERS

Id.

The Plat was recorded with the Office of the Register of Deeds for Charleston County on October 24, 1986 in Plat Book BK at Page 135. Id. No other legal instruments have been recorded by Plaintiffs or any other person indicating that John Ballam Road is anything other than a public right-of-way. *See* Dep. of H. Bailem, pp. 25:5-8; 36:8-13; 47:14-22.

Plaintiff Diane Jefferson testified that she was involved in various aspects of retaining Pennington and communicating the family's intent to Pennington during his preparation of the Plat. *See* Dep. of D. Jefferson, pp.: 10:5-17; 11:3-21; 16:21-25; 17:1-19. Plaintiff Michael Jefferson acknowledged the signature of his grandmother, Rebecca Jefferson, on the Plat. Dep. of M. Jefferson, pp.: 11:5-15, attached as **Exhibit E**. Notably, during Ann Bailem Simmons' deposition the following exchange occurred:

Q Were you present when these signatures were affixed to Exhibit 4, Henry Bailem, Rebecca Jefferson, and Estelle Capers? A Yes, I was there. Yes. Q You were there when those signatures went on the plat? A Yes. Q Okay. You saw them sign Exhibit 4? A Exhibit 4? Well, I'll say it like this: When they signed, I don't know. I know that this plat	was signed. Q Let me ask it a different way. I just want to make sure we're on the same page. Were you present when Henry Bailem, Rebecca Jefferson, and Estelle Capers signed the plat that is shown on Exhibit 4? A Right. Everything was signed for everyone -- Q Okay. A -- there. Yes.

See Dep. of A. Simmons, pp.: 17:16-25; 18:1-9, attached as **Exhibit F**.

Furthermore, the Plat has been incorporated into the chain of title for the Plaintiffs' properties since 1986 and is referenced in each of the deeds from which the Plaintiffs obtained title to their respective properties. Plaintiffs testified to the following regarding the deeds to their individual lots:

- Ann Bailem Simmons, testified that the title she received to her property, Lot 1 on the Plat, contains the following property description:

All that lot, piece, parcel or tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Pennington, P.E., and L.S., entitled "Plat of Land of John Ballam Estate located in the Liberty Hill area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK at Page 135, of the RMC Office for Charleston County.

Said property containing approximately 1.67 acres of land as shown as Lot 1 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the north on lands of Ballam, to the west on John Ballam Road and Lot 2, to the east on lands now or formerly of Mitchum and to the South on lands now or formerly of Howard McManus and McCaster.

Id. at pp. 12-15.

- Rashica Coakley, testified that the title she received to her property, Lot 2 on the Plat, contains the following property description:

All that lot, piece, parcel or tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Pennington, P.E., and L.S., entitled "Plat of lands of John Ballam Estate located in the Liberty Hill area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK, Page 135, of the RMC Office for Charleston County.

Said property containing approximately 1.40 acres of land as shown as Lot 2 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the north on lands now or formerly of Flora Ballam, to the south on John Ballam Road, to the west on Lot 3, and to the east on Lot 1.

See Dep. of R. Coakley, pp.: 7-8, attached as **Exhibit G**.

- Diane Jefferson testified that the title she and her husband, Michael Jefferson, received to their property, Lot 3 on the Plat, contains the following property description:

All that lot, piece, parcel or tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Pennington, P.E., and L.S., entitled "Plat of lands of John Ballam Estate located in the Liberty Hill area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK, Page 135, of the RMC Office for Charleston County.

Said property containing approximately 1.29 acres of land as shown as Lot 3 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the northwest on land on Cephus Wright, to the northeast on Lot 2, to the southeast on John Ballum Road, and to the southwest on Lot 4.

See Dep. of D. Jefferson, pp.: 29-30.

- Shelia Bailem testified that the title she and her husband, Joseph Bailem, received to their property, Lot 4 on the Plat, contains the following property description:

All that lot, piece, parcel or tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Pennington, P.E., and L.S., entitled "Plat of lands of John Ballam Estate located in the Liberty Hill area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK, Page 135, of the RMC Office for Charleston County.

Said property containing approximately 1.20 acres of land as shown as Lot 4 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the northeast on lands of Cephus Wright, to the south on John Ballam Road, to the west on Lot 5, and to the east on Lot 3.

See Dep. of S. Bailem, pp.: 8-9, attached as **Exhibit H**.

- Henry Bailem, IV testified that the title he received to his property, Lot 5 on the Plat, contains the following property description:

All that lot, piece, parcel or tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Pennington, P.E., and L.S., entitled "Plat of lands of John Ballam Estate located in the Liberty Hill area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK, Page 135, of the RMC Office for Charleston County.

Said property containing approximately 2.72 acres of land as shown as Lot 5 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the north on lands now or formerly of Isaac Wright Estate, to the south on John Ballam Road, to the west on Six Mile Road, and to the east on Lot 4.

See Dep. of H. Bailem, pp.: 29-30.

Acceptance of Dedication and Improvements of John Ballam Road

Charleston County Council accepted John Ballam Road into its maintenance system on August 16, 1994, as part of a list of unimproved roads petitioned for county acceptance and construction. See Ex. 1(F), Pl. Amend. Comp. Although it is unclear who requested John Ballam Road to be improved, Plaintiffs admit that the road was improved from a dirt road to a paved road by Charleston County using public funds. See Dep. of H. Bailem, p. 37:15-16 and Dep. of D. Jefferson, pp.: 83-86. The road was constructed as part of Charleston County's dirt to pave program which sought to improve public roads in Charleston County. See 30(b)(6) Dep. of Def. TOMP,

pp.: 33-34, attached as **Exhibit I**. Improvements were made to John Ballam Road by Charleston County in early 2002 using Charleston County Transportation Committee funds. See Dep. of W. Linkler, pp.: 48-51, attached as **Exhibit J**.

On April 11, 1995, Plaintiffs' properties, along with 24 other properties surrounding Rifle Range Road and Six Mile Road, were annexed into the Town of Mount Pleasant. See Pl. Amend. Comp. ¶ 37. As part of the annexation, the maintenance responsibilities of John Ballam Road were transferred from Charleston County to TOMP. See 30(b)(6) Dep. of Def. TOMP, pp.: 33-34. Since the annexation, TOMP has been responsible for the maintenance of John Ballam Road. *Id.* at p.: 20:8-24. Although no significant improvements to the roadway have been needed since it was constructed, TOMP has performed maintenance on the drainage ditch adjacent to John Ballam Road and located within the John Ballam Road 50' right-of-way. *Id.* at pp.: 27-29.

TOMP has also issued encroachment permits for utilities services to be placed within the John Ballam Road 50' right-of-way and for the neighboring development to connect to John Ballam Road. *Id.* at pp.: 37:14-25; 38:1-22. Furthermore, TOMP has removed attempts by the Plaintiffs to block public access to John Ballam Road. See Dep. of H. Bailem, pp.: 39:22-25; 40:1-5; 84:20-25; 85:1-13.

Procedural History

Plaintiffs began contacting TOMP regarding the status of the road as a public right-of-way in or around 2016. *Id.* at p.: 25:5-11. This coincides with the sale and potential development of the property across John Ballam Road from the Plaintiffs' properties ("McManus Tract"), now owned by DRB. The McManus Tract was denied annexation into the Town of Mount Pleasant in 2017. The McManus Tract was subsequently developed in Charleston County and is part of unincorporated Charleston County.

Plaintiff Henry Bailem initially filed this action on February 23, 2023, solely against Charleston County and the Town of Mount Pleasant. On June 6, 2024, the Complaint was amended to add as parties all properties owners adjacent to John Ballam Road. On October 28, 2024, this Court issued an Order on multiple motion, including Defendant Charleston County's Motion to Dismiss. As further outlined in the Order dated February 4, 2024, this Court dismissed Plaintiffs' causes of action against Charleston County for adverse possession, inverse condemnation, and trespass.

LEGAL STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." Id. (citing Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013)).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 518-19,

595 S.E.2d at 822. “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Ellis at 518, 595 S.E.2d at 822.

ARGUMENT

I. Plaintiffs’ Declaratory Judgment and Quiet Title Actions Should be Dismissed as a Matter of Law.

Plaintiffs have filed this action seeking declaratory judgment from the Court regarding the ownership of John Ballam Road and have sought to quiet the title of John Ballam Road. Essentially, both of these causes of action are seeking to have the purported public dedication of John Ballam Road declared invalid. “Dedication is the giving of land or an easement for the use of the public by the owner.” Grady v. City of Greenville, 129 S.C. 89, 123 S.E. 494, 496 (1924).

Perfecting a dedication of property to public use involves two steps. “First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use.” Mack v. Edens, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995). “Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication.” Id. “No particular formality is necessary to effect a common law dedication.” Boyd v. Hyatt, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct. App. 1988). “An intention to dedicate may be implied from the circumstances.” Id.

A. Intent by the Property Owner to Dedicate

“South Carolina law recognizes two types of implied dedication – ‘one where the question of implied dedication arises from the sale of land with reference to maps or plats; the other when the dedication arises ... from an abandonment to or acquiescence in public use.’” Vick v. S.C. Dep’t of Transp., 347 S.C. 470, 477, 556 S.E.2d 693, 697 (Ct. App. 2001) (quoting, Shia v. Pendergrass, 222 S.C. 342, 348, 72 S.E.2d 699, 701 (1952)). “A dedication need not be made by deed or other writing, but may be effectually made by acts or declarations.” Hoogenboom v. City of Beaufort,

315 S.C. 306, 317, 433 S.E.2d 875, 883 (Ct. App. 1992). “The owner’s intention to dedicate must be manifested in a positive and unmistakable manner.” Id.

“A recorded plat may be sufficient to disclose a landowner’s intent to dedicate property to public use.” Town of Kingstree v. Chapman, 405 S.C. 282, 303–04, 747 S.E.2d 494, 505 (Ct. App. 2013) (quoting Van Blarcum v. City of N. Myrtle Beach, 337 S.C. 446, 450, 523 S.E.2d 486, 488 (Ct.App.1999). “If a landowner subdivides and plats an area of land into lots and streets and then sells lots with reference to the plat, the owner manifests an intent to dedicate those common areas to be used by both the purchasers and the public, absent evidence of a contrary intent.” Id.

In this case, the Plat contains clear language purporting to dedicate John Ballam Road to the public: “We hereby dedicate this 50’ road right-of-way for the use of the public forever.” *See* Ex. 1(D), Pl. Amend. Comp. The Plat also contains the signatures of the owners of John Ballam Road at the time, Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers. Id. Although Plaintiffs Henry Bailem and Diane Jefferson referenced the possibility of the signatures on the Plat being forged or transposed, there are no allegations of forged or otherwise fake signatures in their Amended Complaint. Furthermore, Plaintiff Ann Bailem Simmons testified that she witnessed Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers sign the Plat. *See* Dep. of A. Simmons, pp.: 17:16-25; 18:1-9. Plaintiff Michael Jefferson also identified the signature of his grandmother, Rebecca Jefferson, on the Plat. *See* Dep. of M. Jefferson, pp.: 11:5-15. Although there is more than sufficient evidence showing that the owners signed the dedication language on the Plat, the signatures on the Plat are not necessary to establish the property owners’ intent to dedicate.

Each Plaintiff has been presented with copies of their respective titles to their individual lots. Each has acknowledged that the description of their property in their title references the Plat, states that title their individual properties is “subject to the easements as shown on said plat”, and

that their properties are butted and bounded by John Ballam Road. *See* Dep. of A. Simmons, pp.: 12-15, Dep. of R. Coakley, pp.: 7-8, Dep. of D. Jefferson, pp.: 29-30, Dep. of S. Bailem, pp.: 8-9, and Dep. of H. Bailem, pp.: 29-30. Further, there have been no challenges by the Plaintiffs' of the titles to their individual properties. Plaintiffs' titles to their respective properties each individually manifest Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers' intent to dedicate John Ballam Road to the public. As such, there is more than sufficient evidence to show that there was a positive and unmistakable intent to dedicate John Ballam Road to the public.

B. Public Acceptance

In Town of Kingstree, 405 S.C. 282, 301-02, 747 S.E.2d 494, 504, the Court of Appeals explained that the owner's intention to dedicate and the public body's acceptance do not require formality. "As with intention to dedicate, no formal acceptance by a public authority is necessary to show public acceptance." Id. Acceptance may be implied by the public or a public authority continuously using or repairing the property." Id. "The use, repair, and working of the streets by public authorities is a mode of acceptance." Tupper v. Dorchester Cnty., 326 S.C. 318, 326, 487 S.E.2d 187, 192 (1997).

Charleston County Council took formal action on August 16, 1994 to accept John Ballam Road into its maintenance system as part of a list of unimproved roads petitioned for County acceptance and construction. *See* Ex. 1(F), Pl. Amend. Comp. Although the Plaintiffs have presented a letter dated August 12, 1993 from the Charleston County Public Works Department indicating that the County was not willing to accept John Ballam Road until it was constructed in accordance with County standards (Id. at Ex. 1(E)), case law shows that the acceptance for publication need not be immediate. *See* Chafee v. City of Aiken, 57 S.C. 507 (1900), only requiring acceptance of a public dedication to take place within a reasonable time. Clearly, Charleston

County Council reversed course on this staff level determination and decided to accept John Ballam Road a year later. Furthermore, formal acceptance by the public authority is not necessary. Acceptance may be implied by the public authority's use, repair, and working of the street. In this case, Plaintiffs admit that Charleston County paved and made improvements to John Ballam Road. *See* Dep. of H. Bailem, p. 37:15-16 and Dep. of D. Jefferson, pp.: 83-86. Further, John Henry Dingle, friend of the Bailem family and former Charleston County employee, testified in his deposition that he would use John Ballam Road to access Six Mile Canal when he was working for Charleston County. *See* Dep. of J. Dingle, pp. 18:9-25; 19:1-3, attached as **Exhibit K**. This evidence alone is sufficient to constitute acceptance.

Plaintiffs have failed to put forth any evidence showing that the property owners at the time of the dedication, Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers, did not intend to dedicate John Ballam Road to the public at the time of the execution and recording of the Plat or any of the deeds for the Plaintiffs' respective properties. Notably, even the Affidavit of Estelle Capers, which was executed on August 11, 2020, does not state that she did not sign the Plat or deeds, nor does it indicate her intent when the Plat and Plaintiffs' deeds were executed. *See* Ex. 1, Pl. Amend. Comp. It simply states the Bailem family's intent. *Id.* Plaintiffs have also failed to put forth sufficient evidence to establish that John Ballam Road was not accepted by Charleston County. As such, TOMP is entitled to judgment as a matter of law on Plaintiffs' causes of action for declaratory judgment and quiet title.

II. Plaintiffs' Cause of Action for Adverse Possession to TOMP should be Dismissed as a Matter of Law.

The Plaintiffs' Third Cause of Action is a claim for adverse possession against TOMP. To establish a claim of adverse possession, the Plaintiffs must prove by clear and convincing evidence their possession of the subject property was continuous, hostile, actual, open, notorious, and

exclusive for the statutory period. See McDaniel v. Kendrick, 386 S.C. 437, 442, 688 S.E.2d 852, 855 (Ct. App. 2009) (citing All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 358 S.C. 209, 229, 595 S.E.2d 253, 265 (Ct. App. 2004)). However, “[a]dverse possession does not run against the state or its duly constituted political subdivisions.” Hilton Head Plantation Prop. Owners’ Ass’n v. Donald, 375 S.C. 220, 225, 651 S.E.2d 614, 617 (Ct. App. 2007) (quoting Davis v. Monteith, 289 S.C. 176, 179–80, 345 S.E.2d 724, 726 (1986)).

TOMP is a duly constituted political subdivision of the State of South Carolina. As such, Plaintiffs cannot assert a claim of adverse possession against TOMP in regards to John Ballam Road.

III. Plaintiffs’ Cause of Action for Inverse Condemnation against TOMP should be Dismissed as a Matter of Law.

The Plaintiffs’ Fourth Cause of Action is a claim for inverse condemnation against TOMP. To establish an inverse condemnation, a plaintiff must show: (1) an affirmative, positive, aggressive act on the part of the governmental entity, (2) a taking, and (3) the taking is for public use. Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76, 79 (2005). South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proven by affirmative, positive, aggressive acts by the governmental entity. Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557, 563 (2004).

TOMP was not involved in the creation or drafting of the Plat dedicating John Ballam Road for use by the public forever. Nor was TOMP involved in the acceptance of John Ballam Road as a public right-of-way. As such, Plaintiffs cannot show an affirmative, positive, aggressive act on the part of TOMP and claim for inverse condemnation fails.

IV. Plaintiffs' Claims are Barred by the Statute of Limitations under S.C. Code Ann. § 15-3-340.

TOMP is entitled to summary judgment because Plaintiffs' claims, if any, are barred by the statute of limitations pursuant to S.C. Code § 15-3-340. The statute of limitations begins to run at the time the cause of action accrues. Harvey v. S.C. Dep't. of Corr., 338 S.C. 500, 508, 527 S.E.2d 765, 769 (Ct. App. 2000) (citing Matthews v. City of Greenwood, 305 S.C. 267, 269, 407 S.E.2d 668, 669 (Ct. App. 1991)). "Thus, a particular cause of action accrues at the moment when the plaintiff has a legal right to sue on it." King v. James, 388 S.C. 16, 25-26, 694 S.E.2d 35, 40 (Ct. App. 2010).

"Statutes of limitations are not simply technicalities." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "One purpose of a statute of limitations is 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Id. (quoting McKinney v. CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)); see also Transp. Ins. Co. & Flagstar Corp. v. S. Carolina Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010); Logan v. Cherokee Landscaping & Grading Co., 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010).

Plaintiffs barred from pursuing this action pursuant to S.C. Code § 15-3-340, which provides as follows:

No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.

This statute is a statute of limitations upon an action for the recovery of any interest in real property and expressly gives good title. This statute requires the Plaintiffs to commence an action within ten years since the Plaintiffs, their ancestors, or predecessors were seized or possessed of

John Ballam Road. As discussed herein, dedication is perfected upon a property owner manifesting an intention to dedicate his property to public use and an express or implied public acceptance of the property offered for dedication. Mack, 320 S.C. 236 at 239, 464 S.E.2d 124 at 126.

Plaintiff Henry Bailem, IV commenced this action on February 23, 2023. The dedication of John Ballam Road was perfected well before February 23, 2013. The owners of John Ballam Road manifested their intent to dedicate the road for public use, at the latest, when the deeds to the Plaintiffs' properties were executed and referenced the Plat, in or around 1988. Charleston County formally accepted John Ballam Road into its maintenance system on August 16, 1994. Improvements were made to John Ballam Road by Charleston County in early 2002. *See* Dep. of W. Linkler, pp.: 48-51. As such, neither the Plaintiffs, their ancestors, predecessors, or grantors were seized or possessed of John Ballam Road within ten (10) years before the commencement of this action. Therefore, the Plaintiffs claims are barred by the statute of limitations contained in S.C. Code Ann. § 15-3-340 and should be dismissed.

V. Plaintiffs' Claims are Barred by the Doctrine of Laches.

Plaintiffs in this matter are barred from recovery under the equitable doctrine of laches. The doctrine of laches is defined as neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E. 2d 525, 527 (1988). Under this doctrine, if a party knowing his rights does not seasonably assert them, and by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. *See* Robinson et al. v. Estate of Harris, 388 S.C. 630, 698 S.E. 2d 222 (2010). In Robinson, the Court held that claimants of real property in an action to quiet title thirty-nine years after a conveyance was barred by the doctrine

of laches. The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Hallums, 296 S.C. at 198, 371 S.E. 2d at 527.

The undisputed facts in this case show that Plaintiffs, or their predecessors in title, have held title to their properties through deeds recorded with Charleston County Register of Deeds in or around 1988. These deeds make reference to the Plat which was recorded with the Charleston County Register of Deeds on October 24, 1986 in Plat Book BK at Page 135. Plaintiffs, or their predecessors in title, have held title to their properties with reference to the Plat containing the public dedication of John Ballam Road for approximately thirty-five years until this action was filed. Furthermore, Plaintiffs had actual notice that TOMP and Charleston County have treated John Ballam Road as a public right-of-way since at least when John Ballam Road was paved in early 2002.

Plaintiffs have delayed bringing a challenge to this public dedication for at least 20 years. The delay in now claiming that John Ballam Road is private is unreasonable under the circumstances. Plaintiffs have benefited from the utilization of public funds for improvements and maintenance to John Ballam Road and are now seeking to prejudice and disadvantage members of the public and other neighboring properties who have relied on the public record showing John Ballam Road as a public right-of-way. As such, Plaintiffs' claims should be barred under the doctrine of laches and, therefore, dismissed.

VI. Plaintiffs' Claims are Barred under the Doctrine of Equitable Estoppel.

Plaintiffs' claims in this matter are barred under the doctrine of equitable estoppel because at least some of the Plaintiffs either represented to Charleston County and TOMP that John Ballam Road was public when seeking improvements to the road, or did not raise any objections to John

Ballam Road being treated as a public right-of-way when it was paved by Charleston County or when the drainage ditches within the John Ballam Road 50' right-of-way were cleared.

The elements of equitable estoppel are: (1) conduct amounting to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention or expectation that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. Southern Dev. Land & Golf Co. v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993). “As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position.” Id.

The South Carolina Supreme Court in S. Ry. Co. v. Day, 140 S.C. 388, 138 S.E. 870, 873 (1926) further recognized that silence, under some circumstances, could amount to a false representation and concealment of material facts.

In this case, it is unclear whether the Plaintiffs requested for Charleston County to pave John Ballam Road; however, it is clear that they were aware the road was being paved and did not assert their purported ownership of John Ballam Road at that time. *See* Dep. of H. Bailem, p. 37:15-16 and Dep. of D. Jefferson, pp.: 83-86. Plaintiff Diane Jefferson testified that she did request that TOMP send crews to clean the ditch within the John Ballam Road 50' right-of-way. *See* Dep. of D. Jefferson, pp.: 90-97. TOMP and Charleston County, in reliance upon the public record, have made improvements to John Ballam Road under the belief that it is a public right-of-way. Now, more than twenty years after John Ballam Road was constructed using public funds, and since then has been maintained using public funds, the Plaintiffs are now asserting their ownership over John

Ballam Road. As such, the Plaintiffs should be barred from asserting this cause of action under the doctrine of equitable estoppel.

VII. In the alternative, TOMP is Entitled to Judgment as a Matter of Law on its Counterclaim of Adverse Possession.

The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time.” Jones v. Leagan, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009); cited in Taylor v. Heirs of William Taylor, 419 S.C. 639, 650, 799 S.E.2d 919, 924 (Ct. App. 2017). The statutory period for adverse possession is ten years in South Carolina. S.C. Code Ann. § 15-67-210. The party asserting adverse possession must show that they have met the elements by clear and convincing evidence. Jones, 384 S.C. at 10-11, 681 S.E.2d at 11; Taylor, 419 S.C. at 651, 799 S.E.2d at 924-25.

In Taylor, the Court of Appeals explained that “[t]o claim title by adverse possession, a party must show the extent of his possession even when entering under color of title. ... Color of title alone is not evidence of adverse possession, and ‘it does not follow that adverse possession can be proved by less evidence when the entry is under color of title than when it is not.’ ... However, color of title is evidence of the extent of the claim and should be considered with the other facts in the case.... Color of title need not be a deed; ‘[i]t is anything which shows the extent of [the] occupant's claim.’ ... ‘It is by no means necessary that the paper should be in the form of a deed. A bond or receipt would be sufficient.’ ... ‘The principle purpose of color of title in adverse possession proceedings is not to show actual grant of land or interest therein, but to designate [the] boundary of possessor’s claim.’” Taylor, 419 S.C. at 651, 799 S.E.2d at 925 (internal citations omitted).

Respondent TOMP’s claim of ownership to John Ballam Road is pursuant to the language contained in the Plat and Charleston County’s acceptance of the dedication through its Council’s

actions and improvements made to John Ballam Road. TOMP does not have a deed for John Ballam Road; however, it claims ownership of John Ballam Road under color of title.

For possession to be open and notorious, “the legal owner need not have actual knowledge the claimant is claiming property adversely, [but] the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it. Jones, 384 S.C. at 13-14, 681 S.E.2d at 13. “[A]cts of ownership of open land for purposes of adverse possession need not include actual residency or occupancy.” Id., at 14, 681 S.E.2d at 13. “Moreover, activities that do not involve the creation of permanent structures on the land can be sufficiently open and notorious as to put the legal owner on noticed that his land is being adversely possessed.” Taylor, 419 S.C. at 651, 799 S.E.2d at 925.

TOMP has owned and maintained John Ballam Road since it was annexed into the Town of Mount Pleasant in 1995. Although Charleston County paved John Ballam Road and made other improvements to the road in early 2002, John Ballam Road has been in the possession and control of TOMP. TOMP has taken several actions to maintain the road for use of the public, including removing attempts by the Plaintiffs to block access to the road. *See* Dep. of H. Bailem, pp.: 39:22-25; 40:1-5; 84:20-25; 85:1-13. TOMP has also performed drainage maintenance within the John Ballam Road 50’ right-of-way. *See* 30(b)(6) Dep. of Def. TOMP, pp.: 27-29.

For possession to be continuous, a party “claiming adverse possession must have personally held the property for ten years.” Jones, 384 S.C. at 15, 681 S.E.2d at 14 “Occasional and temporary use or occupation does not constitute adverse possession. However, the rule requiring continuity of possession does not mean the person in possession must be actually on the land during the whole of the statutory period.” Taylor, 419 S.C. at 651-52, 799 S.E.2d at 925. “To show the possession was hostile, the adverse claimant is required to show only that his possession

was actual, exclusive, open, notorious, and without the consent of the title owner.” Id. (citing Knox v. Bogan, 322 S.C. 64, 70, 472 S.E.2d 43, 47 (Ct. App. 1996)). “The claimant may establish hostile possession by showing he occupied the property without the title owner’s consent even if he occupied the property under the mistaken belief that it belonged to him...” Id.

As stated above, TOMP has continued to ensure that John Ballam Road was accessible to the public since annexation of the Plaintiffs’ properties in 1995. TOMP has removed attempts to block public access to John Ballam Road. TOMP has issued encroachment permits for utilities to be placed within the John Ballam Road 50’ right-of-way. Id. at pp.: 37:14-25; 38:1-22. Further, TOMP has been responsible for maintenance of John Ballam Road and has performed work on John Ballam Road using public funds. Id. at p.: 20:8-24 As such, if this Court determines that the Plaintiffs’ claims should not be otherwise dismissed, as argued herein, then TOMP is entitled to judgment as a matter of law on its counterclaim for adverse possession.

CONCLUSION

Based on the foregoing discussion and analysis, the Defendant Town of Mount Pleasant respectfully requests that the Court grant its motion for summary judgment and dismiss the Plaintiffs’ Amended Complaint with prejudice.

TOWN OF MOUNT PLEASANT

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May 27, 2025
 Mount Pleasant, South Carolina

Counsel for the Defendant Town of Mount Pleasant

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)
)

) CASE NO.: 2023-CP-10-00947
)

Henry Bailem, IV, Joseph Bailem, Sheila
Bailem, Diane Jefferson, Michael Jefferson,
Sr., Rashica Coakley, and Ann Bailey
Simmons,

Plaintiffs,

v.

**PLAINTIFFS' RESPONSE TO
DEFENDANT TOWN OF MOUNT
PLEASANT'S REQUESTS FOR
ADMISSION**

County of Charleston, Town of Mount
Pleasant, DRB Group South Carolina, LLC
f/k/a Dan Ryan Builders South Carolina,
LLC, Marie P. Howard, Lewis B. Howard,
Jr., Lanelle P. Johnson, William Bailem, Sr.,
X Syvier Lynn Johnson, Sonia Maria
Simmons, Kenneth Davis, Juanita Nelson,
Titus Howard, Myeisha Howard, James
Howard, And John Doe and Jane Doe,
fictitious names used herein to designate the
unknown heirs at law, distributes, and/or
devisees of all persons who are minors r
members of the Armed Forces of the United
States of America, as contemplated By the
Soldiers' and Sailors' Relief Act, 1940, as
Amended, and all persons entitled to claim
under and through any of them,

Defendants.

TO: Defendant Town of Mount Pleasant, by and through their attorneys of record, James I. Ward, IV and David G. Pagliarini.

PRELIMINARY STATEMENT

Plaintiffs Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson, Michael Jefferson, Sr., Rashica Coakley, and Ann Bailey Simmons ("Plaintiffs") have not, at this time, fully

completed their discovery and investigation in this action. All information contained herein is based solely upon such information and evidence as is presently available and known to Plaintiffs upon information and belief at this time. Further discovery, investigation, research and analysis may supply additional facts and meaning to currently known information. Plaintiffs reserve the right to amend any and all responses herein as additional facts are ascertained, legal research is completed, and analysis is undertaken. The responses herein are made in a good faith effort to supply as much information as is presently known to Plaintiffs.

GENERAL OBJECTIONS

1. Plaintiffs object to the requests that impose or seek to impose any requirement or discovery obligation greater than or different from those under Rule 36(a), SCRPC, the South Carolina Rules of Civil Procedure and the applicable Local Rules and Orders of the Court.
2. Plaintiffs object to the requests to the extent they seek disclosure of information protected under the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or immunity. Should any such disclosure by Plaintiffs occur, it is inadvertent and shall not constitute a waiver of any privilege or immunity.

Subject to and without waiving the foregoing objections, Plaintiffs provide the following responses:

RESPONSES

1. Admit that the Ballam Plat contains the following language regarding John Ballam Road:
“WE HEREBY DEDICATE THIS 50’ ROAD RIGHT OD WAY FOR USE OF THE
PUBLIC FOREVER.”

Response: Admit that the recorded plat showing 5 lots on John Ballam Road recorded

October 24, 1986 contains this language.

2. Admit that Henry Ballam, Rebecca Jefferson, and Estelle Capers were the owners of Lots 1 – 5 on the Ballam Plat when the Ballam Plat was recorded on October 24, 1986.

Response: Admit.

3. Admit that Henry Ballam, Rebecca Jefferson, and Estelle Capers signed the Ballam Plat.

Response: Deny that these individuals signed the plat that was recorded on October 24, 1986.

4. Admit that the Plaintiffs have relied on the Ballam Plat to take title to their respective properties.

Response: Admit that the Plaintiffs deeds refer to the plat recorded on October 24, 1986.

5. Admit that Charleston County Council accepted the public dedication of John Ballam Road on August 16, 1994.

Response: The Plaintiffs are not in a position to admit or deny what Charleston County did regarding acceptance of public dedication, so must deny it. Though the County purported to “accept” dedication, the owners did not request dedication, so there was no dedication to accept.

6. Admit that John Ballam Road was dedicated and accepted as a public right-of-way.

Response: Deny.

7. Admit that John Ballam Road was paved using public funds.

Response: The Plaintiffs do not know the source of the funds used by the County to pave the road, but presume they were public funds. The Plaintiffs were not given notice that the County would pave the road and did not agree to it.

8. Admit that Plaintiffs knew or became aware of the improvements to John Ballam Road using public funds on or before December 31, 2002.

Response: The Plaintiffs did not know that the County was going to pave the road. The County was on site to make repairs to the road that the County had damaged in the course

of maintaining the ditch, which the County was contractually obligated to maintain. The Plaintiffs, in agreeing to the repair of their road by damages done by the County, did not implicitly agree to the County's paving of the road or dedication of the road to the public.

9. Admit that Lots 1 – 5 on the Ballam Plat were annexed into the Town of Mount Pleasant on April 11, 1995.

Response: Admit consistent with the public records of the Town of Mt. Pleasant.

10. Admit that the Town of Mount Pleasant has been responsible for maintaining John Ballam Road since April 11, 1995.

Response: Deny.

11. Admit that the Plaintiffs have requested the Town of Mount Pleasant to complete maintenance to John Ballam Road, including but not limited to drainage ditches located within the John Ballam Road right-of-way, on or after October 1, 2017.

Response: Consistent with their deposition testimony, the Plaintiffs admit only that they requested the Town clear the ditches on the western side of John Ballam Road, nearest to their individual lots, based on the Town's collection of stormwater fees from them, not based on any public dedication of the road.

12. Admit that the Town of Mount Pleasant performed maintenance to John Ballam Road, including but not limited to drainage ditches located within John Ballam Road, between September 16, 2021 and November 13, 2021.

Response: The Plaintiffs cannot admit or deny these dates. The Plaintiffs, consistent with their deposition testimony, admit that the Town appeared during one period only to do ditch clearing work.

13. Admit that the Town of Mount Pleasant has removed fences and other items used by the Plaintiffs to attempt to block public access to John Ballam Road.

Response: Admit, consistent with the Plaintiffs' deposition testimony.

14. Admit that members of the public have used John Ballam Road since at least January 1, 2003.

Response: Deny that members of the public have used the road, to the extent certain individuals may have, with the owners' permission.

Respectfully submitted,

AUSTEN & GOWDER, LLC

/s/ W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr. (S.C. Bar #7895)
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Counsel for Defendant

May 16, 2025
Charleston, South Carolina

In the Matter of:

HENRY BAILEM, IV

VS.

**COUNTY OF CHARLESTON AND TOWN
OF MOUNT PLEASANT**

James G. Pennington

December 6, 2023



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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT

- - -

Henry Bailem, IV,	:	CASE NO.:
	:	2023-CP-10-00947
Plaintiff,	:	
	:	
vs.	:	
	:	
County of Charleston and Town of	:	
Mount Pleasant,	:	
	:	
Defendants.	:	

DEPOSITION OF JAMES G. PENNINGTON

DATE TAKEN: WEDNESDAY, DECEMBER 6, 2023
TIME BEGAN: 10:07 A.M.
TIME ENDED: 12:22 P.M.
LOCATION: LAW OFFICE OF ROBERT M. TURKEWITZ, LLC
768 ST. ANDREWS BOULEVARD
CHARLESTON, SOUTH CAROLINA 29407

REPORTED BY: DEIRDRE J. WEYER, RPR
SPECTRUM COURT REPORTING SERVICES
P.O. BOX 1296
MT. PLEASANT, SOUTH CAROLINA 29202

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Diane Jefferson
Diane Jefferson

I N D E X

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EXAMINATION

PAGE

By Mr. Turkewitz

5, 78

By Mr. Ward

38, 106

By Ms. Darnell

50, 108

By Mr. Ferrara

56

By Mr. Belle

77

By Mr. Knowles

82, 108

Certificate of Reporter

113

E X H I B I T S

EXHIBIT

DESCRIPTION

MARKED

1 Subpoena

5

2 Sample Engineering Billing Statement Dated
5/19/1986

10

3 Plat of Lands of John Bailem Estate
Recorded 3/6/1986

12

4 Plat

14

5 Plat

17

6 Subdivision Approval Application History
Sheet Dated 8/11/1986

24

7 Plat Dated 7/23/1986

27

8 Charleston County Council Letter Dated
10/10/1986

31

9 Agenda and Worksheet Dated 9/9/1986

33

~~9 Agenda and Worksheet Dated 9/9/1986~~~~33~~

1	E X H I B I T S (CONT'D)		
2	EXHIBIT	DESCRIPTION	MARKED
3	10	Collection of Color Photographs	37
4	11	Plat	45
5	12	Plat	47
6			
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2 JAMES G. PENNINGTON,
3 after having been first duly sworn, was
4 examined and testified as follows:

5 - - -
6 EXAMINATION
7 - - -

8 BY MR. TURKEWITZ:

9 Q Good morning, Mr. Pennington. How are you
10 today?

11 A Okay.

12 MR. TURKEWITZ: I'm going to go ahead and
13 introduce the Subpoena as Exhibit 1.

14 (Exhibit Number 1 was marked for
15 identification.)

16 BY MR. TURKEWITZ:

17 Q Mr. Pennington, good morning. We're here
18 today just to take your deposition in a case
19 involving a family, the Bailem family in
20 Mt. Pleasant. And they own property there and it's
21 relating to some -- your deposition is relating to
22 some plats that you did --

23 A Okay.

24 Q -- and maybe submitted to the county.

25 So I just handed you the Subpoena, and it
asked you to bring any and all documents that you

1 have relating to your work that you did on behalf of
2 the Bailem family. Do you -- do you see that? Do
3 you see that on the subpoena that --

4 A Yes, I do.

5 Q -- we requested that?

6 Okay. And I know you mentioned to me on
7 the phone that you had moved several times your
8 office and that you just don't have any documents
9 that -- a lot of documents got lost in that process,
10 so. And just if you can confirm again on the record
11 you don't have any documents at all relating to the
12 Bailem family?

13 A I have no documents at all related to the
14 Bailem family.

15 Q Okay. And the property, of course?

16 A And the property. I mean, well, yeah, the
17 property.

18 Q Yeah. As we're sitting here today, do you
19 have any recollection at all of doing work for the
20 Bailem family?

21 A No.

22 Q Okay. And we have here Mr. Henry Bailem,
23 who's one of the owners.

24 A Yes, sir.

25 Q And we have Diane Jefferson.

1 A Hello.

2 Q Diane, will you stand up?

3 So do you recognize her at all?

4 A No.

5 Q Okay. Just so I'll represent to you that
6 Diane Jefferson -- we'll show you some documents --
7 is the one who was dealing with this whole issue
8 throughout the entire time and had contracted with
9 you to do the work, okay. Does that ring a bell at
10 all?

11 A How old were you back then?

12 MS. JEFFERSON: In my 20s.

13 THE WITNESS: Oh, really? Wow. Well,
14 it's nice to see you again. I guess I saw you then.
15 I don't even know, but, you know.

16 BY MR. TURKEWITZ:

17 Q So just some background just -- I know
18 when we talked you mentioned that you've been deposed
19 numerous times in the past?

20 A I wouldn't say that many times, but, you
21 know. Do you want me to count them?

22 Let's see. Five.

23 Q Okay.

24 A I don't know.

25 Q Well, so you know that, you know, I'm

1 going to be asking you questions and you're under
2 oath and just, you know, all we ask is that you
3 answer the questions honestly and what do you recall.
4 If you don't recall, let me know that, okay?

5 A Okay.

6 Q In the deposition, I'll ask questions. If
7 you don't understand my question, let me know.

8 A Okay.

9 Q But if you answer, I'll assume that you
10 understood the question --

11 A Okay.

12 Q -- okay?

13 And the lawyers here, I'm going to ask
14 them all to identify themselves for the record
15 anyway?

16 A Okay.

17 Q But the lawyers here -- lawyers here
18 represent Charleston County and Mt. Pleasant
19 Township.

20 A Okay.

21 MR. TURKEWITZ: So if we could just go
22 around the table.

23 MR. WARD: Yeah. My name is James Ward
24 and I am counsel for the Town of Mt. Pleasant.

25 THE WITNESS: Oh, okay.

1 MR. BELLE: My name is Marc Belle, one of
2 the Assistant County Attorneys representing
3 Charleston County.

4 MS. DARNELL: I'm Brittney Darnell,
5 Assistant Count Attorney representing Charleston
6 County.

7 THE WITNESS: Wow.

8 MR. FERRARA: And I'm Bernie Ferrara, also
9 in the Charleston County Attorneys Office
10 representing Charleston County.

11 THE WITNESS: Okay.

12 MR. TURKEWITZ: So -- oh. I'm sorry.

13 MS. KNOWLES: Martina Knowles, paralegal
14 for Knowles Law Firm for the Plaintiffs.

15 MR. KNOWLES: And Brian Knowles. I
16 represent Henry Bailem as well.

17 THE WITNESS: Oh, okay.

18 MR. TURKEWITZ: So I'll ask you questions
19 and they'll also have an opportunity to ask you any
20 questions as well.

21 THE WITNESS: Okay.

22 BY MR. TURKEWITZ:

23 Q Okay. So just to start, do you have any
24 questions at all about this procedure?

25 A No.

1 Q Okay. I want to show you a document.

2 We're going to have it marked as Exhibit Number 2.

3 (Exhibit Number 2 was marked for
4 identification.)

5 BY MR. TURKEWITZ:

6 Q Okay. Mr. Pennington, do you see Exhibit
7 2?

8 A Yes, I do.

9 Q Okay. And it's -- do you recognize this
10 document?

11 A It's my handwriting but I don't recognize
12 it. I mean, it looks a little rough, but --

13 Q Right.

14 A -- yeah.

15 Q Okay. And it's dated May 19th, 1986?

16 A Wow.

17 Q And it's a billing statement from Sample
18 Engineering; is that correct?

19 A Sample Engineering.

20 Q And you worked for Sample Engineering at
21 that time?

22 A Yeah. It was Sample Engineering and
23 then -- yeah, then it changed to Sample Surveying
24 and...

25 Q Okay. And you mentioned that

1 Diane Jefferson must have been pretty young at this
2 time. How old were you at this time?

3 A Jeez. You asked me a hard question right
4 off the bat. Let's see --

5 Q Let me ask you, what is your birth date?

6 A '53.

7 Q Okay. 1953. So this would have had you
8 at, what, 33?

9 A Sounds like good math to me.

10 Q Okay. And this billing statement is to
11 Diane Jefferson; is that correct?

12 A Yes, it is.

13 Q Is that your handwriting, by the way?

14 A It looks like my handwriting, as sloppy as
15 it is, but it is.

16 Q Okay. And it says, "Survey of two lots
17 located off of Six Mile Road, Mt. Pleasant, Estate of
18 Harriet Bailem; is that right?

19 A That's correct.

20 Q And it's for \$375 and it mentions that it
21 was paid in full; is that correct?

22 A That's correct.

23 Q Okay. Do you have any recollection at all
24 of doing this work?

25 A No.

1 Q Okay. So this work involved doing a
2 survey, correct? It involved doing a survey of two
3 lots?

4 A That's correct.

5 Q Okay. And I'm going to show you -- we're
6 going to have it marked.

7 MR. TURKEWITZ: I don't have copies of it
8 because I just got it this morning. We'll have this
9 marked as Exhibit 3.

10 (Exhibit Number 3 was marked for
11 identification.)

12 BY MR. TURKEWITZ:

13 Q Okay. Mr. Pennington, do you recognize
14 Exhibit 3?

15 A No, I don't.

16 Q Okay. Does it have your name on it?

17 A Yes, it does.

18 Q Okay. What is it, if you could identify
19 it for the record based on --

20 A It looks like a plat of two lots.

21 Q Okay. And I'll represent to you that this
22 is the Bailem property?

23 A Uh-huh.

24 Q And it mentions -- you see two lots in
25 there.

1 Okay. And was this submitted -- was this
2 approved and submitted to Charleston County?

3 A Yes, it was.

4 Q Okay. Sitting here right now, do you know
5 or have any recollection of what was being -- you
6 were being requested to do or what the Bailem family
7 wanted to have done?

8 A No.

9 Q If you look at it, do you see that there
10 is -- that on this plat there is a, what looks
11 like --

12 A A leg.

13 Q -- a leg going to the second --

14 A Right.

15 Q -- property?

16 Okay. So looking at this, there's no
17 road -- there's no road appearing on the property
18 other than Six Mile Road? That's the only road on
19 there; is that correct?

20 A That's it.

21 Q Okay. And is this to your knowledge -- or
22 looking at this, would you say that this leg, as you
23 called it, is egress-ingress to one of the lots, the
24 back lot?

25 A Ingress-egress -- okay. Sure. All right.

1 Q Do you agree with that?

2 A Yes, it is. That is access for the second
3 lot.

4 Q Okay. All right. I'm going to show you
5 another plat. And what is the date of this plat that
6 we just looked at?

7 MR. KNOWLES: I handed it to --

8 MR. TURKEWITZ: Oh, I'm sorry.

9 We'll have copies made, by the way.

10 BY MR. TURKEWITZ:

11 Q What is the date of this plat?

12 A Let's see. Nineteen -- December 16th,
13 1985.

14 Q Okay. I'm going to show you another plat
15 that is marked Exhibit 4.

16 (Exhibit Number 4 was marked for
17 identification.)

18 BY MR. TURKEWITZ:

19 Q Not a very good copy, I'm afraid.

20 A Little fuzzy.

21 Q Yeah. But is there a -- is there a date
22 on this one? Do you see any date?

23 A No.

24 Q And it's hard to read. There is a date,
25 but it's just hard to read, isn't it?

1 A I don't -- there is one -- it looks like
2 there may be one. Can't read it.

3 Q And this was prepared by you; is that
4 correct?

5 A That's correct.

6 Q Okay. And let me ask you just for -- so
7 when you're doing these surveys and plats, I mean, do
8 you do it yourself? Do you have anyone working with
9 you?

10 A Today or back in --

11 Q Back in --

12 A -- 1985?

13 Q Yeah, back in 1985/'86.

14 A You always have a lot of men, you know, to
15 help you survey back in those days and somebody to
16 draw it, a draftsman.

17 Q Okay.

18 A I'm pretty sure I had at least that.

19 Q Okay. And your surveys in a situation
20 like this, would you be the one who would be dealing
21 directly with the customer?

22 A Typically, yes. It's a type of survey.
23 You know, if you're a mortgage company and you needed
24 a mortgage survey, it wouldn't have to come through
25 me. They could just call the office, Look, I need a

1 mortgage survey.

2 Q Right.

3 A I'm not sure.

4 Q Okay. Let me ask you, I'm going to
5 represent to you that the Bailem family wished to
6 divide this whole lot into five lots. And do you see
7 five lots on this survey?

8 A Yes, I do.

9 Q Okay. And do you see also -- we talked
10 about the leg for the ingress-egress. Do you see
11 that there's a leg for each one of these lots except
12 for the front lot?

13 A Yes.

14 Q Okay. And that was intended -- well, you
15 could certainly conclude that that's intended so that
16 all of these lots have access to Six Mile Road; is
17 that right?

18 A That's correct.

19 Q Okay. And then on the right side, it
20 says, "We hereby ded." What would that be?

21 A I'm not sure what that's...

22 Q Is that your handwriting?

23 A No.

24 Q Okay.

25 A Somebody else wrote that on later.

1 Q Okay.

2 A I'm not saying -- I just can tell that the
3 handwriting I'm not sure -- it's not my handwriting,
4 but, you know, so.

5 Q Okay. Would this -- is there any
6 indication that this was submitted to the county or
7 submitted for approval?

8 A I have no idea.

9 Q Okay. Let me show you the next one. And
10 I have -- I have a better -- I think the original is
11 the little bit better copy, but I'm going to go ahead
12 and have this one, which is a copy, marked as Exhibit
13 5.

14 (Exhibit Number 5 was marked for
15 identification.)

16 BY MR. TURKEWITZ:

17 Q Okay. So what I want you to do is if you
18 look at what's marked as Exhibit 5 and look at what
19 looks like to be an original, can you confirm that
20 these are the same documents?

21 A Well, you know, somebody's
22 handwritten -- has handwriting all over it.

23 Oh, yeah, yeah. Okay, I see it over here
24 too. Okay.

25 Q Okay.

1 A Yeah.

2 Q Can you identify what this document is?
3 I'll let you look on the original. It might be
4 easier to.

5 A I would just say offhand, you know, as a
6 surveyor, that somebody was planning on dividing some
7 property.

8 Q Okay. And the last survey that we saw,
9 there was -- there were legs going to --

10 A Right.

11 Q -- each one of the --

12 A Yeah.

13 Q But here there's -- it looks like there's
14 a 50-foot egress easement. Do you see that?

15 A Yes.

16 Q Do you remember doing any of this? Does
17 this refresh your recollection at all?

18 A No.

19 Q Okay. Are these -- is the handwriting at
20 all -- does that at all look familiar to you? Do you
21 recognize that?

22 A No.

23 Q Okay. But this was prepared by you, was
24 it not?

25 A Yes.

1 Q Okay. And I want you to look at the
2 bottom right. There's some language there.

3 A Okay.

4 Q Do you see that language on the bottom
5 right?

6 A Bottom right. Okay.

7 Q What does that say?

8 A Let's see. "I hereby dedicate the 20-foot
9 ingress-egress easement over and" -- wait a
10 minute -- "easement over in" -- looks like "property
11 to be" -- "to the use of the property owners and
12 their heirs and assigns guarantee as maintenance of
13 said ingress-egress easement in which may or may not
14 change either in size or location without expressed
15 written consent of County Council. Approval of this
16 plat in no way obligates the County of Charleston to
17 accept any easement shown here for continued
18 maintenance."

19 Q Okay. Is that -- is that your handwriting
20 on there?

21 A No. That would be a draftsman.

22 Q A draftsman would have written that?

23 Okay. So this -- so is it fair to say that the
24 intent of this when it was written was to dedicate
25 the easement, basically, the ingress-egress easement

1 to the property owners?

2 A Yeah. That's what it says.

3 Q To the use of the property owners?

4 A Yeah.

5 Q Okay. And if you look down below, there's
6 signature lines. Do you see that?

7 A I see three lines.

8 Q If you look, there's actually a fourth
9 down at the very bottom of that.

10 A Oh.

11 Q Do you see that?

12 A Yeah, I see the name, not a line actually,
13 but, you know.

14 Q Right. And it's hard to see, but do you
15 see there's some indication that there are signatures
16 there?

17 A There are.

18 Q Okay. Can you read those signatures?

19 A Oh, the signatures? Not really.

20 Q Let me -- I have a magnifying glass here
21 if you want to use it to --

22 A No, I don't need a magnifying glass. I
23 mean, there's a faint outline, very faint, of
24 something there.

25 Q Okay. Something there, but do

1 you -- looking at it, does it appear to be
2 that -- does it appear to be letters to you?

3 A It's really hard to tell.

4 Q But those are signature lines, correct?

5 A Yes.

6 Q Okay. And there is some -- there is
7 some -- something there?

8 A There's something there.

9 Q Okay. Let me just look at it real quick.
10 All right. I think you should look at it
11 with the light. That might help.

12 A Seems like there could be a specialist
13 that could do this. I mean, I'm a surveyor not a --

14 Q You can hold it if you want.

15 A Huh?

16 Q You can hold this if you want.

17 A There may be some lines in there. I'm not
18 positive.

19 Q Okay. Is it possible that those are
20 signatures based on what you're looking at?

21 A It could be. I don't know what it is.

22 Q Okay. Now, when you talk about easements
23 or ingress-egress easements, what's the difference
24 between a easement that's dedicated to property
25 owners that's a private easement and a public

1 easement?

2 A Well, a private easement, I would say, is
3 private, that property owners own it, and the public
4 is public and the public owns it.

5 Q Okay. Have you been involved in doing
6 surveys where one's -- where a survey is for a
7 private easement and a survey is for a public
8 easement?

9 A Sure.

10 Q Okay. What's involved? What's the
11 procedure for that?

12 A Depending on which county you were talking
13 about and the procedures, you would have to put a
14 dedication statement and then have the person sign
15 it.

16 Q Okay. All right. And, I mean, do you do
17 that personally yourself, put those statements
18 together and have them sign it?

19 A It's requested by the developer or, you
20 know, the -- or whoever the entity, the controlling
21 authority is, the county or city or whatever it may
22 be.

23 Q Okay. And looking at this, I mean, is it
24 clear to you that the property owners wanted it to be
25 a private easement?

1 A Well, that's what it -- yeah, it says
2 there "private," right. That's a private easement.

3 Q Okay. And if you were to want to know,
4 like, what the intent was, you would -- you would go
5 to the owners and they could also tell you what was
6 the intent; is that correct?

7 A Yes. The owner would tell me what they
8 wanted to do, that's correct.

9 Q Okay. So in this situation, then, you
10 were dealing with Diane Jefferson, she would have
11 told you that this was intended to be a private
12 easement; is that correct?

13 A Sure.

14 Q Okay. Keep it together.

15 MR. TURKEWITZ: Did you guys want to see
16 the original?

17 MR. FERRARA: Yeah.

18 BY MR. TURKEWITZ:

19 Q And with regard to the procedure for
20 dedication of something being a private or a public
21 easement, that involves going to the county for
22 Charleston County?

23 A For Charleston County, yeah, all easements
24 have to be approved by Charleston County.

25 Q Okay. And it gets -- does it ultimately

1 get approved by Charleston County Council?

2 A It has to have their stamp on here
3 approving it.

4 Q Okay. All right. So let me show
5 you -- I'm going to go ahead and have this marked as
6 Exhibit -- well, actually, before we do that.

7 MR. TURKEWITZ: We'll have that marked as
8 Exhibit 6.

9 (Exhibit Number 6 was marked for
10 identification.)

11 BY MR. TURKEWITZ:

12 Q Mr. Pennington, I just handed to you
13 Exhibit 6. Do you recognize that document?

14 A Not at all.

15 Q Okay. It says on the top, "Subdivision
16 Approval Application History Sheet." Do you see
17 that?

18 A Yeah.

19 Q Okay. And this is not anything that you
20 recognize; is that correct?

21 A No.

22 Q Okay. I just wanted to know. Have you
23 ever submitted any kind of application for approval
24 of a plat or a subdivision?

25 A Many, many, many times.

1 Q I mean, do you recognize that document as
2 being that?

3 A No. This is very odd-looking, but I don't
4 know what was going on back then. I don't know.
5 This is the document then, I don't know.

6 Q It says, "The applicant,
7 Mr. and Mrs. Michael Jefferson." Do you see that?

8 A Yes.

9 Q Okay. And it's for the John Bailem
10 Estates?

11 A Okay.

12 Q All right.

13 Let me show you what's been marked
14 as -- before we do that, what happens if you submit a
15 plat for approval of a subdivision and there's an
16 easement and the easement says on the plat that it's
17 for use of the public but the county basically
18 approves it's only for private use of the owners
19 only? What happens -- so that situation, do you have
20 a -- in that situation, is the right-of-way going to
21 be a private easement if it's not approved by the
22 county?

23 A I don't quite understand the question.

24 Q Yeah. Let's say there was -- let's say
25 that there was a request made and on the survey it's

1 requesting that the plat be -- or that a
2 right-of-way, ingress-egress right-of-way, be for the
3 benefit of the public, okay?

4 A Okay.

5 Q That would be a public easement or at
6 least a request for a public easement on the plat,
7 right?

8 A Right.

9 Q And if the county basically only approves
10 it as a private easement, then is that a -- is it a
11 private easement thereafter? I mean, it's not -- if
12 it's not approved to be a public easement, then the
13 county is denying or not accepting it as a public
14 easement; is that correct?

15 A Yeah, the county has to accept it and
16 approve the plat.

17 Q Okay.

18 A Whatever verbiage is on there.

19 Q Okay. Well, they -- it's what they
20 approve, though? It's what the county is approving
21 at the end of the day?

22 A They have to approve the plat or it can't
23 get recorded.

24 Q Right. And they have to approve it
25 as -- if they don't approve it as a public easement,

1 only approve it as a private easement, then it is a
2 private easement; is that right? Would you agree
3 with that?

4 A I'm not quite sure what you're saying.

5 Q Well, we can look at the documents and
6 maybe -- let me ask you, are you -- do you consider
7 yourself an expert on that issue of something being a
8 private easement versus being a public easement?

9 A No.

10 Q Okay.

11 MR. TURKEWITZ: Let's go ahead and have
12 this marked as Exhibit 7.

13 (Exhibit Number 7 was marked for
14 identification.)

15 BY MR. TURKEWITZ:

16 Q Mr. Pennington, I've just handed you
17 what's been marked as Exhibit 7.

18 A Okay.

19 Q Do you recognize this document?

20 A No.

21 Q Well, this -- let me ask you, is this a
22 plat that's dated July 23, 1986, prepared by you?

23 A Let's see. Yes.

24 Q Okay. And this plat shows that it was
25 submitted to the county, is that correct?

1 A That's correct.

2 Q Okay. And it says on here -- it shows the
3 five lots; is that right?

4 A Yes.

5 Q And it shows the right-of-way --
6 ingress-egress right-of-way; is that correct?

7 A That's correct.

8 Q Let me ask you, what do you recall? Do
9 you recall anything about this being prepared and
10 being signed by the owners?

11 A No.

12 Q Okay. There are three signatures on the
13 right. Do you see it?

14 A Yes.

15 Q Do you have any recollection at all
16 whatsoever of those individuals signing it?

17 A No.

18 Q Okay. One is Henry Bailem. Another
19 person is Rebecca Jefferson. The other person is
20 Estelle Capers. Do you see that?

21 A I see the three names.

22 Q Okay. And it says on there in the
23 dedication, "We hereby dedicate this 50-foot road
24 right-of-way for the use of the public forever. We
25 hereby dedicate this 20-foot drainage easement to the

1 use of the public forever. The approval of this plat
2 in no way obligates the County of Charleston to
3 accept the easement for maintenance or construction."

4 Do you see that?

5 A Yes, I do.

6 Q Okay. Who wrote that language there?

7 A I don't know.

8 Q Okay. And you say you have no
9 recollection whatsoever of the signing of this or of
10 the -- talking to any individuals?

11 A (Shakes head.)

12 COURT REPORTER: Was that a yes or a no?

13 THE WITNESS: I said no. I'm sorry.

14 BY MR. TURKEWITZ:

15 Q Okay. So it mentions also that the final
16 plat was approved on October 7th, 1986. Do you see
17 that?

18 A I see that.

19 Q Okay. And is it clear to you that the
20 property owners here wanted to have ingress-egress to
21 their lots instead of having the legs going to Six
22 Mile Road?

23 A It looks like a better design to me than
24 having a bunch of legs --

25 Q Okay.

1 A -- yeah.

2 Q And do you remember, were you the one who
3 put the -- the markers on the property lines or the
4 corners of the property?

5 A Was I the one physically to set these
6 property corners?

7 Q Uh-huh.

8 A I have no idea.

9 Q Okay. I mean, normally, are you the one
10 who does that when you're doing a survey?

11 A Well, you can have a field crew that, you
12 know, assists you. No, I can't tell you. Today?
13 Today, no. We have field crews.

14 Q Field crews that do that?

15 A Yeah.

16 Q Okay. Okay. And each lot has the acreage
17 listed; is that right?

18 A That's correct.

19 Q Okay. Well, let me ask you, if a roadway
20 is a public roadway, do the owners get taxed on
21 that -- on that roadway or is that not taxed?

22 A I have no idea.

23 Q Okay. You mentioned you're not an expert
24 on those -- on that area?

25 A No.

1 Q Okay. And would the acreage on there, if
2 it was a -- if it was a public roadway, the acreage
3 on there would -- that's listed would not include the
4 roadway; is that right?

5 A On the particular drawing, the acreage
6 does not include the roadway. The roadway has its
7 own acreage.

8 Q Okay.

9 A Each lot has its acreage and the road has
10 an acreage.

11 MR. TURKEWITZ: We'll have copies of this
12 made.

13 BY MR. TURKEWITZ:

14 Q Okay. So, sir, we were talking about the
15 approved final plat date was October 7, 1986; is that
16 right?

17 A That's what it says. That's right.

18 MR. TURKEWITZ: Let's go ahead and have
19 this marked as Exhibit 8.

20 (Exhibit Number 8 was marked for
21 identification.)

22 BY MR. TURKEWITZ:

23 Q Sir, you've been handed Exhibit 8. Can
24 you -- can you identify that document?

25 A No.

1 Q All right. Basically, looking at the
2 document on its face, you agree that this is a
3 October 10, 1986, Charleston County Council letter to
4 you?

5 A That's what it appears, yes.

6 Q Okay. And states on here -- let me go
7 around here. I apologize.

8 It states on here -- move around here.
9 "Dear Mr. Pennington, County Council at their meeting
10 held on October 7 granted approval with the granting
11 of a variance from Section 111 E-12, which would
12 allow the creation of four lots that do not front on
13 a state- or county-maintained road. And with the
14 dedication 20-foot-wide drainage easement as shown on
15 the plat, this plat represents a division of estate
16 property and a 50-foot right-of-way will be dedicated
17 to the property owners."

18 Did I read that correctly?

19 A Yes, you did.

20 Q Okay. So is it clear that the county is
21 only approving this plat to be dedicated to the
22 property owners?

23 A That's what it says.

24 Q Okay.

25 MR. KNOWLES: Do you want me to take it

1 and get copies? Take five minutes.

2 MR. TURKEWITZ: We can continue. If y'all
3 want copies now we can do it, or we can take a break
4 when I'm done questioning.

5 MS. HAUCK: I think I might have made
6 copies of that letter.

7 MR. TURKEWITZ: Okay.

8 THE WITNESS: I don't need a copy. I've
9 seen the letter.

10 BY MR. TURKEWITZ:

11 Q Sir, I want to show you what's been
12 marked -- will be marked as Exhibit 9.

13 (Exhibit Number 9 was marked for
14 identification.)

15 BY MR. TURKEWITZ:

16 Q Okay, sir, Exhibit 9, do you see at the
17 top of the first page Agenda and Worksheet, September
18 9, 1986?

19 A Yes.

20 Q Okay. And it states that planning staff
21 and Public Works recommend approval with the granting
22 of a variance -- well, strike that. Let me just
23 start all over.

24 It states on the top that it's relating to
25 lands of John Bailem Estate; is that right?

1 A That's correct.

2 Q Okay. And there's five lots with a total
3 acreage of 9.03 acres; is that right?

4 A That's right.

5 Q Okay. And applicant is you,
6 James Pennington?

7 A That's correct.

8 Q Okay. And it states, "Planning staff and
9 Public Works recommend approval with the granting of
10 a variance from Section 111 E-12 which will allow the
11 creation of four lots that do not front on a state-
12 or county-maintained road and with the dedication of
13 a 20-foot-wide drainage easement as shown on the
14 plat. This plat represents a division of estate
15 property and a 50-foot right-of-way will be dedicated
16 to the property owners."

17 Did I read that correctly?

18 A That's correct.

19 Q Okay. And the board minutes, it also
20 identifies some other properties as well on the
21 second page?

22 A Yes, it does.

23 Q Okay.

24 So I don't know if you know the answer to
25 this, but what would take precedent for the

1 right-of-way? Would it be -- in other words, what
2 would make it a public easement? Would it be the
3 County Council approval or what's on the plat?

4 A I have no idea.

5 Q All right. Sir, I don't -- did you have
6 any involvement at all with any other properties
7 around this subdivision?

8 A I don't think so. I don't remember any
9 right offhand. I'd have to check and -- I would say
10 no right offhand, but we've surveyed a lot of
11 property. But I'm not positive.

12 Q Okay. If -- if Ms. Jefferson indicates
13 that the land was always intended to be a private
14 easement and was never intended by the owners to be a
15 public easement, will you feel that, you know,
16 that -- would you -- would you agree that if that's
17 the case, then this was a mistake on here dedicating
18 it to --

19 A I knew that was coming. I have no idea.

20 Q Okay. Would Ms. Jefferson be in the best
21 position to know what the property owners wanted?

22 MR. WARD: Object to the form.

23 THE WITNESS: Yeah, that's -- I have no
24 idea what they would -- what their decisions or
25 anything would have been. I don't know.

1 BY MR. TURKEWITZ:

2 Q Well, certainly the customer is the one
3 who knows what they want, right?

4 A Right. If the developer asked me to do a
5 certain job for them, they tell me how they want it
6 done, then that's what I do, right.

7 Q Okay.

8 MR. TURKEWITZ: Let's just take a brief
9 break and then I may not have any other questions,
10 and then the other lawyers will have an opportunity
11 to ask you questions.

12 (A break was taken from 10:46 a.m. to
13 10:49 a.m.)

14 BY MR. TURKEWITZ:

15 Q Mr. Pennington, we've looked at the plat
16 that was marked as Exhibit 7. That was the one that
17 was submitted and approved. How could it be
18 approved -- have you ever done a plat that was
19 submitted for a public easement or at least that said
20 "public easement" on the plat and it was only
21 approved for -- as a private easement?

22 A Not that I can remember, no.

23 Q Okay. Do you have any idea why it was not
24 approved as a private -- as a public easement?

25 A I have no idea.

1 Q Okay. Is it possible because the property
2 owners only wanted it to be a private easement?

3 A I have no idea.

4 Q Okay. Do you recall at the time that you
5 did your survey, was there a road there, that
6 right-of-way?

7 A I don't recall.

8 MR. TURKEWITZ: Let's go ahead and have
9 this marked as Exhibit 10.

10 (Exhibit Number 10 was marked for
11 identification.)

12 BY MR. TURKEWITZ:

13 Q Sir, you've been handed Exhibit 10. These
14 are -- I'll represent to you these are pictures of
15 what the area and -- what the area looked like where
16 the right-of-way is located. Does that refresh your
17 recollection of what that area --

18 A Oh, no.

19 Q -- looked like at the time?

20 A No, it doesn't.

21 Q Obviously, there's no road there; is that
22 correct?

23 A There's no road here, no.

24 Q Do you know when a road was actually put
25 in?

1 A No.

2 Q Okay. Sir, I thank you for your time --

3 A Okay.

4 Q -- and I don't have any other questions,
5 but these gentlemen and the lady might have
6 questions --

7 A Oh.

8 Q -- for you.

9 MR. WARD: Do you want me to go?

10 THE WITNESS: They're going to take turns.

11 MR. WARD: Yes.

12 - - -
13 EXAMINATION
14 - - -

14 BY MR. WARD:

15 Q Again, I'm James Ward, so I represent the
16 Town of Mt. Pleasant, and I appreciate you being here
17 as well. Having done real estate for a little while,
18 I've seen your name a lot, so it's good to put a face
19 with the name.

20 A The other day somebody popped up on a
21 mortgage plat that we did back in 1885 and they had
22 been using that same mortgage plat with all these
23 conveyances.

24 Q Right.

25 A I think it's time to update it.

1 Q Probably so.

2 Okay. So how long have you been a
3 surveyor?

4 A Since '85.

5 Q Since '85. So you were -- early on when
6 you drafted --

7 A Right.

8 Q -- these, you were fairly early on in your
9 career?

10 A Yes.

11 Q Okay. You still work as a surveyor?

12 A Yes.

13 Q Okay. What -- what licenses do you
14 currently hold and did you hold at the time of when
15 these plats that you represented --

16 A Licensed land surveyor.

17 Q Licensed land surveyor? And still that's
18 your current license now?

19 A Yes.

20 Q Okay. As part of that license, do you
21 have to go through continuing education and --

22 A Yes, I did.

23 Q -- stuff like that? Okay.

24 A I'm semi-retired. My son has taken over
25 the business and does it all, so.

1 Q Understood. And in preparation for
2 today's depositions, did you meet with the
3 Plaintiff's counsel? Did you discuss this prior to
4 today's deposition?

5 A No.

6 Q Okay. And have you been -- did you go out
7 to the property prior to today's deposition --

8 A No.

9 Q -- recently?

10 Do you recall the last time you were at
11 this property?

12 A No, I don't.

13 Q Okay. And are you being paid today for
14 being here other than the \$25 that's required by law?

15 A That's it.

16 Q Okay. All right. And --

17 A McDonald's Happy Meal.

18 Q I'm going to go -- if you don't mind, I'll
19 go through these and --

20 A Okay.

21 Q -- touch on them and present you with some
22 of the exhibits you've already been presented with
23 and I'm going to present you with a couple more.
24 We'll start with -- I'm sorry. I'm going to have to
25 stand up just to...

1 THE WITNESS: I'm a little embarrassed
2 that y'all have a bigger file than I had, but it just
3 got lost over time. Today, everybody has to have a
4 file, computer files, CAD files, you know.

5 BY MR. WARD:

6 Q Okay. I'm going to start with what has
7 been marked as Exhibit 4 that you were presented with
8 earlier. And the date, I think you said earlier, was
9 a little bit unclear to see. But based on your
10 review of this plat right now, can you tell if this
11 plat was recorded or was approved by the county?

12 A No, it wasn't.

13 Q Okay. And then the -- this -- I think you
14 testified to this earlier, but this signature block
15 that says, "We hereby ded," that was not drafted by
16 you and is it signed?

17 A No.

18 Q And then the next I'm going to go to what
19 has been already marked as Exhibit 5. And again, you
20 testified that this was a plat dated -- let me find
21 the date.

22 A I can't read it.

23 Q Can you tell what date this plat is?

24 A No.

25 Q Okay. And there's some language at the

1 very top left of this plat that says, "void." Did
2 you write that or do you know who wrote that?

3 A I have no idea.

4 Q Does that look like your handwriting?

5 A No.

6 Q Okay. Again, was this plat, can you tell
7 by looking at it now, was this recorded with
8 the -- with Charleston County?

9 A No. This is something rough.

10 Q Okay.

11 A This is a rough.

12 Q So this is a rough draft of the --

13 A Right.

14 Q -- of the plat?

15 And you gave some testimony a little bit
16 about there potentially being a signature under this
17 dedication language in the bottom right corner. Do
18 you know whose signature that is? Can you identify
19 it --

20 A No.

21 Q -- if there is a signature?

22 A Not at all.

23 Q Okay. And then do you know if the
24 signatures of the persons who own this property are
25 on this dedication language?

1 A I have no idea.

2 Q Okay. Go now to -- now we'll go to what
3 has already been marked as Exhibit 7. Based on your
4 review of this plat, was this plat recorded with the
5 Charleston County register of deed?

6 A Yes, it was.

7 Q Okay. And was the plat approved and
8 signed by -- looks like the Charleston County Council
9 as well as the Charleston County Planning Board?

10 A Yes.

11 Q And you can also see up here on the right
12 under the dedication language, that was signed by
13 what appears to be the property owners or what would
14 be the property owners based on your review, correct?

15 A That's what it looks like.

16 Q Okay.

17 MR. KNOWLES: Object to the form on that
18 last question.

19 BY MR. WARD:

20 Q Now, based on your review of this plat,
21 Number 7, can you tell if there is other property
22 owners that may could use what's marked as
23 John Bailem Road 50-foot right-of-way as access to
24 Six Mile Road?

25 A Do you want my opinion? I just don't

1 know.

2 Q Let me rephrase the question. There are
3 other properties based on your review of this plat
4 that --

5 A Right.

6 Q -- about John Bailem Road, correct?

7 A Yes, there are.

8 Q Okay. And having been a surveyor for as
9 long as you have, would it be reasonable for other
10 surveyors who survey property in this area to rely on
11 this plat that's been recorded with the Charleston
12 County Register of Deeds in preparing subsequent
13 plats for other properties in this area?

14 MR. FERRARA: Objection.

15 BY MR. WARD:

16 Q You can answer.

17 A Oh. That's what I would do. I would get
18 all the plats of record that surround the piece of
19 property that I'm surveying and use it as a
20 reference.

21 Q Okay. I've got a couple plats. My plats
22 are not as big as these. So if you have trouble
23 reading them, let me know.

24 (A discussion was held off the record
25 regarding the marking of the exhibits.)

1 (Exhibit Number 11 was marked for
2 identification.)

3 BY MR. WARD:

4 Q Okay. Do you recognize this plat that's
5 in front of you?

6 A No, I don't.

7 Q But you recognize it is a plat of lands
8 owned by McAstor McManus & McAstor McManus, Junior?

9 A That's what the title says.

10 Q Okay. On this you would see that there
11 is -- again, it's very difficult to read. But on the
12 very north of the properties it says, "John Bailem
13 Road, 50-foot right-of-way. And then it's, again,
14 very tiny, so if you need a magnifying glass, let me
15 know. But there is a reference to a plat book next
16 to it as well; is that correct?

17 A That's correct.

18 Q And that reference is to Exhibit 7?

19 A That's correct.

20 Q Okay. And that plat states that
21 John Bailem Road is a public right-of-way, correct?

22 A This says -- it doesn't state. It says
23 50-foot right-of-way.

24 Q Okay. I guess my, I guess, question is
25 based on your review of this plat as being a

1 surveyor, if it references what's already been marked
2 as Exhibit 7, would you come to the determination
3 that this is a public right-of-way, that John Bailem
4 Road is a public right-of-way if you were to review
5 that plat --

6 MR. TURKEWITZ: Objection.

7 MR. KNOWLES: Objection.

8 MR. TURKEWITZ: Double objection.

9 BY MR. WARD:

10 Q You can answer.

11 A I'm confused about -- you want my opinion,
12 so I can't -- I really don't know. I'm not quite
13 sure what you're asking me. It is your -- are you
14 asking me --

15 Q I'm asking you if you were to -- if you
16 were just to review this plat that's been marked as
17 Exhibit 11 which you've previously testified
18 references what's already been marked as Exhibit 7,
19 would you come to the determination that that is a
20 public right-of-way, that John Bailem Road is a
21 public right-of-way?

22 MR. TURKEWITZ: Object to the form.

23 THE WITNESS: Oh. I would say that
24 looking at this plat, the only access they have to a
25 road is John Bailem Road --

1 BY MR. WARD:

2 Q -- okay.

3 A These lots.

4 Q Okay.

5 A There's no other road on this except for
6 John Bailem Road on this plat.

7 Q I've got one.

8 A There's one down here, though. What is
9 that? I can't hardly see it. Mc-something.

10 Q Okay. We'll mark that as Exhibit 11.

11 (Exhibit Number 12 was marked for
12 identification.)

13 THE WITNESS: All I'm doing is reading
14 what's on the plat. You know, I don't know. It
15 says, "McManus Road unapproved" on the northeast side
16 of the property.

17 BY MR. WARD:

18 Q Okay. So there may be another road there
19 but you can't --

20 A Or at least one of the lot -- or two of
21 the lots there's some kind of field road or
22 something. I don't know.

23 Q And that states -- but you can't tell
24 whether that's a public or a private road, correct?

25 A No.

1 Q Okay. So I'll move on to number 12.
2 Should be that one right there.

3 A Okay.

4 MR. TURKEWITZ: Where were you referring
5 to, by the way?

6 MR. WARD: Right there.

7 MR. TURKEWITZ: Where is that statement,
8 though, "McManus road unapproved"?

9 MR. WARD: It's in those little lines.
10 I'm sorry. I don't mean to answer.

11 MR. TURKEWITZ: Oh, okay.

12 BY MR. WARD:

13 Q Okay. So I have before you another plat
14 that's been marked as Exhibit 12. Based on your
15 review of that, does that look like a plat of some
16 easements on -- on the properties including the five
17 subdivided properties that we've been discussing that
18 are the subject of this lawsuit?

19 A I think you're asking me is this -- is
20 this easement the same as this easement. Is that
21 what you're asking?

22 Q No, sir. I'm asking you is this a plat of
23 utility easements for --

24 A Utility easements, okay.

25 Q -- for -- for the properties that are the

1 subject of this lawsuit? So for the five subdivided
2 properties, is that what that appears to be?

3 A It's what the title has. It's a plat of
4 utilities easements.

5 Q Okay. You may need the magnifying glass,
6 but right above the properties of Estelle Bailem, can
7 you see, does that say, "John Bailem Road public
8 50-foot right-of-way"?

9 A Oh, I see. I've got it upside down.
10 Okay.

11 Q No, I think you had right-side up.

12 A Well, I mean I was --

13 Q Oh, yes, yes, yes, yes. Correct, yes,
14 sir.

15 A Okay. All right. Gotcha. That's what
16 was throwing me. Okay. So, okay. Could you ask
17 your question again? I'm sorry. I just...

18 Q Right there above the five Bailem
19 properties, you'll see it says, "John Bailem Road
20 public 50-foot right-of-way." Is that -- is that
21 what that states?

22 A Yes, it does.

23 Q And does that reference -- it references a
24 Planning Board number, but is that the same Planning
25 Board number that's on the -- what's been marked as

1 Exhibit 7?

2 MR. TURKEWITZ: Objection.

3 THE WITNESS: It looks like two-nine,
4 sure.

5 BY MR. WARD:

6 Q Okay. And again, based on your review of
7 this plat, would you come to the determination that
8 John Bailem Road is a public right-of-way?

9 MR. KNOWLES: Objection.

10 MR. TURKEWITZ: Objection.

11 THE WITNESS: I don't know.

12 BY MR. WARD:

13 Q Okay. One more question. I will refer
14 back to what's been marked as Exhibit 10, the
15 pictures. Can you tell based on those pictures that
16 that is the property in question in this lawsuit?

17 A No.

18 Q And you don't recognize those pictures at
19 all as being the property of John Bailem?

20 A No.

21 Q Okay. That is all the questions I have.

22 - - -
EXAMINATION
23 - - -

24 BY MS. DARNELL:

25 Q Okay, Mr. Pennington, what types of

1 services does a land surveyor provide, just
2 generally?

3 A Generally, well, they do boundary surveys,
4 elevation certificates, state property corners,
5 property lines, anything pertaining to land
6 surveying.

7 Q Okay. Over your career, how many surveys
8 do you think you've done?

9 A Oh, man. I really don't know.

10 Q Okay. Do you have an idea of how many
11 plats you may have drafted?

12 A Me personally, I don't draft the plats. I
13 do all the calculations from this day --

14 Q Okay.

15 A -- on. And I would say -- what was the
16 question again?

17 Q About how many plats you may have drafted
18 through --

19 A How many plats have I drafted. I have no
20 idea. I could probably sit down and try to figure it
21 out, some kind of average or something, but.

22 Q Okay. Do you think you would say it was
23 more than ten, hundreds?

24 A Oh, it would be thousands.

25 Q Thousands?

1 A Yeah.

2 Q All right. You mentioned that you have a
3 draftsman that normally drafted the actual plat.

4 A Right.

5 Q Do you have any recollection of who your
6 draftsman may have been at that time?

7 A No.

8 Q No? Okay. What do surveyors rely on when
9 conducting surveys and preparing plats?

10 A Field -- anything in the field, the
11 property corners, plats of records, deeds, the
12 adjoining plats of record.

13 Q Okay. And who determines what is depicted
14 on the plat whenever you go out to survey? Who
15 determines what they want depicted on the plat?

16 A The owner of the property.

17 Q Okay. And do they also determine how to
18 subdivide the property?

19 A Yes.

20 Q All right. And do they determine where to
21 place new easements on the property as well?

22 A That's correct:

23 Q Okay. What is the purpose of a dedication
24 statement on a plat?

25 A It establishes the -- the type of -- the

1 roadway. It established where the road's going to
2 be, where the -- the positioning of the road.

3 Q Do all plats contain a dedication
4 statement?

5 A For Charleston County, let's see. Yes.

6 Q They do. Okay. So would a party need to
7 request a dedication statement be put on a plat at
8 all or they would --

9 A Actually, I don't even think it's legal
10 to -- I mean, it happens, but you're not supposed to
11 go out and subdivide a piece of property without
12 access. You have to have access.

13 Q And do surveyors and other real estate
14 professionals rely on recorded plats?

15 A Yes.

16 Q How do they rely on those recorded plats?

17 A So they'll know what the bounds -- exact
18 boundaries of the property in question.

19 Q Okay. How does declaring a plot of road
20 private impact the surrounding property owners and
21 interested persons?

22 A Well, if it's a private easement, the only
23 people that can use the road are the adjoining
24 property -- the owners of the easement.

25 Q Okay. So I know you don't recall a lot

1 about your interactions with the Bailem family. So
2 do you recall who contacted you about surveying the
3 land of John Bailem Estate?

4 A No.

5 Q Okay. If the Bailem family only wanted to
6 subdivide the land, if that was their intent, which
7 is to subdivide the land, would a dedication
8 statement be necessary on the plat?

9 A Well, all we can do is what's required by
10 the -- to get -- for the process through the county
11 or the city or... So would it be necessary to put a
12 dedication statement on there? I've seen them
13 without dedication statements, but I would say it
14 establishes the right-of-way -- for Charleston
15 County, I would say that's probably one of their
16 requirements, but I'm not sure back then.

17 Q Okay. After you create -- after the final
18 plat is created for your client, is it typical for
19 you to review that plat with the -- with your client,
20 with the property owner, to make sure it was
21 accurate?

22 A Right. The owner would have to approve it
23 before we would continue.

24 Q Okay. Is it your typical practice that if
25 there was a dedication statement drafted that you

1 would have them proof that statement to make sure it
2 was accurate before they signed?

3 A Do I make a point of them approving the
4 statement to sign it?

5 Q (Nods head.)

6 A No. That's up to their -- I mean, we just
7 provide them with the document and then they give it
8 back to us. They approve the -- if they approve the
9 document, then they give it to us and then we
10 resubmit it.

11 Q Okay. Do you typically witness your
12 clients sign the dedication statement or --

13 A No.

14 Q -- anything like that?

15 No? Okay. Can you recall the Bailem
16 family raising any concerns to you regarding the
17 plat?

18 A No. No.

19 Q Okay. Can you recall if it was your
20 belief that John Bailem Road was to become a public
21 road when you --

22 A I have no idea.

23 Q -- conducted this?

24 Do you recall when you last communicated
25 with the Bailem family?

1 A Nope.

2 Q Can you recall the Bailem family ever
3 contacting you about the error -- the error with the
4 dedication statement --

5 A No.

6 Q -- raising that concern?

7 Has the Bailem family ever sought any
8 relief from you for the alleged incorrect dedication
9 statement on this plat?

10 A No.

11 Q Okay.

12 MS. DARNELL: Marc, Bernie, do you guys
13 have anything you'd like to add?

14 MR. FERRARA: Yeah, I'd like to have a
15 couple of questions.

16 MS. DARNELL: Okay.

17 - - -
18 EXAMINATION
19 - - -

19 BY MR. FERRARA:

20 Q I'm looking at -- I believe this is
21 Plaintiff's Exhibit Number 4; is that correct?

22 A I'm sorry?

23 Q Is that Plaintiff's Exhibit 4?

24 A No.

25 MR. TURKEWITZ: It's Exhibit 5.

1 MR. FERRARA: 5, even though it has number
2 4 on it?

3 MR. TURKEWITZ: Yeah, that was the
4 original.

5 BY MR. FERRARA:

6 Q All right. Plaintiff's Exhibit Number 5,
7 it's the plat that has the word "void" written up
8 here in the corner?

9 A Right.

10 Q And it has a dedication statement that
11 says that, "We hereby dedicate" -- and I'm just going
12 to paraphrase -- the 50-foot ingress-egress easement
13 over my property to the use of the property owners
14 and I, my heirs, and assigns guarantee maintenance of
15 said ingress-egress easement which may not be changed
16 either in size or location without expressed written
17 consent of the County Council.

18 And then there's another paragraph saying
19 that Charleston County is -- in no way is obligated
20 to maintain the easement.

21 So you drafted this plat, correct?

22 A That's correct.

23 Q And you placed that language in that
24 dedication statement, correct?

25 A That's correct.

1 Q And so in your mind at the time, were the
2 Bailems dedicating an easement to themselves?

3 A That's correct.

4 Q Okay. So we have three property
5 owners -- Henry Bailem, Estelle Capers, and Rebecca
6 Jefferson, which it appears like there are some
7 signatures on this plat. I'm looking at the original
8 plat. Those three individuals dedicated an easement
9 to whom, in your mind?

10 A By the statement itself, they are
11 dedicating to the property owners.

12 Q All right. The property owners being
13 whom?

14 A The Bailem Estate.

15 Q So it's to themselves --

16 A Right.

17 Q -- and other members of the Bailem Estate?

18 A That's correct.

19 Q Okay. All right. So in your mind when
20 you drafted this plat -- I don't see a date on this.

21 A This is a very rough draft and I'm -- I
22 don't know how y'all got a copy of this. This is
23 beyond me, but.

24 Q All right. Would you have drafted this
25 plat before the 1986 plat?

1 A That's correct.

2 Q Okay. And there's a phone number on this,
3 571-3640. Is that your telephone number?

4 A I was looking at that. I was wondering
5 what that number was. That's not --

6 Q Was it ever a phone number of yours?

7 A No.

8 Q Was it a phone number of Sample Surveying?

9 A Not that I recollect, no.

10 Q Okay. All right. And so on this plat, it
11 shows -- it looks like two parcels -- three parcels.
12 I'm sorry. Three parcels, correct?

13 A Let's see. One, two, three, four -- I
14 mean -- oh, this is a rough draft, so --

15 Q I know.

16 A -- there's two parcels. I'm sorry.
17 Yeah, you're right.

18 Q Isn't it three parcels?

19 A No. Let's see. One -- yeah, three.

20 Q Okay. It's three parcels?

21 A Right.

22 Q And the three parcels are adjacent to
23 what? Does it say, "A 50-foot ingress-egress
24 easement"? Do you see those words?

25 A Yes.

1 Q So pursuant to this plat in your mind at
2 least and I would imagine the Bailem family were
3 dedicating an easement, like you just testified to,
4 themselves and members of the Bailem Estate family;
5 is that a fair statement?

6 A That's a fair statement.

7 Q Okay. All right. If it was an easement,
8 who owned the underlying feet to the land of that
9 easement? Do you know my question -- do you
10 understand my question?

11 A No.

12 Q All right. Do you know what an easement
13 is?

14 A Oh, yeah.

15 Q Define an easement for me, please.

16 A It's a defined area of where a
17 drainage -- for drainage or access or could be
18 utilities.

19 Q So if I give you an easement over my
20 property, who owns the property? Don't I own the
21 property?

22 A Typically --

23 Q Don't I own the underlying feet?

24 A Right.

25 Q And you just have a right to cross over my

1 property, correct, if I give you an easement,
2 correct?

3 A Right, that's correct.

4 Q So in this instance, this 50-foot
5 ingress-egress easement, my question to you again is
6 who were the underlying property owners?

7 A The Bailems.

8 Q The Bailems, okay. So they were giving an
9 easement over Bailem property?

10 A That's correct.

11 Q Okay. All right. And then you testified
12 earlier that all easements have to be approved by
13 County Council. Isn't that an incorrect statement?

14 A Could be.

15 Q What do you mean by "could be"?

16 A Well, I'll say utilities and stuff I was
17 thinking -- I don't know if they really -- did you
18 say County Council?

19 Q Yes.

20 A Oh, I think -- I would imagine
21 utilities -- I really don't know.

22 Q So if I gave you -- if I owned my property
23 and I give James Pennington an easement order, I got
24 to get that easement approved by Charleston County?

25 A I'm not sure.

1 Q You're not sure?

2 A No.

3 Q And you've been a surveyor for how many
4 years?

5 A For a long time.

6 Q At least since 1985 --

7 A I'm not sure what your question is.

8 Q -- at least 53 years you said earlier?

9 A What's that?

10 Q At least 53 years?

11 A Right.

12 Q Okay. But you don't know whether --

13 A At least.

14 Q -- I can just give you an easement to my
15 property without going to County Council or the Town
16 of Mt. Pleasant?

17 A So what you're asking me can you record an
18 agreement between you and your neighbor --

19 Q I'm not saying record. Can I enter into
20 an agreement with James Pennington and give you an
21 easement over my property to cross my property to go
22 access whatever? Do I have to have that approved by
23 County Council or Charleston County or the Town of
24 Mt. Pleasant?

25 A A private easement between you the owner,

1 would have to get it approved by -- the only reason
2 you would have to get it approved by County Council
3 is if you want to record it.

4 Q Okay. Okay. So back to my original
5 question, you testified all easements have to be
6 approved by Charleston County. That's not a true
7 statement, is it?

8 A In that regard, no. I wasn't thinking
9 that. I'm not a lawyer, you know. I don't know.

10 Q Well, you're a surveyor.
11 So why -- if this dedication statement on
12 Plaintiff's Exhibit 5 is for a private easement,
13 would that document have to be approved by County
14 Council?

15 A If you want to approve this plat and have
16 it recorded --

17 Q Okay.

18 A -- it would have to be approved by
19 Charleston County Planning Board.

20 Q Okay. So if you want to have it recorded
21 in the Register of Deeds office --

22 A Right.

23 Q -- Charleston County Planning --

24 A Now the RMC.

25 Q -- the RMC office, has to go before the

1 county if it's going to be recorded in the public
2 record?

3 A That's correct.

4 Q Correct. Okay. Okay. So then we go
5 to -- this is -- we look at -- can I see Exhibit
6 Number --

7 MS. DARNELL: 7.

8 BY MR. FERRARA:

9 Q Plaintiff's Exhibit 7, did you draft this
10 plat?

11 A Yes.

12 Q Okay. And you signed it and certified to
13 the correct dimensions of the property and the
14 necessary markers and the precision of the markers,
15 right? That's your signature down there?

16 A That's correct.

17 Q Okay. And there's a dedication statement
18 on it, okay. Did you write that dedication statement
19 on the plat?

20 A Yes, we did.

21 Q Okay. So earlier you said you didn't
22 know, but now you do know?

23 A Well, I mean, I'm assuming. It's the same
24 handwriting as all the rest of it --

25 Q I was going to -- okay. So you did put

1 that dedication statement on it?

2 A Yes.

3 Q Okay. And the dedication statement says,
4 "We hereby dedicate this 50-foot right-of-way for the
5 use of the public forever. We hereby dedicate the
6 20-foot drain easement to the use of the public
7 forever."

8 And then this approval statement that the
9 approval of this plat never obligates the County of
10 Charleston to the easement for maintenance or
11 construction.

12 All right. I think we're talking
13 semantics here in this dedication statement. When
14 you say, "We dedicate the 50-foot right-of-way for
15 the use of the public forever," what does that mean
16 to you? Still a private easement?

17 A I would say that this statement on here is
18 not a private easement, it's a public easement.

19 Q A public easement?

20 A Right.

21 Q Okay. Well, it says public --

22 A Public.

23 Q -- 50-foot road right-of-way?

24 A Right.

25 Q Okay. Is it an easement or a

1 right-of-way?

2 A Oh. I see what you're saying.

3 Q I mean, Mr. Pennington, we're in
4 litigation and every word --

5 A Okay.

6 Q -- has a meaning and --

7 A Right.

8 Q -- are words of art. An easement is not a
9 roadway and a roadway is not an easement. The
10 right-of-way is not an easement. Or do you believe
11 they're all the same?

12 A That would be up to the lawyers. I don't
13 know.

14 Q No. I'm asking you as a surveyor, because
15 y'all use these words on your plats.

16 A Are easements and right-of-ways the same
17 thing?

18 Q Yes.

19 A Well, yeah.

20 Q They are, in your mind?

21 A Right.

22 Q Okay. So back to this dedication
23 statement. What are these property owners
24 dedicating?

25 A They're dedicating a road easement.

1 Q Okay. Do the words say that?

2 A No.

3 Q Okay. Aren't they dedicating a 50-foot
4 road right-of-way to the use of the public forever?
5 What do those words mean to you?

6 A That it's a public right-of-way.

7 Q Thank you. And then what about the
8 drainage easement?

9 A It's a public drainage easement.

10 Q Okay. Question: How do the private
11 50-foot easement in Plaintiff's Exhibit 5 --

12 A Okay.

13 Q -- transform into a public right-of-way in
14 Plaintiff's Exhibit 7? What happened between those
15 two -- drafting of those two plats?

16 A I have no idea.

17 Q You have no idea. What do you mean you
18 have no idea?

19 A I have no idea why --

20 Q You drafted the plats, didn't you?

21 A That's correct.

22 Q They were drafted close in time, weren't
23 they?

24 A They were what?

25 Q Drafted close in time.

1 A Right.

2 Q Okay. But now you have no idea?

3 A No.

4 Q What do you mean you have no idea?

5 A I can't remember anything during this
6 time. I can't remember anything about this plat
7 during this time. I don't know -- I don't know why.

8 Q Okay. When you drafted both of these
9 plats, did you do the surveying by yourself or did
10 you have an assistant or assistants, plural, helping
11 you with the survey?

12 A Yes, I had assistants like I have a
13 draftsman, then we have rod men, we have --

14 Q And he walked out to the property and held
15 a marker pole and y'all measured it off?

16 A Right.

17 Q Who assisted you in this survey?

18 A I can't remember.

19 Q You can't remember the person's name?

20 A No.

21 Q Was it one person or two or three?

22 A Don't know.

23 Q Were they employed by Sample Surveying?

24 A Were there people employed by Sample
25 Surveying during this time?

1 Q All right. Well, let me ask you, when you
2 drafted these plats, it just says, "Signed by James
3 G. Pennington -- oh, Sample Engineering, Inc. I'm
4 sorry. Is that your company?

5 A Yes.

6 Q Okay.

7 A At that time, yes, it was Sample
8 Engineering.

9 Q All right. All right. You don't
10 recall --

11 A I was trying to -- yes.

12 Q Do you recall the --

13 A I'm not positive. I'm not positive. When
14 did I acquire the property? Jeez. Well, I acquired
15 the company -- I'm not exactly sure what date it was.

16 Q How many people worked for Sample
17 Engineering, Inc., back in 1985 time frame?

18 A Let's see. I would say there was at least
19 a draftsman and at least a rodman.

20 (Court reporter asked for clarification.)

21 BY MR. FERRARA:

22 Q And would you be able to look into your
23 records and produce those names of those individuals?

24 A No.

25 Q Tell me why you wouldn't or can't.

1 A Just can't.

2 Q You don't remember the names of the
3 individuals that were employed by your company in
4 1985?

5 A No.

6 Q Do you maintain any kind of financial
7 records of the company?

8 A From 35 years ago? No.

9 Q Okay. So we take this Plaintiff's Exhibit
10 Number 7 plat and you took the original to Charleston
11 County and submitted it to the Charleston County
12 Planning Department for approval; is that correct?
13 Because you've been a recorder at the R&D office,
14 correct?

15 A I don't remember.

16 Q You don't remember?

17 A Nope.

18 MR. FERRARA: Do we have Charleston County
19 letter to him?

20 (A discussion was held off the record.)

21 MR. BELLE: That was exhibit --

22 MR. TURKEWITZ: Is this what you're
23 talking about?

24 MR. FERRARA: I think it is.

25 MR. TURKEWITZ: Actually, my legal

1 assistant said I had a copy and she was right.

2 BY MR. FERRARA:

3 Q All right. And this is Plaintiff's
4 Exhibit 8. Do you recall a letter dated October
5 10th, 1986, addressed to you from Evelyn Bonham,
6 Clerk of Charleston County Council, that references
7 this plat?

8 A No, I don't.

9 Q You have no recollection at all?

10 A None at all.

11 Q Okay. But would you agree with me that
12 the letter says, "This plat represents a division of
13 state property and a 50-foot right-of-way will be
14 dedicated to the property owners"?

15 A Let's see.

16 Q The last sentence, first paragraph.

17 A Oh, okay. Yeah, that's what it says.

18 Q Okay. Did you read this letter?

19 A Just this minute? Just this second?

20 Q Back in 1986.

21 A No. I don't even remember it.

22 Q Did you read this letter?

23 A Just this minute?

24 Q Back in 1986.

25 A No.

1 Q You didn't read it?

2 A Well, I don't know. I don't remember.

3 Q Okay. Did you read it now?

4 A Yes.

5 Q Okay. So question: The clerk of council
6 says that the plat represents a 50-foot right-of-way
7 dedicated to the property owners. Is that a true
8 statement?

9 A That's what it says in this letter.

10 Q Is that a true statement?

11 A I don't know.

12 Q Does the plat represent a 50-foot
13 right-of-way dedicated to the property owners?

14 A The plat says 50-foot right-of-way for use
15 of the public forever --

16 Q Okay. And you testified earlier to my
17 question that this 1986 plat, Plaintiff's Exhibit 7,
18 dedicates it to the public forever and that it's a
19 public dedication, correct?

20 A That's correct.

21 Q Okay. And so -- and it dedicates this
22 50-foot right-of-way to the public forever -- for the
23 utility of the public forever, correct?

24 A That's that it says under Dedication.

25 Q So the clerk of council bends those words

1 and says 50-foot right-of-way to the property owners.
2 When you read this letter in 1986, did that signify
3 something that, hey, she's wrong, the plat says this?
4 Did you call the clerk of council and say I think you
5 got it wrong, ma'am?

6 A I don't remember.

7 Q Okay. Because you -- okay. All right.

8 Let me ask you this: Is she wrong in that
9 statement? Is the clerk of council in error with
10 that statement?

11 A I don't know.

12 Q All right. Well, does the 1986 plat grant
13 a 50-foot right-of-way to the property owners?

14 MR. TURKEWITZ: Objection.

15 BY MR. FERRARA:

16 Q It's not hard. We're talking about this
17 dedication statement on the 1986 plat.

18 A What was your question again, then?

19 Q The clerk of council says that a 50-foot
20 right-of-way is dedicated to the property owners. Is
21 that consistent with the 1986 plat dedication or is
22 it contrary to it?

23 A No, one says to the property owners; one
24 says to the public.

25 Q Okay. That suffices.

1 Okay. So there appears to be some
2 confusion as to this plat. The dedication of the
3 right-of-way is in favor of the property owners or
4 the public?

5 MR. TURKEWITZ: Objection.

6 BY MR. FERRARA:

7 Q In your mind at the time, the 1986 plat
8 dedicated the right-of-way to whom?

9 It's not a hard question. You just
10 answered it earlier.

11 A Well, it says -- the dedication statement
12 states that it dedicated it to the public forever.

13 Q Okay. Not the property owners?

14 A I don't see that on the plat, no.

15 Q Okay. Unlike the private easement draft
16 plat number -- Plaintiff's Exhibit Number 5 which had
17 that language dedicating the easement to the property
18 owners, correct?

19 A The draft that we did, that's correct.

20 Q Okay. Do you remember that draft?

21 A No. I recognize the writing.

22 Q By approving the 1986 plat -- I'm
23 referring to the Plaintiff's Exhibit Number 7 -- did
24 Charleston County approve the John Bailem Road
25 right-of-way as a public easement?

1 MR. TURKEWITZ: Objection.

2 THE WITNESS: If you go by the plat of
3 record, then by the dedication statement on this plat
4 that this road right-of-way was dedicated to the
5 public forever.

6 BY MR. FERRARA:

7 Q And so it's -- it's a -- is that a
8 dedication to use John Bailem Road for ingress and
9 egress in perpetuity --

10 MR. TURKEWITZ: Objection.

11 BY MR. FERRARA:

12 Q -- for the public?

13 MR. TURKEWITZ: Objection.

14 BY MR. FERRARA:

15 Q You can answer the question.

16 A I don't know.

17 Q But you wrote those words?

18 A We put that statement on this plat.

19 Q And now --

20 A By the direction of somebody.

21 Q Okay. Do you recall who directed you to
22 put those words on there?

23 A I have no idea.

24 Q Was it the Bailem family?

25 A I don't know.

1 Q Was it a member of the Bailem family?

2 A I don't know.

3 Q Was it Henry Bailem?

4 A I can't remember. I can't remember.

5 Q Estelle Capers?

6 A Can't remember.

7 Q Diane Jefferson?

8 A Can't remember.

9 Q Yeah. When you created these plats back
10 in '86, did you carry errors and omission insurance
11 for errors in drafting plats and performing surveys?

12 A In '86 did I have an E&O, I doubt if I
13 could afford it --

14 Q Okay.

15 A -- back in those days. But I'm not sure.

16 Q Do you have it today?

17 A Oh, yeah.

18 Q Are you covered today with a carrier?

19 A Oh, yeah.

20 Q Okay. Just a couple of seconds.

21 MR. FERRARA: I'm fine. I don't have any
22 more questions.

23 MR. BELLE: All right. A couple final
24 questions.

25 ///

- - -
EXAMINATION
- - -

1

2

3 BY MR. BELLE:

4 Q As a land surveyor, do you rely on letters
5 from counsel or do you rely on recorded plats?

6 A Recorded plats.

7 Q Okay. Also, is a property owner allowed
8 to record subsequent plats on their property if they
9 get new property surveys and if they've established a
10 new easement, can they record additional plats in the
11 future?

12 A Of course.

13 Q And then when you record a plat in the
14 future, what plat, you know, should take precedence
15 or priority?

16 A Well, there are, you know, seniority. The
17 oldest plat would go first and you would base your
18 new plat on the old plat. I'm not quite sure what
19 you're asking me, but --

20 Q So if a new surveyor comes, should they
21 rely on the new plat that's recorded?

22 A They should rely on the plat that's
23 recorded. And then if there was another one recorded
24 after this, then they would rely on that one. I
25 guess that's what -- you rely on it when you're

1 working on jobs. You use everything you got. But
2 I'm not sure what you're asking me.

3 MR. FERRARA: Anything else?

4 MR. BELLE: Thanks for your time.

5 MS. DARNELL: Thank you.

6 MR. TURKEWITZ: I just have a few
7 follow-up questions.

8 - - -
REEXAMINATION
9 - - -

10 BY MR. TURKEWITZ:

11 Q So Mr. Pennington, this is a
12 situation -- this is the big picture. This is a
13 situation where the Bailem family wanted to subdivide
14 this large lot into five separate lots; is that
15 right?

16 A Okay.

17 Q And they had to have a variance to do
18 that; is that right?

19 A I don't know.

20 Q Okay. They had to have ingress and egress
21 to do that so that --

22 A Yes.

23 Q -- each one of those lots had a way of
24 getting in and out, right?

25 A Right.

1 Q And is it clear that they did not have to
2 have it as a public right-of-way in order to do that?
3 It could have been done with a private easement or
4 right-of-way?

5 A And be approved and recorded at the RMC
6 office?

7 Q Right.

8 A Well, there's other people involved then,
9 I mean.

10 Q Right.

11 A I don't -- all we -- we're just a tool for
12 people to use. They can decide how they want to do
13 it, put whatever statement they want us to put on
14 there, we can do it, put it on there, submit it. If
15 they want it recorded, submit it to the county or
16 wherever we may be and have them approve it.

17 Q But you know that -- from your work that
18 you've done, you know that it did not have to be a
19 public right-of-way in order for them to have the
20 ingress-egress approved by the county?

21 A I would say no, it wouldn't have had to
22 been public.

23 Q Okay.

24 A I don't think that there were any rules
25 back then about public or private.

1 Q Okay. So -- all right. So --

2 A But I don't know.

3 Q Okay. Looking at Exhibit 7, the
4 dedication language, do you see that where it looks
5 like there's a different -- it looks like there's a
6 little bit different handwriting?

7 A Yeah, it does.

8 Q Do you know whose handwriting that is?

9 A No, I don't.

10 Q Okay. But the writing where it says, "We
11 hereby dedicate this 50-foot road right-of-way for
12 the use of the public forever" is different from the
13 writing below that?

14 A It seems lighter. It's not more
15 pronounced. I agree with you, it looks like it's
16 different.

17 Q Okay. Do you know how that -- how that
18 came to be?

19 A Uh-uh.

20 Q Okay. And Mr. Ferrara was asking you
21 about Exhibit 8, the letter that was sent to you by
22 Charleston County Council?

23 A Right.

24 Q I mean, if you -- if you do a survey and
25 the survey was for a particular thing and you get a

1 letter from County Council and it says something
2 else, is that something that -- would you have
3 noticed that and would you have taken action if it
4 was not true?

5 A The job was done. You know, I was
6 finished. This was -- it was written to me, I'm
7 surprised, and not written to the property owners.
8 We would probably -- I would say standard we would
9 have given the copies to the owners.

10 Q Okay. There was a lot of discussion about
11 if something is on a plat then that's the way it is
12 and it's, you know, you can't change --

13 A I can see that.

14 Q But when you're dealing with dedication of
15 a public right-of-way, doesn't it have to be accepted
16 by the county or by the municipality?

17 A For maintenance. If the county's going to
18 accept it to build it and maintain it, they would
19 want it dedicated to them, I'm sure. I don't know.
20 I mean...

21 Q Okay. So you saw those pictures of what
22 that --

23 A Yeah.

24 Q -- area looked like? Does that look like
25 a roadway to you, those pictures --

1 A No.

2 Q Okay. That would not have been something
3 that the county accepted as a public right-of-way.
4 Do you agree with that?

5 A No, they would have to build a road. I
6 don't think they would accept that expense. But
7 that's just my opinion.

8 Q Okay. Mr. Knowles may have some questions
9 as well.

10 - - -
11 EXAMINATION
12 - - -

12 BY MR. KNOWLES:

13 Q Yes, just to follow up on that where
14 Rob Turkewitz was asking you, if you look at Exhibit
15 7.

16 A Okay.

17 Q What does it say right above the approved
18 final plat at the bottom there?

19 A I see it. "This approval in no way
20 obligates the County of Charleston to maintain
21 right-of-way until it's been constructed to county
22 standards."

23 Q What does that mean to you as a surveyor?

24 A That you have to build a road and meet
25 their standards before they would accept it as a

1 right-of-way.

2 Q Would that mean there was no road there at
3 the time, though?

4 A That's -- oh. Right. You know, it could
5 have been a dirt road or something, you know, some
6 kind of field road or something. But it wouldn't
7 have been to county standards.

8 Q Okay. How many plats would you have
9 presented to County Council for approval?

10 A How many have I presented?

11 Q How many would you have in this --

12 A Oh. How many different revisions? They
13 go on sometimes for years. Typically, there's, you
14 know, at least three or four revisions before final
15 approval.

16 Q Okay.

17 A Not only revisions on your -- on this type
18 of statement, but configurations of the lot, things
19 of that nature.

20 Q Do you know if any of them were rejected
21 by County Council?

22 A This particular case? I don't remember.

23 Q Do you know if Plaintiff's Exhibit 5 would
24 have been a draft submitted to County Council?

25 A No. That's just a rough sketch.

1 Q Why would you have had signatures on a
2 rough sketch?

3 A That's a good question.

4 Q Would it have been your practice at the
5 time to have the property owners sign a dedication on
6 a rough draft?

7 A I don't remember.

8 Q You don't remember if you'd have clients
9 signing off on dedication on a rough draft?

10 A I don't remember. I can tell you what we
11 do today.

12 Q What do you do today?

13 A We would make sure that they understand
14 what is going to happen and have them sign
15 anything -- signed statements.

16 Q You mean back then you didn't explain to
17 the property owner what they were signing?

18 A What we would do is we'd draw it up the
19 way we think they want it and then give it to them to
20 make the decision on whether they want -- this is
21 what they want, but the configuration.

22 Q So that would be what you were doing here,
23 then, right? They were dedicating --

24 A I have no idea. I don't know.

25 Q You don't know what you were doing with

1 your survey?

2 A What was going at this stage?

3 Q Well, just in general as a surveyor, I
4 mean, you said you surveyed thousands of properties,
5 right --

6 A Right.

7 Q -- in your career?

8 A Right.

9 Q I know you were relatively new at the
10 time, right?

11 A That's correct.

12 Q But were you overseeing this project at
13 the time?

14 A This is my writing.

15 Q So it's a "yes," right?

16 A Right.

17 Q And at that time when you had a
18 dedication, you would present it to the homeowners to
19 sign, correct?

20 A Typically, they wouldn't sign until the
21 final plat -- until the final plat. You were right
22 about this. I'm not quite sure why they would have
23 been signing a draft.

24 Q Is this your handwriting, "Void"?

25 A No. I don't know whose that is.

1 Q Is that your handwriting that says, "Power
2 line," on the top right?

3 A Yes.

4 Q Is this your handwriting that says, "Lot
5 1, Lot 2, Lot 3"?

6 A Which one are you looking at?

7 Okay. Yeah, that's my handwriting.

8 Q None of this is coming back to you now
9 after sitting here for a couple hours?

10 A No.

11 Q So you said you would have the property
12 owners sign the dedication at the time the plat was
13 final, correct?

14 A Right.

15 Q So wouldn't this imply, then, that
16 Plaintiff's Exhibit 5 is the final plat that should
17 have been recorded?

18 MR. FERRARA: Object to the form.

19 THE WITNESS: I can't remember.

20 BY MR. KNOWLES:

21 Q Would there have been any other reason to
22 have the homeowners sign the dedication?

23 A I have no idea.

24 Q Okay. Have you ever had a survey done
25 where you have the homeowners sign a dedication if

1 it's not the final plat?

2 A Typically, it's when we get to the very
3 final stages that they sign the dedication.

4 Q Okay. Any idea how it changed so
5 drastically from this signed dedication on Exhibit 5
6 to the one on Exhibit 7?

7 A No.

8 Q Why is there only three people on Exhibit
9 7 and there's four people on Exhibit 5?

10 A I have no idea.

11 Q How many people do you need to -- how many
12 property owners do you have to have to -- to legally
13 grant an easement?

14 A One. The owner.

15 Q Why are you getting four people to sign
16 that?

17 A They all own it.

18 Q Why do you have three people signing on
19 the one that's recorded?

20 A I don't know.

21 Q Who would have been in charge of seeing
22 that the dedication was signed? You?

23 A Who would be in charge to make sure that
24 the dedication statements were signed?

25 Q Right.

1 A That would have been the Planning Board.

2 Q But you have to submit that to the
3 Planning Board --

4 A Right.

5 Q -- right? So it's not their job to see
6 who signs it, right? You get -- on the survey --

7 A Yeah.

8 Q -- you go to the homeowner and say, here,
9 sign this, right?

10 A Right. I would tell the homeowner -- you
11 know, I'm not positive about all this at this time,
12 but the property owners would need to sign the
13 dedication statement.

14 Q All of them?

15 A Right. But, you know, we don't do
16 research. We don't know who the owners are. So
17 whatever they tell us.

18 Q You were dividing this plat that's Exhibit
19 7 into five lots, right?

20 A That's correct.

21 Q And this dedication to the public you're
22 saying should be signed by each of the owners?

23 A Right. Of the estate, right.

24 Q And there's -- shouldn't there be five
25 signatures here?

1 A No, not necessarily.

2 Q Why not?

3 A Because it could be one. Could be two.

4 Q What are you basing it on?

5 A It says John Bailem Estate.

6 Q Okay. So who determines, then, who needs
7 to be signing the dedication? You as the surveyor?

8 A No.

9 Q As a surveyor, you referenced --

10 A The owner would tell me who the
11 owner -- would say who's the owner, you know.

12 Q But as a surveyor, you looked at deeds,
13 correct?

14 A Right.

15 Q And weren't there deeds at the time?

16 A I'm sure there were, but I don't remember
17 on this particular site.

18 MR. KNOWLES: I can't see it on the copy.

19 MR. TURKEWITZ: You need the magnifying
20 glass?

21 MR. KNOWLES: No. I'm thinking. Sorry.

22 BY MR. KNOWLES:

23 Q Who wrote -- whose handwriting is this on
24 the dedication? You may have been asked this, but if
25 you did, I'm sorry.

1 A I don't know.

2 Q You have no idea who wrote that?

3 A I have no idea.

4 Q Would you have taken a plat and given it
5 to the homeowner and said, here, you write something?
6 Write the dedication?

7 A No.

8 Q Okay. So that --

9 MR. TURKEWITZ: You're referring to
10 Exhibit 7, right?

11 MR. KNOWLES: And 5.

12 THE WITNESS: The stuff in this day and
13 age, everything was written on mylar.

14 BY MR. KNOWLES:

15 Q With mylar?

16 A There were no copies. There were no copy
17 machines. There was no way to print stuff out. A
18 mylar is a piece of plastic.

19 Q Okay.

20 A You have to write on there with ink.

21 Q Okay.

22 A There's no way.

23 Q Who's writing on the mylar, the surveyor?

24 A The draftsman.

25 Q Okay. Were you the draftsman --

1 A No.

2 Q -- on Plaintiff's 7 or 5?

3 A No.

4 Q You didn't draft this?

5 A (Shakes head.)

6 Q So that means it was somebody in your
7 office that drafted it?

8 A That's correct.

9 Q How would the owners sign on mylar paper?

10 A Black pen would work or with a roll point
11 pen, you know.

12 Q Did you guys at the time have standard
13 dedication language for like this one on Exhibit 5
14 you would use for all of your surveys?

15 A No. Nothing was standard.

16 Q Or number 7? This wasn't something you
17 would reproduce over and over and over and
18 over?

19 A No. It was handwritten every time.

20 Q So what's the difference in the draftsman
21 and the surveyor?

22 A I do all the calculations, make
23 the -- make sure the field notes are correct and all
24 that, the property corners.

25 Q Whose job is it to relay what the owner

1 wants if there's a dedication?

2 A Well, I mean, they could call and talk to
3 somebody in the office and...

4 Q Okay. So tell me how that works with the
5 mylar. You take -- the mylar has a copy underneath?
6 Like, is this -- would it have been on this type
7 paper? Is this an original?

8 A That's blueprint paper.

9 Q All right. So what's the difference?

10 A Well, the mylar you're running through the
11 blueprint machine and it produces that.

12 Q Okay. And then what do you take to the
13 county?

14 A The blueprints.

15 Q Where does the mylar stay with --

16 A I would keep the mylar.

17 Q You've checked and you have no mylar
18 copies?

19 A No.

20 Q How far back do you maintain records?

21 A I think we're required by law for ten
22 years.

23 Q Do you have a retention policy with your
24 company? Written?

25 A No.

1 Q Do you routinely destroy documents after
2 ten years?

3 A Don't really destroy them. They just, you
4 know.

5 Q What do you do?

6 A Today?

7 Q I mean, what's been your practice for
8 maintaining documents?

9 A Well, that changes all the time. That's
10 why I ask you. You're saying today?

11 Q When would you have gotten rid of the
12 files from 1986?

13 A I didn't get rid of any files. They just
14 get, you know -- we've moved a bunch of times and a
15 lot of files got lost, misplaced.

16 Q Where could they have been lost at?

17 A I don't know.

18 Q How do you maintain your file, these
19 mylars? How big are they? Were they like this size?

20 A Typically we throw them away, though.
21 There's too much. They take too much space and
22 they're just -- were reproducing copies.

23 Q What would have been in your file --

24 A Don't need them today, you know.

25 Q What would have been in your file in 1986?

1 A This piece of paper here showing my
2 calculations.

3 Q That's Exhibit 5?

4 A Yes. The field notes where they went out
5 and turned the angles, pulled the distances.

6 Q Where would the blueprint be for
7 Plaintiff's Exhibit 7?

8 A For 7? The blueprint, that's recorded at
9 the R&D office.

10 Q So the RMC has this?

11 A Right, not that.

12 Q Well, I mean a blueprint of Number 7?

13 A You said Number 7. Huh?

14 Q A blueprint of Number 7 --

15 A Yes.

16 Q -- would be recorded --

17 A Right.

18 Q The RMC --

19 A Now they scan everything, you know. But
20 yeah, I think they keep their -- I don't know how
21 long they keep theirs. Do you know? I don't know
22 how long they keep them. They probably throw them
23 away after ten years too. I don't know.

24 Q Wait a minute. You think the RMC throws
25 away the recorded plats after ten years?

1 A Do they scan and make copies and all that?
2 Do they have a big warehouse full of this stuff? I
3 don't know.

4 Q Would they ever have a copy of the mylar
5 you're talking about?

6 A No. That was for me to use to make
7 copies.

8 Q All right. Take a look at Plaintiff's
9 Exhibit 8. This letter that we've talked about,
10 October 10th, 1986, from Charleston County Council to
11 you.

12 A Okay.

13 Q Where is this plat that they're
14 referencing in the letter?

15 A That's Exhibit 7.

16 Q That's not Exhibit 7.

17 A Oh, it's not?

18 Q Maybe you need to read it again. What
19 is -- particularly as you can figure out, we're here
20 today about this dedication over the road, whether
21 it's public or private.

22 A Uh-huh.

23 Q What did County Council approve to be
24 recorded as the dedication?

25 A Well, according to this letter, they

1 approved the 20-foot-wide drain ditch shown on the
2 plat.

3 Q What's the last sentence of the first
4 paragraph say?

5 A "Will be dedicated to the property
6 owners."

7 Q What will be?

8 A The right-of-way. The 50-foot
9 right-of-way.

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

12 A It's this plat.

13 Q Which plat?

14 A Exhibit 7.

15 Q Is that what the dedication says?

16 A No.

17 Q So you recorded a plat that was not
18 approved by County Council?

19 A Apparently so.

20 Q So what takes precedent, what County
21 Council approved, what the homeowners' intent was, or
22 what you --

23 A I don't --

24 Q -- recorded?

25 A I don't know.

1 Q If the property owners wanted to go back
2 today, hire you to resurvey the property to correct
3 your -- if this is a scrivener's error, would they be
4 able to do that?

5 A No. It would have to meet all the
6 standards of today.

7 Q We're here today because the Bailem family
8 has maintained this property in their family for over
9 a hundred years.

10 A Okay.

11 Q All right. This road that is in dispute
12 here now is attempting to be used by a developer down
13 here on the McManus tract.

14 A Oh, really? Okay.

15 Q Okay? At the time you did this plat, you
16 don't recall even a road being there?

17 A No. I don't recall.

18 Q And what you recorded granted -- what did
19 it grant?

20 A The dedication statement says it was
21 dedicated a 50-foot road right-of-way to the use of
22 the public forever.

23 Q All right. How, isn't that contrary to
24 what the intent of the family would have been and
25 what County Council approved, a 50-foot right-of-way

1 dedicated to the property owners?

2 MR. FERRARA: Object to form.

3 THE WITNESS: I understand what you're
4 saying. Right, there's a difference. A difference
5 that's very important today with a difference at this
6 time that probably it was not.

7 BY MR. KNOWLES:

8 Q So would you consider your dedication a
9 scrivener's error?

10 A I'm not sure what happened.

11 Q Okay. So what I'm asking you, if they
12 wanted to hire you today to correct -- if you called
13 this a scrivener's error, to correct -- to reflect
14 what County Council approved in 1986 and reflect what
15 the homeowners' intent was, would you be able to do
16 that?

17 MR. WARD: Object to the form.

18 THE WITNESS: I would have -- anything you
19 submit today has to be whatever today's standards.
20 They have changed. You know, everything's changed.
21 So I don't --

22 BY MR. KNOWLES:

23 Q I'm saying correct --

24 A I'm not sure that they would accept this
25 as a -- no, I'm not sure that they would.

1 Q Why is that?

2 A Well, you know, there's statutes of
3 limitations and things, so I don't know.

4 Q Statute of limitations?

5 A Sure. Everything is statute of
6 limitations, isn't it? You're a lawyer.

7 Q You're arguing statute of limitations with
8 me? That's not even an answer to my question.

9 A You're saying, well, I don't want this. I
10 want to change it.

11 Q All I was --

12 A You're saying you want me to change this.
13 I'm saying why change something that's 35 years old.
14 I mean, it's not, you know --

15 Q It's not what was approved by County
16 Council. You can't --

17 A Oh, well.

18 Q -- a scrivener's error and record a new
19 plat?

20 A No.

21 Q You can't do that? Tell me why?

22 A I can do that.

23 Q Okay.

24 A But I would have --

25 Q What are you talking to me about statute

1 of --

2 A -- to meet today's standards.

3 Q What do you mean you just got to meet
4 today's standards?

5 A It would have to be like a new
6 subdivision. Like, have to be all the lots --

7 Q Why would you have to -- have you ever
8 corrected a plat that's had an error in it?

9 A Yeah, a few times.

10 Q Okay. And did that require a whole new
11 subdivision?

12 A Usually weren't that old -- this old, you
13 know. It was caught right away or something. You
14 could do a revision or a surveyor's error or
15 something.

16 Q So what prevents you from correcting this
17 plat to reflect what County Council approved?

18 A The length -- this plat right here? Well,
19 these people aren't alive anymore, right, are they?
20 I don't know. It's -- everything's changed. I don't
21 know whether it could be done or not or you could
22 reproduce something this old and then resubmit it to
23 Charleston County Planning. I just don't think so.

24 Q What are you relying on to base that
25 opinion?

1 A For one thing, I wouldn't do it anyway.

2 Q Okay. Why would you not do it?

3 A It's too old.

4 Q What does the age of the plat have to do
5 with anything?

6 A Because everything's changed.

7 Q What's changed?

8 A Zoning requirements; planning
9 requirements; DOT requirements. Everything. It
10 would be.

11 Q What does DOT requirements have to do with
12 correcting the dedication?

13 A When you -- if it's a -- today, if it's a
14 state road, you have to get permission from the state
15 now to build the road.

16 Q Well, the state don't -- the state calls
17 it a private road?

18 A Oh. Okay.

19 Q The school district considers it a private
20 road?

21 A Oh, really?

22 Q The trash people consider it a private
23 road?

24 A Oh, yeah?

25 Q Post office considers it a private road?

1 MR. WARD: Objection.

2 THE WITNESS: They don't drive down there?

3 BY MR. KNOWLES:

4 Q No.

5 A Oh, really?

6 Q So if the post office, the school
7 district, the trash services, and the DOT call
8 John Bailem Road a private road, why can you not
9 correct this dedication to reflect a private road
10 which was called for by County Council and what was
11 called for to be recorded?

12 MR. WARD: Object to the form.

13 MR. BELLE: Object to the form.

14 THE WITNESS: I don't know.

15 BY MR. KNOWLES:

16 Q You don't know?

17 A No.

18 Q What would it take for you to correct the
19 dedication to reflect what the 1986 letter called
20 for?

21 MR. WARD: Object to the form.

22 MR. KNOWLES: I'm asking him in his job
23 what would he need to do to correct the dedication.

24 THE WITNESS: We would have to go out and
25 resurvey all the property.

1 BY MR. KNOWLES:

2 Q Okay.

3 A In today's standards, we'd have to look at
4 all the trees, we'd have to locate all -- whatever
5 improvements have been made, make sure it meets all
6 the zoning requirements --

7 Q Right.

8 A -- and have all the original signatures
9 and all that.

10 MR. WARD: Objection.

11 BY MR. KNOWLES:

12 Q Original signatures from who, now?

13 A Henry Bailem, Rebecca Jefferson,
14 Estelle Capers.

15 Q All right. If you look at Exhibit 11,
16 Mt. Pleasant. The attorney handed you the McManus
17 tract.

18 A Okay.

19 Q Do you see a road southeast of these
20 tracts called David Green Road?

21 A I see the David Green Estate.

22 Q You don't see a David Green Road, do you?

23 A No.

24 Q If I represented to you there is a road
25 called David Green Road here south of this tract --

1 A Okay.

2 Q -- there's new homes built on either side
3 of it --

4 A Oh, really?

5 Q -- by the same developer who owns the
6 McManus tract now --

7 A Okay.

8 Q -- and they're using that David Green
9 Road --

10 MR. BELLE: Objection.

11 BY MR. KNOWLES:

12 Q -- where would that -- why would that not
13 be on this plat?

14 A I have no idea.

15 Q So I'm saying as a surveyor, if you have a
16 tract of land here you're showing, right?

17 A Uh-huh.

18 Q And if there's John Bailem Road to the
19 north, wouldn't you show the road to the south if
20 there was one?

21 A Would I? Sure.

22 Q Why would you not?

23 A Why would you not? I agree.

24 Q And if you look at Exhibit 12, which is
25 this other exhibit, the Christ Church Parish plat.

1 A Okay.

2 Q It says under -- or in the title, Plat of
3 Permanent Utilities and it's a various widths situate
4 on --

5 A Right.

6 Q -- on undedicated Brentley Road,
7 undedicated McManus Road, John Bailem Road, public
8 50-foot right-of-way, and David Green Road, public
9 50-foot ingress-egress easement about to be acquired
10 by Mt. Pleasant Waterwork and Sewer Commission.

11 Where is David Green Road on this plat?
12 Do you see it?

13 A I don't see it. I see Rifle Range, John
14 Bailem, Six Mile.

15 Q Do you see the McManus tract?

16 A Right. Yes.

17 Q Where is that located?

18 A That's to the north.

19 Q If you take a look again and compare it to
20 Exhibit 11.

21 A I mean to the south.

22 Q The plat I showed you a moment ago --

23 A Okay.

24 Q -- McManus tract.

25 A Right.

1 Q Where is David Green Road on either of
2 these plats?

3 A I have no idea. I don't see it.

4 Q How could you grant a permit of utilities
5 on a -- on a road that's not even on the plat?

6 A You realize there is more than one page to
7 this, don't you?

8 Q I didn't introduce this. Where --

9 A Okay.

10 MR. TURKEWITZ: Is this the --

11 MR. WARD: There's multiple pages. You
12 can pull it from the -- office.

13 MR. KNOWLES: I don't think I have any
14 more questions. You guys?

15 MR. WARD: I have two very brief
16 questions. You're not going to get that Happy Meal
17 at lunch now.

18 - - -
REEXAMINATION
19 - - -

20 BY MR. WARD:

21 Q I think you may have answered this already
22 but I just want to make sure it's on the record.
23 When you're preparing plats and you're referring to
24 older plats, do you -- do you rely on the plat or do
25 you rely on a letter from the clerk of council

1 regarding what has been done on this plat?

2 A Rely on the plats.

3 Q Okay.

4 A I do.

5 Q Okay. And assuming that that John Bailem
6 Road is a private road -- we do not believe it is,
7 but assuming it is, who would be responsible for
8 constructing the road?

9 A The property owners.

10 Q Who would be responsible for maintenance
11 of the road?

12 A Today you would have to -- you'd have to
13 build a road to the standards, to whatever standards,
14 county standards or city standards, and then they
15 would take over maintenance.

16 Q Okay. And based in the dedication
17 language that's on the Exhibit 7, who would be
18 responsible for any drainage issues that are
19 occurring on this road?

20 A Typically, it's public works.

21 Q Okay. That's all I have.

22 MS. DARNELL: I just have two very short
23 questions too.

24 THE WITNESS: All right.

25 ///

1 - - -
2 REEXAMINATION
3 - - -

4 BY MS. DARNELL:

5 Q So you testified that Plaintiff's Exhibit
6 5, I believe, that this was just a rough sketch.

7 A Uh-huh.

8 Q Would it have been standard practice for
9 you guys to write "void" on rough sketches or things
10 that were not final plats?

11 A There was -- somebody wrote "void." I
12 don't know why. I don't remember.

13 Q Okay.

14 A It was a standard practice. To write the
15 word "void," yes, I would probably -- if there was a
16 document that we weren't going to be using anymore,
17 there was a newer document, then I would write
18 something on there to let us know, you know, that
19 it's...

20 Q I see.

21 MS. DARNELL: Okay. That's -- do you have
22 any?

23 MR. KNOWLES: I got two more.

24 - - -
25 REEXAMINATION
26 - - -

27 BY MR. KNOWLES:

1 Q Is Exhibit 8, the 1986 County Council
2 letter, not evidence of what should be relied upon?

3 MR. BELLE: Objection.

4 BY MR. KNOWLES:

5 Q Does the 1986 letter by County Council not
6 reflect what should have been recorded as far as the
7 dedication --

8 MR. BELLE: Object to the form.

9 BY MR. KNOWLES:

10 Q -- of the road to the property owners?

11 A This -- this -- do I -- I have to try -- I
12 know I have to change the question. I know that you
13 have it straight in your mind, but I don't have it in
14 mine. Should this statement have been on this plat
15 for County Council approval? Is that what you're
16 asking me?

17 Q (No audible response.)

18 A I don't know.

19 Q When County Council writes a letter to a
20 surveyor, right, they're approving what's been
21 submitted to them, correct?

22 A That's correct.

23 Q Okay. So, obviously, there was a plat
24 submitted to them where there was a dedication to the
25 property owners, correct?

1 A That's right.

2 Q So where is that plat?

3 A This is it.

4 Q That's --

5 MR. FERRARA: And you're referring to
6 Plaintiff's Exhibit 7, correct?

7 THE WITNESS: That's correct, Exhibit 7.

8 MR. FERRARA: Okay.

9 BY MR. KNOWLES:

10 Q So you think Plaintiff's Exhibit 7 is what
11 Charleston County Council approved to be recorded?

12 A Yes. Let's see. It's application number
13 11829. Let's see. 11829.

14 Q How does, again, Plaintiff's Exhibit 7 not
15 contradict with what County Council approved in --

16 A Well, one of them's dedicated to the
17 public and one's dedicated to the property owners.

18 Q And County Council explicitly said --

19 MR. FERRARA: Object to the form.

20 BY MR. KNOWLES:

21 Q -- on Exhibit 8, the October 10, 1986,
22 letter.

23 A Let me see this.

24 Q All right. Let me back up. Exhibit 9.

25 A Oh. This is Exhibit 9. Okay.

1 Q What is that?

2 A That's Exhibit 9.

3 Q Yeah, but what does it say at the top?

4 A Agenda and worksheet.

5 Q In the first paragraph, last sentence?

6 A 50-foot right-of-way will be dedicated to
7 the property owners.

8 Q What's the date of this again?

9 A The date is September 29th, 1986.

10 Q And then Exhibit 8, what's the date of
11 that letter?

12 A Let's see. October 10th, 1986.

13 Q And what was the date you recorded Exhibit
14 7?

15 A Let's see. The date -- recording date was
16 October 24th, 1986.

17 Q All right. We're good. Thanks.

18 MR. TURKEWITZ: Thank you, Mr. Pennington.

19 MR. WARD: Thank you.

20 MS. DARNELL: Thank you.

21 (Court reporter requested transcript
22 orders:)

23 COURT REPORTER: You get the original and
24 one. Would you like an etran?

25 MR. TURKEWITZ: Yes.

1 MR. WARD: I've got to get approval, so
2 can I get a card?

3 MR. BELLE: One for the county, please.

4 COURT REPORTER: Etran and all of the
5 exhibits?

6 MR. BELLE: Yes.

7 (Deposition was concluded at 12:22 p.m.)

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF BERKELEY)

3 I, Deirdre J. Weyer, Registered Professional
4 Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify that the witness
6 in the foregoing deposition was by me duly sworn to
7 testify to the truth, the whole truth, and nothing
8 but the truth in the within-entitled cause; that said
9 deposition was taken at the time and location therein
10 stated; that the testimony of the witness and all
11 objections made at the time of the examination were
12 recorded stenographically by me and were thereafter
13 transcribed by computer-aided transcription; that the
14 foregoing is a full, complete, and true record of the
15 testimony of the witness and of all objections made
16 at the time of the examination; and that the witness
17 was given an opportunity to read and correct said
18 deposition and to subscribe the same.

19 Should the signature of the witness not be
20 affixed to the deposition, the witness shall not have
21 availed himself/herself of the opportunity to sign or
22 the signature has been waived.

23 I further certify that I am neither related to
24 nor counsel for any party to the cause pending or
25 interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 3rd day of January 2024, at Moncks
Corner, Berkeley County, South Carolina.



Deirdre J. Weyer, RPR
My Commission Expires:
June 26, 2033

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

9TH JUDICIAL CIRCUIT

- - -

HENRY BAILEM, IV, JOSEPH
 BAILEM, SHEILA BAILEM, DIANE
 JEFFERSON, MICHAEL JEFFERSON,
 SR., RASHICA COAKLEY, and
 ANN BAILEM SIMMONS,

Plaintiffs,

vs.

COUNTY OF CHARLESTON, TOWN OF
 MOUNT PLEASANT, DRB GROUP
 SOUTH CAROLINA, LLC f/k/a DAN
 RYAN BUILDERS SOUTH CAROLINA,
 LLC, MARIE P. HOWARD, LEWIS B.
 HOWARD, JR., LANELLE P.
 JOHNSON, WILLIAM BAILEM, SR.,

CASE NO.

2023-CP-10-00947

(Caption Continued on Page 2)

 DEPOSITION OF MICHAEL JEFFERSON

DATE TAKEN: Tuesday, May 6, 2025

TIME BEGAN: 3:31 p.m.

TIME ENDED: 3:42 p.m.

LOCATION: Adams & Reese
 151 Meeting Street, Suite 301
 Charleston, South Carolina

REPORTED BY: Marie H. Bruegger, RPR, CRR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
 803-212-0012

(Caption Continued)

X SYVIER LYNN JOHNSON, SONIA :
MARIA SIMMONS, KENNETH DAVIS, :
JUANITA NELSON, TITUS HOWARD, :
MYEISHA HOWARD, JAMES HOWARD, :
and JOHN DOE AND JANE DOE, :
fictitious names used herein :
to designate the unknown :
heirs at law, distributes, :
and/or devisees of all :
persons claiming under or :
through the devisees, and any :
such persons who are minors :
or members of the Armed :
Forces of the United States :
of America, as contemplated :
by the Soldiers' and Sailors' :
Relief Act, 1940, as Amended, :
and all persons entitled to :
claim under and through any :
of them, :
Defendants. :

APPEARANCES:

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CHARLESTON COUNTY ATTORNEY'S OFFICE

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Representing the Defendant DRB Group of South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC

APPEARANCES CONTINUED:

DRB GROUP OF SOUTH CAROLINA, LLC
BY: WILLIAM RANKIN, ESQUIRE (Via Zoom)
1101 Slater Road, Suite 300
Durham, NC 27703
Representing the Defendant DRB Group of South
Carolina, LLC f/k/a Dan Ryan Builders South
Carolina, LLC

ALSO PRESENT:

Henry Bailem
Marilyn Bailem
Michael Boyle (Via Zoom)
Diane Jefferson

I N D E X

	PAGE
EXAMINATION	
By Mr. Stanley.....	6
Certificate of Reporter.....	13

PREVIOUSLY-MARKED EXHIBITS

DEFENDANT'S	DESCRIPTION	MARKED
Exhibit 3	Amended Complaint and Affidavits.....	9
Exhibit 4	Large Plat.....	7

E X H I B I T S

DEFENDANT'S	DESCRIPTION	MARKED
Exhibit 20	Second Amended Notice of Deposition of Michael Jefferson.....	6

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P R O C E E D I N G S

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(Defendant's Exhibit 20, Second
Amended Notice of Deposition of Michael
Jefferson, was marked for identification.)

MICHAEL JEFFERSON

being first duly sworn, testified as follows:

- - -

EXAMINATION

- - -

BY MR. STANLEY:

Q Mr. Jefferson, just for the record, we
have marked as Exhibit 20 the second amended notice
of taking your deposition, just so we have that on
the record.

Did you have any involvement -- well, did
you hear my ground rules earlier about you can't
talk to your lawyer once the deposition's started,
otherwise, I get to ask you; that you have to give
verbal responses; that if you answer a question, I'm
going to assume that you understood it; and that if
you have any questions or don't understand a
question, to just ask me, and I will try to
rephrase. Did you understand those earlier?

1 A Yes.

2 Q I'm not going to go any further into
3 those.

4 (Defendant's Exhibit 4, Large Plat,
5 previously marked, was shown to the
6 deponent.)

7 BY MR. STANLEY:

8 Q Exhibit 4, the plat, did you have any
9 involvement in the -- did you have any involvement
10 in how that plat came to be?

11 A Very minimal.

12 Q What involvement did you have?

13 A Well, my wife kind of discussed some
14 things to me when I came home off of the road, but I
15 basically put this thing in her hands, because I
16 wasn't there most of the time.

17 Q Okay. Did you speak with Mr. Penington?

18 A No.

19 Q Did you speak with anyone from the County
20 about the dedication and acceptance?

21 A Wasn't there.

22 Q Did you speak with anyone from the Town of
23 Mount Pleasant about the annexation?

24 A No.

25 Q Were you present when the road was paved?

1 A When I came home, that was a done deal.

2 Q Did you have any conversations with anyone
3 about the paved road?

4 A Well, it shocked me, because when I turned
5 off of Six Mile Road onto John Ballam Road, I
6 couldn't believe it. The road was already paved.
7 So I had some conversation with my wife about it,
8 and she didn't know any more about it than I did,
9 because, basically, it was the same thing. When she
10 came home, the road was paved.

11 Q Did you talk with any municipality about
12 the paved road?

13 A I didn't, but I believe she begin to do
14 some legwork in that direction.

15 Q Have you had any conversations with any
16 municipality regarding public versus private, the
17 road being public versus private?

18 A No, but I did a little bit of research on
19 my own to find out how that works and talked to my
20 wife about it. So she went further into it than I
21 did, so she could tell you a whole lot more than I
22 can, because I didn't have time to stick around. I
23 was back on the road.

24 Q What research did you do?

25 A Huh?

1 Q What research did you do?

2 A I kind of went online and -- not online,
3 but I Googled some stuff on the phone to try to find
4 out how this things worked. And I'll be honest with
5 you, without prior knowledge of how that comes
6 together, it just confused me, so I just squashed
7 it.

8 Q I believe you did sign an affidavit in
9 this case, right?

10 A I think I might have signed one or two.
11 I'm not sure.

12 (Defendant's Exhibit 3, Amended
13 Complaint and Affidavits, previously
14 marked, was shown to the deponent.)

15 BY MR. STANLEY:

16 Q Mr. Jefferson, on Page 3 of that
17 affidavit, is that your signature?

18 A I don't see one on this page.

19 Q On Page 3 of the affidavit.

20 A Yeah. That looks like my signature.

21 Q Did you see -- did you ever see a plat
22 that had four lots on it?

23 A Can't recall that I did.

24 Q Did you ever see a plat that said we
25 dedicate the road to the property owners?

1 A Oh, no, never.

2 Q Were you involved at all in the
3 subdivision application to the County?

4 A My wife and I spoke about it, but she did
5 all the legwork.

6 Q Most of this affidavit that you signed
7 quotes or references documents. Other than reading
8 the documents, do you have any personal knowledge of
9 what took place related to the subdivision approval?

10 A When you said the subdivision approval,
11 you're talking about subdividing the property?

12 Q Yes, sir.

13 A Basically, all the knowledge I've had is
14 what my wife told me and what we sat down and
15 discussed and what we agreed to.

16 Q You were here for her deposition. Were
17 you able to hear her okay?

18 A Run that by me again.

19 Q Were you able to hear her okay, your wife,
20 when she was testifying?

21 A Today?

22 Q Yes, sir.

23 A Yeah.

24 Q Did y'all discuss anything that she and I
25 didn't talk about in that deposition?

1 A To be honest with you, y'all discussed way
2 more than I thought y'all would.

3 Q It's our job to ask questions. Sometimes
4 we take it a little seriously.

5 The signatures on Exhibit 4, is one of
6 those one of your parents?

7 A Exhibit 2?

8 Q Exhibit 4.

9 A Lot 2?

10 Q I'm sorry. There are three signatures
11 over there on the right.

12 A Oh, no, no, no, huh-uh. One is my
13 grandmother.

14 Q Okay. Which one is that?

15 A Rebecca Jefferson.

16 Q Okay. Did anybody ever sign her name for
17 her?

18 A To be honest with you, I can't answer
19 that. I wasn't around as much as family members and
20 wife.

21 Q Okay. That's fair. In a typical month,
22 how often were you on the road in the '80s?

23 A Just about every day.

24 Q Same for the '90s, I'm guessing?

25 A Yeah, yeah, yeah.

1 Q Did you do anything when -- did you go to
2 the County or the Town when the development started
3 to take place across the road, you personally?

4 A No, no.

5 Q That's all the questions I have. Thank
6 you for your time.

7 A Thank you.

8 MR. HETHINGTON: I don't have any
9 questions for you. Thank you, sir.

10 MR. WARD: I don't either.

11 MR. GOWDER: I certainly don't. You're
12 through.

13 (The deposition was concluded at
14 4:16 p.m.)

15 - - -

1 CERTIFICATE OF REPORTER

2
3 I, Marie H. Bruegger, Registered Professional
4 Reporter, Certified Realtime Reporter, and Notary
Public for the State of South Carolina at Large, do
hereby certify:

5 That the foregoing deposition was taken before
6 me on the date and at the time and location stated
7 on Page 1 of this transcript; that the deponent was
8 duly sworn to testify to the truth, the whole truth,
9 and nothing but the truth; that the testimony of the
10 deponent and all objections made at the time of the
examination were recorded stenographically by me and
were thereafter transcribed; that the foregoing
deposition as typed is a true, accurate, and
complete record of the testimony of the deponent and
of all objections made at the time of the
examination to the best of my ability.

11 I further certify that I am neither related to
12 nor counsel for any party to the cause pending or
interested in the events thereof.
13 Witness my hand, I have hereunto affixed my official
seal this 13th day of May 2025, at Johns Island,
Charleston County, South Carolina.

14
15
16
17
18 Marie H. Bruegger,
19 Registered Professional Reporter,
20 Certified Realtime Reporter, and Notary
Public, State of South Carolina at Large
My Commission expires: March 23, 2031
21
22
23
24
25

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL
CIRCUIT

3 Henry Bailem, IV; Joseph Bailem; Sheila Bailem;
4 Diane Jefferson; Michael Jefferson, Sr.;
5 Rashica Coakley; and Ann Bailey Simmons,

6 Plaintiffs,

7 vs. Case No. 2023-CP-10-0947

8 County of Charleston; Town of Mount Pleasant;
9 DRB Group South Carolina, LLC f/k/a Dan Ryan
10 Builders South Carolina, LLC; Marie P. Howard;
11 Lewis B. Howard; Lanelle P. Johnson; William
12 Bailem, Sr.; X Syvier Lynn Johnson; Sonia Maria
13 Simmons; Kenneth Davis; Juanita Davis; Titus
14 Howard; Myeisha Howard; James Howard; and John
15 Doe and Jane Doe; fictitious names used herein
16 to designate the unknown heirs at law,
17 distributes, and/or devisees of all persons who
18 are minors or members of the Armed Forces of
19 the United States of America, as contemplated
20 By the Soldiers' and Sailors' Relief Act, 1940,
21 as Amended, and all persons entitled to claim
22 under and through any of them,

23 Defendants.

24 30(b)(6) Town of Mount
25 DEPOSITION OF: Pleasant-through it's
Representatives: Pat Carter,
Hillary Repnick, James Aton

DATE: May 20, 2025

TIME: 11:00 a.m.

LOCATION: Virtual -- Zoom

REPORTED BY: Roxanne Easterwood, RPR

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2 Catherine Anderson, Diane Jefferson,
3 Mark Borst, William Rankin, Michael Boyle

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I N D E X

	Page	Line
DEPUTY CHIEF PAT CARTER	6	20
EXAMINATION	6	22
BY MR. GOWDER		
HILLARY REPNICK	17	18
EXAMINATION	17	20
BY MR. GOWDER		
EXAMINATION	30	1
BY MR. WARD		
JAMES ATON	31	6
EXAMINATION	31	8
BY MR. GOWDER		
CERTIFICATE OF REPORTER	42	1

E X H I B I T S

(No Exhibits Proffered)

P R O C E E D I N G S

* * * * *

MR. GOWDER: Nice to meet you. My name is Andy Gowder. I represent the plaintiffs in this case, Henry Bailem, et al., versus County of Charleston. You three are all here because you have been designated as witnesses by the Town of Mount Pleasant under a rule in our Rules of Civil Procedure called 30(b)(6) that allows that corporate defendants, like the Town of Mount Pleasant, may designate people who are most knowledgeable to testify about particular topics. So you each have been designated by the county to talk about specific topics that were listed in the notice, and that's up here on the screen, Exhibit A. We'll go through these here in a minute. I am obligated by our Rules of Civil Procedures also to go over another couple of rules with you. One is that now that the deposition is started and you have been sworn, you are obligated to ask me any questions that you have about the process. If you have questions about my questions, if you need me to repeat a question or restate it, or you don't understand it, I would ask that you direct all of those questions or statements to me, rather

1 than to Mr. Ward, at this point.
2 Further, if there are breaks and there are
3 off-the-record discussions or private discussions
4 with your counsel, those are not protected by
5 privilege, and I may ask you about those. So I
6 would ask that you not engage in those kind of
7 discussions if there are any breaks. Any
8 conferences that do occur are proper subjects of
9 questions from me. Do you all understand that?

10 THE WITNESSES: Yes.

11 MR. GOWDER: Do you have any questions
12 of me before we get started?

13 THE WITNESS: I do not.

14 MR. GOWDER: We're not going to go
15 very long here, but if you need a break,
16 obviously, let me know. I guess Deputy Chief
17 Carter, you have been asked or designated to go
18 first. I will start with you, sir.

19 THE WITNESS: Okay.

20 DEPUTY CHIEF PAT CARTER
21 being first duly sworn, testified as follows:

22 EXAMINATION

23 BY MR. GOWDER:

24 Q. Deputy Chief Carter, I'm showing you
25 what has been marked as Exhibit A to the notice,

1 and there are four topics there. Which of these
2 topics have you been designated to testify about?

3 A. 1 and 3.

4 Q. 1 and 3, okay. So we will ask you
5 about those. First of all, before we start, just
6 a little bit about you, Deputy Chief Carter. How
7 long have you been with the Town of Mount Pleasant
8 Police Department?

9 A. Twenty-eight years.

10 Q. What is your responsibility at this
11 point with regard to in your role as deputy chief?

12 A. As deputy chief, I'm over all
13 operations of the police department, coordinating
14 day-to-day, and any ongoing processes. I was also
15 brought into this as I was the prior operations
16 captain. So I have had operations for the most
17 extended time at the police department.

18 Q. Very good. And what have you done to
19 prepare yourself to testify today?

20 A. I pulled the reports for John Ballam,
21 looked into our reporting system to pull any
22 reports involving that area.

23 Q. With regard to the first topic: All
24 evidence in the possession of the town that the
25 town has acquired John Ballam Road by adverse

1 possession. First of all, what is your
2 understanding of what "adverse possession" is?

3 MR. WARD: Object to the form.

4 THE WITNESS: I don't know. That's not
5 a term we deal with as the police department. So
6 I don't know that.

7 MR. STANLEY: Sorry to interrupt. Can
8 we have the same stipulation for this, that an
9 objection by one is objection for all?

10 MR. GOWDER: Certainly. So stipulated.

11 BY MR. GOWDER:

12 Q. Sir, with regard to Number 1 then,
13 what can you tell me about that?

14 A. Just looked at the reports for the
15 area and our responses to disturbances on John
16 Ballam Road.

17 Q. We'll go into those in a minute. You
18 told me a minute ago that you don't -- you're not
19 familiar with the term "adverse possession" in
20 your work as a police officer. How would those
21 incidents relate to whether or not the town
22 acquired the road by adverse possession?

23 A. That was just the police department's
24 involvement with John Ballam Road, would have been
25 those reports.

1 Q. So you're here to testify about the
2 police department's involvement on John Ballam
3 Road; you can't say whether or not those -- that
4 that involvement amounts to adverse possession,
5 can you?

6 A. Cannot.

7 Q. Let's look then. I have before you on
8 the screen what's been produced to me by the
9 town's attorneys. It's titled "Incident List
10 Report." The identification number on it is
11 Ballam TOMP Production 0867. Are you familiar
12 with this document?

13 A. Yes, sir.

14 Q. All right, sir. And it appears to
15 have 121 pages. It's a PDF document. Were you
16 involved in the preparation of this document?

17 A. Yes, sir.

18 Q. So tell me about that. Tell me what
19 this is and how you compiled it.

20 A. For our incident management system,
21 our reporting system, I did a search on it. You
22 can do multiple different search techniques. So
23 what I searched was for John Ballam as an incident
24 location to pull our involvement for that area.
25 So this was the list of all reports that came up

1 for our response to that road that generated
2 incident reports.

3 Q. So I don't think we're going to go
4 through 121 pages here this morning, but just
5 explain to me what I'm looking at here. The first
6 two pages, Pages 1 of 2 for this incident list
7 report, what is this?

8 A. They're the summary that the reporting
9 system generates just showing what it was. That's
10 the overall list of all the incident reports.
11 It's just the way the report system generates.

12 Q. So this would be the summary on the
13 first two pages, and then thereafter, is this a
14 compilation of all of those incident reports that
15 are summarized in the first two pages?

16 A. Yes, sir.

17 Q. For the remaining 121 pages?

18 A. Yes, sir.

19 Q. From your compilation of this and your
20 review of this, are there any incidents that are
21 directly relevant to whether or not the road is a
22 private road or a public road?

23 A. When we dealt with the civil matters
24 in the area, those all involved the property off
25 of the roadway. There was complaints in here

1 about the road, but all indications that I had and
2 everything that was produced into these reports
3 showed that when there was a trespassing or a
4 disturbance, it was a property off of the roadway.
5 I don't show anything that was produced to me that
6 said that the roadway was not like any other
7 roadway.

8 Q. So that I am sure that I understand
9 what your answer just was, all of the incidents
10 that were compiled here in this document involve
11 incidents on the parcels along the roadway where
12 there are private residences; is that right?

13 A. Yeah. They involved the residences
14 along John Ballam, yes, sir.

15 Q. Were there any incidents collected in
16 this report that have any relevance with whether
17 or not the road is a public or a private road?

18 A. I didn't have anything produced. I
19 don't believe so, because everything that I read
20 in here, there was disturbances about the
21 properties along there. There was a couple of
22 times people brought up the roadway, but it was
23 never shown or documented that the roadway was
24 different than any other roadway.

25 Q. That was not -- whether or not the

1 road was public or private was not relevant with
2 regard to the investigation of any of these
3 incidents; is that accurate?

4 A. Did not involve on those, and then
5 when there was a complaint about the roadway,
6 nothing was produced. So it was handled as the
7 properties on the side like we would anywhere
8 else.

9 Q. When you mention a complaint about the
10 roadway, what specifically are you talking about?

11 A. I believe there was a -- one of the
12 disturbances in here where they were complaining
13 about a vehicle on the roadway, and then the
14 person had come into the property, and so it was
15 handled as a trespass onto the property, and the
16 matter of the car being on the roadway was not
17 relevant at that point by the continued
18 investigation. Once they had put the person on
19 trespass for the property, there was no longer a
20 complaint on that report, so that report closed.

21 Q. Understood. Do you have anything else
22 to say about Topic Number 1?

23 A. I don't believe so, no, sir.

24 Q. Going to topic, then, Number 3: All
25 evidence in the possession of the town that John

1 Ballam Road has been utilized by the public as a
2 public right-of-way. What do you have to say
3 about that one?

4 A. Again, from the PD side, it's just
5 that we responded and handled that roadway as we
6 do other roadways of the response to calls on
7 there of responding to it. That the roadway was
8 treated like other roadways.

9 Q. Treated like other roadways by the
10 police department?

11 A. Yes, sir.

12 Q. Let me ask the question this way,
13 Deputy Chief Carter: There are also roads that
14 are designated as private roads in this vicinity
15 and in the Town of Mount Pleasant, correct?

16 A. There are some, yes, sir.

17 Q. In fact, just, I think, surrounding
18 John Ballam Road, there are roads that have blue
19 streaks on it. So are you familiar with that
20 distinction?

21 A. We don't operate on that way of it. I
22 don't have it differentiated by the signs. So
23 when we get called to a complaint on an area, then
24 we check the roadway at that time to see if there
25 is a complaint on there that we've had to check

1 once before, but I don't have a list of which ones
2 are private.

3 Q. If you are responding to a call on
4 whether or not -- on a report of a disturbance or
5 some other reported potential crime, assuming it's
6 in the Town of Mount Pleasant, does it matter to
7 you or your police officers whether the road that
8 you go down is a public road or a private road?

9 A. For crimes, we can enforce state laws
10 within Mount Pleasant boundaries. There are some
11 areas that are under county contract. So we would
12 not enforce town ordinances on them. By policy,
13 that's how we deal with it. State ordinances,
14 though, within the Town of Mount Pleasant we're
15 able to enforce.

16 Q. What kinds of things would you be
17 relying on the county law enforcement to address
18 on private roads?

19 A. It's not broke down by road. It's
20 just if we go into -- Snowden area is our largest
21 county contract area, so we cannot enforce a town
22 ordinance. We have the ability to enforce state
23 law, but we couldn't do, like, the town noise
24 ordinance, because it's in the county.

25 Q. That's because parts of Snowden are

1 unincorporated, not in the Town of Mount Pleasant?

2 A. Yes, sir.

3 Q. Understood. In terms of this Number
4 3: Utilization by the public as a public
5 right-of-way, other than through your
6 investigations of reported incidents, does the
7 police department have any knowledge of how the
8 public utilizes John Ballam Road?

9 A. Because of the other neighborhoods and
10 roadways on there, all of my experience has been
11 that it was treated as a roadway because there was
12 that offshoot road. So it was people getting back
13 and forth to their residences on the roadway.

14 Q. To your knowledge, is there access to
15 any dwellings at this point off John Ballam Road,
16 other than those five lots along the side of John
17 Ballam Road?

18 A. I don't know. I haven't looked that
19 in depth to it. I know there was work being done
20 to the right side. So there was contractors
21 having to get into there, that was some of the
22 disturbances we were called to, to access to their
23 property.

24 Q. Clearly, part of this case involves
25 the new development on the right side. Setting

1 that aside for a moment. Are there any people who
2 use this road other than those who live on the
3 left side of the road?

4 A. I don't know. I haven't sat outside
5 there to see who uses it.

6 Q. Isn't it true that this road is --
7 terminates in a cul-de-sac at the end?

8 A. Again, I haven't driven it by the map,
9 but when I have looked at it, there is the
10 offshoot to the right, then the road goes back to
11 the left past the residences, just looking at the
12 map. I haven't been far off of Six Mile in a long
13 time.

14 Q. Just to make sure that I understand
15 the extent of your testimony, then, Deputy Chief
16 Carter, what evidence do you have that -- either
17 that the public is using the road or the extent to
18 which the public is using the road?

19 A. Just the reports, just the familiarity
20 of the reports from my officers is all that I
21 have.

22 MR. GOWDER: I think for perhaps your
23 convenience, I will stop here -- these are all of
24 the questions I have for you -- and allow other
25 attorneys to ask you any questions they may have,

1 because once we're through with questioning you,
2 it may be that Mr. Ward will allow you to go on
3 about your business. I'll stop now and see if any
4 other attorneys for the other parties have
5 questions of you.

6 MR. WARD: I do not have any questions
7 of him.

8 MR. HETHINGTON: None from the county.

9 MR. STANLEY: None from DRB.

10 MR. GOWDER: Deputy Chief Carter, thank
11 you so much for your time and for your service to
12 the town. And that's all the questions I have for
13 you.

14 THE WITNESS: Thank you.

15 MR. WARD: Just to confirm, we're okay
16 with letting him go and getting back to work?

17 MR. GOWDER: Yes, please.

18 HILLARY REPNICK
19 being first duly sworn, testified as follows:

20 EXAMINATION

21 BY MR. GOWDER:

22 Q. Ms. Repnick, again, I'm Andy Gowder.
23 Thank you for being here. Which of these topics
24 of these four are you prepared to testify about?

25 A. I am here for Topic Number 4.

1 Q. If you would, before we get started,
2 what is your role with the Town of Mount Pleasant?

3 A. I am the Public Services Department's
4 operations officer. So I oversee different
5 operations within our department and some specific
6 division and special projects, lots of things.

7 Q. Got it. How long have you been in
8 that position?

9 A. I have been in this position for, I
10 believe, three and a half years specifically.

11 Q. What did you do before that?

12 A. I was the storm water manager for the
13 Town of Mount Pleasant.

14 Q. Take me back in time. What before
15 that?

16 A. I was in an administrative clerk
17 position, and before that I was a laborer for the
18 Public Services Department.

19 Q. How long in total have you worked for
20 the Town of Mount Pleasant?

21 A. It will be 30 years come September.

22 Q. Tell me, if you would, what you have
23 done to prepare yourself to testify today?

24 A. I reviewed a couple of the exhibits
25 related to work orders and took a look back in our

1 files for any odd files and records that we may
2 have had, just because it's been a long time.

3 Q. Tell me just generally, before we dive
4 into some of these specifics, what kind of reports
5 or records did you find in your review that had to
6 do with John Ballam Road.

7 A. So I found in our current work
8 management system we had a couple of work orders,
9 service request work orders related to John Ballam
10 Road. I found a couple of photographs that were
11 tagged for John Ballam Road, and we have a kind of
12 download from an old database of calls that just
13 came in, and I just did a word search for John
14 Ballam Road within there.

15 Q. Are you aware of when the Town of
16 Mount Pleasant annexed this area and specifically
17 John Ballam Road?

18 A. So I believe it was before I was
19 employed with the town, but I became familiar
20 vaguely with the area when I started working at
21 least with the storm water program.

22 Q. Roughly, when was that?

23 A. I started as a storm water manager in
24 1997.

25 Q. At that point at least, is it your

1 understanding that at the point of annexation, the
2 Town of Mount Pleasant took over maintenance
3 responsibility for the road from Charleston
4 County?

5 A. I am not aware of any information
6 related to that. It's not standard, but I'm not
7 specifically -- don't recall anything on that.

8 Q. At the present time, who has the
9 maintenance responsibility for John Ballam Road?

10 A. I believe that's up in the air. We
11 have a record of ownership of or maintenance
12 responsibilities that we refer to when we get
13 calls from citizens. I think it's currently
14 tagged as the Town of Mount Pleasant.

15 Q. Do you know how long that has been the
16 case?

17 A. I do not, no, sir.

18 Q. Do you know what that designation is
19 based on?

20 A. We start with some county road
21 records, and then occasionally I believe our --
22 we'll find information and may submit it for
23 review, and other folks check it out and look up
24 information, but I don't know specifically.

25 Q. Tell me, if you would, what

1 maintenance on the road were you able to determine
2 has the Town of Mount Pleasant undertaken?

3 A. I couldn't find any maintenance
4 records for the road itself.

5 Q. If there had been maintenance on the
6 road, that should be in the town's records, right?

7 A. That's correct.

8 Q. So can we conclude there has been no
9 maintenance by the Town of Mount Pleasant on this
10 road?

11 A. I only have the records in front of
12 me, sir.

13 Q. But you don't have any records in
14 front of you showing maintenance by the town?

15 A. On the road, yes, sir.

16 Q. On the road, correct. I am showing
17 you a work order that has been produced by the
18 attorneys for the town, and looks like dating
19 from -- actual start date, November 9, 2021.
20 Actual finish date, November 9, 2021. And then
21 going on down, it appears that there are date work
22 order closed, March 22nd, 2022. Are you familiar
23 with this document?

24 A. I am.

25 Q. Tell me what this document is.

1 A. So this document is a printout from
2 our work management database. It's a work order.
3 So it represents tracking of work performed by our
4 department employees.

5 Q. Are you familiar from your own
6 experience with this -- with the work that's
7 reflected on this work order?

8 A. I have no direct experience, but I do
9 understand what they -- what it says.

10 Q. So from your experience in your
11 current role, you are able to figure out what
12 happened based on reading this work order?

13 A. Correct.

14 Q. What can you tell from reading this
15 work order?

16 A. This work order indicates that a crew,
17 specific employees, went out to a specific site,
18 which is John Ballam Road, and they put grass seed
19 out in a ditch to prevent erosion. And then
20 there's notes from the supervisors that these
21 notes are actually already reflected on a
22 different work order. So the work had already
23 been captured someplace else, and this actually
24 was not needed, because it's a duplication of
25 records.

1 Q. Can you tell from this document, first
2 of all, the location of the ditch?

3 A. So, no. It just says John Ballam Road
4 and the ditch.

5 Q. Do you know whether or not there are
6 ditches on both sides of John Ballam Road?

7 A. There are shallow ditches in parts of
8 John Ballam Road on both sides, but not all. I
9 don't recall them on all sides.

10 Q. Are you familiar with -- if you were,
11 I guess, standing on Six Mile Road, you're looking
12 down John Ballam Road, the ditch on the right, are
13 you familiar with the fact that that is an older
14 ditch or preexisting ditch to the one that
15 might -- any ditch that might exist along the
16 left-hand side of the road?

17 A. I do not have any history of when
18 those ditches were actually created and in which
19 sequence they were created.

20 Q. Do you know whose responsibility
21 maintenance of the ditches on either side of John
22 Ballam Road is?

23 A. From a maintenance standpoint, we
24 would look at today's record. If the road is
25 listed today as the Town of Mount Pleasant, we

1 would certainly look at the ditch and then
2 determine if the maintenance that is requested or
3 needed would be something that we would perform or
4 if it was something that the homeowners may have
5 to perform.

6 Q. Would there typically be right-of-way
7 easements or agreements between property owners
8 and the local government, in this case the town,
9 regarding maintenance responsibilities for the
10 ditch?

11 A. Can you repeat the question? I lost
12 part of it.

13 Q. It was probably a random question.
14 I'll do better.

15 A. We're losing audio. Hold on.

16 Q. Can you hear me now?

17 A. I can hear you now, yes, sir.

18 Q. Typically, is it the case that there
19 are either right-of-way easements or some other
20 contract between the property owners and the local
21 government to allow for maintenance of the
22 ditches?

23 A. Not in that specific terms. For
24 instance, town code has for lot upkeep, property
25 owners should maintain vegetation up to the

1 pavement. It's sort of an expectation that the
2 town is not going to come out and mow your front
3 lawn and keep up with the vegetation between your
4 property line and the pavement in special
5 circumstances, and it includes ditches. So we
6 kind of keep good housekeeping.

7 Then from our standpoint, we will take
8 a look at the drainage ditch if it's within our
9 jurisdiction, and if it needs grading for the
10 purpose of the ditch, which is to move drainage
11 water and protect properties, et cetera, then we
12 will determine if maintenance is needed, if it's
13 an emergency, and when/if we choose to do it, it
14 would be scheduled.

15 Q. Thank you. That's helpful. One thing
16 that I can represent to you, that there has been
17 prior testimony in the case -- in this case that
18 the ditch on the left-hand side of the road was
19 subject to an agreement -- a written agreement
20 between the then-property owners and the County of
21 Charleston dating back to the early 1960s about
22 maintenance of the ditch. Do you know anything
23 about that?

24 A. I do not know anything about that.

25 Q. Are there any records reflected in the

1 Town of Mount Pleasant that you have seen in your
2 review that indicates whose responsibility the
3 ditch on the left-hand side of the road is to
4 maintain?

5 A. I'm not aware of any documents
6 specifically about maintenance of that ditch.

7 Q. Is it the town's position that it does
8 not have responsibility for that ditch?

9 A. The town's position, because the
10 properties are within the Town of Mount Pleasant
11 and annexed into the town mthat those specific
12 properties we would respond to requests, and we
13 would determine if we need to do maintenance,
14 since our records currently show the town -- I
15 guess I'll call it owning the road, having some
16 type of responsibility, if those records are
17 correct.

18 Q. Actually, your statement raises a
19 point that I'd like to ask you. From the town's
20 perspective, who owns the road?

21 A. The current records that I have access
22 to, it says the town. And that's based upon, I
23 think, annexation, abutting properties, but that's
24 the information that I have from a record that I
25 have access to.

1 Q. Would you agree that in order for the
2 town to claim ownership of the road, there would
3 have had to in the past been a public dedication
4 of the road by the property owner?

5 MR. WARD: Object to the form.

6 THE WITNESS: I am not aware of a
7 process that works like that through annexation.

8 BY MR. GOWDER:

9 Q. So you don't really know how it came
10 to be that the town -- it's said to be in the
11 records of Mount Pleasant owned by the town?

12 MR. WARD: Object to the form.

13 THE WITNESS: So I am not aware. I
14 just have a database that has an ownership note on
15 it.

16 BY MR. GOWDER:

17 Q. You don't know who made that entry or
18 how that came to be?

19 A. That's correct.

20 Q. Number 4 specifically talks about the
21 resources and staff that have been utilized to
22 clear out, clean, mow, and otherwise maintain the
23 drainage ditch within the John Ballam 50-foot
24 right-of-way.

25 Other than this work order, do you

1 have other information about that?

2 A. I believe there is a second work
3 order.

4 Q. You think it predates November of
5 2021?

6 A. I believe there is a work order that
7 has additional labor and equipment and jobs listed
8 on it that was part of the deposition prep.

9 Q. While we're considering that, I'm
10 showing you a picture that's been produced. It
11 appears to be of a ditch. Do you have any
12 information about what this shows?

13 A. So this shows a drainage ditch on the
14 side of what appears to be a roadway with a
15 driveway culvert or pipe, and this came from a
16 file within our subdivision records titled "John
17 Ballam Road."

18 Q. From your review of the records, how
19 many times can you tell that the town has been
20 onsite to do any maintenance or any work at all on
21 the drainage ditches on either side of this road?

22 A. So our original older records indicate
23 that we had received several calls requesting
24 maintenance of the ditch from the property owners,
25 someone along John Ballam Road regarding overgrown

1 vegetation, and those records -- I believe there
2 were, like, three records for the road, and one of
3 them indicated a request for us to come back and
4 do a slightly better job.

5 So at least twice before this, the
6 current work order, the one we're looking for, and
7 at least one previous note indicated that we had
8 performed work. Those were comments from a
9 caller, but I don't have any actual earlier work
10 records.

11 Q. So, essentially, two times since
12 annexation; is that correct?

13 A. That is what I have on record, yes,
14 sir.

15 Q. And the most recent one would have
16 been November 2021; is that right?

17 A. Somewhere in late 2021, yes, sir.

18 Q. Ms. Repnick, do you have any other
19 information with regard to Topic Number 4 that we
20 have not talked about?

21 A. No, sir.

22 MR. GOWDER: That being the case, those
23 are all of the questions for you that I have.
24 Thank you very much. I'll turn you over to the
25 other lawyers.

1 EXAMINATION

2 BY MR. WARD:

3 Q. I just have a couple brief ones.

4 Ms. Repnick, you testified earlier
5 that the town -- generally, it's the property
6 owners who are responsible up to the pavement.
7 Would the town ever do any clearing of ditches
8 that were not in the right-of-way, that were
9 outside of -- that there wasn't a drainage
10 easement for it?

11 A. If there was no drainage easement or
12 it was not in the right-of-way, we would not
13 perform work.

14 Q. In looking at the records in this
15 case, work was done on the ditch on John Ballam
16 Road because it was within the 50-foot
17 right-of-way?

18 A. We assumed it was within the 50-foot
19 right-of-way, yes.

20 MR. WARD: I don't have any other
21 questions.

22 MR. STANLEY: Nothing from DRB.

23 MR. HETHINGTON: Nothing from the
24 county.

25 MR. GOWDER: Ms. Repnick, I don't have

1 any further questions. So if Mr. Ward allows it,
2 that would be all I have for you. You're free to
3 go.

4 MR. WARD: Yes.

5 THE WITNESS: Thank you.

6 JAMES ATON

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. GOWDER:

10 Q. Mr. Aton, I'm showing you the Exhibit
11 A and the four topics here. Which ones are you're
12 to address?

13 A. 1, 2, 3, and 4.

14 Q. All of them?

15 A. Yes, sir.

16 Q. Mr. Aton, tell me what your role is
17 with the Town of Mount Pleasant.

18 A. I am the deputy director of the
19 capital projects and transportation division.

20 Q. Tell me what that entails.

21 A. That entails all roadways, sidewalks,
22 signing, signals, encroachment permits, design
23 review, team review, capital improvement projects,
24 and capital maintenance projects for the town.

25 Q. How long have you been in that

1 position?

2 A. I have been with the town for ten
3 years, and in this position for three.

4 Q. What did you do with the town before
5 those three years?

6 A. Previously, I was the operations
7 division chief for five years, and then prior to
8 that the town's traffic engineer for two years.

9 Q. Is that your professional training as
10 a traffic engineer?

11 A. My education is in civil engineering,
12 with a focus on traffic and transportation
13 engineering, yes, sir.

14 Q. Tell me, if you would, where you
15 obtained your degrees.

16 A. The Citadel for a bachelor of science
17 in environmental engineering, and Clemson
18 University for a master's in civil engineering,
19 with a focus in transportation and traffic
20 engineering.

21 Q. Did you work anywhere before you
22 started with the Town of Mount Pleasant?

23 A. I did. I worked for a private
24 consulting firm doing roadway design and traffic
25 signal design for three and a half years.

1 Q. Thank you very much. If you would,
2 tell me -- we'll start at the top. What can you
3 tell me about the town's acquisition of John
4 Ballam Road by adverse possession?

5 A. It's my understanding that the town
6 road was -- or John Ballam Road was given to the
7 town by Charleston County as part of their Dirt to
8 Pave Program, which is funded through the sales
9 tax -- half cent sales tax. I'm not aware of when
10 that was handed over, but that's my understanding
11 of how the town came into ownership of the
12 roadway.

13 Q. Tell me a little bit about the Dirt to
14 Pave Program. What is that?

15 A. Dirt to Pave Program is the county-run
16 program where public roadways that require
17 considerable maintenance annually are designed to
18 be paved with asphalt, reducing the county's
19 maintenance load and providing a safer and more
20 accessible roadway.

21 Q. What roads are eligible to be paved
22 under this program?

23 A. Public roadways are eligible.

24 Q. So it was the town's assumption that
25 this road was public?

1 A. To the best of my knowledge, the
2 county does not pursue spending taxpayer dollars
3 on private roadway improvements.

4 Q. So the town was relying on the
5 county's representations that this was a public
6 road?

7 A. That is my understanding.

8 Q. Tell me about -- there have been some
9 testimony earlier about C Tax money. Is that the
10 money that is being used to fund this Dirt to Pay
11 Program?

12 A. I'm not sure. The program itself has
13 had many different names and acronyms over the
14 years. I currently know it as CTC and TST, or
15 Charleston County transportation sales tax or the
16 transportation TST program. I'm not sure about C
17 Tax.

18 Q. Tell me how the town and the county
19 worked together on these records that are being
20 paved, generally. We can get to John Ballam
21 specifically in a minute. Do the roads have to be
22 transferred to the town? Or tell me how that
23 works.

24 A. The roadways themselves do not
25 necessarily need to be transferred to the town.

1 It's a question of an application, typically
2 through a municipality or the county themselves,
3 identifying existing assets that are eligible for
4 the Dirt to Pave Program. That's how that
5 typically works. At least from a municipality
6 standpoint, it's an annual submittal and review
7 process.

8 Q. With regard to John Ballam Road in
9 particular, do you have or were you able to
10 determine when it was that the road was paved?

11 A. I do not know.

12 Q. Is the town involved in the decision
13 to pave the road?

14 A. I do not know.

15 Q. Is it your understanding that the
16 county paved the road?

17 A. Yes, it is.

18 Q. So, to your knowledge, did the town
19 have any involvement in that project whatsoever?

20 A. I do not know.

21 Q. You would know, wouldn't you? You
22 would be the person in the town that would know
23 that in your position, right?

24 MR. WARD: Object to the form.

25 THE WITNESS: This road was paved well

1 before my time with the town.

2 BY MR. GOWDER:

3 Q. In your review of the records of the
4 town, did you see any records that would indicate
5 that the town had involvement in the paving of
6 this road?

7 A. No.

8 Q. Do you have any indication that the
9 property owners along John Ballam Road were
10 notified that the road was going to be paved?

11 A. I do not know.

12 Q. Do you know whether or not the
13 property owners along John Ballam Road requested
14 that the road be paved?

15 A. I do not know.

16 Q. Other than the fact that you had
17 testified that it's the town's position that the
18 town was given the road by Charleston County
19 through the Dirt to Pave Program, do you have any
20 other testimony about acquisition of the road by
21 adverse possession?

22 A. I do not.

23 Q. On Number 2, it says: "Public funds
24 were utilized to pave and improve John Ballam
25 Road." I think it's been your testimony that

1 those were county funds, not town funds, right?

2 A. That is correct.

3 Q. With that being said, do you have
4 anything else to say about Topic Number 2?

5 A. I do not.

6 Q. On Topic Number 3, what evidence is in
7 the possession of the town, as far as you know,
8 that John Ballam Road is being used by the public
9 as a public right-of-way?

10 A. Other than anecdotal evidence of
11 driving down it, as well as plats that have been
12 reviewed, I have no other evidence that it's a
13 public roadway or utilized by the public.

14 Q. What anecdotal evidence are you
15 referring to?

16 A. The fact that it is an open roadway,
17 that our maintenance crew and likely trash and
18 recycling utilize the roadway to access residents,
19 as well as us -- as well as the town issuing
20 encroachment permits for improvements on the
21 roadway.

22 Q. Those encroachment permits were for
23 improvements on the roadway on the left side of
24 the roadway, correct, or the right --

25 A. It's my understanding -- it's my

1 understanding it's the right side of the roadway.

2 Q. That's specifically the access into
3 the new development, right?

4 A. That is one of the encroachment
5 permits, yes.

6 Q. Do you have any information about
7 whether or not there has been any maintenance of
8 this road by the town?

9 A. I do not know.

10 Q. Do you have any information about
11 whether or not there is any Town of Mount Pleasant
12 public service that is offered using this road?

13 A. I believe trash and recycling, but I'm
14 not sure.

15 Q. What is your belief on that based on?

16 A. That's based off of the plat and that
17 it's a public roadway, and just seeing that the
18 trash cans are not out at the Six Mile Road
19 intersection; they're at the individual driveways.

20 Q. You have gone onsite and observed
21 that?

22 A. I have, yes, sir.

23 Q. What do you know, if anything, about,
24 for example, school bus utilization of the road?

25 A. I do not know.

1 Q. So other than what we have talked
2 about, do you have any other information related
3 to Topic Number 3?

4 A. I do not.

5 Q. We heard from Ms. Repnick on Number 4.
6 What do you know about the clearing out, cleaning,
7 mowing, or maintenance of the drainage ditch in
8 the right-of-way?

9 A. The only information that I have is
10 what is present within the encroachment permit
11 submitted, work within the ditch area, not
12 necessarily related to maintenance clearing,
13 mowing, or otherwise maintaining the ditch area.

14 Q. So it's the encroachments with regard
15 to the new construction on the right?

16 A. That is one of the encroachment
17 permits, yes.

18 Q. What would be the other?

19 A. The other are utility company
20 encroachment permits: AT&T, I believe, and
21 Dominion.

22 Q. Those would be for telephone and for
23 gas; is that right?

24 A. I am not sure. I'd have to reference
25 the encroachment permits.

1 Q. Those would just be filed in the
2 records at the town that you're familiar with?

3 A. Yes, sir.

4 Q. Do you have any other information
5 about Number 4?

6 A. I do not.

7 MR. GOWDER: All right, sir, those are
8 all of the questions I have for you. I'll turn it
9 over to the other lawyers.

10 MR. WARD: I do not have any questions.

11 MR. BELL: No questions from the
12 county.

13 MR. GOWDER: Anything from DRB?

14 MR. STANLEY: No, I don't have any
15 questions.

16 MR. GOWDER: That's all I have,
17 Mr. Aton. Thank you for your time. I appreciate
18 it. I guess, James, that would be the end of the
19 testimony of the town; is that right?

20 MR. WARD: Yes, that's all I have.

21 THE WITNESS: Thank you.

22 THE REPORTER: Do you want the same
23 orders for all witnesses unless you tell me
24 otherwise?

25 MR. WARD: Yes, please.

1 MR. HETHINGTON: Yes for the county.

2 MR. STANLEY: Yes, please.

3 (The deposition was concluded at 12:06

4 p.m.)

5 (The witness, after having been advised

6 of the right to read and sign this transcript,

7 does waive that right.)

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1 CERTIFICATE OF REPORTER

2
3 I, Roxanne M. Easterwood, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby
6 certify that the foregoing transcript is a true,
7 accurate, and complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 20th day of May,
13 2025 at Charleston, Charleston County, South
14 Carolina.

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21
22
23
24 _____
Roxanne M. Easterwood, RPR
My Commission expires
November 19, 2034
25

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL
CIRCUIT

3
4 Henry Bailem, IV; Joseph Bailem; Sheila Bailem;
Diane Jefferson; Michael Jefferson, Sr.;
5 Rashica Coakley; and Ann Bailey Simmons,

6 Plaintiffs,

7 vs. Case No. 2023-CP-10-0947

8 County of Charleston; Town of Mount Pleasant;
9 DRB Group South Carolina, LLC f/k/a Dan Ryan
Builders South Carolina, LLC; Marie P. Howard;
10 Lewis B. Howard; Lanelle P. Johnson; William
Bailem, Sr.; X Syvier Lynn Johnson; Sonia Maria
11 Simmons; Kenneth Davis; Juanita Davis; Titus
Howard; Myeisha Howard; James Howard; and John
12 Doe and Jane Doe; fictitious names used herein
to designate the unknown heirs at law,
13 distributes, and/or devisees of all persons who
are minors or members of the Armed Forces of
14 the United States of America, as contemplated
By the Soldiers' and Sailors' Relief Act, 1940,
as Amended, and all persons entitled to claim
15 under and through any of them,

16 Defendants.

17
18 DEPOSITION OF: John Henry Dingle

19 DATE: May 20, 2025

20 TIME: 3:00 p.m.

21 LOCATION: Virtual -- Zoom

22 REPORTED BY: Roxanne Easterwood, RPR

23 CLARK BOLEN
24 CHARLESTON, SC 29415
843-762-6294
25 WWW.CLARKBOLEN.COM

1
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ALSO PRESENT:

Catherine Anderson, Diane Jefferson,
William Rankin

I N D E X

	Page	Line
JOHN HENRY DINGLE	5	3
EXAMINATION	5	5
BY MR. WARD		
EXAMINATION	19	14
BY MR. STANLEY		
CERTIFICATE OF REPORTER	21	1

E X H I B I T S

(No Exhibits Proffered)

1 P R O C E E D I N G S

2 * * * * *

3 JOHN HENRY DINGLE

4 being first duly sworn, testified as follows:

5 EXAMINATION

6 BY MR. WARD:

7 Q. Good afternoon, Mr. Dingle. My name
8 is James Ward. I'm one of the attorneys for the
9 Town of Mount Pleasant. You're here today for
10 your deposition in this case. I have a couple of
11 ground rules to go over with you first, and then
12 we can get started with your questioning.

13 First, as you see, we have a court
14 reporter who is on the line here with us. She's
15 going to be taking down everything we say. So
16 it's just important that we try to avoid talking
17 over one another. If you just let me finish
18 asking the questions I may have before providing
19 your answer, and I'll, obviously, let you finish
20 answer before asking my next question. I think
21 that will be helpful to avoid talking over each
22 other. Sound good?

23 A. Yeah.

24 Q. Second, she's also taking everything
25 down. So it's important to answer every question

1 verbally. So try to avoid any head shakes, nods,
2 "uh-huhs," "huh-uhs," and try to provide "yes" and
3 "no" answers. Sound good?

4 A. Yes.

5 Q. If you can't hear me or you don't
6 understand the question I'm asking, feel free to
7 ask me to repeat it or rephrase it, and I'll be
8 happy to do so. Otherwise, if I ask a question
9 and you answer it, I'll just assume that you
10 understood the question.

11 Lastly, I don't anticipate this being
12 very long, but if you do need a break, just let me
13 know, and we can break if you need to take a
14 break. Sound good?

15 A. Yeah.

16 Q. Can you state your full name for the
17 record?

18 A. John H. Dingle. H for Henry.

19 Q. All right. Mr. Dingle, what is your
20 address?

21 A. 1125 Crystal Road, Mount Pleasant,
22 South Carolina. ZIP Code is 29466.

23 Q. Have you ever been deposed before?

24 A. What?

25 Q. Have you ever had your deposition

1 taken before?

2 A. No.

3 Q. So this is your first time?

4 A. Yes.

5 Q. I'm going to share my screen. Do you
6 see that document on the screen in front of you?

7 A. It's so small.

8 Q. I'll try to zoom in. Is that better?

9 A. No, sir. Still too small.

10 Q. Is that better, or is that the same?

11 A. It's the same.

12 Q. I can zoom in some more. Is it a
13 little better now?

14 A. It's a little better.

15 Q. Does that look familiar to you?

16 A. That's what you're talking about?

17 Q. I'll represent to you that the
18 document in front of you is a copy of the notice
19 of deposition that was served on you. Do you
20 remember receiving that?

21 A. Yeah. Yeah.

22 Q. You're here today to testify in
23 regards to the Ballam versus Charleston County
24 matter, correct?

25 A. That's what they said.

1 Q. In preparation for this deposition,
2 did you do anything? Did you review any documents
3 prior to today's deposition?

4 A. No.

5 Q. Did you speak to anybody about your
6 deposition today?

7 A. No.

8 Q. Are you familiar with any of the
9 plaintiffs in this case?

10 A. I know them, a while back, but lately
11 haven't talked to them. They was here, what, a
12 month ago. I find out that -- well, get that
13 later. They was here, and I forget was here. The
14 following week, that's when y'all sent me that
15 letter to come to -- what do you call that thing?
16 But anyway, deposition. Whatever, I can't
17 remember the lady's name who brings the papers
18 here. That's when she show up, after I talk to
19 them a week before.

20 Q. When you refer to "them," who did you
21 talk to?

22 A. Henry Bailem, Diane, and Michael, Bill
23 Jefferson -- Michael Jefferson, yeah.

24 Q. What did y'all talk about?

25 A. They was asking me questions about the

1 road in Six Mile, John Ballam Road. That's what
2 they was talking about.

3 Q. What did they ask you?

4 A. They ask me questions, because when I
5 went with the county back in the 1964 -- that's
6 when I started with the county, and we had to do a
7 lot of work. And like I told them, I said, the
8 ditch -- there was a ditch that run from Six Mile
9 Road, go back to Palmetto Fort, and there is a
10 ditch in the middle that come up. It was just a
11 road with trees and stuff. We had cleaned the
12 ditch.

13 And the county had a maintenance crew
14 and construction crew. I was on the ditch -- the
15 maintenance crew, packing guys out there, working,
16 cleaning the ditch and stuff like that. And we
17 clean the ditch and whatever. And Diane, she call
18 the county, come back and clean it. Went back,
19 and they cut the trees out, haul it off, pick up
20 all the stumps, haul that off, too. And then they
21 had to recover it. We had to redo the ditch all
22 over, cover it up, redig it in order to satisfy
23 her.

24 But there was no road there during the
25 time. The only little road was there, Henry

1 Bailem had a mobile home back from Six Mile Road
2 coming in. That's the only road before he move.
3 He had to move his mobile home after they had all
4 that going on.

5 The ditch -- like I told her and
6 Michael, I don't know who build the road, but I
7 know the county had to put a right-of-way on the
8 side of the ditch in order to get in with the
9 machine to do their work they had to do, and then
10 they come back because Diane -- I mean, Diane,
11 Michael, they had a backhoe back there, was
12 working on it, trying to get the road square.

13 Now if the county did the road, I
14 don't know, because I didn't work on the
15 construction crew. Then they had a construction
16 crew come from North Charleston, the company with
17 all the big machines and stuff. We didn't have no
18 big machines here during that time.

19 Q. So you mentioned that you worked for
20 the county. You said you started in 1964; is that
21 correct?

22 A. 1964.

23 Q. When did you retire with the county?

24 A. 2011.

25 Q. What positions did you hold while you

1 were working for the town?

2 A. When I first start out there, for the
3 first 25 years I was doing labor work.

4 Q. After that?

5 A. After that the guy who was there
6 before me -- well, it was two guys ahead of me.
7 The first guy when I was there -- when I first got
8 there, his name was Glenn Remley (sic). He
9 retired, and some other guy. He was there, and he
10 retire after 25 years. And then I -- then they
11 move me up in the spot he was at being a
12 supervisor, because I was there all this time.
13 And every -- I could go around and do the work
14 that need to be done.

15 Q. How long were you a supervisor with
16 the county?

17 A. I want to say I start work after --
18 was 25 years I was there. I was a laborer, and I
19 was there -- 44 years I was there. I didn't never
20 figure that out.

21 Q. When you left the town or when you
22 left the county in 2011, what was your title?

23 A. Supervisor.

24 Q. What kind of crew did you supervise?

25 A. After that I still had the maintenance

1 crew, and I had two guys for operate.

2 Q. I'm not very familiar with that. What
3 kind of maintenance were y'all doing for the
4 county?

5 A. We was doing drainage, cut roadside,
6 and put down driving pipe and stuff like that.

7 Q. Did you do any road work with the
8 county, any paving or anything like that?

9 A. No, we didn't never do no paving.

10 Q. Did you do road maintenance of any
11 type?

12 A. Yeah, mostly all the dirt roads over
13 here in Mount Pleasant, Awendaw, back and forth.
14 The county used to do most of it. We had motor
15 blade. We used to go out and blade the road. We
16 start at one end and blade to the next end, but a
17 lot of roads the county didn't do because they
18 didn't have no right-of-way on it.

19 Q. In what area in the county did you
20 work in mostly?

21 A. Mostly from Mount Pleasant all the
22 way -- I used to blade from Mount Pleasant all the
23 way back to Awendaw. And I had a pad, a little
24 booklet they give me with all the kind of road,
25 maintenance road, the county road, and private

1 road.

2 The private road, we don't do
3 private -- we didn't do no private road unless
4 they call in and make a work order. That's work
5 they got to pay to get done. We ain't never do no
6 private road like that. Only county road and
7 community road.

8 Q. Did you ever do any work on John
9 Ballam Road?

10 A. No. Not to my knowledge, no.

11 Q. Did you know or did you know at the
12 time whether John Ballam Road was a county road or
13 a private road?

14 A. I sure didn't.

15 Q. Who did you -- when you were working
16 for the county, who did you report to?

17 A. Who I report to?

18 Q. Who was your supervisor?

19 A. I had a superintendent. My
20 superintendent. I had two or three of them. When
21 I first start there, the guy's name was James
22 McNeil. And after he gone, I had a guy name Ron
23 Brady that was my superintendent. And after he
24 retire and gone, the last superintendent I had was
25 a guy named John Myers.

1 Q. I want to back up a little bit. You
2 said that you're familiar with the plaintiffs in
3 this case: Henry Bailem, Diane Jefferson, Michael
4 Jefferson. How long have you known them for?

5 A. I know them well. Let me see. I know
6 them all just as long as I been with the county.

7 Q. When did you first meet the Bailem
8 family?

9 A. The Bailem, that was -- that's been a
10 long time. I know Michael -- not Michael, Henry
11 Bailem. I know him ever since he was small. I
12 know him before I start working for the county.

13 Q. So prior to 1964?

14 A. Yes. No, I know -- no, hold on. His
15 family, when I start working with the county,
16 that's when I get to know him. But he was living
17 on Rifle Range Road before he was living to the
18 back. He was up on Rifle Range Road with
19 granddaddy, because granddaddy raised him. We
20 used to ride bicycles back and forth. I used to
21 ride bicycle, go back where he lived. Called Six
22 Mile, back and forth. That's how I get to know a
23 lot of people living in that area.

24 Q. You knew him as, like, somebody in the
25 neighborhood?

1 A. Right.

2 Q. Are you familiar at all with this
3 lawsuit, with their lawsuit against the county and
4 the town?

5 A. No. I hear about it, but I don't -- I
6 not familiar with it.

7 Q. Have you seen a copy of the complaint
8 filed in this case?

9 A. No.

10 Q. I'm going to pull up an exhibit to
11 their complaint. Bear with me one second. Can
12 you see that plat in front of you?

13 A. A little, yeah. It's so small. I can
14 see, but I can't see the writing on it.

15 Q. I'm not going to ask you about the
16 writing. I just want to ask you, have you ever
17 seen that before today?

18 A. No.

19 Q. You're not familiar at all with how
20 this was created or how it was approved through
21 the county or anything like that?

22 A. No.

23 Q. When you were working with the county,
24 did you ever have any reason to take a look at
25 this plat to see whether the road was public or

1 private?

2 A. Well, I'll put it this way: When they
3 was doing this kind of work, I was just working.
4 The only person that look at that would be the
5 supervisor, and during that time I wasn't the
6 supervisor yet. I was just a worker on the
7 maintenance crew. The guy who could tell you
8 about this, he already died now.

9 Q. About what time was that? What time
10 period are you referring to?

11 A. I don't know, to tell you the fact
12 true, because all this was going on when Glenn
13 Remley was there and they was working on that road
14 and the ditch in the back, because when they --
15 what happened, when they do the ditch, I think
16 that's when they put a right-of-way on the side.
17 It's just like a road, but it's not a road. They
18 just used that enough for the machine to get in so
19 they can do their work when they was working on
20 the canals back there.

21 Q. Did you ever work on the canal back?

22 A. Yeah. We cleaned the ditches. That's
23 what we -- that's what I was telling you. When
24 they first start out, we went and cleaned the
25 ditches, because they ain't been clean before, but

1 after I got there we went to clean it. It had a
2 lot of trees and stuff in it. We had -- used to
3 use bush knives and road fork. We didn't have no
4 tractor, nothing, chain saw. We cut the trees
5 from part of the ditch all the way to the end.

6 That's when the county come in and
7 start with Diane. Anyway, she start the ball
8 rolling by having the county come in, take all the
9 trees out, cut all the trees down on the side of
10 the ditch, dig up all of the stumps and haul it
11 off. I remember that part. If the county do the
12 road, I don't know if the county do the road or
13 not. I can't tell you yeah, and I can't tell you
14 no. I just don't know.

15 Q. When you're talking about the ditch,
16 are you talking about the ditch that's adjacent to
17 the road, or are you talking about the Six Mile
18 canal?

19 A. No, not that one. The one that run
20 alongside of Ballam Road. It run from the canal
21 on the left side of John Ballam Road if you coming
22 out. If you coming down John Ballam Road from Six
23 Mile Road, it would be on the right. That would
24 run into the big canal.

25 Q. Have you ever driven on John Ballam

1 Road?

2 A. Uh-huh.

3 Q. Were you at all involved in the road
4 being paved or --

5 A. No.

6 Q. You have no knowledge of when it was
7 paved?

8 A. No.

9 Q. When you drove on John Ballam Road,
10 what was your purpose of driving on it?

11 A. I used to drive down there because we
12 had -- after they do the ditch and they put a
13 road. We used to drive through and go around,
14 right. We used to clean the big canal from
15 around -- canal run from Rifle Range all the way
16 back to Palmetto Fort. They had a road alongside.
17 We used to drive through there with the truck to
18 keep up with our equipment.

19 Instead of leave the truck on the head
20 of the road and walk all the way down there and
21 all the way back, we used to drive through there
22 until we get through to the end. That way we had
23 a way to get back instead of walk all the way
24 back.

25 Q. That's when you were with the county,

1 you would drive down there to get to Six Mile
2 Canal, correct?

3 A. Right.

4 MR. WARD: Mr. Dingle, I appreciate
5 your time. That is all of the questions I have.
6 I will turn it over to some of the other lawyers
7 on this call. They may have some questions for
8 you. I may have some questions later depending on
9 their questions, but that's all I have for you
10 right now. Thank you.

11 THE WITNESS: All right.

12 MR. HETHINGTON: I don't have any
13 questions at this point. I'll pass you off.

14 EXAMINATION

15 BY MR. STANLEY:

16 Q. Mr Dingle, my name is Taylor Stanley.
17 I represent DRB Group. Can you hear me okay?

18 A. Yeah, I can hear you.

19 Q. Same kind of ground rules that
20 Mr. Ward mentioned earlier apply to my
21 questioning. I just have a few questions for you.

22 When you went out there and did
23 maintenance on the ditch, were you a laborer
24 still?

25 A. Yeah.

1 Q. So that was prior to 1989?

2 A. Yes.

3 MR. STANLEY: That's all the questions
4 I have. Thank you.

5 THE WITNESS: Okay.

6 MR. GOWDER: No questions from me.

7 MR. WARD: I don't have any more
8 questions. I believe you're done. Thank you for
9 your time, and appreciate you.

10 THE WITNESS: No problem. I have to
11 say this, too: I don't know how I got tied in
12 this. I guess I was the last one of the crew
13 still living that working with the county during
14 that time. I think that's why they jump on me
15 for -- I can only tell them what I know. I'm not
16 going to lie nothing for nobody. I'm not going to
17 lie for nobody. That's just how I am.

18 MR. WARD: I appreciate it. Thank you,
19 sir.

20 (The deposition was concluded at 3:23
21 p.m.)

22 (The witness, after having been advised
23 of the right to read and sign this transcript,
24 does waive that right.)

25

1 CERTIFICATE OF REPORTER

2
3 I, Roxanne M. Easterwood, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby
6 certify that the foregoing transcript is a true,
7 accurate, and complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 20th day of May,
13 2025 at Charleston, Charleston County, South
14 Carolina.

15
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23
24 _____
Roxanne M. Easterwood, RPR
My Commission expires
November 19, 2034
25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2023-CP-10-00947

Henry Bailem, IV, Joseph Bailem, Sheila
Bailem, Diane Jefferson, Michael Jefferson, Sr.,
Rashica Coakley, and Ann Bailey Simmons

Plaintiffs,

v.

County of Charleston, Town of Mount
Pleasant, DRB Group South Carolina, LLC
f/k/a Dan Ryan Builders South Carolina, LLC,
Marie P. Howard, Lewis B. Howard, Jr.,
Lanelle P. Johnson, William Bailem, Sr., X
Syvier Lynn Johnson, Sonia Maria Simmons,
Kenneth Davis, Juanita Nelson, Titus Howard,
Myeisha Howard, James Howard, And John
Doe and Jane Doe, fictitious names used
herein to designate the unknown heirs at law,
distributes, and/or devisees of all persons who
are minors r members of the Armed Forces of
the United States of America, as contemplated
By the Soldiers' and Sailors' Relief Act, 1940,
as Amended, and all persons entitled to claim
under and through any of them,

Defendants.

**Plaintiffs' Memorandum in Opposition to the Motions for Summary Judgment of Charleston
County, the Town of Mt. Pleasant, and DRB Group South Carolina, LLC f/k/a Dan Ryan
Builders South Carolina**

INTRODUCTION

Plaintiffs respectfully submit this memorandum in opposition to the motions for summary judgment of the defendants, Charleston County ("County"), Town of Mount Pleasant ("TOMP"), and DRB Group South Carolina, LLC ("DRB").

This case involves a fundamental question of property rights: whether a surveyor's unauthorized insertion of dedication language on a subdivision plat can strip private landowners of their property without their knowledge or consent. The answer, both legally and factually, is no.

The Bailem family has owned and exclusively used the land where the current John Ballam Road is located for over 100 years. In 1986, seeking only to subdivide family land to distribute to their children, the three living heirs hired a surveyor for the straightforward task of drawing lot lines. Without authorization, explanation, or the family's knowledge, the surveyor added language purporting to dedicate their private road to public use. This unauthorized act cannot and did not divest the family of their property rights.

The Defendants' motions for summary judgment overlook genuine issues of material fact and misinterpret the law. Summary judgment is inappropriate where, as in this case, disputed facts exist regarding the surveyor's authority, the family's intent, the validity of any dedication, and the appropriateness of governmental actions taken without due diligence concerning the road's ownership.

The Defendants respectfully request that the Court deny these motions and decide the case only after hearing the testimony of the witnesses and weighing the evidence at trial.

STATEMENT OF FACTS

A. The Bailem family has owned their property for over 100 years.

The Bailem (formerly Ballam) family has owned the property encompassing John Ballam Road for generations, with the land having been in the family since the 1800s. (Am. Compl. ¶ 14). This was family land, passed down through the years, without a formal road providing access to the family homesites. The land originally came into the family through Flora Ballam, a former slave of the Boone Hall Plantation, and John Ballam, also known as Sandy Ballam. (Am. Compl. ¶ 14). The Bailem family has taken great pride in owning this land for about 150 years. (Id.). In 1986, the heirs of John Ballam's estate - Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers - owned the property as tenants in common. (Pl. Res. to Def. TOMP's RFA ¶ 2, Ex. B to TOMP Mot.; Am. Compl. ¶¶ 1, 21-23).

Plaintiffs have resided on this land for decades: Henry Bailem IV has lived at 1420 Six Mile Road for 68 years; Joseph and Sheila Bailem have lived at 2236 John Ballam Road for 68 and 41 years, respectively; Michael and Diane Jefferson have lived at 2242 John Ballam Road for 64 and 39 years, respectively; Florence Coakley resided at 1425 Brentley Road for 85 years until her passing in 2021; and Ann Bailem Simmons has lived at 1430 Brentley Road for 75 years. (Am. Compl. ¶¶ 16-20).

B. The 1986 subdivision was intended to create family parcels accessed by an unpaved private road.

In 1986, the three living family owners decided to formally subdivide their property to create individual lots for other family members. This was not a commercial development or public subdivision—it was simply a family dividing their land among themselves. (Am. Compl. ¶¶ 24-25; Ex. 1 to Am. Compl. - Affidavit of Henry Bailem, IV, ¶ 5).

They hired James G. Pennington, a surveyor, for what they believed to be the straightforward task of surveying the property and drawing lot lines. (Am. Compl. ¶ 24; Ex. 1 to Am. Compl. - Affidavit of

Henry Bailem, IV, ¶ 5; Dep. of J. Pennington, p. 11:10-15, Ex. C to TOMP Mot.; Dep. of D. Jefferson, pp. 9:25, 10:1-22, Ex. D to TOMP Mot.).

On March 6, 1986, the Plat of Lands of the John Ballam Estate was recorded in Charleston, South Carolina, T.M.S. 561-00-00-60, constituting the first subdivision. Ex. 1 to Am. Compl. - Affidavit of Henry Bailem, IV, ¶ 4.

Originally, Pennington was hired to create a plat showing four lots and a private access road dedicated to the owners of those lots. Dep. of D. Jefferson, p. 10:2-17.

On July 23, 1986, Pennington drafted a plat that reserved a blank space for dedication language, which incorporated the words "dedicate the... ingress-egress easement over my property to the use of the property owners..." above the signature lines. (Am. Compl. ¶ 25; Ex. 1(B) to Am. Compl.). This was the plat presented to the owners for approval and signature. See Attached Plaintiffs' Memorandum Exhibit A.

The three owners of the lots signed that plat. Deposition of Henry Bailem, p. 11:17-12:19.

The family's intent was clear: to create private lots for family members with access via an existing unimproved private road. At all times, the Bailem family's goal was solely to subdivide John Ballam Estate's land, thereby keeping the area where the road would later be constructed as part of their private property. This intention was clearly communicated to surveyor Pennington. (Am. Compl. ¶¶ 25-26; Ex. 1 to Am. Compl. - Affidavits of Henry Bailem, IV, Estelle Capers, Ann Simmons, et al.). Nothing in their discussions with Pennington indicated any intent to dedicate property for public use. (Dep. of D. Jefferson, pp. 10:5-17, 11:3-24; Dep. of J. Pennington, p. 54:5-16).

Although no original signed copy of that earlier four-parcel plat with the appropriate private dedication can be found, a marked-up copy of that plat which Pennington provided to Diane Jefferson is submitted as **Plaintiffs' Memorandum Exhibit A**.

Exhibit A shows a faint indication of a signature, suggesting the owner's intent to grant access solely to the property owners. It seems this "working copy" of the plat was used to create a subsequent five-parcel plat.

C. The plat that was actually filed included dedication language contrary to the family's instructions and was not signed by the property owners.

Afterwards, Dianne Jefferson spoke with Pennington about adding a fifth lot, which required the creation of another plat. Deposition of Diane Jefferson, 10:2-11:24.

Pennington seemingly made a copy of the four-lot plat that had been signed by the owners, which included the private road dedication, and annotated it with Diane Jefferson to indicate the creation of the new lot. Plaintiffs' Memorandum Exhibit A.

Pennington gave the marked-up copy to Dianne Jefferson (Plaintiffs' Memorandum Exhibit A) but did not show her the subsequent five-lot parcel before it was finalized and submitted for subdivision plat approval and filing. Deposition of Diane Jefferson 12:2-11.

For some reason, Pennington, without notice to or authorization from Dianne Jefferson or any other family member, erroneously substituted a public dedication on the 5-lot parcel. Pennington's testimony does not provide clarity on this matter, as he does not recall performing this work and has also stated that he did not draft the plats he signed; an undisclosed draftsman created the plats. Deposition of Pennington 11:23-25; 51:12-13.

Without the family's knowledge or consent, someone, presumably Pennington's unknown draftsman, inserted dedication language on a different version of the plat stating, converting the owners' desired private dedication to a public dedication: "We hereby dedicate this 50' road right-of-way for the use of the public forever." (Am. Compl. ¶ 27; Ex. 1(C), (D) to Am. Compl.). This plat, with the

erroneous and unauthorized public dedication, was submitted with the August 11, 1986 subdivision application, contrary to the Bailem family's intent and without their knowledge. (Am. Compl. ¶ 27).

This language (1) was never discussed with the family (Dep. of D. Jefferson, pp. 16:21-25, 17:1-19); (2) was never authorized by the family (Dep. of H. Bailem, pp. 34:8-17, Ex. A to TOMP Mot.), and (3) was contrary to the family's intent to maintain private property (Am. Compl. ¶¶ 26, 53).

Compounding the error, Pennington obtained signatures on the public dedication that are not those of the actual owners, through some means.

This is clearly demonstrated by comparing the signatures of the three individuals on the deeds that conveyed the parcels to the Plaintiff owners with the signatures on the 5-lot parcel. See signature pages to the deeds found at **Plaintiffs' Memorandum Exhibit B**.

Additionally, Rebecca Bailem Jefferson was blind and did not sign her name, only making a mark "X" to indicate her signature, as demonstrated on the deeds. Remarkably, she somehow signed her first and last name on the recorded five-lot plat, even though she only made an X on the deeds that were purportedly signed at the same time. Plaintiffs' Memorandum Exhibit B; Deposition of Henry Bailem, pp. 26:15-27:15.

Finally, Estelle Bailem Capers always included her middle name when signing official documents, as shown on the deeds, but not on the five-parcel plat. Plaintiffs' Memorandum Exhibit B; Deposition of Henry Bailem, pp. 26:15-27:15.

Nevertheless, the five-lot parcel plat, which bore an unauthorized and erroneous public dedication without the owners' signatures, was submitted to the County for filing, and the parcel was recorded on October 24, 1986, in the real property records of Charleston County.

The plaintiffs were unaware of the filing of the erroneous plat until years later, when the ownership of the road was disputed.

D. The county subdivision records demonstrate the family's desire for the access road to remain private.

Critically, the Charleston County Planning Staff and Public Works recommended in their September 29, 1986 agenda that the application be approved "with the granting of a variance from Section III E-12 which will allow the creation of four lots that do not front on a state or county maintained road, and with the dedication of a 20' wide drainage easement as shown on the plat. This plat represents a division of estate property and a 50' right-of-way will be dedicated to the property owners." (Am. Compl. ¶ 29; Ex. 1(C) to Am. Compl.) (emphasis added).

On October 10, 1986, the surveyor received a letter outlining the outcome of the Charleston County Council meeting held on October 7, 1986. This letter reaffirms the dedication of the 50' right-of-way to the property owners. (Am. Compl. ¶ 31; Ex. 1(C) to Am. Compl.). Despite these official records indicating that the road was to be dedicated to property owners, the incorrect plat was mistakenly recorded on October 24, 1986, without the private owners' dedication. (Am. Compl. ¶ 32).

E. Charleston County later regarded the road as private, despite the recording of the erroneous 1986 plat.

Even if a dedication was intended (which Plaintiffs vehemently deny), Charleston County continued, after the recording of the plat in 1986, to regard the access road, now called John Ballam Road, as a private road.

In August 1993, the County explicitly rejected John Ballam Road from its maintenance system, confirming it did not "meet Charleston County standards for an earth road and cannot be accepted into the County maintenance system" and stating that if construction continued without meeting requirements, "the County will consider this road to be a private road for the use of the property owners and their heirs." (Am. Compl. ¶ 35; Ex. 1(E) to Am. Compl.)

This rejection was not merely a "staff determination" but an official position of the authorized department

Later, the "Jurisdiction Information" document related to John Ballam Road indicated that the maintenance jurisdiction was "Private" until it was crossed out and mistakenly replaced with "Public" after the road and surrounding property were annexed into Mt. Pleasant. (Ex. 1(F) to Am. Compl.)

F. The Plaintiffs maintained their belief that the road was private and were unaware that anyone disputed this until the County paved the road without prior notice or their consent.

Since the October 24, 1986 plat was recorded, the Plaintiffs and their families have maintained John Ballam Road. (Am. Compl. ¶ 34; Exhibit 1, Henry Bailem Affidavit ¶ 14). The Plaintiffs and their families have never benefited from any public services, including postal and school bus services, and only began receiving waste disposal services after annexation into Mount Pleasant on April 11, 1995. (Am. Compl. ¶ 39, Henry Bailem Affidavit ¶ 18).

For decades after 1986, the Bailem family continued to use John Ballam Road as their private access, maintaining exclusive control. It was only when developer DRB purchased adjacent property and sought to use "their" road that the Plaintiffs investigated and discovered the unauthorized dedication language. (Am. Compl. ¶¶ 41-42).

STANDARD OF REVIEW

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Cafe Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995). Further, summary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusion to be drawn therefrom. *MacFarlane v. Manly*, 274 S.C. 392, 264 S.E.2d 838 (1980).

LEGAL ARGUMENT

The motions by the Defendants must fail because the crucial question in the case—whether the Plaintiffs or their predecessors in title publicly dedicated the piece of land now known as John Ballam Road or whether it is a private road providing access only to the five parcels owned by the Plaintiff Bailem heirs—is highly contested and very much a question of fact that cannot be resolved on summary judgment. This issue must be determined only after this court hears the testimony, weighs the evidence, and makes a determination at the conclusion of a trial on the merits.

A. THERE WAS NO VALID PUBLIC DEDICATION AS A MATTER OF LAW

The Intent to Dedicate to the Public Is Not Clearly Established

Public dedication is an exceptional mode of passing an interest in land, and proof of dedication must be strict, cogent, and convincing. The acts proved must not be consistent with any construction other than that of a dedication, and dedication may not be implied from the permissive, sporadic, and recreational use of property. The record must contain evidence the owner of the property clearly,

convincingly, or unequivocally intended to dedicate the property for public use. *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995)

The County has failed to meet this burden due to contradictory evidence regarding the dedicators' intent.

- Official County Records: The October 10, 1986 County Clerk letter stating the right-of-way would be "dedicated to the property owners" provides contemporaneous evidence that County officials understood this as a private, not public, dedication.
- County's Own Witness Confirms No Public Dedication Was Approved: Mr. Linkler testified that the County Council action on October 7, 1986 was to approve a subdivision "with a private dedication" to "the property owners." (Linkler Dep. 18:18-20). When asked repeatedly whether there was any council action approving public dedication, he could identify none, admitting he had "not seen any other council minutes" showing approval of public dedication. (Linkler Dep. 19:1).
- Direct Testimony Regarding Original Intent: Henry Bailem's testimony: The road "was always to the family, not to public" and that when he instructed the subdivision, he specified the road should be "to the family, to the use of the family, the Bailem family forever, not the public." (Henry Bailem 17: 1-14; 17-19).
- Diane Jefferson's testimony: She gave explicit instructions to surveyor Pennington that the property should be "subdivided and have it dedicated to the property owners" and that "dedicated to the property owners... was the stipulation." She testified that she witnessed

the property owners signing "a document that had a statement that says: 'I hereby dedicate to the property owners.'" (Diane Jefferson Deposition 10:25-11: 3; 11: 23024; 112: 2-4).

- Plat Creation Process Contradicts Public Dedication: Mrs. Jefferson's detailed testimony reveals that:
 - The original plan was for four lots with private dedication
 - When she requested a change to five lots, she specifically asked Penington to maintain "the same setup" with dedication "to the property owners"
 - She never saw or approved the final plat with public dedication language
 - The property owners never consented to public dedication.

The County's Own Records Establish Private, Not Public, Dedication

The County cannot now claim that the road was publicly dedicated, as its own official correspondence from the time of the alleged dedication clearly contradicts this assertion. The October 10, 1986 letter from the County Clerk represents the official County interpretation of what was being dedicated, and it explicitly states dedication "to the property owners."

Most significantly, the County's own 30(b)(6) witness acknowledged that even after the alleged 1986 "public dedication," the County did not treat the road as public. Mr. Linkler testified:

- "Prior to 1996... the maintenance responsibility was assumed to be private" (Linkler Dep. 36:1-3);
- The County would not maintain roads "until it's been constructed to a county standard" (Linkler Dep. 36:12-13);

- In 1993, the County told property owners: "the county will consider this road to be a private road for the use of the property owners and their heirs" (Linkler Dep. 39:14-16).

This testimony establishes that the County did not regard the road as publicly dedicated in 1986, undermining any claim of public dedication at that time.

B. THE COUNTY FAILED TO ACCEPT ANY PUBLIC DEDICATION

Even assuming for the sake of argument that some form of public dedication was intended and offered, the County's acceptance was defective and insufficient to perfect a public dedication.

County's Own Witness Confirms No Request from Property Owners

The County's 30(b)(6) witness, Mr. Linkler, made several critical admissions regarding the County's 1994 "acceptance":

- He could not find any evidence that property owners asked the County to accept the road for maintenance.
- When asked about petitions for acceptance, he testified: "I don't have a written petition" (Linkler Dep. 41:11) and "I would not have seen" any verbal requests (Linkler Dep. 41:14).
- He acknowledged that the County could have added the road to the acceptance list without any request from property owners (Linkler Dep. 30:23-25)

This testimony demonstrates that the 1994 acceptance was not based on any request from property owners and was, at most, a unilateral action by the County.

County's Treatment Inconsistent with Public Ownership

The County's own witness admitted that even after alleged "acceptance" in 1994, the County's treatment was inconsistent with public ownership:

- Maintenance Responsibility: The road was annexed to the Town of Mount Pleasant, and Mr. Linkler testified that maintenance responsibility transferred to the Town, not the County (Linkler Dep. 50:17-18)
- No Evidence of County Control: The County presented no evidence of exercising control over the road consistent with ownership
- Admission of Title Transfer: Mr. Linkler testified that upon annexation, "the right-of-way became town right-of-way, not unincorporated county right-of-way," (Linkler Dep. 51:15-17) suggesting the County's interest was temporary at best.

C. THE DEDICATION ON THE 1986 PLAT IS INVALID DUE TO LACK OF AUTHORITY AND IMPROPER EXECUTION.

The Surveyor Exceeded His Authority

Pennington was hired solely to create a private family subdivision, not to dedicate public roads (Dep. of J. Pennington, p. 11:10-15; Dep. of D. Jefferson, pp. 10:5-10). No family member authorized Pennington to include dedication language (Dep. of H. Bailem, pp. 34:8-17). The family's consistent understanding was that this would remain a private road for their use (Am. Compl. ¶¶ 25, 53).

Pennington admitted in deposition that access needed to be established, but never that public dedication was required or authorized (Dep. of J. Pennington, p. 54:5-16)

DRB's reliance on Pennington's testimony that he acts according to client requests actually supports the Plaintiffs—no client requested the public dedication. (Dep. of J. Pennington, p. 36:4-6, Ex.

29 to DRB Mot.). Pennington's admission that owners must approve plats before recording further undermines the Defendants' position, as the family never approved the dedication language. (Id. at 54:17-23).

The Signatures are Not Valid Signatures and Have No Witnesses.

As detailed above, these signatures do not match those on the deeds and are unlikely to be theirs based on their appearance, the fact that one witness was blind and only signed her name with an X, and the other always included "Bailem" as her middle name, which she did not do on the plat. Furthermore, Henry Bailem IV testified that he recognized his father's signature, and the one on the plat is not his father's. There were no witnesses for the signatures, as there are, and must be, on the deeds.

While Ann Bailem Simmons testified in her deposition that she witnessed signatures, her testimony must be considered in context. It is unclear from her testimony what she saw those owners signing. It is highly likely that she observed the witnesses signing the original of the document included as Exhibit A to this Memorandum, which still shows faint indications of those original signatures. Her testimony does not conclusively demonstrate that she saw the owners sign the five-lot plat recorded in October 1986. At most, her testimony raises further questions of fact to be assessed and resolved by the court at trial.

Further, Diane Jefferson testified about conversations with Pennington regarding "transferring" signatures (Dep. of D. Jefferson, pp. 47:23-48:4, 49:9-15). Additionally, Pennington stated he did not draft his plats; a draftsperson did, and he did not remember this plat in any case.

The burden lies with the defendants to demonstrate valid dedication, not with the plaintiffs to refute it. Therefore, the court must deny the defendants' motions for summary judgment on this issue.

D. PLAINTIFFS HAVE ESTABLISHED SUFFICIENT EVIDENCE OF OWNERSHIP

Plaintiffs received their properties through valid deeds from the original property owners. While these deeds reference the plat, they do not contain public dedication language and do not necessarily incorporate any public dedication language shown on the plat, particularly where the County's own contemporaneous records indicate private dedication.

The fact that properties "butt and bound" on John Ballam Road does not necessarily establish that the road is publicly owned. Properties can butt and bound on private roads, and the specific language used in the deeds must be interpreted in light of all surrounding circumstances, including the County's own interpretation of the dedication.

E. THE STATUTE OF LIMITATIONS ARGUMENT FAILS BECAUSE GENUINE ISSUES OF FACT EXIST REGARDING THE VALIDITY OF THE ALLEGED 1986 DEDICATIONThe Authenticity of the 1986 Plat Is in Genuine Dispute

The Defendants' entire argument relies on the validity of the 1986 plat, yet substantial evidence raises doubts about the authenticity and validity of this document. Unlike in *Robinson v. Estate of Harris*, 388 S.C. 616, 698 S.E.2d 214 (2010), where there was no dispute regarding the validity of the underlying conveyance, here the Plaintiffs have presented significant questions about whether the plat accurately reflects the intentions of the original property owners.

As detailed above, the purpose and impact of any public dedication are topics of considerable debate.

- Contemporaneous County Records Contradict Public Dedication: The October 10, 1986, letter from the County Clerk of Council to surveyor James Pennington explicitly states that "a 50' right-of-way will be dedicated to the property owners" - not to the public. This official correspondence from the same period directly contradicts the County's interpretation of the plat as a public dedication.
- County's Own 30(b)(6) Witness Admits Discrepancy: Wesley Linkler, the County's designated representative, testified under oath that "There is a discrepancy between the letter and the plat recorded at BK 135." (Linkler Dep. 19:11-13). When pressed about whether there was any council action approving a public (rather than private) dedication, he could not identify such action and acknowledged he had "not seen any other council minutes" evidencing council approval of public dedication. (Linkler Dep. 19:1).
- Direct Testimony Challenging Signatures: Both Henry Bailem IV and Diane Jefferson testified under oath that the signatures on the 1986 plat are not authentic:
 - Henry Bailem's testimony: Rebecca Jefferson "was blind in 1986" and "couldn't have signed it because she was blind"; Estelle Capers "always signed her name Estelle Bailem Capers" but the plat shows only "Estelle Capers"; Henry Bailem, Jr.'s signature "don't look like my daddy's signature".
 - Diane Jefferson's testimony: "These three people did not sign this document, no matter how many times it was copied, with this statement on at any time." She testified that the property owners only signed "one time" and "it was on the plat with the correct dedication statement, and it was the original four lot."

- **County Lacks Evidence of Signature Authenticity:** Mr. Linkler acknowledged that the County lacks knowledge of how the signatures appeared on the plat, testifying: "I'm not aware of anybody in the county being present when it was signed by the property owners" (Linkler Dep. 22:23-24) and "No one from the county witnessed it." (Linkler Dep. 25:1). He further conceded: "We would have to rely on the professional stamp of the surveyor." (Linkler Dep. 25:24).
- **Supporting Evidence of Rebecca Jefferson's Blindness:** The deposition testimony establishes that Rebecca Jefferson was "permanently blind" before 1985 due to diabetes; however, the plat claims to bear her signature in 1986. Notably, when she later executed a deed in 1988, she signed with an "X" and the notation "This is my mark."
- **Detailed Testimony About Signature Transfer:** Diane Jefferson provided crucial testimony regarding how the signatures were placed on the disputed plat. She testified that when she asked surveyor Pennington to change from four lots to five lots, "I asked him if he needed them to sign again. His response to me was he did not need to have them sign again. The signatures from before could go to this document." She further testified that Pennington said he could "transfer them" and that this was "common practice."
- **Original Intent Contradicted:** Mrs. Jefferson testified that her specific instruction to Mr. Pennington was to "subdivide the property and have it dedicated to the property owners" and that "dedicated to the property owners... was the stipulation." She stated unequivocally: "I witnessed folks signing a document that had a statement that says: 'I hereby dedicate to the property owners.' I did not see this statement. I did not see this plat until way later."

The Statute of Limitations Does Not Begin to Run Until Discovery of the Adverse Claim

Even accepting the plat's face validity, S.C. Code Ann. § 15-3-340 does not bar Plaintiffs' claims because the limitations period begins when Plaintiffs knew or should have known their rights were being adversely claimed. Here, the County's actions were consistent with maintenance of a private road serving the property owners until recent years when the County first asserted exclusive public ownership.

Key Timeline Facts and Testimony:

- 1986: The plat was recorded with ambiguous or contradictory documentation; a county letter states dedication "to the property owners."
- In the 1990s, Mr. Bailem testified that County officials told him, "it's a private road" and "you don't have to worry about it. It's a private road. It's in the book as a private road."
- 1990s-2000s: Mrs. Jefferson testified to multiple visits to County offices where officials consistently confirmed the road's private status, stating "John Ballam Road is a private road dedicated to the property owners."
- 1994-2002: County improvements made without a clear assertion of exclusive public ownership
- In 2017, the Town of Mount Pleasant "turned him down" when a developer sought to use John Ballam Road, "said he didn't have access to John Ballam Road" because it was "a private road."
- 2019: First clear assertion by government entities that the road was public (Exhibit 7)
- 2023: Initial claim by the County regarding exclusive public ownership that negatively impacts the Plaintiffs' rights.

Detailed Government Representations: Mrs. Jefferson's testimony offers extensive details about government representations over the decades:

- County employee "John" initially argued the road was public, but after checking records, "came back, and said, 'You're correct'" that it was private.
- When she later called back about the McManus driveway issue, the same employee stated, "legal said we can't do that because the road is public"—indicating that the County's position changed without explanation.
- Multiple meetings with County and Town officials where "County and Town of Mount Pleasant officials say the road is a private road. We made a mistake."
- Consistent treatment by various agencies: The state refused to put up road signs "saying it's a private road" and "The post office wouldn't even let us put our mailboxes down there, saying it's a private road."

F. LACHES DOES NOT APPLY WHERE THE COUNTY'S OWN CONDUCT CREATED CONFUSION

The equitable doctrine of laches is defined as neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. *Robinson v. Estate of Harris*, 391 S.C. 114, 118, 705 S.E.2d 41, 43 (2011). "In order to establish laches as a defense, a party must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the party asserting the defense of laches." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 432, 673 S.E.2d 448, 456 (2009). "Whether a claim is barred by laches is to be determined in light of facts of each case, taking into consideration whether the delay has worked injury,

prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches." *Hallums v. Hallums*, 296 S.C. 195, 198-99, 371 S.E.2d 525, 527 (1988). In sum, the party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice. *Id.* at 199, 371 S.E.2d at 528.

This defense raises, at most, a question of fact that is inappropriate for a decision at the summary judgment stage.

Furthermore, laches cannot apply if the defendant's own conduct contributed to the delay or confusion.

The County's Contradictory Position Explains Any Delays

The Plaintiffs' delay in challenging the road's status is due to the County's contradictory documentation and actions. The testimony shows that County officials consistently informed the Plaintiffs that the road was private:

- Mr. Bailem's testimony:
 - In the 1990s, they told me it was recorded as a private road, so we didn't have to do anything about that.
 - County officials stated, "you don't have to worry about it. It's a private road. It's in the book as a private road."
 - As late as 2017, the Town of Mount Pleasant refused a developer access to John Ballam Road, telling him, "he didn't have access to John Ballam Road" because it was a private road.
- Mrs. Jefferson's detailed testimony:

- County employee "John" initially argued the road was public, but after checking records with a colleague, he returned and said, 'You're correct' that John Ballam Road was private.
- She was informed that the road was "a private road dedicated to the property owners" and was given official documents to that effect.
- Multiple meetings with government officials, where "County and Town of Mount Pleasant officials say the road is a private road. We made a mistake."
- When the County's position later changed, she was told, "legal said we can't do that because the road is public" - but no explanation was provided for the change in position.

When governmental entities repeatedly confirm a road's private status over decades, property owners reasonably rely on those official representations.

Plaintiffs' Reasonable Reliance on Government Conduct

The testimony shows Plaintiffs acted reasonably in relying on government representations:

- Consistent Official Position: For over 30 years, various government entities treated and described the road as private. Mrs. Jefferson testified that "every time I went for a visit there, the road was private. I was requesting services for the ditch on a regular base. The road was private. We're not going to do anything with the road."
- No Maintenance Claims: Mr. Bailem testified that "for 30-something years, the County wouldn't maintain the road" and "The Town of Mount Pleasant wouldn't maintain the road."

Mrs. Jefferson confirmed this, testifying that when the County came to do drainage work, they specifically said they were only fixing damage they caused and were not claiming road ownership.

- Other Agency Recognition: The State refused to install road signs "saying it's a private road" and "The post office wouldn't even let us put our mailboxes down there, saying it's a private road"
- Documented Reliance: Mrs. Jefferson's testimony shows Plaintiffs took specific actions based on government representations, including requesting specific documentation and following official instructions about road maintenance and improvements.

No Prejudice to County

The County cannot claim prejudice from maintenance expenditures when those expenditures were made with knowledge of the ambiguous nature of the dedication. The County's own 1986 records put it on notice that the dedication was "to the property owners," not the public.

Moreover, the County's improvements were largely to repair damage it caused: Both Mr. Bailem and Mrs. Jefferson testified that the County "tore the road up" when cleaning ditches. Mrs. Jefferson specifically testified that County engineer Hasell told her: "Mrs. Jefferson, we came in here, and those trees were there, and we had to get those trees out, and we destroyed your road. We have to put your road back in at least the condition it was in or in better condition."

The County's own employee acknowledged they were obligated to repair damage they caused during their drainage work, not that they were asserting ownership of a public road. Mrs. Jefferson

testified: "It was never no discussion about paving the road because the road was taken over or anything like that; it was to put back a road in the place of the road that was there."

G. DRB'S CLAIM OF IMPLIED DEDICATION BY REFERENCE TO THE PLAT FAILS.

DRB argues that even without express dedication, the road was impliedly dedicated when lots were conveyed by reference to the plat. This argument fails for multiple reasons:

Invalid Express Dedication Cannot Create Valid Implied Dedication

An unauthorized and void express dedication cannot bootstrap itself into validity through later deed references. The plat's defects infected all subsequent conveyances. *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975) assumes a valid underlying plat, which doesn't exist here

The Deed References Were Not Dedicatory

- The deeds state lots are "subject to easements" shown on the plat, not dedications (Ex. 5, 16, 24, 26, 28 to DRB Mot.).
- Describing property as bounded by "John Ballam Road" identifies location, not ownership.
- Private roads can bound property just as public roads can.
- The family's continuous treatment of the road as private negates any dedicatory intent

Family Conveyances Cannot Create Public Rights

- The deeds were intrafamily transfers, not sales to the public.

- No consideration was given to the public for any dedication.
- Family members cannot dedicate each other's property through circular conveyances.
- The original owners' lack of intent to dedicate controls.

CONCLUSION

The Defendants' motions request that this Court validate their conversion of private property to public use based on a flawed plat, an inappropriate acceptance, and decades of inconsistent and ambiguous governmental actions. Neither limitations nor laches can remedy the fundamental issue that no one ever authorized the dedication of this family's private road for public use.

This case involves more than just a road; it encompasses the heritage of a family that has owned this land since the 1800s, passed down from Flora Ballam, a former slave. The Bailem family has maintained this property for 150 years, only to have it threatened by an unauthorized action by a surveyor. Justice, equity, and the law necessitate the denial of the motions and the ultimate vindication of the Plaintiffs' property rights.

As the Plaintiffs' affidavits attached to their Amended Complaint make clear: "At all times, the Ballam family's intent was only to subdivide the Ballam land, and thus, keeping the road private after its subdivision. This intention was clearly communicated to surveyor Pennington." The Court should honor this intent and protect rights that have been in this family for generations. The Plaintiffs respectfully request that the court deny the motions of the Defendants and hear this matter in full at a trial on the merits.

Respectfully submitted,

s/ W. Andrew Gowder Jr

W. Andrew Gowder, Jr.

Austen and Gowder, LLC

1629 Meeting St. Suite A

Charleston, SC 29405

Telephone: (843) 727-2229

andy@austengowder.com

Attorney for Plaintiffs

#4

EXHIBIT A

ELECTRONICALLY FILED - 2025 May 30 7:56 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000947

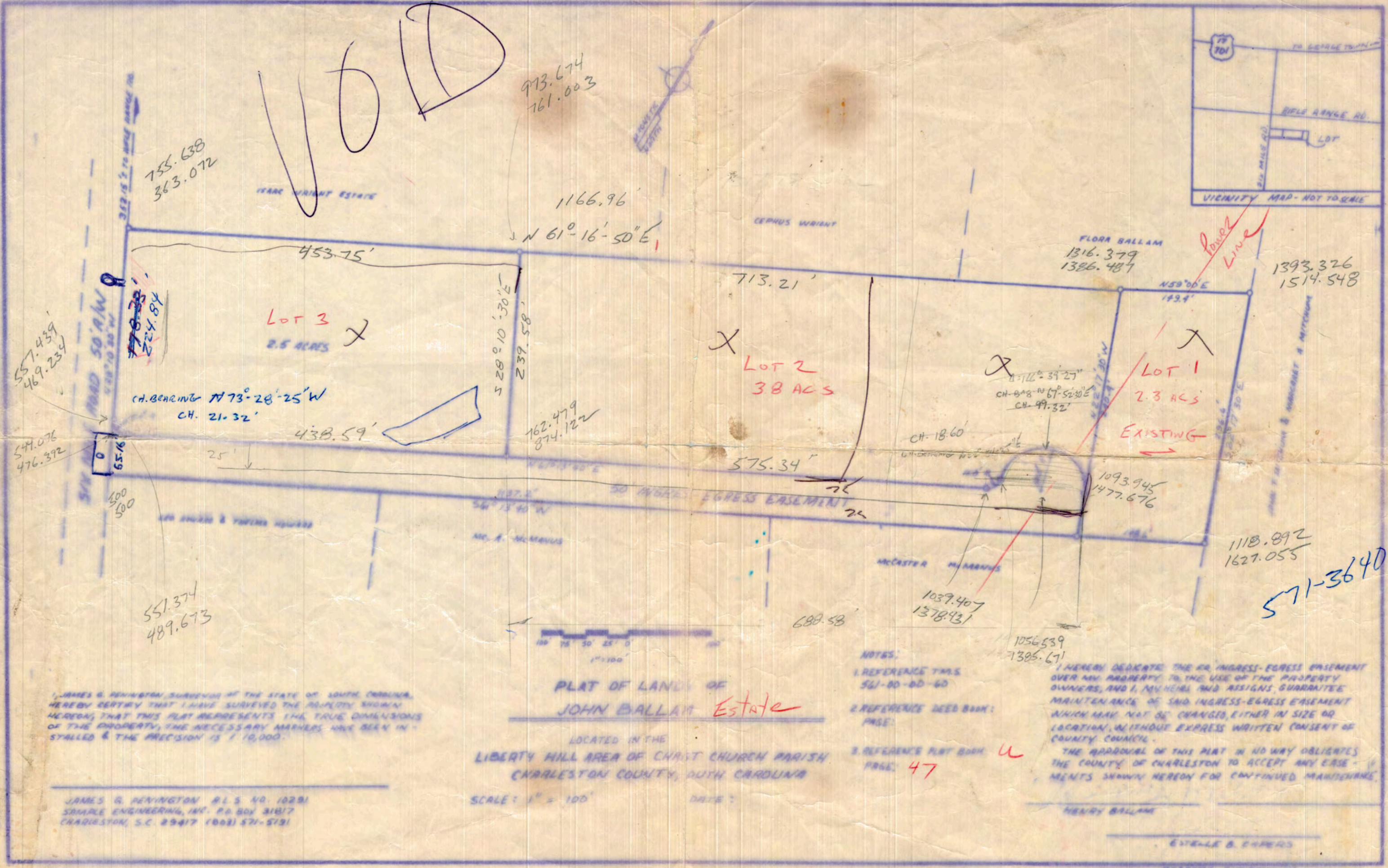


EXHIBIT B

ELECTRONICALLY FILED - 2025 May 30 7:56 PM - CHARLESTON - COMMON PLEAS - CASE#2023CPI1000947

1820

Russell Brown
ATTORNEY AT LAW

41 MORRIS STREET
CHARLESTON, SOUTH CAROLINA 29403

OFFICE (803) 723-1658

HOME (803) 766-3215

September 12, 1986

Charleston County Planning Board
Charleston County Courthouse
No. 2 Courthouse Square
Charleston, South Carolina 29402

Re: Application of Lands of the Estate of John Balaam.

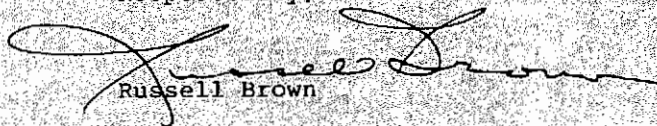
Gentlemen:

This comes to certify the ownership of the Estate of John Balaam of a ten (10) acre parcel of real estate situated on the Six Mile Road, approximately three hundred ten (310') feet East of Rifle Range Road, Mt. Pleasant, South Carolina.

Examination of the Cross Index to Real Estate maintained in the Charleston County R.M.C. Office does not reveal a deed to be on record in the name of John Balaam, however, my examination of the property card maintained in the Assessor's Office, the Treasurer's Duplicate maintained in the Treasurer's Office and the Historical File to Real Estate maintained in the Assessor's Office revealed that a ten (10) acre parcel of land assigned TMS# 561-00-00-061 was returned and assessed in the name of John Balaam and or the Estate of John Balaam at all times since the year of 1893.

Accordingly, it is this writer's opinion that this property is now owned by the Estate of John Balaam.

Respectfully,


Russell Brown

RB/mac

LINE #19--File #20 dwn 4-8-68, for 1941 ass't change

LINE# 12--Previously mapped as 10.0 ac. High, Liberty Hill. Per Plat U-47 2-3 ac. High subd. into 561-0-0-14 for 1980. Now acreage for this card is 7.7 ac. High, Liberty Hill. Jmw 2-26-80

LINE #1--Tax dist. changed from Moultrie 2-2 to Amendment 1-3 for 1984 by resolution of Charleston County in 1983 (Amendment Special Taxing District). 6/6/84 pc

LINE #12--Previously mapped as 7.7 ac. high by plat BK-133 acreage subdivided into Lots 2 thru 5 for 1987, see TMS# 561-00-00-090, 91 & 92. New acreage and legal for this card is 2.72 ac. high lot 5 with new measurements for 1987. 6/18/87 pc

LINE #4--By Federal in Deed A173-853, John Ballam, a/k/a John Ballam died leaving as his sole heir, his son, Henry Ballam, a/k/a Henry Ballam. He died intestate about 9-25-70 leaving as his sole heir, his wife, Harriett, his son, Henry, Jr. and John. His daughters, Rebecca B. Jefferson and Estelle B. Capers. 1 Whereas, Harriett Ballam a/k/a Harriett Ballam died intestate on 10-10-78 leaving as her sole heirs, her son Henry, Jr. and her daughters Rebecca and Estelle. Whereas, John Ballam a/k/a John Ballam predeceased his mother, Harriett, dying in 1978 intestate and leaving as his sole heirs, his wife, Maggie B. Ballam a/k/a Ballam, who has since died, and that she and John Ballam a/k/a John Ballam left no surviving heirs. Now the surviving heirs of John Ballam a/k/a John Ballam wish to convey all of their interest to Henry Ballam, IV. Surviving heirs are: Henry Ballam, Jr., Rebecca Ballam Jefferson and Estelle Ballam Capers. bc 7-29-88

LINE #4--By Quit Claim deed X237-408, James D. Johnson Jr conveys what ever int. he had to Henry Ballam IV. 5-3-94 lbs

LINE# 1--Tax Dist. change from Amendment 1-3 to Town of Mt. Pleasant 2-1 for 1996, Plat Reg# 1995-05 dated 4-95 3-13-96 b1

LINE# 14--Plat PH 614 is a misc. Utility easement. 11-6-97 lbs

G. Simms McDowell, III
Attorney at Law
36 Broad Street
Charleston, SC 29401

Fax No. 803/577-4570

803/723-5152

February 7, 1994

Mr. and Mrs. Michael Jefferson, Sr.
2242 John Ballam Road
Mt. Pleasant, SC 29464

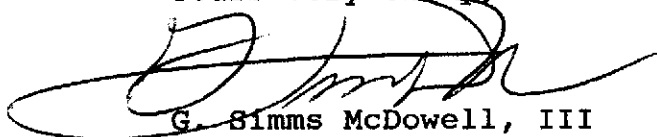
Re: Lot 3, 1.29 acres, John Ballam Estate

Dear Mr. and Mrs. Jefferson:

Enclosed please find the original, recorded deed from James Johnson to you regarding the above referenced property. You will note that the deed is dated January 20, 1994, and was recorded January 21, 1994 at 2:31 p.m., in Book X-237, page 382 of the RMC Office for Charleston County.

If I can be of any further assistance or if you have any questions, please do not hesitate to contact me.

Yours very truly,



G. Simms McDowell, III

GSMCD/kym
Enclosures as stated

BK X237PG382

STATE OF SOUTH CAROLINA	)	QUIT-DEED
	)	TITLE TO REAL ESTATE
COUNTY OF CHARLESTON	)	(See attached Recital)

KNOW ALL MEN BY THESE PRESENTS, THAT I, HENRY BAILEM, IV, of the State aforesaid, for and in consideration of the sum of Five Dollars (\$5.00), love and affection for my cousins, MICHAEL JEFFERSON, SR., and DIANE JEFFERSON to me in hand paid at and before the sealing of these presents by MICHAEL JEFFERSON, SR., and DIANE JEFFERSON, in the State aforesaid, County aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release unto the said MICHAEL JEFFERSON, SR., and DIANE JEFFERSON their heirs and assigns forever, the following described property, to-wit:

ALL that lot, piece, parcel or tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Penington, P.E., and L.S., entitled "Plat of lands of John Ballam Estate located in the Liberty Hill area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK, Page 135, of the RMC Office for Charleston County.

Said property containing approximately 1.29 acres of land as shown as Lot 3 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the northwest on lands on Cephus Wright, to the northeast on Lot 2, to the southeast on John Ballum Road, and to the southwest on Lot 4.

GRANTEE'S ADDRESS: 2242 John Ballam Road
Mt. Pleasant, SC 29464

TMS#: 561-00-00-091

tit. real. est.

1

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 the said MICHAEL JEFFERSON, SR., and DIANE JEFFERSON, their heirs and assigns, forever.

AND I do hereby bind myself and my heirs, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said MICHAEL JEFFERSON, SR., and DIANE JEFFERSON, their heirs and assigns, against me and my heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal this 20th day of January, in the year of our Lord one thousand nine hundred ninety-four and in the two hundred and seventeenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Cheryl Stobbes
Jeresa H Daniels

Henry Bailem IV
HENRY BAILEM, IV

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named HENRY BAILEM, IV, sign, seal and as his act and deed, deliver the within Deed and that (s)he with the other witness subscribed above witnessed the execution thereof.

Cheryl Stobbes

SWORN TO BEFORE ME THIS

20th day of January, 1994.

Jeresa H Daniels
Notary Public for South Carolina

My Commission Expires: 3/17/96

tit. real. est.

3

RECITAL

WHEREAS, John Ballaam, also known as JOHN BAILEM, died seized and possessed of the below described property in 18____; and

WHEREAS, he was survived only by his son, Henry Ballaam, a/k/a Henry Bailem, who was born in 1885 and died intestate on or about September 25, 1970, seized and possessed of the above described property, and survived by his wife, Harriett, his sons, Henry, Jr., and John, and his daughters, Rebecca B. Jefferson and Estelle B. Capers; and

WHEREAS, Harriett Ballaam a/k/a Harriett Bailem died on or about October 10, 1978, intestate, leaving as her sole surviving heirs, her son, Henry, Jr., and her daughters Rebecca and Estelle; and

WHEREAS, John Ballaam a/k/a John Bailem predeceased his mother, Harriett, by six months dying in 1978 intestate and leaving as his sole surviving heir his wife, Maggie B. Ballaam a/k/a Bailem; who has since died on or about _____, and that she and John Ballaam a/k/a John Bailem left no issue surviving; and

WHEREAS, the aforementioned surviving heirs of John Ballaam a/k/a John Bailem now wish to convey all of their right, title and interest in and to the above described property to Michael Jefferson, Sr., and Diane Jefferson.

BK 817286327

State of South Carolina, COUNTY OF CHARLESTON

WHEREAS, John Ballaam, also known as JOHN BAILEM, died seized and possessed of the below described property in 188__; and

WHEREAS, he was survived only by his son, Henry Ballaam a/k/a Henry Bailem, who was born 1885 and died intestate on or about September 25, 1970, seized and possessed of the below described property, and survived by his wife, Harriett, his sons, Henry, Jr., and John, and his daughters, Rebecca B. Jefferson and Estelle B. Capers; and

WHEREAS, Harriett Ballaam a/k/a Harriett Bailem died on or about October 10, 1978, intestate, leaving as her sole surviving heirs, her son, Henry, Jr., and her daughters Rebecca and Estelle; and

WHEREAS, John Ballaam a/k/a John Bailem predeceased his mother, Harriett, by six months dying in 1978 intestate and leaving as his sole surviving heir his wife, Maggie B. Ballaam a/k/a Bailem; who has since died on or about _____, and that she and John Ballaam a/k/a John Bailem left no issue surviving; and

WHEREAS, the aforementioned surviving heirs of John Ballaam a/k/a John Bailem now wish to convey all of their right, title and interest in and to the below described real property to Michael Jefferson, Sr. and Diane Jefferson;

KNOW ALL MEN BY THESE PRESENTS, THAT

HENRY BAILEM, JR., REBECCA BAILEM JEFFERSON and
ESTELLE BAILEM CAPERS, a/k/a Estelle B. Capers

in the State aforesaid For/And in consideration of the sum of

Five Dollars (\$5.00) and love and affection-----DOLLARS,

to them in hand paid at and before the sealing of these presents by MICHAEL JEFFERSON, SR. and DIANE JEFFERSON

in the State aforesaid County Aforesaid the receipt whereof is hereby

acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and

release unto the said MICHAEL JEFFERSON, SR. and DIANE JEFFERSON, their heirs and assigns, forever, the following described real property, to-wit:

ALL that lot, piece, parcel or tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Penington, P.E., and L.S., entitled "Plat of lands of John Ballam Estate located in the Liberty Hill Area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK, Page 135, of the RMC Office for Charleston County."

Said property containing approximately 1.29 acres of land and shown as Lot 3 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the northwest on lands of Cephus Wright, to the northeast on Lot 2, to the southeast on John Ballam Road, and to the southwest on Lot 4.

TMS #561-00-00-091

Grantee's Address: 2242 John Ballam
MT. PLEASANT, S.C.

3K 8172-6328

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said
MICHAEL JEFFERSON, SR. and DIANE JEFFERSON, their Heirs and Assigns forever.

BK B172-6329

AND, we do hereby bind ourselves and our Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said MICHAEL JEFFERSON, SR. and DIANE JEFFERSON, their Heirs and Assigns, against US and our Heirs, and all persons whomsoever, lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hand s and Seal s, this 26th day of January in the year of our Lord one thousand nine hundred and eighty-eight and in the two hundred and Twelfth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Henry Bailem, Jr. (L.S.)
Rebecca Bailem JEFFERSON
REBECCA BAILEM JEFFERSON
Estelle B. Capers (L.S.)
Estelle Bailem Capers

The State of South Carolina,

Charleston County.

PERSONALLY appeared before me the first witness

and made oath that she/he saw the within named HENRY BAILEM, JR., REBECCA ESTELLE BAILEM CAPERS a/k/a Estelle B. Capers BAILEM JEFFERSON and sign, seal, and as their act and deed, deliver the within written Deed.

and that she/he with the second witness

witnessed the execution thereof.

SWORN to before me, this 26th

day of January A.D. 1988

Notary Public of South Carolina
My Commission Expires: 3-29-89

4 20 2

BK B172F0330

68 SHERIFF McDOWELL
26 BROAD STREET
CHARLESTON, SC 29401

FILED, INDEXED & RECORDED

B172-327

1988 JAN 28 PM 12:18

REGISTERED TO THE CLERK OF COURT
CHARLESTON COUNTY, S.C.

TMS VERIFIED
SAC CTM
DTG 1-29-88
561-00-00-091

State of South Carolina,

TO

TITLE TO REAL ESTATE

Filed _____ day _____

at _____ A.D. 19 _____

at _____ o'clock _____ M.

and recorded in Book _____

Page _____

B. M. C. of Clerk Court C.P. & C. S.

County, S.C.

Recorded this 28th day _____

of _____ 1988

in Book _____

Page _____

SE PROPERTY RECORD CLERK

CHARLESTON

Not Public
Darius J. Rogers
County, S.C.

State of South Carolina,

Form 14--Title to Real Estate

67890

Revised 1976

WHEREAS, John Ballaam, also known as JOHN BAILEM, died seized and possessed of the below described property in 18____; and

WHEREAS, he was survived only by his son, Henry Ballaam a/k/a Henry Bailem, who was born in 1885 and died intestate on or about September 25, 1970, seized and possessed of the below described property, and survived by his wife, Harriett, his sons, Henry, Jr., and John, and his daughters, Rebecca B. Jefferson and Estelle B. Capers; and

WHEREAS, Harriett Ballaam a/k/a Harriett Bailem died on or about October 10, 1978, intestate, leaving as her sole surviving heirs, her son, Henry, Jr., and her daughters Rebecca and Estelle; and

WHEREAS, John Ballaam a/k/a John Bailem predeceased his mother, Harriett, by six months dying in 1978 intestate and leaving as his sole surviving heir his wife, Maggie B. Ballaam a/k/a Bailem; who has since died on or about _____, and that she and John Ballaam a/k/a John Bailem left no issue surviving; and

WHEREAS, the aforementioned surviving heirs of John Ballaam a/k/a John Bailem now wish to convey all of their right, title and interest in and to the below described property to ~~REBECCA BAILEM JEFFERSON, Florence and Robert~~
Coulkey

KNOW ALL MEN BY THESE PRESENTS, THAT

HENRY BAILEM, JR., REBECCA BAILEM JEFFERSON and
ESTELLE BAILEM CAPERS,

in the State aforesaid _____ for/and _____ in consideration of the sum of
Five Dollars (\$5.00) and love and affection----- DOLLARS,

to _____ them _____ in hand paid at and before the sealing of these presents by _____

REBECCA BAILEM JEFFERSON

in the State aforesaid _____ the receipt whereof is hereby

acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and
~~release unto the said~~ FLORENCE Coulkey and Robert Coulkey, their
~~REBECCA BAILEM JEFFERSON, her~~ heirs and assigns forever
the following described property, to-wit:

ALL that lot, piece, parcel of tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Penninton, P.E., and L.S., entitled "Flat of lands of John Ballam Estate located in the Liberty Hill Area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1985, and recorded in Book BK, Page 135, of the RMC Office for Charleston County."

Said property containing approximately 1.40 acres of land and shown as Lot 2 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the north on lands now or formerly of Flora Ballam, to the south on John Ballam Road, to the west on Lot 3, and to the east on Lot 1.

TMS #561-00-00-090
Grantee's address:

1425 BRENTLEY ST.
RIFLE RANGE RD.
INT. PLASANT, SC 29464

3K V174PC022

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 the said REBECCA BAILEY JEFFERSON, her *Florence and Robert Courtney, their* Heirs and Assigns forever. *EAC*
76B

AND we do hereby bind our Heirs,
 Executors and Administrators to warrant and forever defend, all and singular, the said Premises unto the said
~~REBECCA BAILEM JEFFERSON, her~~
Florence and Robert Coukley, their
 Heirs and Assigns, against us and our F/B Heirs, and all persons whomso-
 ever lawfully claiming or to claim the same or any part thereof.

WITNESS our Hand s and Seal s, this 26th day of January
 in the year of our Lord one thousand nine hundred and eighty-eight and in the two hundred and
twelfth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
 IN THE PRESENCE OF

Jersey H. Daniels Henry Bailem, Jr. (L.S.)
James M. Donnell Rebecca Bailem Her Mark To F-B (L.S.)
Estelle Bailem Capers (L.S.)
 REBECCA BAILEM JEFFERSON
 ESTELLE BAILEM CAPERS

The State of South Carolina,
 Charleston County.

PERSONALLY appeared before me first witness
 and made oath that he/she saw the within named HENRY BAILEM, JR., REBECCA BAILEM
CAPERS and ESTELLE BAILEM CAPERS
sign, seal, and as their act and deed, deliver the within written Deed,
 and that he/she with the second witness
witnessed the execution thereof.

SWORN to before me, this 26th
 day of January A.D. 19 88

James M. Donnell Jersey H. Daniels
 Notary Public of South Carolina
 My Commission Expires: 3-29-89

CLERK OF COURT
35 BROAD STREET
CHARLESTON, SC 29401

FILED, INDEXED & RECORDED
V174-21
68 MAY 19 PM 2:31

ROBERT A. KING
REGISTER MESSENGER CONVEYANCE
CHARLESTON COUNTY, S.C.

JK
52088
561-00-05-090

State of South Carolina,

TO

TITLE TO REAL ESTATE

Filed _____ day
of _____ A.D. 19
at _____ o'clock
M.
and recorded in Book _____
Page _____ Fee \$ _____

R. M. G. or Clerk Court C.P. & C. S.

County, S.C.

Recorded this _____ day
of _____
BY PROPERTY RECORD CLERK in 58
in Book _____ Page _____

Per, \$ _____

Charles J. King
CHARLESTON

Author _____ County, S. C.
CLERK OF COURT
35 BROAD STREET
CHARLESTON, SC 29401

State of South Carolina,

WHEREAS, John Ballaam, also known as JOHN BAILEM, died seized and possessed of the below described property in 18____; and

WHEREAS, he was survived only by his son, Henry Ballaam a/k/a Henry Bailem, who was born in 1885 and died intestate on or about September 25, 1970, seized and possessed of the below described property, and survived by his wife, Harriett, his sons, Henry, Jr., and John, and his daughters, Rebecca B. Jefferson and Estelle B. Capers; and

WHEREAS, Harriett Ballaam a/k/a Harriett Bailem died on or about October 10, 1978, intestate, leaving as her sole surviving heirs, her son, Henry, Jr., and her daughters Rebecca and Estelle; and

WHEREAS, John Ballaam a/k/a John Bailem predeceased his mother, Harriett, by six months dying in 1978 intestate and leaving as his sole surviving heir his wife, Maggie B. Ballaam a/k/a Bailem; who has since died on or about _____, and that she and John Ballaam a/k/a John Bailem left no issue surviving; and

WHEREAS, the aforementioned surviving heirs of John Ballaam a/k/a John Bailem now wish to convey all of their right, title and interest in and to the below described property to ~~ESTELLE BAILEM CAPERS;~~

JOSEPH AND SHEILA BAILEM, JR.

KNOW ALL MEN BY THESE PRESENTS THAT

HENRY BAILEM, JR., REBECCA BAILEM JEFFERSON and
ESTELLE BAILEM CAPERS

in the State aforesaid _____ for/and _____ in consideration of the sum of

Five Dollars (\$5.00) and love and affection----- DOLLARS *7/7*

to them _____ in hand paid at and before the sealing of these presents by ESTELLE BAILEM CAPERS

in the State aforesaid _____ the receipt whereof is hereby

acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and

release unto the said *JOSEPH AND SHEILA BAILEM, JR.* ESTELLE BAILEM CAPERS, her heirs and assigns forever, the following described property, to-wit:

ALL that lot, piece, parcel of tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Penninton, P.E., and L.S., entitled "Plat of lands of John Bailem Estate located in the Liberty Hill Area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK, Page 135, of the RMC Office for Charleston County."

Said property containing approximately 1.20 acres of land and shown as Lot 4 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the northeast on lands of Cephus Wright, to the south on John Ballam Road, to the west on Lot 5, and to the east on Lot 3.

TMS #561-00-00-092

Grantee's address:

BRANTLEY RD
2241 JOHN BAILEM RD
MT. PLEASANT, SC

BK V174-6026

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 the said *EBC*

ESTELLE BAILEM CAPERS, her Heirs and Assigns forever.

JOSEPH AND SHARLA BAILEM, TRS *TH KB*

AND we do hereby bind our BK V-17-A-0027
 Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said
ESTELLE BAILEM CAPERS, her JOSEPH AND SHEILA BAILEM, their
 Heirs and Assigns, against us and our Heirs, and all persons whomso-
 ever lawfully claiming, or to claim the same or any part thereof
 WITNESS our Hand s and Seal s, this 26th day of January
 in the year of our Lord one thousand nine hundred and eighty-eight and in the two hundred and
twelfth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
 IN THE PRESENCE OF

Henry Bailem, Jr. (L.S.)
Rebecca Bailem Jefferson (L.S.)
Estelle Bailem Capers (L.S.)
 HENRY BAILEM, JR.
 REBECCA BAILEM JEFFERSON
 ESTELLE BAILEM CAPERS

The State of South Carolina,

CHARLESTON County.

PERSONALLY appeared before me first witness
 and made oath that he/she saw the within named HENRY BAILEM, JR., REBECCA
BAILEM JEFFERSON and ESTELLE BAILEM CAPERS
sign, seal, and as their act and deed, deliver the within written Deed,
 and that he/she with second witness
witnessed the execution thereof.

SWORN to before me, this 26th.

day January A.D. 19 88

Notary Public of South Carolina
 My Commission Expires: 3-29-89

State of South Carolina.

BKA 173PG853

WHEREAS, John Ballaam, also known as JOHN BAILEM, died seized and possessed of the below described property in 18____; and

WHEREAS, he was survived only by his son, Henry Ballaam a/k/a Henry Bailem, who was born in 1885 and died intestate on or about September 25, 1970, seized and possessed of the below described property, and survived by his wife, Harriett, his sons, Henry, Jr., and John, and his daughters, Rebecca B. Jefferson and Estelle B. Capers; and

WHEREAS, Harriett Ballaam a/k/a Harriett Bailem died on or about October 10, 1978, intestate, leaving as her sole surviving heirs, her son, Henry, Jr., and her daughters Rebecca and Estelle; and

WHEREAS, John Ballaam a/k/a John Bailem predeceased his mother, Harriett, by six months dying in 1978 intestate and leaving as his sole surviving heir his wife, Maggie B. Ballaam a/k/a Bailem; who has since died on or about _____, and that she and John Ballaam a/k/a John Bailem left no issue surviving; and

WHEREAS, the aforementioned surviving heirs of John Ballaam a/k/a John Bailem now wish to convey all of their right, title and interest in and to the below described property to HENRY BAILEM, ~~III~~ ^{IV} *BE*

KNOW ALL MEN BY THESE PRESENTS, THAT *HB*
HENRY BAILEM, JR., REBECCA BAILEM JEFFERSON and
ESTELLE BAILEM CAPERS

in the State aforesaid for/and _____ in consideration of the sum of
Five Dollars (\$5.00) and love and affection-----DOLLARS,

to them _____ in hand paid at and before the sealing of these presents by _____ *HB BE BC*

HENRY BAILEM, ~~III~~ ^{IV}

in the State aforesaid _____ the receipt whereof is hereby

acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and *EB*
release unto the said HENRY BAILEM, ^{IV}, his heirs and assigns forever the following
described property, to-wit: *HB*

ALL that lot, piece, parcel of tract of land, situate, lying and being in the County of Charleston as shown on a plat by James G. Penninton, P.E., and L.S., entitled "Plat of lands of John Ballam Estate located in the Liberty Hill Area of Christ Church Parish, Charleston County, South Carolina, dated July 23, 1986, and recorded in Book BK, Page 135, of the RMC Office for Charleston County."

Said property containing approximately 2.72 acres of land and shown as Lot 5 on the aforementioned plat.

Subject to the easements as shown on said plat.

BUTTING AND BOUNDING to the north on lands now or formerly of Isaac Wright Estate, to the south on John Ballam Road, to the west on Six Mile Road, and to the east on Lot 4.

TMS #561-00-00 260
Grantee's address:

John Bailem Road
Mt. Pleasant, S.C. 29464

CLERK OF COURT
35 BROAD STREET
CHARLESTON, SC 29401

FILED, INDEXED & RETURNED

V174-25
68 MAY 19 PM 12:31

ROBERT H. KING
REGISTER MESSENGER
CHARLESTON COUNTY, S.C.

5-20-58
561-00-00-052

State of South Carolina,

TO

TITLE TO REAL ESTATE

Filed _____ day _____

at _____ A.D. 19____

at _____ o'clock _____ M.

and recorded in Book _____

Page _____, Fee, \$ _____

H. M. C. or Clerk Court C.P. & C. S.

County, S.C.

Recorded this _____ day _____

of _____ 19____

IN PROPERTY RECORD CARD

in Book _____ Page _____

Fee, \$ _____

Author _____

CHARLESTON

County, S. C.

CLERK OF COURT

35 BROAD STREET

CHARLESTON, SC 29401

BKA 173PG854

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 the said
HENRY BAILEM, ~~his~~, his

Heirs and Assigns forever.

Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said

Heirs and Assigns, against us and our Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hand and Seal s, this 26th day of January in the year of our Lord one thousand nine hundred and eighty-eight and in the two hundred and twelfth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Leis Smith
Estelle Bailem Capers

Henry Bailem Jr. (L. S.)
HENRY BAILEM JR.
Rebecca Bailem Jefferson (L. S.)
REBECCA BAILEM JEFFERSON
Estelle Bailem Capers (L. S.)
ESTELLE BAILEM CAPERS

The State of South Carolina,

CHARLESTON County.

PERSONALLY appeared before me first witness

and made oath that he/she saw the within named HENRY BAILEM, JR., REBECCA BAILEM JEFFERSON and ESTELLE BAILEM CAPERS sign, seal, and as their act and deed, deliver the within written Deed,

and that he/she with second witness

witnessed the execution thereof.

SWORN to before me, this 26th

day of January A.D. 1988

Estelle Bailem Capers (SEAL)
Notary Public of South Carolina
My Commission Expires: 3-29-89

Leis Smith

James McDougal, Jr.
36 Broad Street
Charleston, SC 29401

3KA 173 PG 856

FILED, INDEXED & RECORDED
A173-853
1500 MAR 10 PM 3:51

ROBERT N. KING
REGISTER MESNE CONVEYANCE
CHARLESTON COUNTY, S.C.

TMS VERIFIED	
BAC	<i>JK</i>
DTD	3-11-88
561-00-00-06	

State of South Carolina,

*Henry Bailens, Jr., Rebecca
Bailens-Bailens and Little Bailens
Copies of*

TO

Henry Bailens, Jr.

TITLE TO REAL ESTATE

Filed _____ day

of _____ A.D. 19

at _____ o'clock _____ M.

and recorded in Book _____

Page _____, Fee \$ _____

B. N. C. or Clerk Court C.P. & G. S.

Charleston County, S.C.

Recorded this _____ day

of *March* 19 *88*

in Book _____

Fee \$ _____

Pauline J. Hays

Auditor *Charleston* County, S.C.

RECORDED



9214890107899976499375
JEFFERSON MICHAEL
2242 JOHN BALLAM RD
MOUNT PLEASANT, SC 29464

Job Name: JOHN BALLAM
Job Address: 2242 JOHN BALLAM RD MOUNT PLEASANT, SC

Dear Sir/Madam:

Please accept our apologies for erroneously mailing out the attached notice. It was an error on our part, and not that of **SYNERGY EQUIPMENT**. As you can see, it has been **REVISED** and I can assure you that this will not occur again. We do sincerely apologize again for any inconvenience this may have caused.

You may contact me directly at (561) 424.6011 if there are any other issues we need to address.

Thank you for your time and understanding in this matter.

Sincerely,

Latoia Jennings

Latoia Jennings
Nationwide Notice, Inc.

NOTICE OF FURNISHING LABOR AND MATERIALS

9214890107899976499276
FONTAINE CONSTRUCTION
PO BOX 2746
ANDERSON, SC 29622

Please be advised that this company is hereby providing you with notice of furnishing labor and materials to the Project pursuant to S.C. Code Ann. § 29-5-40. The following information is provided pursuant to said statute:

- (1) We have been employed by/contracted with: **FONTAINE CONSTRUCTION.**
- (2) We provided: **Rental Equipment.**
- (3) The Project is known as : **JOHN BALLAM** , located at: **2242 JOHN BALLAM RD.**
- (4) Legal Description: **JOHN BALLAM / 2242 JOHN BALLAM RD / MOUNT PLEASANT, SC / As recorded in the public records of CHARLESTON County, SC / Property Control # 561-00-00-058 300FT E OF APP 650FT S RIFLE RANGE R PLATSUFFIX BV-82 POLTWP 002; **REVISED** , Residential .**
- (5) The labor, services, or materials were last actually furnished or scheduled to be furnished by us to the Project on **02/13/20.**
- (6) The estimated contract price for labor, equipment and/or materials to be provided to **FONTAINE CONSTRUCTION** for this project is (if known), **\$2,173.70.**

Nationwide Notice on behalf of Synergy Equipment, is requesting a copy of any Notice of Project Commencement recorded on the project listed above. This request is not a lien, it is only a notice, pursuant to South Carolina Code Ann § 29-5-23. This in no way reflects any concern of the integrity of your sub-contractor. Please let us know if you have filed a Notice of Project Commencement by sending a copy via Fax to 561-439-6614, by email to ento@nationwidenotice.com, or by certified mail to Nationwide Notice, PO Box 542165, Lake Worth, FL 33454 along with a copy of this request. If none is available now, this is an ongoing request should one become available in the future. **NOTICE:** Failure to file a Notice of Project Commencement allows sub-subcontractors and material suppliers to a subcontractor to seek payment through a mechanic's lien for amounts that exceed the amount owed to the subcontractor by the owner or general contractor.

Agent For:

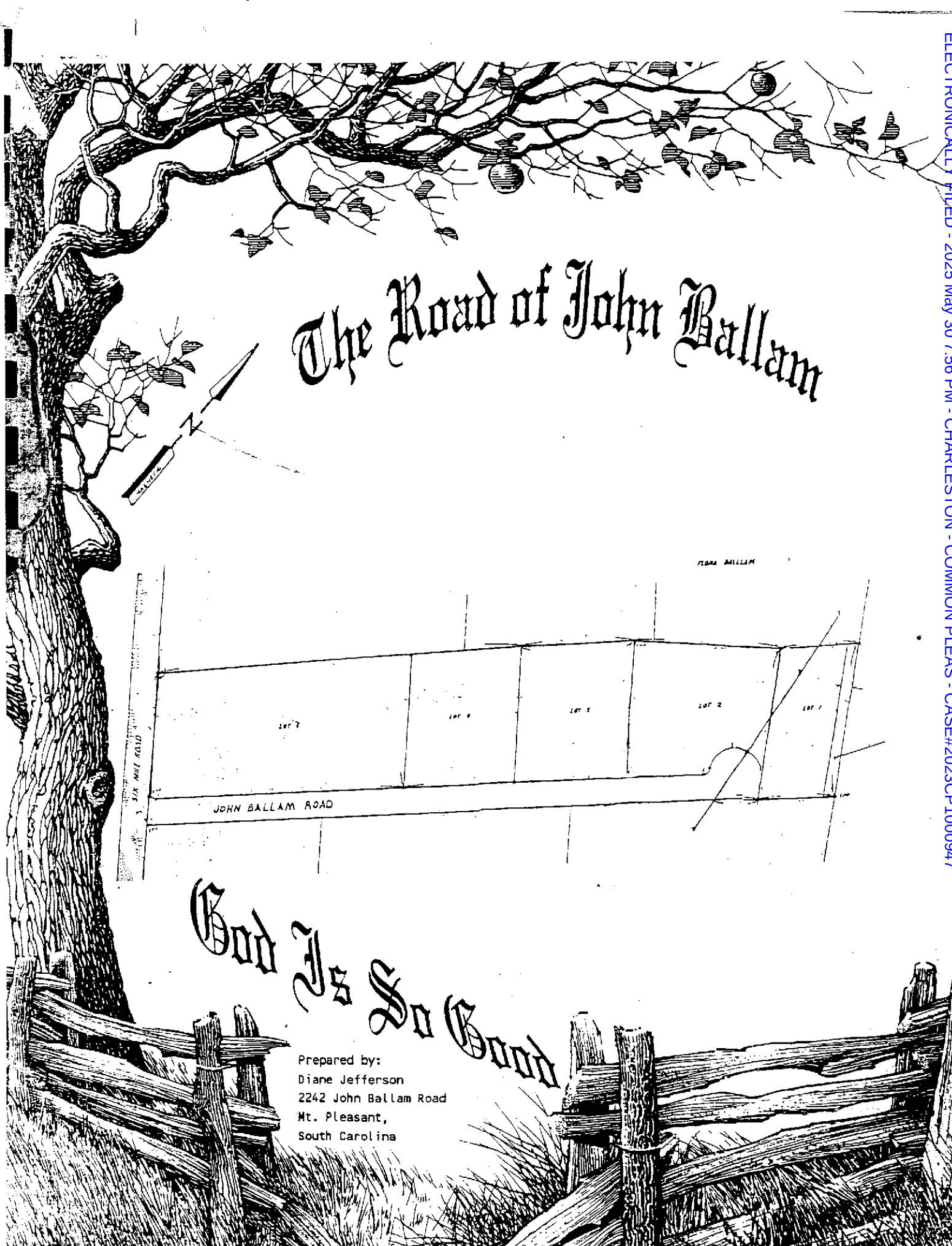
Synergy Equipment
3660 Enrindale Drive, Vairico , FL 335

REVISED

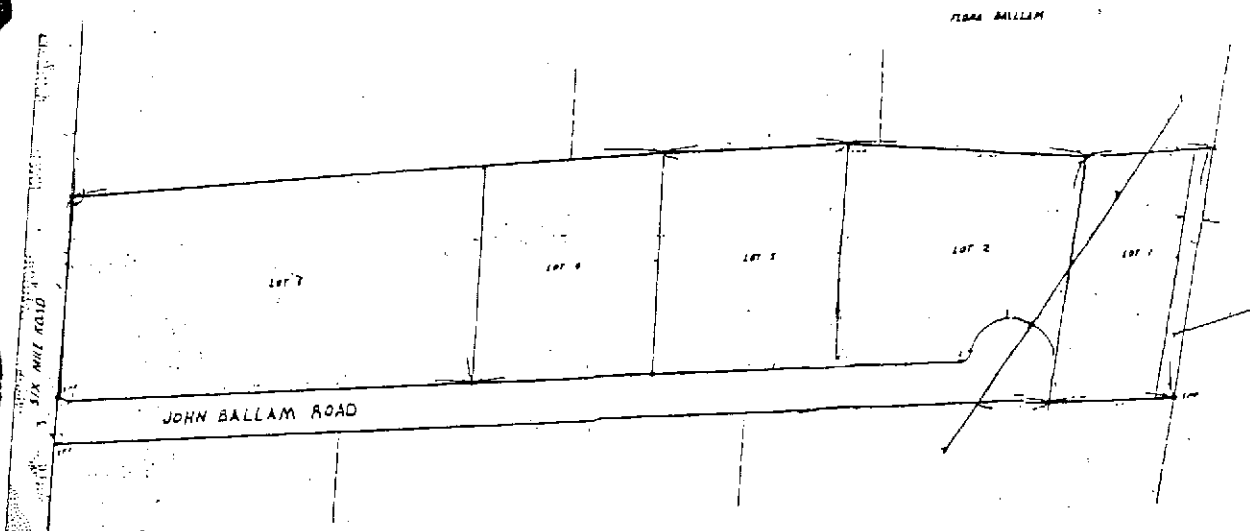
W/O: 7664689
Job #: 1182036982
Date: 02/20/2020
Acct #: 9970

By: Jorge Iriban

<u>Recipient Type</u>	<u>Tracking ##</u>	<u>Name</u>	<u>Address</u>
Owner	9214890107899980382977	BALLAM RD LLC	103 PALM BLVD #2C, ISLE OF PALMS , SC 29451
General Contractor	9214890107899976499276	FONTAINE CONSTRUCTION	PO BOX 2746, ANDERSON, SC 29622



The Road of John Ballam



God Is So Good

Prepared by:
Diane Jefferson
2242 John Ballam Road
Mt. Pleasant,
South Carolina

Published by
Easyway Out Computer Service
(803) 881-9849 / 569-9619

Volume 7 of 11
Copyright July 27, 1991
All Rights Reserved

Descendants of John Ballam
From One To Another

John Ballam
born: 1862
1st Generation
1862 - 1890
Number of children: 7

Flora Ballam

Henry Ballam Sr. (Pappa)

Roots

Descendants of John Ballam
From One To Another

Henry Ballam Sr. - Feb 25

2nd Generation

Number of children: 4

Harriet Graddick
born: October 3, 1888

1888 -
married: 1909

JAN 18
Henry Ballam Jr. 1912 - March 17 1987
John Ballam II 1914 - 1978
Rebecca Ballam I 1916 -
Estelle Bailem 1929 -

18 Sept 1914
Feb 1980
10 Dec 1982

Roots

Rebecca Nov 8 2006 death notice (Tue)

Gabe Jefferson Nov 15 1986

Rebecca Jefferson Nov. 7 2006

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2023-CP-10-000947

Henry Bailem, IV, Joseph Bailem, Sheila
Bailem, Diane Jefferson, Michael Jefferson, Sr.,
Rashica Coakley, and Ann Bailey Simmons

Plaintiffs,

v.

County of Charleston, Town of Mount
Pleasant, DRB Group South Carolina, LLC
f/k/a Dan Ryan Builders South Carolina, LLC,
Marie P. Howard, Lewis B. Howard, Jr.,
Lanelle P. Johnson, William Bailem, Sr., X
Syvier Lynn Johnson, Sonia Maria Simmons,
Kenneth Davis, Juanita Nelson, Titus Howard,
Myeisha Howard, James Howard, And John
Doe and Jane Doe, fictitious names used
herein to designate the unknown heirs at law,
distributes, and/or devisees of all persons who
are minors r members of the Armed Forces of
the United States of America, as contemplated
By the Soldiers' and Sailors' Relief Act, 1940,
as Amended, and all persons entitled to claim
under and through any of them,

Defendants.

**PLAINTIFFS' MOTION TO
RECONSIDER AND ALTER OR
AMEND JUDGMENT PURSUANT TO
RULE 59(e), SCRPC AND SUPPORTING
MEMORANDUM**

Plaintiffs Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson, Michael Jefferson, Sr., Rashica Coakley, and Ann Bailem Simmons, by and through undersigned counsel, respectfully move this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider and to alter or amend the Order Granting Summary Judgment entered on July 8, 2025 ("Order"), and for rehearing of the issues addressed in said Order.

MOTION

The Motion is based on the following grounds:

1. The record presented by the Plaintiffs raises genuine issues of material fact regarding the authenticity of the alleged signatures on the 1986 plat and the validity of any public dedication, which prevents the entry of summary judgment and requires these issues to be resolved at trial. The Court's Order did not view all evidence and reasonable inferences in the light most favorable to Plaintiffs as the non-moving parties.
2. The Defendants failed to meet their burden of proving the essential elements of public dedication with clear, cogent, and convincing evidence.
3. The Court's Order fails to adequately address contradictory evidence, including the County's own contemporaneous records indicating private dedication "to the property owners" and testimony from the County's witness acknowledging discrepancies in the documents.
4. The Court's Order applied the statute of limitations and doctrine of laches without considering the impact of the County's contradictory conduct and representations that prevented Plaintiffs from discovering their adverse claims until recent years.

MEMORANDUM

INTRODUCTION

This case is particularly unsuitable for a decision on summary judgment. The issue before the court at this stage is whether these property owners or their ancestors made a public dedication of this right-of-way known as John Ballam Road. That issue is hotly contested by the conflicting testimony of witnesses and the inferences that can be drawn from the documents. The Plaintiffs testify that neither they nor the previous generation who conveyed this property to them intended any public dedication but instead intended that this right of way be for private use only.

The Bailem family has owned and exclusively used the land where John Ballam Road is now located for over 100 years. In 1986, wanting only to subdivide their land to pass it to their children, the three living heirs hired a surveyor to draw lot lines. Without permission, explanation, or the family's knowledge, the surveyor added language claiming to dedicate their private road for public use. This unauthorized action cannot and did not strip the family of their property rights.

The one document on which the Defendants hang their entire case on its face, the October 1986 recorded plat, seems to indicate a public dedication but a slightly deeper look at the circumstances and the signatures of the owners raises at the very least a question for the fact finder to be weighed and determined at trial, not at a summary judgment hearing.

The Plaintiffs contend that there is little doubt that these are not the owners' signatures and that there never was a public dedication by the owners.

Summary judgment is inappropriate where, as here, disputed facts exist regarding the surveyor's authority, the family's intent, the validity of any dedication, and the propriety of governmental actions taken without due diligence concerning the road's ownership.

For that reason, as outlined here, the Plaintiffs respectfully request that the Court deny the Defendants' motions for summary judgment and proceed to trial on the issue of ownership.

The Order granting summary judgment to all Defendants warrants reconsideration under Rule 59(e), SCRCP.

LEGAL STANDARD FOR RULE 59(e) MOTIONS

[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. See, e.g., *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) ("purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits"); *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003)(an example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration"); James Flanagan, *South Carolina Civil Procedure* 474-475 (2d ed. 1996). There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity."

Elam v. S.C. DOT, 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004)

[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when

an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Elam, 602 S.E.2d at 780.

STATEMENT OF FACTS

A. The Bailem family has owned their property for over 100 years.

The Bailem (formerly Ballam) family has owned the property encompassing John Ballam Road for generations, with the land being in the family since the 1800s. (Am. Compl. ¶ 14). This was family land, passed down through the years, with no formal road serving to access the family homesites. The land was initially entered into the family through Flora Ballam, a former slave of the Boone Hall Plantation, and John Ballam a/k/a Sandy Ballam. (Am. Compl. ¶ 14). The Bailem family has taken great pride in ownership of this land for around 150 years. (Id.). In 1986, the heirs of John Ballam's estate - Henry Bailem, Jr., Rebecca Jefferson, and Estelle Capers - owned the property as tenants in common. (Pl. Res. to Def. TOMP's RFA ¶ 2, Ex. B to TOMP Mot.; Am. Compl. ¶¶ 1, 21-23). All Plaintiffs have lived on this land for decades.

B. The 1986 subdivision was intended to create family parcels accessed by an unpaved private road.

In 1986, the then-living three family owners decided to formally subdivide their property to create individual lots for other family members. (Am. Compl. ¶¶ 24-25; Ex. 1 to Am. Compl. - Affidavit of Henry Bailem, IV, ¶ 5).

They hired James G. Pennington, a surveyor, for what they understood to be the straightforward task of surveying the property and drawing lot lines. (Am. Compl. ¶ 24; Ex. 1 to Am.

Compl. - Affidavit of Henry Bailem, IV, ¶ 5; Dep. of J. Pennington, p. 11:10-15, Ex. C to TOMP Mot.; Dep. of D. Jefferson, pp. 9:25, 10:1-22, Ex. D to TOMP Mot.).

On March 6, 1986, the Plat of Lands of John Ballam Estate was recorded in Charleston, South Carolina, T.M.S. 561-00-00-60, making the first subdivision. Ex. 1 to Am. Compl. - Affidavit of Henry Bailem, IV, ¶ 4.

Originally, Pennington was hired to create a plat showing four lots and a private access road dedicated to the owners of those lots. Dep. of D. Jefferson, p. 10:2-17.

On July 23, 1986, Pennington drafted a plat that contained dedication language that incorporated the words [READ] above signature lines. (Am. Compl. ¶ 25; Ex. 1(B) to Am. Compl.). This was the plat presented to the owners for approval and signature. See Attached Plaintiffs' Memorandum Exhibit A.

The three owners of the lots signed that plat. Deposition of Henry Bailem, p. 11:17-12:19.

The family's intent was clear: create private lots for family members with access via an existing unimproved private road. This intention was clearly communicated to surveyor Pennington. (Am. Compl. ¶¶ 25-26; Ex. 1 to Am. Compl. - Affidavits of Henry Bailem, IV, Estelle Capers, Ann Simmons, et al.).

Nothing in their discussions with Pennington indicated any intent to dedicate property to public use. (Dep. of D. Jefferson, pp. 10:5-17, 11:3-24; Dep. of J. Pennington, p. 54:5-16).

Though no original signed copy of that earlier four parcel plat with the proper private dedication can be located, a marked-up copy of that plat that Pennington gave to Diane Jefferson is submitted as Plaintiffs' Memorandum Exhibit A.

Exhibit A shows the faint indication of a signature, indicating the owners intent to provide access to the property owners only. It appears this "working copy" of the plat was used to create a subsequent five-parcel plat at Ms. Jefferson's request.

C. The plat that was actually filed contained dedication language contrary to the family's instructions and was not signed by the owners of the property.

Dianne Jefferson approached Pennington about adding a fifth lot, necessitating the creation of another plat. Deposition of Diane Jefferson, 10:2-11:24.

Pennington apparently made a copy of the four-lot plat that had been signed by the owners with the private road dedication and marked it up with Diane Jefferson. Plaintiffs' Memorandum Exhibit A.

Pennington gave the marked up copy to Dianne Jefferson(Plaintiffs' Memorandum Exhibit A) but did not show her the subsequent five lot parcel before it was finalized and submitted for subdivision plat approval and filing. Deposition of Diane Jefferson 12:2-11.

For some reason, Pennington erroneously, without notice to or authorization from Dianne Jefferson or any other member of the family, substituted a public dedication on the 5-lot parcel. Pennington's testimony is not helpful in explaining this because he does not remember doing this work and has also testified that he did not draft the plats he signed, an undisclosed draftsman created the plats. Deposition of Pennington 11:23-25; 51:12-13;

Without the family's knowledge or consent, someone, presumably the Pennington's unknown draftsman inserted dedication language on a different version of the plat converting the owners' desired private dedication to a public dedication: "We hereby dedicate this 50' road right-of-way for the use of the public forever." (Am. Compl. ¶ 27; Ex. 1(C), (D) to Am. Compl.). This plat with the erroneous and unauthorized public dedication was submitted with the August 11, 1986 subdivision application, contrary to the Bailem family's intent and without their knowledge. (Am. Compl. ¶ 27).

This language: 1. Was never discussed with the family (Dep. of D. Jefferson, pp. 16:21-25, 17:1-19); 2. Was never authorized by the family (Dep. of H. Bailem, pp. 34:8-17, Ex. A to TOMP Mot.), and 3. Was contrary to the family's intent to maintain private property (Am. Compl. ¶¶ 26, 53).

The mylar that would bear the ink signatures of the owners to the dedication would have been kept by the surveyor, but Pennington said he lost it. (Pennington 92:15-19; 95:6-7). What is recorded is the blueprint copy. Pennington 94:8-9.

Compounding the error, Pennington obtained, through some means, signatures on the public dedication that are not the signatures of the owners.

This can clearly be seen by comparing the signatures of the three individuals on the deeds by which they conveyed the parcels to the Plaintiff owners with the signatures on the 5-lot parcel.

Additionally, Rebecca Bailem Jefferson was blind and did not sign her name, by only made a mark "X" indicating her signature, as demonstrated on the deeds. Remarkably, she somehow signed her first and last name on the recorded five-lot plat, though she only made an X on the deeds that were purportedly signed at the same time. Plaintiffs' Memorandum Exhibit B; Deposition of Henry Bailem, pp. 26:15-27:15.

Estelle Bailem Capers always included her middle name in signing official documents, as shown on the deeds, but not on the five-parcel plat. Plaintiffs' Memorandum Exhibit B; Deposition of Henry Bailem, pp. 26:15-27:15.

Finally, Henry Bailem knows his father's signature and has testified that that signature is not his father's.

Nevertheless, the 5-lot parcel plat, bearing an unauthorized and erroneous public dedication without the signatures of the owners AND WITHOUT WITNESSES was presented to the County for filing, and the plat was filed on October 24, 1986 in the real property records of Charleston County.

The Plaintiffs were not aware of the filing of the erroneous plat until years later, when the ownership of the road came into dispute.

D. The County subdivision records evidence the family's desire for the access road to remain private.

Critically, the Charleston County Planning Staff & Public Works recommended in their September 29, 1986 agenda that the application be approved "with the granting of a variance from Section III E-12 which will allow the creation of four lots that do not front on a state or county maintained road, and with the dedication of a 20' wide drainage easement as shown on the plat. This plat represents a division of estate property and a 50' right-of-way will be dedicated to the property owners." (Am. Compl. ¶ 29; Ex. 1(C) to Am. Compl.) (emphasis added).

On October 10, 1986, the surveyor received a letter stating the outcome of the October 7, 1986 Charleston County Council meeting. This letter reiterates the dedication of the 50' right-of-way to the property owners. (Am. Compl. ¶ 31; Ex. 1(C) to Am. Compl.). Despite these official records showing the road was to be dedicated to property owners, the wrong plat was erroneously recorded on October 24, 1986 without proper dedication. (Am. Compl. ¶ 32).

Pennington deposition: 95:23-96:19

Q: What did County Council approve to be recorded as the dedication?

A: Well, according to this letter, they approved the 20-foot-wide drain ditch shown on the plat.

Q: What's the last sentence of the first paragraph say?

A "Will be dedicated to the property owners."

Q: What will be?

A: The right-of-way. The 50-foot right-of-way.

Q: Okay. So where is that plat that represents that?

A: It's this plat.

Q: Which plat?

A: Exhibit 7.

Q: Is that what the dedication says?

A: No.

Q: So you recorded a plat that was not approved by County Council?

A: Apparently so.

E. Charleston County subsequently considered the road private, despite the recording of the erroneous 1986 plat.

Charleston County continued, after the recording of the plat in 1986 to regard the access road, now called John Ballam Road, as a private road.

In August 1993, the County explicitly rejected John Ballam Road as being a road within its maintenance system, confirming it did not "meet Charleston County standards for an earth road and cannot be accepted into the County maintenance system" and stating that if construction continued without meeting requirements, "the County will consider this road to be a private road for the use of the property owners and their heirs." (Am. Compl. ¶ 35; Ex. 1(E) to Am. Compl.)

Later, the "Jurisdiction Information" document related to John Ballam Road indicated that the maintenance jurisdiction was "Private" until it was crossed out and erroneously replaced with "Public" once the road and surrounding property were annexed into Mt. Pleasant. (Ex. 1(F) to Am. Compl.)

F. The Plaintiffs continued to consider the road private and did not know anyone contended otherwise until the County paved their road without prior notice or their approval.

Since the October 24, 1986 plat was recorded, Plaintiffs and their family have maintained John Ballam Road, without contribution from the Defendants, except for tirs paving, which Plaintiffs have testified they did not request and were unaware was happening until it was done. (Am. Compl. ¶ 34; Exhibit 1, Henry Bailem Affidavit ¶ 14).

Mail has not been delivered on the road, and school buses did not go down the road for pickups, with only one exception due to the illness of a child suffering from sickle cell anemia who could not make it to the corner one day. They only received waste disposal services after annexation into Mount Pleasant on April 11, 1995. (Am. Compl. ¶ 39, Henry Bailem Affidavit ¶ 18).

For decades after 1986, the Bailem family continued to use John Ballam Road as their private access, maintaining exclusive control. Only when developer DRB purchased adjacent

property and sought to use "their" road did Plaintiffs investigate and discover the unauthorized dedication language. (Am. Compl. ¶¶ 41-42).

ARGUMENT

1. THE ORDER GRANTS SUMMARY JUDGMENT DESPITE GENUINE ISSUES OF MATERIAL FACT

A. The Summary Judgment Standard

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011)(internal citations omitted).

B. Substantial Questions of Material Fact

The Court's Order does not acknowledge substantial disputed facts that preclude summary judgment, including but not limited to:

1. Authenticity of Signatures: Plaintiffs presented specific testimony challenging the authenticity of all three signatures on the 1986 plat:
 - a. Rebecca Jefferson was blind in 1986 and could only sign with an "X," yet the plat purports to bear her full signature.
 - b. Estelle Capers usually signed as "Estelle Bailem Capers" on official documents, but the plat shows only "Estelle Capers."

- c. Henry Bailem IV testified that the signature purporting to be his father's "doesn't look like my daddy's signature."
 - d. The Order dismisses evidence of signature problems without adequate consideration of the specific testimony regarding Rebecca Jefferson's blindness and signature inconsistencies.
- 2. County's Own Contradictory Records: The County's October 10, 1986 letter explicitly states the right-of-way would be "dedicated to the property owners"—not to the public. The County's own 30(b)(6) witness admitted this "discrepancy between the letter and the plat."
- 3. Lack of Authorization: Uncontroverted testimony establishes that no family member authorized public dedication. Diane Jefferson testified she specifically instructed the surveyor to dedicate the road "to the property owners" and that "dedicated to the property owners... was the stipulation." The Order does not adequately consider extensive testimony regarding the family's actual intent to maintain private ownership.
- 4. Public dedication: Public dedication requires "strict, cogent, and convincing" proof that the owner "clearly, convincingly, or unequivocally intended to dedicate the property for public use." *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995). Defendants failed to meet this burden given:
 - a. Contradictory Official Records: The County's contemporaneous documentation contradicts public dedication. The September 29, 1986 County agenda and October 10, 1986 letter both reference dedication "to the property owners." The Order does not adequately weigh the County's own contradictory documentation, instead treating the 1986 plat as definitive despite acknowledged discrepancies.

- b. County's Own Witness Testimony: Wesley Linkler testified that County Council approved a subdivision "with a private dedication" to "the property owners" and could identify no council action approving public dedication.
- c. Lack of County Acceptance: Even if valid dedication existed, Linkler admitted the County provided no evidence that property owners requested acceptance and acknowledged the County could have added the road to the acceptance list unilaterally.

A description of the conflicting evidence that must be decided by the fact finder only after a full trial on the merits is outlined below.

2. THE EXISTENCE OF FACTUAL ISSUES IN THE RECORD PRECLUDES ENTRY OF SUMMARY JUDGMENT WITH REGARD TO PUBLIC DEDICATION, THE STATUTE OF LIMITATIONS AND LACHES AND REQUIRES A FULL TRIAL BEFORE THE FINDER OF FACT.

The motions by the Defendants must fail because, the crucial question in the case, whether the Plaintiffs or their predecessors in title publicly dedicated the piece of land now called John Ballam Road or whether it is a private road providing access only to the five parcels owned by the Plaintiff Bailem heirs, is hotly disputed and very much a question of fact that cannot be decided on summary judgment and must be determined only after this court hears the testimony, weighs the evidence and makes a determination at the conclusion of a trial on the merits.

A. NO VALID PUBLIC DEDICATION OCCURRED AS A MATTER OF LAW

1. The Intent to Dedicate to the Public Is Not Clearly Established

Public dedication is an exceptional mode of passing an interest in land, and proof of dedication must be strict, cogent, and convincing. The acts proved must not be consistent with any construction other than that of a dedication, and dedication may not be implied from the permissive,

sporadic, and recreational use of property. The record must contain evidence the owner of the property **clearly, convincingly, or unequivocally intended to dedicate** the property for public use. *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995)

The County has failed to meet this burden due to contradictory evidence regarding the dedicators' intent.

Official County Records: The October 10, 1986 County Clerk letter stating the right-of-way would be "dedicated to the property owners" provides contemporaneous evidence that County officials understood this as a private, not public, dedication.

County's Own Witness Confirms No Public Dedication Was Approved: Mr. Linkler testified that the County Council action on October 7, 1986 was to approve a subdivision "with a private dedication" to "the property owners." (Linkler Dep. 18:18-20). When asked repeatedly whether there was any council action approving public dedication, he could identify none, admitting he had "not seen any other council minutes" showing approval of public dedication. (Linkler Dep. 19:1).

Direct Testimony Regarding Original Intent:

Henry Bailem's testimony: The road "was always to the family, not to public" and that when he instructed the subdivision, he specified the road should be "to the family, to the use of the family, the Bailem family forever, not the public." (Henry Bailem 17: 1-14; 17-19).

Diane Jefferson's testimony: She gave explicit instructions to surveyor Pennington that the property should be "subdivided and have it dedicated to the property owners" and that "dedicated to the property owners... was the stipulation." She testified that she witnessed the property owners signing "a document that had a statement that says: 'I hereby dedicate to the property owners.'" (Diane Jefferson Deposition 10:25-11: 3; 11: 23024; 112: 2-4)

Plat Creation Process Contradicts Public Dedication: Mrs. Jefferson's detailed testimony reveals that: (i) The original plan was for four lots with private dedication; (ii) When she requested a

change to five lots, she specifically asked Penington to maintain "the same setup" with dedication "to the property owners;" (iii) She never saw or approved the final plat with public dedication language; (iv) The property owners never consented to public dedication.

2. The County's Own Records Establish Private, Not Public, Dedication

The County cannot now claim the road was publicly dedicated when its own official correspondence from the time of the alleged dedication clearly states otherwise. The October 10, 1986 letter from the County Clerk represents the official County interpretation of what was being dedicated, and it explicitly states dedication "to the property owners."

Most significantly, the County's own 30(b)(6) witness admitted that even after the alleged 1986 "public dedication," the County did not treat the road as public. Mr. Linkler testified:

- "Prior to 1996... the maintenance responsibility was assumed to be private" (Linkler Dep. 36:1-3);
- The County would not maintain roads "until it's been constructed to a county standard" (Linkler Dep. 36:12-13);
- In 1993, the County told property owners: "the county will consider this road to be a private road for the use of the property owners and their heirs" (Linkler Dep. 39:14-16).

This testimony establishes that the County itself did not consider the road publicly dedicated in 1986, undermining any claim of public dedication at that time.

B. THE COUNTY FAILED TO PROPERLY ACCEPT ANY PUBLIC DEDICATION

Even assuming for the sake of argument that some form of public dedication was intended and offered, the County's acceptance was defective and insufficient to perfect a public dedication.

1. County's Own Witness Confirms No Request from Property Owners

The County's 30(b)(6) witness, Mr. Linkler, made several critical admissions about the County's 1994 "acceptance":

- He could not identify any evidence that property owners requested the County accept the road for maintenance.
- When asked about petitions for acceptance, he testified: "I don't have a written petition" (Linkler Dep. 41:11) and "I would not have seen" any verbal requests (Linkler Dep. 41:14).
- He admitted the County could have put the road on the acceptance list itself without any request from property owners (Linkler Dep. 30:23-25)

This testimony shows the 1994 acceptance was not based on any request from property owners and was at most a unilateral County action.

2. County's Treatment Inconsistent with Public Ownership

The County's own witness admitted that even after alleged "acceptance" in 1994, the County's treatment was inconsistent with public ownership:

- Maintenance Responsibility: The road was annexed to the Town of Mount Pleasant, and Mr. Linkler testified that maintenance responsibility transferred to the Town, not the County (Linkler Dep. 50:17-18).
- No Evidence of County Control: The County presented no evidence of exercising control over the road consistent with ownership.

- Admission of Title Transfer: Mr. Linkler testified that on annexation, "the right-of-way became town right-of-way, not unincorporated county right-of-way," (Linkler Dep. 51:15-17) suggesting the County's interest was temporary at best.

C. THE DEDICATION ON THE 1986 PLAT IS INVALID DUE TO LACK OF AUTHORITY AND IMPROPER EXECUTION.

1. The Surveyor Exceeded His Authority

Pennington was hired solely to create a private family subdivision, not to dedicate public roads (Dep. of J. Pennington, p. 11:10-15; Dep. of D. Jefferson, pp. 10:5-10). No family member authorized Pennington to include dedication language (Dep. of H. Bailem, pp. 34:8-17). The family's consistent understanding was that this would remain a private road for family use (Am. Compl. ¶¶ 25, 53). DRB's reliance on Pennington's testimony that he does what clients request actually supports Plaintiffs - there is no evidence that his client requested the public dedication. (Dep. of J. Pennington, p. 36:4-6, Ex. 29 to DRB Mot.). Pennington's admission that owners must approve plats before recording further undermines Defendants' position, as the family never approved the dedication language. (Id. at 54:17-23).

2. The Signatures are Not Valid Signatures and Have No Witnesses.

As detailed above, these signatures do not match those on the deeds and are not likely theirs based on their appearance, the fact that one witness was blind and only signed her name with an X, and the other always included "Bailem" as her middle name, which she did not do on the plat. Further, Henry Bailem IV testified he knew his father's signature, and the one of the plat is not his father's. There were no witnesses for the signatures, as there are, and must be, on the deeds

While Ann Bailem Simmons testified in her deposition that she witnessed signatures, her testimony must be viewed in context. It is not clear from her testimony what she witnessed those owners signing. It is highly likely that she saw the witnesses signing the original of the copy included as Exhibit A to this Memorandum, which still bears the faint indication of those original signatures. Her testimony is not at all conclusive that she saw the owners sign the five-lot plat recorded in October 1986. At most, her testimony is a further question of fact to be weighed and decided to the court at trial.

Further, Diane Jefferson testified about conversations with Pennington regarding "transferring" signatures (Dep. of D. Jefferson, pp. 47:23-48:4, 49:9-15). Additionally, Pennington said he did not draft his plats, a draftsman did, and he did not remember this plat in any event.

The burden is on defendants to prove valid dedication, not on Plaintiffs to disprove it. The court must deny the Defendants' motions for summary judgment on this issue.

D. PLAINTIFFS HAVE ESTABLISHED SUFFICIENT EVIDENCE OF OWNERSHIP

Plaintiffs received their properties through valid deeds from the original property owners. While these deeds reference the plat, they do not contain public dedication language and do not necessarily incorporate any public dedication language shown on the plat, particularly where the County's own contemporaneous records indicate private dedication.

The fact that properties "butt and bound" on John Ballam Road does not necessarily establish that the road is publicly owned. Properties can butt and bound on private roads, and the specific language used in the deeds must be interpreted in light of all surrounding circumstances, including the County's own interpretation of the dedication.

E. THE STATUTE OF LIMITATIONS ARGUMENT FAILS BECAUSE GENUINE ISSUES OF FACT EXIST REGARDING THE VALIDITY OF THE ALLEGED 1986 DEDICATION

1. The Authenticity of the 1986 Plat Is in Genuine Dispute

The Defendants' entire argument rests on the validity of the 1986 plat, yet substantial evidence calls into question the authenticity and validity of this document. Unlike the situation in *Robinson v. Estate of Harris*, 388 S.C. 616, 698 S.E.2d 214 (2010) where there was no dispute about the validity of the underlying conveyance, here Plaintiffs have raised substantial questions about whether the plat accurately reflects the intent of the original property owners.

As detailed above, the intent and effectiveness of any public dedication is a matter of significant dispute.

- Contemporaneous County Records Contradict Public Dedication: The October 10, 1986 letter from the County Clerk of Council to surveyor James Pennington explicitly states that "a 50' right-of-way will be dedicated to the property owners" - not to the public. This contemporaneous official correspondence directly contradicts the County's interpretation of the plat as a public dedication.
- County's Own 30(b)(6) Witness Admits Discrepancy: Wesley Linkler, the County's designated representative, testified under oath that "There is a discrepancy between the letter and the plat recorded at BK 135." (Linkler Dep. 19:11-13). When pressed about whether there was any council action approving a public (rather than private) dedication, he was unable to identify any such action and admitted he had "not seen any other council minutes" evidencing council approval of public dedication. (Linkler Dep. 19:1).
- Direct Testimony Challenging Signatures: Both Henry Bailem, IV and Diane Jefferson testified under oath that the signatures on the 1986 plat are not authentic:
 - *Henry Bailem's testimony*: Rebecca Jefferson "was blind in 1986" and "couldn't have signed it because she was blind"; Estelle Capers "always signed her name Estelle

Bailem Capers" but the plat shows only "Estelle Capers"; Henry Bailem, Jr.'s signature "don't look like my daddy's signature"

- *Diane Jefferson's testimony*: "These three people did not sign this document, no matter how many times it was copied, with this statement on at any time." She testified that the property owners only signed "one time" and "it was on the plat with the correct dedication statement, and it was the original four lot."
- County Has No Evidence of Signature Authenticity: Mr. Linkler admitted that the County has no knowledge of how the signatures came to be on the plat, testifying: "I'm not aware of anybody in the county being present when it was signed by the property owners" (Linkler Dep. 22:23-24) and "No one from the county witnessed it." (Linkler Dep. 25:1). He further admitted: "We would have to rely on the professional stamp of the surveyor." (Linkler Dep. 25:24).
- Supporting Evidence of Rebecca Jefferson's Blindness: The deposition testimony establishes that Rebecca Jefferson was "permanently blind" before 1985 due to diabetes, yet the plat purports to bear her signature in 1986. Significantly, when she later executed a deed in 1988, she properly signed with an "X" and the notation "This is my mark," demonstrating the proper legal method for a blind person to execute documents.
- Detailed Testimony About Signature Transfer: Diane Jefferson provided crucial testimony about how the signatures came to be on the disputed plat. She testified that when she asked surveyor Pennington to change from four lots to five lots, "I asked him if he needed them to sign again. His response to me was he did not need to have them sign again. The signatures from before could go to this document." She further testified that Pennington said he could "transfer them" and that this was "common practice."

- Original Intent Contradicted: Mrs. Jefferson testified that her specific instruction to Mr. Pennington was to "subdivide the property and have it dedicated to the property owners" and that "dedicated to the property owners... was the stipulation." She stated unequivocally: "I witnessed folks signing a document that had a statement that says: 'I hereby dedicate to the property owners.' I did not see this statement. I did not see this plat until way later."
- 2. The Statute of Limitations Does Not Begin to Run Until Discovery of the Adverse Claim

This is not an action for the recovery of real property. S.C. Code Ann. § 15-3-340. The ownership remains in the ownership of the Plaintiffs to this day.

Even accepting the plat's face validity, S.C. Code Ann. § 15-3-340 does not bar Plaintiffs' claims because the limitations period begins when Plaintiffs knew or should have known their rights were being adversely claimed.

When discovery rule is triggered is a question of fact, not appropriate for summary judgment.

Here, the County's actions were consistent with maintenance of a private road serving the property owners until recent years when the County first asserted exclusive public ownership.

Key Timeline Facts and Testimony:

- 1986: Plat recorded with ambiguous or contradictory documentation; County letter states dedication "to the property owners."
- 1990s: Mr. Bailem testified that County officials told him "it's a private road" and "you don't have to worry about it. It's a private road. It's in the book as a private road"

- 1990s-2000s: Mrs. Jefferson testified to numerous visits to County offices where officials consistently confirmed the road's private status, stating "John Ballam Road is a private road dedicated to the property owners."
- 1994-2002: County improvements made without clear assertion of exclusive public ownership.
- 2017: Town of Mount Pleasant "turned him down" when a developer sought to use John Ballam Road, "said he didn't have access to John Ballam Road" because it was "a private road."
- 2019: First clear assertion by governmental entities that the road was public (Exhibit 7).
- 2023: First assertion by County of exclusive public ownership adverse to Plaintiffs' rights

Detailed Government Representations: Mrs. Jefferson's testimony provides extensive detail about government representations over decades:

- County employee "John" initially argued the road was public, but after checking records, "came back, and said, 'You're correct'" that it was private.
- When she later called back about the McManus driveway issue, the same employee said "legal said we can't do that because the road is public" - showing the County's position changed without explanation.
- Multiple meetings with County and Town officials where "County and Town of Mount Pleasant officials say the road is a private road. We made a mistake"

- Consistent treatment by various agencies: State refused road signs "saying it's a private road" and "The post office wouldn't even let us put our mailboxes down there, saying it's a private road."

Substantial questions of fact exist in the record that prevent granting summary judgment on the statute of limitations defense.

F. LACHES DOES NOT APPLY WHERE THE COUNTY'S OWN CONDUCT CREATED CONFUSION

The equitable doctrine of laches is defined as neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. *Robinson v. Estate of Harris*, 391 S.C. 114, 118, 705 S.E.2d 41, 43 (2011). "In order to establish laches as a defense, a party must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the party asserting the defense of laches." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 432, 673 S.E.2d 448, 456 (2009). "Whether a claim is barred by laches is to be determined in light of facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches." *Hallums v. Hallums*, 296 S.C. 195, 198-99, 371 S.E.2d 525, 527 (1988). In sum, the party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice. *Id.* at 199, 371 S.E.2d at 528.

At most, this defense raises a question of fact which is inappropriate for a decision at the summary judgment stage.

Further, laches cannot apply when the defendant's own conduct contributed to the delay or confusion.

1. The County's Contradictory Position Explains Any Delay

Plaintiffs' delay in challenging the road's status is explained by the County's own contradictory documentation and conduct. The testimony establishes that County officials repeatedly told Plaintiffs the road was private:

- *Henry Bailem's testimony:*
- In the 1990s, "they told me it was recorded as a private road, so we didn't have to do anything about that"
- County officials said, "you don't have to worry about it. It's a private road. It's in the book as a private road."
- As late as 2017: Town of Mount Pleasant refused a developer access to John Ballam Road, telling him "he didn't have access to John Ballam Road" because it was a private road
- *Diane Jefferson's testimony:*
- County employee "John" initially argued the road was public, but after checking records with a colleague, "came back, and said, 'You're correct'" that John Ballam Road was private.
- She was told the road was "a private road dedicated to the property owners" and given official documents to that effect.
- Multiple meetings with government officials where "County and Town of Mount Pleasant officials say the road is a private road. We made a mistake."
- When the County's position later changed, she was told "legal said we can't do that because the road is public," but no explanation was given for the change in position.
- When governmental entities repeatedly confirm a road's private status over decades, property owners reasonably rely on those official representations.

2. Plaintiffs' Reasonable Reliance on Government Conduct

The testimony shows Plaintiffs acted reasonably in relying on government representations:

- Consistent Official Position: For over 30 years, various government entities treated and described the road as private. Mrs. Jefferson testified that "every time I went for a visit there, the road was private. I was requesting services for the ditch on a regular base. The road was private. We're not going to do anything with the road."
- No Maintenance Claims: Mr. Bailem testified that "for 30-something years, the County wouldn't maintain the road" and "The Town of Mount Pleasant wouldn't maintain the road." Mrs. Jefferson confirmed this, testifying that when the County came to do drainage work, they specifically said they were only fixing damage they caused and were not claiming road ownership.
- Other Agency Recognition: The State refused to install road signs "saying it's a private road," and "The post office wouldn't even let us put our mailboxes down there, saying it's a private road."
- Documented Reliance: Mrs. Jefferson's testimony shows Plaintiffs took specific actions based on government representations, including requesting specific documentation and following official instructions about road maintenance and improvements.

3. No Prejudice to the County

The County cannot claim prejudice from maintenance expenditures when those expenditures were made with knowledge of the ambiguous nature of the dedication. The County's own 1986 records put it on notice that the dedication was "to the property owners," not the public. Moreover, the County's improvements were largely to repair damage it caused: Both Mr. Bailem and Mrs. Jefferson testified

that the County "tore the road up" when cleaning ditches. Mrs. Jefferson specifically testified that County engineer Hasell told her: "Mrs. Jefferson, we came in here, and those trees were there, and we had to get those trees out, and we destroyed your road. We have to put your road back in at least the condition it was in or in better condition."

The County's own employee acknowledged they were obligated to repair damage they caused during their drainage work, not that they were asserting ownership of a public road. Mrs. Jefferson testified: "It was never no discussion about paving the road because the road was taken over or anything like that; it was to put back a road in the place of the road that was there."

G. CLAIM OF IMPLIED DEDICATION BY REFERENCE TO THE PLAT FAILS.

The Defendants argue that even without express dedication, the road was impliedly dedicated when lots were conveyed by reference to the plat. This argument fails for multiple reasons:

1. Invalid Express Dedication Cannot Create Valid Implied Dedication

An unauthorized and void express dedication cannot bootstrap itself into validity through later deed references. The plat's defects infected all subsequent conveyances. *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975) assumes a valid underlying plat, which doesn't exist here.

2. The Deed References Were Not Dedicatory

The deeds state lots are "subject to easements" shown on the plat, not dedications (Ex. 5, 16, 24, 26, 28 to DRB Mot.) Describing property as bounded by "John Ballam Road" identifies location, not ownership. Private roads can bound property just as public roads can. The family's continuous treatment of the road as private negates any dedicatory intent implied from the deeds.

3. Family Conveyances Cannot Create Public Rights

The deeds were intrafamily transfers, not sales to the public. No consideration was given to the public for any dedication. Family members cannot dedicate each other's property through circular conveyances—rather, the original owners' lack of intent to dedicate controls.

CONCLUSION

The Order granting summary judgment contains clear errors of law and fact that warrant reconsideration. Genuine issues of material fact exist regarding the authenticity of the alleged dedication, the validity of signatures, and the family's actual intent. The County's own records and witness testimony create additional factual disputes that preclude summary judgment.

More fundamentally, allowing this Order to stand as written would work manifest injustice by legitimizing the taking of generational family property through allegedly fraudulent means. The minimum requirements of justice, fairness, and due process demand that these claims be decided by the fact finder after full consideration of all evidence, not disposed of summarily based on disputed documentation.

Plaintiffs respectfully request that this Court grant their Motion to Alter or Amend Judgment, vacate the summary judgment order, and set this matter for a trial on the merits.

Respectfully Submitted,

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ATTORNEY FOR PLAINTIFFS

July 18, 2025
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough,
Circuit Court Judge

Civil Case No. 2023-CP-10-00947

Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson,
Michael Jefferson, Sr., Rashica Coakley, and Ann Bailem Simmons,

Appellants,

v.

County of Charleston, Town of Mount Pleasant, DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC, Marie P. Howard, Lewis B. Howard, Jr., Lanelle P. Johnson, William Bailem, Sr., X Syvier Lynn Johnson, Sonia Maria Simmons, Kenneth Davis, Juanita Nelson, Titus Howard, Myeisha Howard, James Howard, And John Doe and Jane Doe, fictitious names used herein to designate the unknown heirs at law, distributes, and/or devisees of all persons who are minors or members of the Armed Forces of the United States of America, as contemplated By the Soldiers' and Sailors' Relief Act, 1940,as Amended, and all persons entitled to claim under and through any of them

Respondents.

NOTICE OF APPEAL

Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson, Michael Jefferson, Sr., Rashica Coakley, and Ann Bailem Simmons appeal the orders of the Honorable Mikell R. Scarborough dated July 8 and August 1, 2025. Appellants received written notice of entry of the Order Granting Summary Judgment on July 8, 2025, and filed a Motion to Reconsider on July 18, 2025. Appellants received written notice of entry of the Order Denying the Motion to Reconsider on August 1, 2025.

August 28, 2025

/s/ W. Andrew Gowder, Jr.

W. Andrew Gowder, Jr. (SC Bar No. 7895)

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

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

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

8 MR. STANLEY: Yes, Your Honor.

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

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

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

13 MR. WARD: Yes, Your Honor.

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

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

24 Are you prepared to go forward?

25 MR. STANLEY: I am, Your Honor.

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

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

6 You may proceed.

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

10 THE COURT: It was only 40 pages.

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

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

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

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

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

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

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

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

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

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

17 She answered, "Yes."

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

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

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

24 "I don't remember."

25 She then was asked, "Were you present when

1 those signatures were fixed to Exhibit 4?"

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

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

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

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

10 Answer, "Yes."

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

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

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

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

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

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

5 THE COURT: What was his name?

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

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

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

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

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

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

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

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

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

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

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

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

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

1 road.

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

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

16 THE COURT: When was this?

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

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

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

1 using County funds.

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

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

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

11 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 MR. STANLEY: That's right.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 attorneys to help protect our rights.

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

5 THE COURT: That was from whom?

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

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

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

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

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

1 allege were contrary to their rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 THE COURT: The plat?

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

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

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

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

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

23 MR. BELLE: Yes, Your Honor.

24 THE COURT: With the recording of the plat?

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

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

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

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

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

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

21 MR. BELLE: Yes, Your Honor.

22 THE COURT: Okay. All right.

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

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

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

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

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

10 THE COURT: Cross that bridge.

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: And no objection was made --

1 MR. BELLE: No objection was made.

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

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

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

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

13 THE COURT: Okay.

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

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

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

25 THE COURT: Okay. Ward and Gibson?

1 MR. BELLE: Yes, Your Honor.

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

3 Thank you, Mr. Belle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Have you ever attempted to block public access?

2 And he said: Yes.

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

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

13 THE COURT: Town employee?

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

19 THE COURT: The road is now paved?

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

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

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

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

6 MR. WARD: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 here at a summary judgement hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Let me stop you there.

1 Ms. Jefferson did not sign the plat?

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

4 THE COURT: She was not an owner.

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

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: All right.

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

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

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

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

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

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

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

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

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

7 Your Honor --

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

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

14 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

22 THE COURT: They say that was in 2002.

23 MR. GOWDER: It was in 2002.

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

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

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

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

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

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

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

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

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

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

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

22 THE COURT: Just one second.

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

24 THE COURT: Thank you.

25 MR. GOWDER: Question, "What did County

1 Council approve to be recorded as the dedication?"

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

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

7 "Will be dedicated to the property owners."

8 "What will be?"

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

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

12 "It's this plat."

13 "Which plat?"

14 "Exhibit 7."

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

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

21 He says, "No."

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

24 And the answer is, "Apparently so."

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

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

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

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

7 THE COURT: Okay. It faces Six Mile?

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

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

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

14 THE COURT: However many acres it was?

15 MR. GOWDER: That's right.

16 THE COURT: Okay.

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

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

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

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

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

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

21 Your Honor, further --

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

23 MR. BELLE: 1995.

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

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

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

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

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

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

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

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

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

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

25 I want to make several arguments, Your Honor,

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

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

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

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

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

1 uncontradictory evidence regarding the dedicator's
2 intent.

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

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

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

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

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

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

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

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

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

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

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

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

18 MR. GOWDER: All three of them.

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

20 MR. GOWDER: Lot three.

21 THE COURT: Okay. All right.

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

25 Even assuming that there's some question

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

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

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

11 MR. GOWDER: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Further, Your Honor --

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

4 MR. GOWDER: Correct.

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

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

13 THE COURT: All right.

14 MR. GOWDER: And, again --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Ms. Jefferson testified that a County

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

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

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

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

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

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

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

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

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

12 MR. GOWDER: Mr. Cane.

13 THE COURT: Yeah. He was deposed?

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

16 THE COURT: He gave an affidavit?

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

19 THE COURT: Okay. About what happened?

20 MR. GOWDER: Yes, sir.

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

23 MR. BELLE: 1996, Your Honor.

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

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

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

5 MR. GOWDER: It was, Your Honor.

6 THE COURT: Road was not paved.

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

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

12 MR. GOWDER: By contract.

13 THE COURT: They contracted with these folks?

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

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

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

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

1 THE COURT: Right.

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

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

10 THE COURT: Okay. Very good.

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

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

18 MR. GOWDER: Right.

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

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

23 THE COURT: Thank you. Any response?

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

25 Pennington was hired by the Bailem family.

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

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

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

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

14 "Transfer."

15 The response continues, "This is hearsay."

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

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

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

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

10 THE COURT: This is whose testimony?

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

15 Answer: I can't answer that.

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

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

23 THE COURT: Okay.

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

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

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

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

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

12 THE COURT: This is the original?

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

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

16 THE COURT: All right. Thank you.

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

20 THE COURT: Okay. Got it.

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

25 And his -- I did not submit his deposition

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

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

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

10 Answer: Yes.

11 Question: So that was prior to 1989?

12 Answer: Yes.

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

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

22 MR. STANLEY: I stand corrected.

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

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

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

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

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

14 MR. GOWDER: Yes, sir.

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

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

1 of that.

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

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

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

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

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

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

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

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

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

8 THE COURT: Anything further, Mr. Belle?

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

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

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

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

1 property owners, who are not here.

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

5 Now, also --

6 THE COURT: The recorded plat, right?

7 MR. BELLE: The recorded plat.

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

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

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

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

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

25 Now, as far as the construction and these

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Additionally --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The planning commission as well as the clerk

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

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

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

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

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

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

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

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

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

13 MR. WARD: Yes, Your Honor.

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

16 MR. WARD: Yes, Your Honor.

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

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

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

1 MR. WARD: Right.

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

4 Anything further, Mr. Gowder?

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

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

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

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

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

25 MR. GOWDER: Which we contend is an invalid

1 plat.

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

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

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

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

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

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

19 THE COURT: Okay.

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

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

1 counsel and provide it to the Court.

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

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

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

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1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

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

15 SIGNED THIS THE 2nd DAY OF OCTOBER 2025.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
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RECEIVED

Mar 18 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough,
Circuit Court Judge

Appellate Case No. 2025-001719

Henry Bailem, IV, Joseph Bailem, Sheila Bailem, Diane Jefferson,
Michael Jefferson, Sr., Rashica Coakley, and Ann Bailem Simmons,

Appellants,

v.

County of Charleston, Town of Mount Pleasant, DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC, Marie P. Howard, Lewis B. Howard, Jr., Lanelle P. Johnson, William Bailem, Sr., X Syvier Lynn Johnson, Sonia Maria Simmons, Kenneth Davis, Juanita Nelson, Titus Howard, Myeisha Howard, James Howard, And John Doe and Jane Doe, fictitious names used herein to designate the unknown heirs at law, distributes, and/or devisees of all persons who are minors or members of the Armed Forces of the United States of America, as contemplated By the Soldiers' and Sailors' Relief Act, 1940,as Amended, and all persons entitled to claim under and through any of them

Defendants,

of which County of Charleston, Town of Mount Pleasant, DRB Group South Carolina, LLC f/k/a Dan Ryan Builders South Carolina, LLC are the

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/ W. Andrew Gowder, Jr.

W. Andrew Gowder, Jr. (SC Bar No. 7895)

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