

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM WILLIAMSBURG COUNTY

SC Court of Appeals

Court of Common Pleas
G. Wells Dickson, Jr., Special Referee

Case No: 2005-CP-45-434

Town of Kingstree, a Body Corporate and Politic, ... Respondent
v.

Gary W. Chapman, Jr., Terilyn J. McClary, Waccamaw
Housing, Inc., Lydia F. Duke, Alice H. Kellahan and
South Carolina Department of Transportation Defendants

of whom, Lydia F. Duke and Alice H. Kellahan are Appellants

RECORD ON APPEAL

Volume II

Larry G. Reddeck
Nettles, Turbeville & Reddeck
Post Office Box 699
Lake City, SC 29560
(843) 374-8511 (phone)
(843) 374-3211 (fax)

William M. O'Bryan, Jr.
O'Bryan & O'Bryan
PO Box 1105
Kingstree, SC 29556
(843) 355-7471
Attorneys for the Appellants

Ernest J. Jarrett
Amanda Shuler
Jenkinson, Jarrett & Kellahan, P.A.
PO Box 669
Kingstree, SC 29556
(843) 355-2000 (phone)
(843) 355-2010 (fax)
Attorneys for the Respondent

INDEX

I. ORDERS

1. Order Denying Defendants Lydia F. Duke's and Alice H. Kellahan's Motion for Reconsideration dated December 1, 2011 and filed December 1, 2011 1
2. Order For Abandonment and Closure of Portion of Porter Street, dated October 22, 2010 (Motion Cover Sheet and Order for Abandonment and enclosure of portion of Porter Street dated October 22, 2010 omitted) 11
3. Order of Reference (with Finality) dated December 1, 2005 and filed December 1, 2005 24

II. PLEADINGS

1. Motion to Alter or Amend Judgment Pursuant to Rule 59(e) and 60, SCRCP of Appellants dated November 3, 2010 (Motion Information Form & Cover Sheet) 25
2. Notice of Intention to file Petition for Abandonment and closure of a portion of Porter Street in the Town of Kingstree, County for Williamsburg dated October 19, 2005 and filed November 14, 2005 43
3. Petition for Abandonment and Closure of Portion of Porter Street of Town of Kingstree, County of Williamsburg dated October 19, 2005, with plat of J.B. Ellis, Jr., RLS dated October 4, 2005 and filed November 15, 2005, attached as Exhibit "A" 46
4. Answer of Department of Transportation dated December 1, 2005 57
5. Answer of Waccamaw Housing, Inc. dated December 20, 2005 61
6. Answer and Counterclaim of the Defendants Alice H. Kellahan & Lydia F. Duke dated January 18, 2006 and filed December 18, 2006 62

INDEX

-continued-

RECORD ON APPEAL

Town of Kingstree vs. Gary W. Chapman, Jr., et al.

7. Reply to Answer and Counterclaim of Plaintiff dated February 7, 2006 67

III. TRANSCRIPT

- A. Transcript of Proceedings of April 26, 2006 69

Witnesses:

1. Mike Kirby
 - A. Direct examination 71
 - B. Cross-examination 85
 - C. Redirect examination 97
 - D. Recross-examination 101
2. Terilyn McClary
 - A. Direct examination 107
 - B. Cross-examination 111
3. Gary W. Chapman
 - A. Direct examination 116
 - B. Cross-examination 118
4. Alice H. Kellahan
 - A. Direct examination 121
 - B. Cross-examination 122
 - C. Redirect examination 124
5. W.N. Kellahan, Jr.
 - A. Direct examination 125
 - B. Cross-examination 137
 - C. Redirect examination 150
 - D. Recross-examination 152

- B. Transcript of Proceedings of April 16, 2007 161

1. John Yancey McGill
 - A. Direct examination 161
 - B. Cross-examination 163
 - C. Redirect examination 168

- C. Transcript of Proceedings of March 29, 2011 - Hearing
on Motion for Reconsideration 182

IV. EXHIBITS

1. Plaintiff's Exhibit #1 - Survey of Jim Ellis, dated October
4, 2005, Book 47 at Page 140 235
2. Plaintiff's Exhibit #3 - Minutes of Meeting, Town of
Kingstree, Regular Meeting of Town Council, dated
January 26, 2004 (7 pages) 236
3. Plaintiff's Exhibit #4 - Minutes of Meeting, Town of
Kingstree, Public Hearing of February 2, 2004 243
4. Plaintiff's Exhibit #5 - Minutes of Meeting, Town of
Kingstree, Special Meeting of Town Council, dated
February 2, 2004 245
5. Plaintiff's Exhibit #6 - Deed from Alice H. Kellahan and
Lydia F. Duke to Waccamaw Housing, Inc., dated May 3,
2004 247
6. Plaintiff's Exhibit #7 - Deeds to Town of Kingstree
 - A. Deed from Episcopal Church recorded in
Deed Book A422 at Page 300 250
 - B. Deed from Methodist Oaks recorded in
Deed Book A422 at Page 290 260
 - C. Deed from Williamsburgh Historical
Society dated July 1, 1998 recorded
November 23, 1998 Deed Book A422 at
Page 280 270
 - D. Deed from Connie Maxwell Church Home
recorded in Deed Book A423 at Page 1 280
 - E. Deed from Epworth Children's Home
recorded in Deed Book A423 at Page 11 290
 - F. Deed from Thornwell Home recorded in
Deed Book A423 at Page 22 301
 - G. Limited Warranty Deed from Presbyterian
Home of SC recorded in Deed A423 at

INDEX

-continued-

RECORD ON APPEAL

Town of Kingstree vs. Gary W. Chapman, Jr., et al.

Page 236	308
7. Defendant's Exhibit #1 - Deed into John Nelson dated November 10, 1880 recorded August 10, 1899 Deed Book Y at Page 585	318
8. Defendant's Exhibit #2 - Map prepared by P. G. Gourdin dated March 1903 showing Ashton Ave. subdivision recorded in Plat Book "B" at page 55	320
9. Defendant's Exhibit #3 - Deed from John T. Nelson to H. W. Britton dated May 6, 1909 recorded in the Office of the Clerk of Court in Deed Book "A-5 at Page 206 for Lot 14	321
10. Defendant's Exhibit #4 - Deed from John T. Nelson to C. C. Brinkley dated July 10, 1909 recorded in the Office of the Clerk of Court in Deed Book "A-5' at Page 272 for lot 13	322
11. Defendant's Exhibit #5 - Petition for Letters of Administration for Estate of J. T. Nelson filed in the Office of the Probate Court for Williamsburg County in Roll #14 Apartment 118	323
12. Defendant's Exhibit #6 - Warrant of Appraisement and Inventory and Appraisement for Estate of J. T. Nelson filed in the Office of the Probate Court for Williamsburg County in Roll #14 Apartment 118	327
13. Defendant's Exhibit #7 - Last Will & Testament of Marie L. Nelson dated January 15, 1980 and recorded in the Office of the Probate Judge for Williamsburg County in Case # 7-400	330
14. Defendant's Exhibit #8 - Warrant of Appraisement and Inventory and Appraisement for Estate of Marie L. Nelson dated July 31, 1981 and recorded in the Office of the Probate Judge for Williamsburg County in Case # 7-400	350

INDEX

-continued-

RECORD ON APPEAL

Town of Kingstree vs. Gary W. Chapman, Jr., et al.

15. Defendant's Exhibit #9 - Plat prepared by William N. Kellahan, Jr. of 20.97 acres and easement dated August 19, 1993 and recorded in the Office of the Clerk of Court in Plat Book S852 at Page 6B 357
16. Defendant's Exhibit #10 - Deed from Samuel E. McIntosh to Alice H. Kellahan, et al. dated September 7, 1993 and recorded September 8, 1993 in Office of the Clerk of Court in Deed Book A311 at Page 231 for 20.97 acres 358
17. Defendant's Exhibit #11 - Easement from Samuel E. McIntosh, individually and as PR and Trustee for the Marie L. Nelson Estate to Alice H. Kellahan, et al. dated September 7, 1993 and recorded September 8, 1993 in Office of the Clerk of Court in Deed Book A311 at page 235 for a fifty foot easement designated as Porter Street 362
18. Defendant's Exhibit #12 - Plat prepared by William N. Kellahan, Jr. of Lot 14 for Gary W. Chapman, Jr., dated November 14, 1996 and recorded in the Office of the Clerk of Court in Plat Book S922 at Page 8A 366
19. Defendant's Exhibit #13 - Deed from Gary W. Chapman, Jr. to Gary W. Chapman and Misty L. Whitley dated November 15, 1996 and recorded December 5, 1996 in Office of the Clerk of Court in Deed Book A372 at page 19 for Lot 14 367
20. Defendant's Exhibit #14 - Deed from Misty L. Whitley to Gary W. Chapman and dated May 4, 1998 and recorded in Office of the Clerk of Court in Deed Book A409 at page 20 for Lot 14 371
21. Defendant's Exhibit #15 - Deed from Steven D. Grady et al. to Terilyn J. McClary dated September 25, 1997 and recorded September 25, 1997 in Office of the Clerk of Court in Deed Book A392 at page 101 for Lot 13 374

INDEX

-continued-

RECORD ON APPEAL

Town of Kingstree vs. Gary W. Chapman, Jr., et al.

22. Defendant's Exhibit #16 - Subdivision Plat of 20.97 acres prepared by W.N. Kellahan, Jr., May 1999, showing subdivision of 20.97 acre tract recorded June 27, 2001 in the Office of the Clerk of Court in Plat Book S1026 at page 9A 380
23. Defendant's Exhibit #17 - Photograph of area which is subject of litigation 381
24. Defendant's Exhibit #18 - Plat dated May 1999, revised May 17, 2002 382
25. Defendant's Exhibit #19 - Memorandum in Support of Motion to Alter or Amend Judgment Pursuant to Rule 59(e) and Rule 60, SCRCP of Defendants Lydia F. Duke and Alice H. Kellahan dated March 8, 2011 383
26. Defendant's Exhibit #20 - Reply to Memorandum in Support of Defendants Lydia F. Duke and Alice H. Kellahan's Motion for Reconsideration dated March 28, 2011 407

THE FOLLOWING EXHIBIT CANNOT BE INCLUDED IN THE RECORD ON APPEAL BECAUSE OF ITS SIZE AND/OR BECAUSE IT DOES NOT REASONABLY LEND ITSELF TO AN ACCURATE REPRODUCTION.

1. Plaintiff's Exhibit #2 - Williamsburg County Map 39 Mylar Map

V. OTHER

1. Affidavit of Eaton Living Trust 416
2. Affidavit of Pendergrass 419
3. Correspondence of June 24, 2011 to the Honorable G. Wells Dickson, Jr. and proposed Order granting Defendants Duke and Kellahan's Motion for Reconsideration and to Alter and Amend the Order of this Court October 22, 2010 and vacating Order for

INDEX

-continued-

RECORD ON APPEAL

Town of Kingstree vs. Gary W. Chapman, Jr., et al.

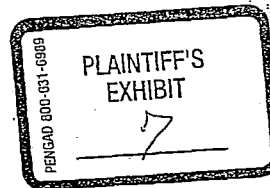
	Abandonment and Closure of portion of Porter Street.	422
4.	Memorandum in Support to Alter or Amend Judgment Pursuant to Rule 59(e) and 60, SCRCF dated March 8, 2011	469
5.	Memorandum in Opposition to Defendants Lydia F. Duke and Alice H. Kellahan's Motion to Alter or Amend Judgment Pursuant to Rule 59(e) and 60, SCRCF of the Plaintiff dated March 23, 2011	493
6.	Reply Memorandum in Support of Defendants Lydia F. Duke and Alice H. Kellahan's Motion for Reconsideration dated March 28, 2011	513
VI.	CERTIFICATE OF COUNSEL	522

STATE OF SOUTH CAROLINA)
) GENERAL WARRANTY DEED
COUNTY OF WILLIAMSBURG)

KNOW ALL MEN BY THESE PRESENTS, THAT the Episcopal Church Home for the Aging, Charleston, South Carolina, in consideration of the sum of Four thousand nine hundred twenty-five and No/100 (\$4,925.00) Dollars to it in hand paid at and before the sealing by these presents by Town of Kingstree, a body corporate and politic organized and existing under the laws of the State of South Carolina, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, and by these Presents does grant, bargain, sell and release unto the said, Town of Kingstree, a body corporate and body politic organized and existing under the laws of the State of South Carolina, its Successors and Assigns forever:

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty five and forty seven hundredths (25.47) acres, more or less, and more fully shown and delineated on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Fluitt Street Proposed Road, lands of Charlie W. McClary, J. W. Boatwright, Betty M. Brown, T.C. & Ora T. Cox, Gordon Street Proposed Road, lands of Florence M. Kaster, Margaret C. Cooper, Margaret C. Campbell, Stephen D. and Katherine K. Grady, and Porter Street fifty feet (50') easement as shown on said map and measuring thereon in the aggregate nine hundred ninety-one and fifteen hundredths (991.15) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke as shown on said map and measuring thereon a distance of One thousand one hundred eighty five and ninety-four hundredths (1,185.94) feet, a fifty foot (50') easement running parallel to the line and by lot of the Kingstree Rural Fire Department and measuring thereon four hundred twenty and twelve hundredths (420.12) feet; on the South by S. C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Seven hundred eighty-one and five hundredths (781.05) feet and by lot of Kingstree Rural Fire Department and measuring thereon two hundred

1 A422 PAGE 300



and ninety one hundredths (209.91) feet; and on the West by Tract No. 1 owned by the Williamsburg Historical Society, Inc., as shown on said map and measuring thereon a distance of One thousand two hundred thirty two and eighty two hundredths (1,232.82) feet, and by lot of Kingtree Rural Fire Department and measuring thereon Four hundred nineteen and eighty-six hundredths (419.86) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingtree, County of Williamsburg, State of South Carolina, containing fifty-eight hundredths (.58) acres, more or less and more fully shown and delineated as Lot No. 3 on a map made by B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred nine and eighty-eight hundredths (209.88) feet; on the East by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and sixty-five hundredths (119.65) feet; on the South by Lot 1C as shown on said map and measuring thereon a distance of Two hundred nine and eight-two hundredths (209.82) feet; and on the West by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and fifty hundredths (119.50) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingtree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less and more fully shown and delineated as "Fluitt Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingtree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Charles W. McClary, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-nine hundredths (208.59) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty (50.00) feet; and on the West by lands of J. Benjamin Pack as shown on said map.

~~Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingtree, County of Williamsburg, State of~~

South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Gordon Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty and eleven hundredths (50.11) feet; on the East by lands of Florence M. Kaster, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-four hundredths (208.54) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Forty nine and ninety-two hundredths (49.92) feet; and on the West by lands of T. C. and Ora T. Cox, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-three hundredths (208.53) feet.

Tract No. 5: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Porter Street 50' Easement" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke, as shown on said map and measuring thereon a distance of Two hundred nine and sixty-six hundredths (209.66) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty and twelve hundredths (50.12) feet; and on the West by lands of Steven D. & Katherine K. Grady, as shown on said map and measuring thereon a distance of Two hundred nine and forty-eight hundredths (209.48) feet.

Also: A sixty (60) foot access road measuring Three hundred and thirty-three hundredths (300.33) feet from S.C. Highway 527 also known as Nelson Boulevard to the aforementioned property described in Tract No. 1 as shown through Lot No. 1D on said map prepared by J. B. Ellis, R.L.S. dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102.

Have and Except the Following Described Properties:

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1B on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred sixty and forty-eight hundredths (260.48) feet; on the East by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and sixty-eight (368) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and twenty-three (262.23) hundredths feet; and on the West by Lot 1A as shown on said map and measuring thereon a distance of Three hundred and seventy-five hundredths (300.75) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and forty-five hundredths (1.45) acres, more or less, and more fully shown and delineated as Lot 1C on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by Lot 3 as shown on said map and measuring thereon a distance of Two hundred nine and eighty-two hundredths (209.82) feet; on the East by Lot 1D as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred nine and seventy-one hundredths (209.71) feet; and on the West by Lot 1B as shown on said map and measuring thereon a distance of Three hundred and sixty-eight hundredths (300.68) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1D on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and

measuring thereon a distance of Two hundred sixty and seventy-six hundredths (260.76) feet; on the East by Lot 2 as shown on said map, a sixty (60) foot access road being the dividing line, and measuring thereon a distance of Three hundred and thirty-three hundredths (300.33) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and seventy-nine hundredths (260.79) feet; on the West by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing two and two hundredths (2.02) acres, more or less, and more fully shown and delineated as Lot 2 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al., as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; on the East by proposed Porter Street of the Town of Kingstree, as shown on said map and measuring thereon a distance of Four hundred twenty (420.00) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; and on the West by Lot 1D as shown on said map, a sixty (60) foot access road being the dividing line, and by lands of the Williamsburg Historical Society, Inc., et al., measuring thereon a distance of Four hundred twenty (420.00) feet.

All of these in the aggregate being the identical premises conveyed to Williamsburgh Historical Society, Inc., f/k/a Williamsburgh County Historical Society, Inc., Connie Maxwell Church Home for Children, Epworth Home for Children, Thornwell Home for Children, Episcopal Church Home for the Aging, Methodist Home for the Aging, and Presbyterian Home of South Carolina by Deed of Distribution of the Estate of Marie L. Nelson dated August 5, 1997, and recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-389 at page 242.

TM# 11-039-001

WHEREAS this sale is subject to all covenants and restrictions of record (provided they do not make the title unmarketable) and to all government statutes, ordinances, rules and regulations;

Grantor's Address: Post Office Box 207
Kingstree, SC 29556

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 conveyed unto the said Town of Kingstree, its Successors and Assigns forever.

And grantor, for itself and its successors and assigns, hereby covenants with grantee, its successors and assigns, that grantor is lawfully seised in fee simple of the above-described premises; that it has a good right to convey; that the premises are free from encumbrances; that grantor and its successors and assigns will forever warrant and defend all of the above-described property to grantee, its successors and assigns, against every person lawfully claiming the same or any party thereof; that grantor and its successors and assigns will guarantee the quiet enjoyment of the above-described property to grantee, its successors and assigns, against every person lawfully claiming the same or any party thereof; and that grantor and its successors and assigns execute any instrument necessary for the further assurance of the title to the premises that may be reasonably required.

WITNESS my Hand and Seal this 9th day of July in the year of our Lord one thousand nine hundred and ninety-eight and in the two hundred and twenty-first year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
Dorothy C. Delgado

EPISCOPAL CHURCH HOME FOR
THE AGING

By: *[Signature]*
Its President

Attest: *[Signature]*
Its Secretary

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

PERSONALLY appeared before me and made oath that (s)he saw the with
named Episcopal Church Home for the Aging, by its President, Bonnie J. Allen
and attested by its Secretary, R. Edward L. Holt III, Esq.
sign, seal and deliver the foregoing written instrument for the uses and purposes there
contained, and that (s)he with the other witness whose signature appears above witnessed
the execution thereof.

SWORN to before me, this 9th
day of June A. D. 1998.
[Signature] (SEAL)
NOTARY PUBLIC OF SOUTH CAROLINA
My commission expires: December 19, 2006

[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit, and I understand such information.

2. This property being transferred is located along Nelson Boulevard of the Town of Kingstree, South Carolina, bearing Williamsburg County Tax Map Number 11-39-001, was transferred by Episcopal Church Home for the Aged to Town of Kingstree on July 9, 1998.

3. Check one of the following: The Deed is

(a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ☒ exempt from the deed recording fee because (See information section of affidavit): it is a transfer to the Town of Kingstree, a municipality of the Federal Government (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See information section of this affidavit.):

(a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$_____.

(b) ☐ The fee is computed on the fair market value of the realty which is \$_____.

(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.

5. Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on

WV A 422 PAGE 307

the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$_____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$

(b) Place the amount listed in item 5 above here: \$
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a): \$

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$_____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the Seller.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 9th
day of June, 1998.

Dorothy C. Gilbert (SEAL)
NOTARY PUBLIC FOR S.C.
My Commission Expires: March 17, 2000

Bernard A. H. H. H.
President of Episcopal Church Home
For the Aging
Seller

FORM A422 PAGE 308

State of South Carolina,

County of WILLIAMSBURG

Episcopal Church Home for the Aging

To

Town of Kingstree

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record
in my office at 3:17 P M. o'clock on the
23rd day of Nov
1998 and was immediately entered upon the proper indexes
and duly recorded in Book A422 of Deeds,
page 300

Carolyn F. Williams
Clerk of Court of Common Pleas and General Sessions for

Williamsburg County, S. C.

I hereby certify that the within Deed has been filed
on the 23rd day of

Nov. A. D. 1998. Recorded in

Book Deeds Page 300

RETURN TO:
JENKINSON & JENKINSON, P. A.
P. O. Drawer 669
Kingstree, SC 29550

FILED 11-23-98 3:17 PM
CAROLYN F. WILLIAMS, C.C.P.

STATE OF SOUTH CAROLINA)
) GENERAL WARRANTY DEED
COUNTY OF WILLIAMSBURG)

KNOW ALL MEN BY THESE PRESENTS, THAT The Methodist Oaks
f/k/a The Methodist Home for the Aging, Orangeburg, South Carolina, in consideration of
the sum of -----Four thousand nine hundred twenty-five and No/100 (\$4,925.00) Dollars -----
-----to it in hand paid at and before the sealing by these presents by the Town of
Kingstree, a body corporate and politic organized and existing under the laws of
the State of South Carolina, the receipt whereof is hereby acknowledged, has granted,
bargained, sold and released, and by these Presents does grant, bargain, sell and release
unto the said, Town of Kingstree, a body corporate and body politic organized and
existing under the laws of the State of South Carolina, its Successors and Assigns forever.

Tract No. 1: All that certain piece, parcel or tract of land lying, being
and situate in the Town of Kingstree, County of Williamsburg, State of
South Carolina, containing twenty five and forty seven hundredths
(25.47) acres, more or less, and more fully shown and delineated on a
map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and
recorded in the Office of the Clerk of Court for Williamsburg County in
Plat Book S956 at page 3, and bounded and described as follows, to-wit:
On the North by Fluitt Street Proposed Road, lands of Charlie W.
McClary, J. W. Boatwright, Betty M. Brown, T.C. & Ora T. Cox, Gordon
Street Proposed Road, lands of Florence M. Kaster, Margaret C. Cooper,
Margaret C. Campbell, Stephen D. and Katherine K. Grady, and Porter
Street fifty feet (50') easement as shown on said map and measuring
thereon in the aggregate nine hundred ninety-one and fifteen hundredths
(991.15) feet; on the East by lands of Alice H. Kellahan and Lydia F.
Duke as shown on said map and measuring thereon a distance of One
thousand one hundred eighty five and ninety-four hundredths (1,185.94)
feet, a fifty foot (50') easement running parallel to the line and by lot of
the Kingstree Rural Fire Department and measuring thereon four
hundred twenty and twelve hundredths (420.12) feet; on the South by S.
C. Highway 527, also known as Nelson Boulevard of the Town of
Kingstree, as shown on said map and measuring thereon a distance of
Seven hundred eighty-one and five hundredths (781.05) feet and by lot of
Kingstree Rural Fire Department and measuring thereon two hundred

1007A422 PAGE 290

nine and ninety-one hundredths (209.91) feet; and on the West by Tract No. 1 owned by the Williamsburg Historical Society, Inc., as shown on said map and measuring thereon a distance of One thousand two hundred thirty two and eighty two hundredths (1,232.82) feet, and by lot of Kingstree Rural Fire Department and measuring thereon Four hundred nineteen and eighty-six hundredths (419.86) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing fifty-eight hundredths (.58) acres, more or less, and more fully shown and delineated as Lot No. 3 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred nine and eighty-eight hundredths (209.88) feet; on the East by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and sixty-five hundredths (119.65) feet; on the South by Lot 1C as shown on said map and measuring thereon a distance of Two hundred nine and eight-two hundredths (209.82) feet; and on the West by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and fifty hundredths (119.50) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Fluitt Street Proposed and" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Charlie W. McClary, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-nine hundredths (208.59) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty (50.00) feet; and on the West by lands of J. Benjamin Pack as shown on said map.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of

South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Gordon Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty and eleven hundredths (50.11) feet; on the East by lands of Florence M. Kaster, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-four hundredths (208.54) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Forty nine and ninety-two hundredths (49.92) feet; and on the West by lands of T. C. and Ora T. Cox, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-three hundredths (208.53) feet.

Tract No. 5: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Porter Street 50' Easement" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke, as shown on said map and measuring thereon a distance of Two hundred nine and sixty-six hundredths (209.66) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty and twelve hundredths (50.12) feet; and on the West by lands of Steven D. & Katherine K. Grady, as shown on said map and measuring thereon a distance of Two hundred nine and forty-eight hundredths (209.48) feet.

Also: A sixty (60) foot access road measuring Three hundred and thirty-three hundredths (300.33) feet from S.C. Highway 527 also known as Nelson Boulevard to the aforementioned property described in Tract No. 1 as shown through Lot No. 1D on said map prepared by J. B. Ellis, R.L.S. dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102.

Saves and Except the Following Described Properties:

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1B on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred sixty and forty-eight hundredths (260.48) feet; on the East by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and sixty-eight (300.88) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and twenty-three (260.23) hundredths feet; and on the West by Lot 1A as shown on said map and measuring thereon a distance of Three hundred and seventy-three hundredths (300.73) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and forty-five hundredths (1.45) acres, more or less, and more fully shown and delineated as Lot 1C on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by Lot 9 as shown on said map and measuring thereon a distance of Two hundred nine and eighty-two hundredths (209.82) feet; on the East by Lot 1D as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred nine and seventy-one hundredths (209.71) feet; and on the West by Lot 1B as shown on said map and measuring thereon a distance of Three hundred and sixty-eight hundredths (300.68) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1D on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and

measuring thereon a distance of Two hundred sixty and seventy-six hundredths (260.76) feet; on the East by Lot 2 as shown on said map, a sixty (60) foot access road being the dividing line, and measuring thereon a distance of Three hundred and thirty-three hundredths (300.33) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and seventy-nine hundredths (260.79) feet; on the West by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing two and two hundredths (2.02) acres, more or less, and more fully shown and delineated as Lot 2 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al., as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; on the East by proposed Porter Street of the Town of Kingstree, as shown on said map and measuring thereon a distance of Four hundred twenty (420.00) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; and on the West by Lot 1D as shown on said map, a sixty (60) foot access road being the dividing line, and by lands of the Williamsburg Historical Society, Inc., et al., measuring thereon a distance of Four hundred twenty (420.00) feet.

All of these in the aggregate being the identical premises conveyed to Williamsburgh Historical Society, Inc., f/k/a Williamsburgh County Historical Society, Inc., Connie Maxwell Church Home for Children, Epworth Home for Children, Thornwell Home for Children, Episcopal Church Home for the Aging, Methodist Home for the Aging, and Presbyterian Home of South Carolina by Deed of Distribution of the Estate of Marie L. Nelson dated August 5, 1997, and recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-389 at page 242.

TM# 11-039-001

WHEREAS this sale is subject to all covenants and restrictions of record (provided they do not make the title unmarketable) and to all government statutes, ordinances, rules and regulations.

Grantee's Address: Post Office Box 207
Kingstree, SC 29556

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 Town of Kingstree, its Successors and Assigns forever.

And grantor, for itself and its successors and assigns, hereby covenants with grantee, its successors and assigns, that grantor is lawfully seised in fee simple of the above-described premises; that it has a good right to convey; that the premises are free from encumbrances; that grantor and its successors and assigns will forever warrant and defend all of the above-described property to grantee, its successors and assigns, against all person lawfully claiming the same or any party thereof; that grantor and its successors and assigns will guarantee the quiet enjoyment of the above-described property to grantee, its successors and assigns, against every person lawfully claiming the same or any party thereof; and that grantor and its successors and assigns execute any instrument necessary for the further assurance of the title to the premises that may be reasonably required.

WITNESS my Hand and Seal this 11 day of August in the year of our Lord one thousand nine hundred and ninety-eight and in the two hundred and twenty-third year of the Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Dorothy C. Pauley
M. Jean Davis

METHODIST OAKS, F/K/A
METHODIST HOME FOR THE
AGING

By: Johnnie R. Benson
Its President

Attest: Albert B. Guess
Its Secretary

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

PERSONALLY appeared before me and made oath that (s)he saw the within
named Methodist Oaks, f/k/a Methodist Home for the Aging, by its President, Johnnie R.
Benson, and attested by its Secretary, Albert B. Guess Seller, sign, seal and
deliver the foregoing written instrument for the uses and purposes therein contained, and
that (s)he with the other witness whose signature appears above witnessed the execution
thereof.

SWORN to before me, this 11
day of August, A. D. 1998.

Dorothy C. Pauley

M. Jean Davis (SEAL)
NOTARY PUBLIC OF SOUTH CAROLINA
My commission Expires: _____
Notary Public, South Carolina State at Large
My Commission Expires August 28, 2000

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit, and I understand such information.

2. This property being transferred is located in the Town of Kingstree, South Carolina, bearing Williamsburg County Tax Map Number 11-39-001, ~~was~~ transferred by The Methodist Oaks, f/k/a The Methodist Home for the Aging to the Town of Kingstree on July __, 1998.

3. Check one of the following: The Deed is

(a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or member of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) x exempt from the deed recording fee because (See information section of affidavit): it is a transfer to the Town of Kingstree, a municipality of the Federal Government (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

Check one of the following if either item 3(a) or item 3(b) above has been checked. (See information section of this affidavit.):

(a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ ____.

(b) ___ The fee is computed on the fair market value of the realty which is \$ ____.

(c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ ____.

Check Yes ___ or No ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on

BOOK A 422 PAGE 297

the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$_____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$_____

(b) Place the amount listed in item 5 above here: \$_____
(If no amount is listed, place zero here.)

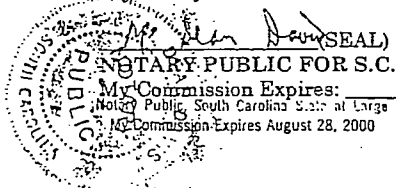
(c) Subtract Line 6(b) from Line 6(a): \$_____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$_____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the Seller.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 29
day of July 1998.



Jessie R. Barr
President of The Methodist Oaks
f/k/a The Methodist Home For
the Aging
Seller

MOHA 422 PAGE 298

State of South Carolina,

County of Williamsburg

RETURN TO:
JENKINSON & JENKINSON, P. A.
P. O. Drawer 669
Kingstree, SC 29550

The Methodist Oaks, f/k/a The Methodist Home for the Aging

To

Town of Kingstree

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record
in my office at 3:15 P M o'clock on the
23rd day of NOV
1998 and was immediately entered upon the proper indexes
and duly recorded in Book A422 of Deeds,
page 290

Carolyn F. Williams
Clerk of Court of Common Pleas and General Sessions for

Williamsburg County, S. C.

I hereby certify that the within Deed has been filed
on the 23rd day of

Nov. A. D. 1998. Recorded in

Book of Deeds, page

Sally M. Maynard Registrar

FILED 11-23-98 @ 3:15 PM
CAROLYN F. WILLIAMS, C.C.P.

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG) GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT the Williamsburg Historical Society, Inc., in consideration of the sum of ----- Seventy three thousand eight hundred seventy-five and No/100 (\$73,875.00) Dollars -----to it in hand paid at and before the sealing by these presents by Town of Kingstree, a body corporate and politic organized and existing under the laws of the State of South Carolina, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said, Town of Kingstree, a body corporate and body politic organized and existing under the laws of the State of South Carolina, its Successors and Assigns forever:

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty five and forty seven hundredths (25.47) acres, more or less, and more fully shown and delineated on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Fluitt Street Proposed Road, lands of Charlie W. McClary, J. W. Boatwright, Betty M. Brown, T.C. & Ora T. Cox, Gordon Street Proposed Road, lands of Florence M. Kaster, Margaret C. Cooper, Margaret C. Campbell, Stephen D. and Katherine K. Grady, and Porter Street fifty feet (50') easement as shown on said map and measuring thereon in the aggregate nine hundred ninety-one and fifteen hundredths (991.15) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke as shown on said map and measuring thereon a distance of One thousand one hundred eighty five and ninety-four hundredths (1,185.94) feet, a fifty foot (50') easement running parallel to the line and by lot of the Kingstree Rural Fire Department and measuring thereon four hundred twenty and twelve hundredths (420.12) feet; on the South by S. C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Seven hundred eighty-one and five hundredths (781.05) feet and by lot of Kingstree Rural Fire Department and measuring thereon two hundred

1
BOOK A422 PAGE 280

nine and ninety one hundredths (209.91) feet; and on the West by Tract No. 1 owned by the Williamsburg Historical Society, Inc., as shown on said map and measuring thereon a distance of One thousand two hundred thirty two and eighty two hundredths (1,232.82) feet, and by lot of Kingstree Rural Fire Department and measuring thereon Four hundred nineteen and eighty-six hundredths (419.86) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing fifty-eight hundredths (.58) acres, more or less, and more fully shown and delineated as Lot No. 3 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred nine and eighty-eight hundredths (209.88) feet; on the East by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and sixty-five hundredths (119.65) feet; on the South by Lot 1C as shown on said map and measuring thereon a distance of Two hundred nine and eight-two hundredths (209.82) feet; and on the West by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and fifty hundredths (119.50) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Fluitt Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Charlie W. McClary, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-nine hundredths (208.59) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty (50.00) feet; and on the West by lands of J. Benjamin Pack as shown on said map.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of

South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Gordon Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty and eleven hundredths (50.11) feet; on the East by lands of Florence M. Kaster, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-four hundredths (208.54) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Forty nine and ninety-two hundredths (49.92) feet; and on the West by lands of T. C. and Ora T. Cox, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-three hundredths (208.53) feet.

Tract No. 5: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Porter Street 50' Easement" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke, as shown on said map and measuring thereon a distance of Two hundred nine and sixty-six hundredths (209.66) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty and twelve hundredths (50.12) feet; and on the West by lands of Steven D. & Katherine K. Grady, as shown on said map and measuring thereon a distance of Two hundred nine and forty-eight hundredths (209.48) feet.

Also: A sixty (60) foot access road measuring Three hundred and thirty-three hundredths (300.33) feet from S.C. Highway 527 also known as Nelson Boulevard to the aforementioned property described in Tract No. 1 as shown through Lot No. 1D on said map prepared by J. B. Ellis, R.L.S. dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102.

422 PAGE 282

Save and Except the Following Described Properties:

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1B on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred sixty and forty-eight hundredths (260.48) feet; on the East by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and sixty-eight (300.68) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and twenty-three (260.23) hundredths feet; and on the West by Lot 1A as shown on said map and measuring thereon a distance of Three hundred and seventy-three hundredths (300.73) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and forty-five hundredths (1.45) acres, more or less, and more fully shown and delineated as Lot 1C on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by Lot 2 as shown on said map and measuring thereon a distance of Two hundred nine and eighty-two hundredths (209.82) feet; on the East by Lot 1D as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred nine and seventy-one hundredths (209.71) feet; and on the West by Lot 1B as shown on said map and measuring thereon a distance of Three hundred and sixty-eight hundredths (300.68) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1D on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and

measuring thereon a distance of Two hundred sixty and seventy-six hundredths (260.76) feet; on the East by Lot 2 as shown on said map, a sixty (60) foot access road being the dividing line, and measuring thereon a distance of Three hundred and thirty-three hundredths (300.33) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and seventy-nine hundredths (260.79) feet; on the West by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing two and two hundredths (2.02) acres, more or less, and more fully shown and delineated as Lot 2 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al., as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; on the East by proposed Porter Street of the Town of Kingstree, as shown on said map and measuring thereon a distance of Four hundred twenty (420.00) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; and on the West by Lot 1D as shown on said map, a sixty (60) foot access road being the dividing line, and by lands of the Williamsburg Historical Society, Inc., et al., measuring thereon a distance of Four hundred twenty (420.00) feet.

All of these in the aggregate being the identical premises conveyed to Williamsburgh Historical Society, Inc., ~~W/a~~ Williamsburgh County Historical Society, Inc., Connie Maxwell Church Home for Children, Epworth Home for Children, Thornwell Home for Children, Episcopal Church Home for the Aging, Methodist Home for the Aging, and Presbyterian Home of South Carolina by Deed of Distribution of the Estate of Marie L. Nelson dated August 5, 1997, and recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-389 at page 242.

TM# 11-039-001

5
BOOK A 422 PAGE 28

WHEREAS this sale is subject to all covenants and restrictions of record (provided they do not make the title unmarketable) and to all government statutes, ordinances, rules and regulations.

Grantee's Address: Post Office Box 207
Kingstree, SC 29556

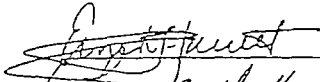
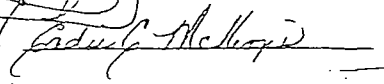
TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Town of Kingstree, its Successors and Assigns forever.

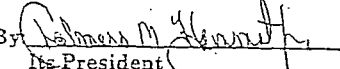
And grantor, for itself and its successors and assigns, hereby covenants with the grantee, its successors and assigns, that grantor is lawfully seised in fee simple of the above-described premises; that it has a good right to convey; that the premises are free from all encumbrances; that grantor and its successors and assigns will forever warrant and defend all of the above-described property to grantee, its successors and assigns, against every person lawfully claiming the same or any party thereof; that grantor and its successors and assigns will guarantee the quiet enjoyment of the above-described property to grantee, its successors and assigns, against every person lawfully claiming the same or any party thereof; and that grantor and its successors and assigns execute any instrument necessary for the further assurance of the title to the premises that may be reasonably required.

WITNESS my Hand and Seal this 1st day of July in the year of our Lord one thousand nine hundred and ninety-eight and in the two hundred and twenty-first year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

WILLIAMSBURG HISTORICAL
SOCIETY, INC.

By 
Its President

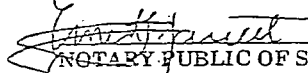
Attest 
Its Secretary

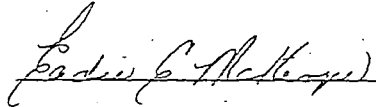
STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

PERSONALLY appeared before me and made oath that (s)he saw the within
named Williamsburgh Historical Society, Inc., by its President, Chalmers Marion Hammet,
Jr., and attested by its Secretary, W. E. Jenkinson, III, Seller, sign, seal and deliver the
foregoing written instrument for the uses and purposes therein contained, and that (s)he
with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me, this 1st
day of July A. D. 1998.

 (SEAL)
NOTARY PUBLIC OF SOUTH CAROLINA
My commission expires: 6/17/01



STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit, and I understand such information.

2. This property being transferred is located along Nelson Boulevard of the Town of Kingstree, South Carolina, bearing Williamsburg County Tax Map Number 11-39-001, was transferred by Williamsburgh Historical Society, Inc. to Town of Kingstree on July 1, 1998.

3. Check one of the following: The Deed is

(a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) x exempt from the deed recording fee because (See information section of affidavit): it is a transfer to the Town of Kingstree, a municipality of the Federal Government (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See information section of this affidavit.):

(a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ ____.

(b) ___ The fee is computed on the fair market value of the realty which is \$ ____.

(c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ ____.

5. Check Yes ___ or No ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on

4422 PACI 287

the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$_____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$

(b) Place the amount listed in item 5 above here: \$
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a): \$

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$_____.

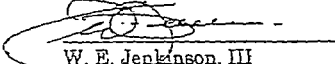
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the Seller.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 1st
day of July 1998.

 (SEAL)
NOTARY PUBLIC FOR S.C.

My Commission Expires: 6/17/11


W. E. Jenkinson, III
Secretary of Williamsburgh
Historical Society, Inc.
Seller

NOVA A422 PAGE 288

State of South Carolina,

County of WILLIAMSBURG

Williamsburgh Historical Society, Inc.

To
Town of Kingstree

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record
in my office at 3:14 PM clock on the
23rd day of Nov
1998 and was immediately entered upon the proper indexes
and duly recorded in Book A422 of Deeds
page 280

Carolyn F. Williams
Clerk of Court of Common Pleas and General Sessions for
Williamsburg County, S.C.

I hereby certify that the within Deed has been duly
3:14 day of
Nov. A.D. 1998 Recorded in

Book A422 of Deeds page
Sally McNease

RETURN TO:
JENKINSON & JENKINSON, P. A.
P. O. Drawer 669
Kingstree, SC 29556

98 NOV 23 PM 3:14
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

STATE OF SOUTH CAROLINA)
) GENERAL WARRANTY DEED 7435
COUNTY OF WILLIAMSBURG)

KNOW ALL MEN BY THESE PRESENTS, THAT the Connie Maxwell Church Home for Children, Greenwood, South Carolina, in consideration of the sum of ----- Four thousand nine hundred twenty-five and No/100 (\$4,925.00) Dollars -----to it in hand paid at and before the sealing by these presents by Town of Kingstree, a body corporate and politic organized and existing under the laws of the State of South Carolina, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said, Town of Kingstree, a body corporate and body politic organized and existing under the laws of the State of South Carolina, its Successors and Assigns forever:

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty five and forty seven hundredths (25.47) acres, more or less, and more fully shown and delineated on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Fluit Street Proposed Road, lands of Charlie W. McClary, J. W. Boatwright, Betty M. Brown, T.C. & Ora T. Cox, Gordon Street Proposed Road, lands of Florence M. Kaster, Margaret C. Cooper, Margaret C. Campbell, Stephen D. and Katherine K. Grady, and Porter Street fifty feet (50') easement as shown on said map and measuring thereon in the aggregate nine hundred ninety-one and fifteen hundredths (991.15) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke as shown on said map and measuring thereon a distance of One thousand one hundred eighty five and ninety-four hundredths (1,185.94) feet, a fifty foot (50') easement running parallel to the line and by lot of the Kingstree Rural Fire Department and measuring thereon four hundred twenty and twelve hundredths (420.12) feet; on the South by S. C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Seven hundred eighty-one and five hundredths (781.05) feet and by lot of Kingstree Rural Fire Department and measuring thereon two hundred

1. A423-001

nine and ninety one hundredths (209.91) feet; and on the West by Tract No. 1 owned by the Williamsburg Historical Society, Inc., as shown on said map and measuring thereon a distance of One thousand two hundred thirty two and eighty two hundredths (1,232.82) feet, and by lot of Kingstree Rural Fire Department and measuring thereon Four hundred nineteen and eighty-six hundredths (419.86) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing fifty-eight hundredths (.58) acres, more or less, and more fully shown and delineated as Lot No. 3 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred nine and eighty-eight hundredths (209.88) feet; on the East by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and sixty-five hundredths (119.65) feet; on the South by Lot 1C as shown on said map and measuring thereon a distance of Two hundred nine and eight-two hundredths (209.82) feet; and on the West by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and fifty hundredths (119.50) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Fluitt Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Charlie W. McClary, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-nine hundredths (208.59) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty (50.00) feet; and on the West by lands of J. Benjamin Pack as shown on said map.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of

South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Gordon Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty and eleven hundredths (50.11) feet; on the East by lands of Florence M. Kaster, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-four hundredths (208.54) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Forty nine and ninety-two hundredths (49.92) feet; and on the West by lands of T. C. and Ora T. Cox, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-three hundredths (208.53) feet.

Tract No. 5: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Porter Street 50' Easement" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke, as shown on said map and measuring thereon a distance of Two hundred nine and sixty-six hundredths (209.66) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty and twelve hundredths (50.12) feet; and on the West by lands of Steven D. & Katherine K. Grady, as shown on said map and measuring thereon a distance of Two hundred nine and forty-eight hundredths (209.48) feet.

Also: A sixty (60) foot access road measuring Three hundred and thirty-three hundredths (300.33) feet from S.C. Highway 527 also known as Nelson Boulevard to the aforementioned property described in Tract No. 1 as shown through Lot No. 1D on said map prepared by J. B. Ellis, R.L.S. dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102.

BOOK A423 PAGE 003

Save and Except the Following Described Properties:

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1B on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred sixty and forty-eight hundredths (260.48) feet; on the East by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and sixty-eight (300.68) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and twenty-three (260.23) hundredths feet; and on the West by Lot 1A as shown on said map and measuring thereon a distance of Three hundred and seventy-three hundredths (300.73) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and forty-five hundredths (1.45) acres, more or less, and more fully shown and delineated as Lot 1C on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by Lot 3 as shown on said map and measuring thereon a distance of Two hundred nine and eighty-two hundredths (209.82) feet; on the East by Lot 1D as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred nine and seventy-one hundredths (209.71) feet; and on the West by Lot 1B as shown on said map and measuring thereon a distance of Three hundred and sixty-eight hundredths (300.68) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1D on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and

measuring thereon a distance of Two hundred sixty and seventy-six hundredths (260.76) feet; on the East by Lot 2 as shown on said map, a sixty (60) foot access road being the dividing line, and measuring thereon a distance of Three hundred and thirty-three hundredths (300.33) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and seventy-nine hundredths (260.79) feet; on the West by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing two and two hundredths (2.02) acres, more or less, and more fully shown and delineated as Lot 2 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al., as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; on the East by proposed Porter Street of the Town of Kingstree, as shown on said map and measuring thereon a distance of Four hundred twenty (420.00) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; and on the West by Lot 1D as shown on said map, a sixty (60) foot access road being the dividing line, and by lands of the Williamsburg Historical Society, Inc., et al., measuring thereon a distance of Four hundred twenty (420.00) feet.

All of these in the aggregate being the identical premises conveyed to Williamsburg Historical Society, Inc., f/k/a Williamsburg County Historical Society, Inc., Connie Maxwell Church Home for Children, Epworth Home for Children, Thornwell Home for Children, Episcopal Church Home for the Aging, Methodist Home for the Aging, and Presbyterian Home of South Carolina by Deed of Distribution of the Estate of Marie L. Nelson dated August 5, 1997, and recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-389 at page 242.

TM# 11-039-001

BOOK A423 PAGE 005

WHEREAS this sale is subject to all covenants and restrictions of record (provided they do not make the title unmarketable) and to all government statutes, ordinances, rules and regulations.

Grantee's Address: Post Office Box 207
Kingstree, SC 29556

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 Town of Kingstree, its Successors and Assigns forever.

And grantor, for itself and its successors and assigns, hereby covenants with the grantee, its successors and assigns, that grantor is lawfully seised in fee simple of the above-described premises; that it has a good right to convey; that the premises are free from all encumbrances; that grantor and its successors and assigns will forever warrant and defend all of the above-described property to grantee, its successors and assigns, against every person lawfully claiming the same or any party thereof; that grantor and its successors and assigns will guarantee the quiet enjoyment of the above-described property to grantee, its successors and assigns, against every person lawfully claiming the same or any party thereof; and that grantor and its successors and assigns execute any instrument necessary for the further assurance of the title to the premises that may be reasonably required.

WITNESS my Hand and Seal this 25th day of June in the year of our Lord one thousand nine hundred and ninety-eight and in the two hundred and twenty-first year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Blenda G. Leming
John Dodger

CONNIE MAXWELL CHURCH
HOME FOR CHILDREN

By: Jimmy McAdams
Its President

Attest: William D. Nicholson
Its Secretary

STATE OF SOUTH CAROLINA

COUNTY OF Greenwood

PERSONALLY appeared before me and made oath that (s)he saw the within
named Connie Maxwell Church Home for Children, by its President, Jimmy McAdams
and attested by its Secretary, William D. Nicholson, Seller,
sign, seal and deliver the foregoing written instrument for the uses and purposes therein
contained, and that (s)he with the other witness whose signature appears above witnessed
the execution thereof.

SWORN to before me, this 25
day of June A. D. 1998.

Arnette S. Teasley (SEAL)
NOTARY PUBLIC OF SOUTH CAROLINA
My commission expires: 3/23/99

Blenda G. Leming

2002A423PAGE007

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit, and I understand such information.
2. This property being transferred is located along Nelson Boulevard of the Town of Kingstree, South Carolina, bearing Williamsburg County Tax Map Number 11-39-001, was transferred by Connie Maxwell Church Home for Children to Town of Kingstree on June 25, 1998.
3. Check one of the following: The Deed is
 - (a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) x exempt from the deed recording fee because (See information section of affidavit): it is a transfer to the Town of Kingstree, a municipality of the Federal Government (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See information section of this affidavit.):
 - (a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ ____.
 - (b) ___ The fee is computed on the fair market value of the realty which is \$ ____.
 - (c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ ____.
5. Check Yes ___ or No ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on

BOOK 4423 PAGE 668

the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$_____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$

(b) Place the amount listed in item 5 above here: \$
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a): \$

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$_____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the Seller.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 25
day of June, 1998.

Connie S. Teasley (SEAL)
NOTARY PUBLIC FOR S.C.
My Commission Expires: 3/23/99

Jimmy McElreath
President of Connie Maxwell
Church Home For Children
Seller

BOOK A 423 PAGE 009

State of South Carolina,

County of Williamsburg

Connie Maxwell Church Home for
Children

To

Town of Kingstree

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record
in my office at 3:19 P M. o'clock on the
23rd day of Nov
1998 and was immediately entered upon the proper indexes
and duly recorded in Book A422 of Deeds,
page 001

Carolyn F. Williams
Clerk of Court, of Common Pleas and General Sessions for

Williamsburg County, S. C.

I hereby certify that the within Deed has been this
23rd day of

Nov., A. D. 1998, Recorded in

Book Deeds page
Sally M. Wilson Auditor

for Williamsburg County

RETURN TO:
JENKINSON & JENKINSON, P. A.
P. O. Drawer 669
Kingstree, SC 29556

FILED 11-23-98 @ 3:19 PM
CAROLYN F. WILLIAMS, C.C.P.

A423 PAGE 010

STATE OF SOUTH CAROLINA)
) LIMITED WARRANTY DEED
COUNTY OF WILLIAMSBURG)

1436

KNOW ALL MEN BY THESE PRESENTS, THAT the Epworth Children's Home, f/k/a Epworth Home for Children, a South Carolina not for profit corporation ("Grantor"), in consideration of the sum of ----- Four thousand nine hundred twenty-five and No/100 (\$4,925.00) Dollars ----- to it in hand paid at and before the sealing by these presents by the Town of Kingstree, a body corporate and politic organized and existing under the laws of the State of South Carolina ("Grantee"), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said:

TOWN OF KINGSTREE

All of the undivided right, title, and interest of the Grantor in and to the following described premises (the "Premises"):

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty five and forty seven hundredths (25.47) acres, more or less, and more fully shown and delineated on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Fluit Street Proposed Road, lands of Charlie W. McClary, J. W. Boatwright, Betty M. Brown, T.C. & Ora T. Cox. Gordon Street Proposed Road, lands of Florence M. Kaster, Margaret C. Cooper, Margaret C. Campbell, Stephen D. and Katherine K. Grady, and Porter Street fifty feet (50') easement as shown on said map and measuring thereon in the aggregate nine hundred ninety-one and fifteen hundredths (991.15) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke as shown on said map and measuring thereon a distance of One thousand

BOOK A423 PAGE 011

one hundred eighty five and ninety-four hundredths (1,185.94) feet, a fifty foot (50') easement running parallel to the line and by lot of the Kingstree Rural Fire Department and measuring thereon four hundred twenty and twelve hundredths (420.12) feet; on the South by S. C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Seven hundred eighty-one and five hundredths (781.05) feet and by lot of Kingstree Rural Fire Department and measuring thereon two hundred nine and ninety one hundredths (209.91) feet; and on the West by Tract No. 1 owned by the Williamsburg Historical Society, Inc., as shown on said map and measuring thereon a distance of One thousand two hundred thirty two and eighty two hundredths (1,232.82) feet, and by lot of Kingstree Rural Fire Department and measuring thereon Four hundred nineteen and eighty-six hundredths (419.86) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing fifty-eight hundredths (.58) acres, more or less, and more fully shown and delineated as Lot No. 3 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred nine and eighty-eight hundredths (209.88) feet; on the East by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and sixty-five hundredths (119.65) feet; on the South by Lot 1C as shown on said map and measuring thereon a distance of Two hundred nine and eight-two hundredths (209.82) feet; and on the West by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and fifty hundredths (119.50) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Fluitt Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows,

to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Charlie W. McClary, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-nine hundredths (208.59) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty (50.00) feet; and on the West by lands of J. Benjamin Pack as shown on said map.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Gordon Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty and eleven hundredths (50.11) feet; on the East by lands of Florence M. Kaster, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-four hundredths (208.54) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Forty nine and ninety-two hundredths (49.92) feet; and on the West by lands of T. C. and Ora T. Cox, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-three hundredths (208.53) feet.

Tract No. 5: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Porter Street 50' Easement" on a map made by Kemp C. Ahrens, R.L.S.; dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke, as shown on said map and measuring thereon a distance of Two hundred nine and sixty-six hundredths (209.66) feet; on the South by lands

of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty and twelve hundredths (50.12) feet; and on the West by lands of Steven D. & Katherine K. Grady, as shown on said map and measuring thereon a distance of Two hundred nine and forty-eight hundredths (209.48) feet.

Also: A sixty (60) foot access road measuring Three hundred and thirty-three hundredths (300.33) feet from S.C. Highway 527 also known as Nelson Boulevard to the aforementioned property described in Tract No. 1 as shown through Lot No. 1D on said map prepared by J. B. Ellis, R.L.S. dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102.

Save and Except the Following Described Properties Which are Specifically Excluded from the Premises Herein Conveyed:

Tract No. I: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1B on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred sixty and forty-eight hundredths (260.48) feet; on the East by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and sixty-eight (300.68) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and twenty-three (260.23) hundredths feet; and on the West by Lot 1A as shown on said map and measuring thereon a distance of Three hundred and seventy-three hundredths (300.73) feet.

Tract No. II: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and forty-five hundredths (1.45) acres, more or less, and more fully shown and delineated as Lot 1C on a map made by J. B. Ellis, R.L.S.,

dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by Lot 3 as shown on said map and measuring thereon a distance of Two hundred nine and eighty-two hundredths (209.82) feet; on the East by Lot 1D as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred nine and seventy-one hundredths (209.71) feet; and on the West by Lot 1B as shown on said map and measuring thereon a distance of Three hundred and sixty-eight hundredths (300.68) feet.

Tract No. III: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1D on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred sixty and seventy-six hundredths (260.76) feet; on the East by Lot 2 as shown on said map, a sixty (60) foot access road being the dividing line, and measuring thereon a distance of Three hundred and thirty-three hundredths (300.33) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and seventy-nine hundredths (260.79) feet; on the West by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet.

Tract No. IV: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing two and two hundredths (2.02) acres, more or less, and more fully shown and delineated as Lot 2 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al., as shown on said map and measuring thereon a distance of Two hundred ten

(210.00) feet; on the East by proposed Porter Street of the Town of Kingstree, as shown on said map and measuring thereon a distance of Four hundred twenty (420.00) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; and on the West by Lot 1D as shown on said map, a sixty (60) foot access road being the dividing line, and by lands of the Williamsburg Historical Society, Inc., et al., measuring thereon a distance of Four hundred twenty (420.00) feet.

DERIVATION: Deed of Distribution of the Estate of Marie L. Nelson dated August 5, 1997, and recorded in the Office of the Register of Deeds for Williamsburg County in Deed Book A-389 at page 242.

ASSESSOR'S TAX MAP REFERENCE: 11-039-001

This sale is subject to all covenants and restrictions of record (provided they do not make the title unmarketable) and to all government statutes, ordinances, rules and regulations.

Grantee's Address: Post Office Box 207
Kingstree, SC 29556

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 Town of Kingstree, its Successors and Assigns forever.

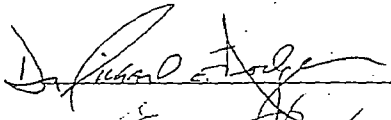
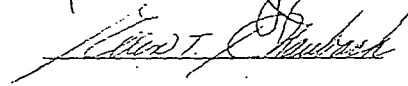
And Grantor, for itself and its successors and assigns, hereby covenants with the Grantee, its successors and assigns, that Grantor has not conveyed the above described Premises to another; that the Premises are free from all encumbrances made by it; that Grantor and its successors and assigns will

BOOK A423 PAGE 016

forever warrant and defend all and singular the Premises unto Grantee, its successors and assigns, against itself and every person lawfully claiming the same or any party thereof by, through, or under the Grantor, but against no others; that Grantor, its successors and assigns, will guarantee the quiet enjoyment of the Premises unto Grantee, its successors and assigns, against itself and every person whomsoever lawfully claiming the same or any party thereof by, through, or under the Grantor, but against no others; and that Grantor and its successors and assigns, will, on demand of Grantee, or its successors or assigns, execute any instrument necessary for the further assurance of the title to the Premises that may be reasonably required.

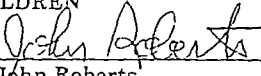
IN WITNESS WHEREOF Grantor has caused these presents to be executed by its heretofore duly authorized officer and its corporate seal to be hereunto affixed this 13 day of August in the year of our Lord one thousand nine hundred and ninety-eight and in the two hundred and twenty-third year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

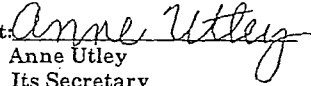



EPWORTH CHILDREN'S HOME
F/K/A EPWORTH HOME FOR
CHILDREN

By:


John Roberts
Its President

Attest:


Anne Utley
Its Secretary

BOOK A 423 PAGE 017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that (s)he saw the within-named Grantor, Epworth Children's Home, f/k/a Epworth Home for Children by its President, John Roberts, and attested by its Secretary, Ann Utley, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

SWORN to before me, this 13th
day of August A. D. 1998.

Glenda J. Newby (SEAL) *Glenda J. Newby*
NOTARY PUBLIC OF SOUTH CAROLINA
My commission expires: 9/9/2001

Richard A. [Signature]

BOOK 4423 PAGE 018

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit, and I understand such information.

2. This property being transferred is located along Nelson Boulevard of the Town of Kingstree, South Carolina, bearing Williamsburg County Tax Map Number _____, was transferred by Epworth Children's Home f/k/a Epworth Home for Children to Town of Kingstree on August 13, 1998.

3. Check one of the following: The Deed is

(a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) x exempt from the deed recording fee because (See information section of affidavit): it is a transfer to the Town of Kingstree, a municipality of the Federal Government (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See information section of this affidavit.):

(a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.

(b) The fee is computed on the fair market value of the realty which is \$.

(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$.

5. Check Yes or No to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on

443A 423 PAGE 019

the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$_____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$_____

(b) Place the amount listed in item 5 above here: \$_____
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a): \$_____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$_____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the Buyer.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 19th
day of November, 1998.

Ernest J. Jarrett (SEAL)
NOTARY PUBLIC FOR S.C.

My Commission Expires: 3-16-05

Ernest J. Jarrett
Ernest J. Jarrett
Attorney for Town of Kingstree
Buyer

WKA 423 PAGE 020

State of South Carolina,

County of Williamsburg

Epworth Children's Home f/k/a

Epworth Home for Children

To

Town of Kingstree

RETURN TO:

JENKINSON & JENKINSON, P. A.

P. O. Drawer 669

Kingstree, SC 29556

TITLE TO REAL ESTATE

I heroby certify that the within Deed was filed for record

In my office at 3:21 P M. o'clock on the

23rd day of NOV

1998 and was immediately entered upon the proper indexes

and duly recorded in Book A423 of Deeds,

page 011

Carolyn F. Williams
Clerk of Court of Common Pleas and General Sessions for

Williamsburg County, S. C.

I heroby certify that the within Deed has been this

Nov. 23rd day of

A. D. 1998, Recorded in

Book of Deeds, page

Sally M. Morgan Auditor

for WILLIAMSBURG County

FILED 11-23-98 @ 3:21 PM
CAROLYN F. WILLIAMS, C.C.C.P.

A423 PAGE 021

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG) GENERAL WARRANTY DEED

4437

KNOW ALL MEN BY THESE PRESENTS, THAT the Thornwell Home for Children, Clinton, South Carolina, in consideration of the sum of -----Four thousand nine hundred twenty-five and No/100 (\$4,925.00) Dollars -----to it in hand paid at and before the sealing by these presents by Town of Kingstree, a body corporate and politic organized and existing under the laws of the State of South Carolina, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said, Town of Kingstree, a body corporate and body politic organized and existing under the laws of the State of South Carolina, its Successors and Assigns forever:

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty five and forty seven hundredths (25.47) acres, more or less, and more fully shown and delineated on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Fluit Street Proposed Road, lands of Charlie W. McClary, J. W. Boatwright, Betty M. Brown, T.C. & Ora T. Cox, Gordon Street Proposed Road, lands of Florence M. Kaster, Margaret C. Cooper, Margaret C. Campbell, Stephen D. and Katherine K. Grady, and Porter Street fifty feet (50') easement as shown on said map and measuring thereon in the aggregate nine hundred ninety-one and fifteen hundredths (991.15) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke as shown on said map and measuring thereon a distance of One thousand one hundred eighty five and ninety-four hundredths (1,185.94) feet, a fifty foot (50') easement running parallel to the line and by lot of the Kingstree Rural Fire Department and measuring thereon four hundred twenty and twelve hundredths (420.12) feet; on the South by S. C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Seven hundred eighty-one and five hundredths (781.05) feet and by lot of Kingstree Rural Fire Department and measuring thereon two hundred

BOOK A423 PAGE 022

nine and ninety one hundredths (209.91) feet; and on the West by Tract No. 1 owned by the Williamsburg Historical Society, Inc., as shown on said map and measuring thereon a distance of One thousand two hundred thirty two and eighty two hundredths (1,232.82) feet, and by lot of Kingstree Rural Fire Department and measuring thereon Four hundred nineteen and eighty-six hundredths (419.86) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing fifty-eight hundredths (.58) acres, more or less, and more fully shown and delineated as Lot No. 3 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred nine and eighty-eight hundredths (209.88) feet; on the East by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and sixty-five hundredths (119.65) feet; on the South by Lot 1C as shown on said map and measuring thereon a distance of Two hundred nine and eight-two hundredths (209.82) feet; and on the West by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and fifty hundredths (119.50) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Fluitt Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Charlie W. McClary, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-nine hundredths (208.59) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty (50.00) feet; and on the West by lands of J. Benjamin Pack as shown on said map.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of

South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Gordon Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty and eleven hundredths (50.11) feet; on the East by lands of Florence M. Kaster, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-four hundredths (208.54) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Forty nine and ninety-two hundredths (49.92) feet; and on the West by lands of T. C. and Ora T. Cox, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-three hundredths (208.53) feet.

Tract No. 5: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Porter Street 50' Easement" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke, as shown on said map and measuring thereon a distance of Two hundred nine and sixty-six hundredths (209.66) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty and twelve hundredths (50.12) feet; and on the West by lands of Steven D. & Katherine K. Grady, as shown on said map and measuring thereon a distance of Two hundred nine and forty-eight hundredths (209.48) feet.

Also: A sixty (60) foot access road measuring Three hundred and thirty-three hundredths (300.33) feet from S.C. Highway 527 also known as Nelson Boulevard to the aforementioned property described in Tract No. 1 as shown through Lot No. 1D on said map prepared by J. B. Ellis, R.L.S. dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102.

Save and Except the Following Described Properties:

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1B on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred sixty and forty-eight hundredths (260.48) feet; on the East by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and sixty-eight (300.68) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and twenty-three (260.23) hundredths feet; and on the West by Lot 1A as shown on said map and measuring thereon a distance of Three hundred and seventy-three hundredths (300.73) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and forty-five hundredths (1.45) acres, more or less, and more fully shown and delineated as Lot 1C on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by Lot 3 as shown on said map and measuring thereon a distance of Two hundred nine and eighty-two hundredths (209.82) feet; on the East by Lot 1D as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred nine and seventy-one hundredths (209.71) feet; and on the West by Lot 1B as shown on said map and measuring thereon a distance of Three hundred and sixty-eight hundredths (300.68) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1D on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and

measuring thereon a distance of Two hundred sixty and seventy-six hundredths (260.76) feet; on the East by Lot 2 as shown on said map, a sixty (60) foot access road being the dividing line, and measuring thereon a distance of Three hundred and thirty-three hundredths (300.33) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and seventy-nine hundredths (260.79) feet; on the West by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing two and two hundredths (2.02) acres, more or less, and more fully shown and delineated as Lot 2 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al., as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; on the East by proposed Porter Street of the Town of Kingstree, as shown on said map and measuring thereon a distance of Four hundred twenty (420.00) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; and on the West by Lot 1D as shown on said map, a sixty (60) foot access road being the dividing line, and by lands of the Williamsburg Historical Society, Inc., et al., measuring thereon a distance of Four hundred twenty (420.00) feet.

All of these in the aggregate being the identical premises conveyed to Williamsburgh Historical Society, Inc., f/k/a Williamsburgh County Historical Society, Inc., Connie Maxwell Church Home for Children, Epworth Home for Children, Thornwell Home for Children, Episcopal Church Home for the Aging, Methodist Home for the Aging, and Presbyterian Home of South Carolina by Deed of Distribution of the Estate of Marie L. Nelson dated August 5, 1997, and recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-389 at page 242.

TM# 11-039-001

WHEREAS this sale is subject to all covenants and restrictions of record (provided they do not make the title unmarketable) and to all government statutes, ordinances, rules and regulations.

Grantee's Address: Post Office Box 207
Kingstree, SC 29556

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 Town of Kingstree, its Successors and Assigns forever.

And grantor, for itself and its successors and assigns, hereby covenants with the grantee, its successors and assigns, that grantor is lawfully seised in fee simple of the above-described premises; that it has a good right to convey; that the premises are free from all encumbrances; that grantor and its successors and assigns will forever warrant and defend all of the above-described property to grantee, its successors and assigns, against every person lawfully claiming the same or any party thereof; that grantor and its successors and assigns will guarantee the quiet enjoyment of the above-described property to grantee, its successors and assigns, against every person lawfully claiming the same or any party thereof; and that grantor and its successors and assigns execute any instrument necessary for the further assurance of the title to the premises that may be reasonably required.

WITNESS my Hand and Seal this ____ day of June in the year of our Lord one thousand nine hundred and ninety-eight and in the two hundred and twenty-first year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

John F. White
Alfred L. Bibb Jr.

THORNWELL HOME FOR
CHILDREN

By: Zane M. Moore
Its President

Attest: Blake Garrett, Jr.
Its Secretary

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

PERSONALLY appeared before me and made oath that (s)he saw the within
named Thornwell Home for Children, by its President, ZANE M. Moore
_____ and attested by its Secretary, BLAKE GARRETT, JR. Seller,
sign, seal and deliver the foregoing written instrument for the uses and purposes therein
contained, and that (s)he with the other witness whose signature appears above witnessed
the execution thereof.

SWORN to before me, this 26
day of JUNE A. D. 1998.

Alfred L. Bibb Jr. (SEAL)
NOTARY PUBLIC OF SOUTH CAROLINA
My commission expires: 2/08/2005

John F. White

1071

STATE OF SOUTH CAROLINA)
) LIMITED WARRANTY DEED
COUNTY OF WILLIAMSBURG)

KNOW ALL MEN BY THESE PRESENTS, THAT the Presbyterian Home of South Carolina, a South Carolina not for profit corporation ("Grantor"), In consideration of the sum of ----Four thousand nine hundred twenty-five and 00/100 (\$4,925.00) Dollars -----to it in hand paid at and before the sealing by these presents by the Town of Kingstree, a body corporate and politic organized and existing under the laws of the State of South Carolina ("Grantee"), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said:

TOWN OF KINGSTREE

All of the undivided right, title, and interest of Grantor in and to the following described premises (the "Premises"):

Tract No. 1: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty five and forty-seven hundredths (25.47) acres, more or less, and more fully shown and delineated on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Fluit Street Proposed Road, lands of Charlie W. McClary, J. W. Boatwright, Betty M. Brown, T.C. & Ora T. Cox, Gordon Street Proposed Road, lands of Florence M. Kaster, Margaret C. Cooper, Margaret C. Campbell, Stephen D. and Katherine K. Grady, and Porter Street fifty feet (50') easement as shown on said map and measuring thereon in the aggregate nine hundred ninety-one and fifteen hundredths (991.15) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke as shown on said map and measuring thereon a distance of One thousand one hundred eighty five and ninety-four hundredths (1,185.94) feet, a fifty foot (50') easement running parallel to the line and by lot of

NPCOL2297967.2-DE (TBP) 011769-0

A423 PAGE 236

hundredths (420.12) feet; on the South by S. C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Seven hundred eighty-one and five hundredths (781.05) feet and by lot of Kingstree Rural Fire Department and measuring thereon two hundred nine and ninety-one hundredths (209.91) feet; and on the West by Tract No. 1 owned by the Williamsburg Historical Society, Inc., as shown on said map and measuring thereon a distance of One thousand two hundred thirty two and eighty-two hundredths (1,232.82) feet, and by lot of Kingstree Rural Fire Department and measuring thereon Four hundred nineteen and eighty-six hundredths (419.86) feet.

Tract No. 2: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing fifty-eight hundredths (.58) acres, more or less, and more fully shown and delineated as Lot No. 3 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred nine and eighty-eight hundredths (209.88) feet; on the East by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and sixty-five hundredths (119.65) feet; on the South by Lot 1C as shown on said map and measuring thereon a distance of Two hundred nine and eighty-two hundredths (209.82) feet; and on the West by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of One hundred nineteen and fifty hundredths (119.50) feet.

Tract No. 3: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Fluitt Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Charlie W. McClary, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-nine hundredths (208.59) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said

A423 PAGE 237

map and measuring thereon a distance of Fifty (50.00) feet; and on the West by lands of J. Benjamin Pack as shown on said map.

Tract No. 4: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Gordon Street Proposed Road" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty and eleven hundredths (50.11) feet; on the East by lands of Florence M. Kaster, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-four hundredths (208.54) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Forty nine and ninety-two hundredths (49.92) feet; and on the West by lands of T. C. and Ora T. Cox, as shown on said map and measuring thereon a distance of Two hundred eight and fifty-three hundredths (208.53) feet.

Tract No. 5: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing twenty-four hundredths (.24) acres, more or less, and more fully shown and delineated as "Porter Street 50' Easement" on a map made by Kemp C. Ahrens, R.L.S., dated February 13, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S956 at page 3, and bounded and described as follows, to-wit: On the North by Secondary Road 45-73, also known as Ashton Avenue of the Town of Kingstree as shown on said map and measuring thereon a distance of Fifty (50.00) feet; on the East by lands of Alice H. Kellahan and Lydia F. Duke, as shown on said map and measuring thereon a distance of Two hundred nine and sixty-six hundredths (209.66) feet; on the South by lands of Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Fifty and twelve hundredths (50.12) feet; and on the West by lands of Steven D. & Katherine K. Grady, as shown on said map and measuring thereon a distance of Two hundred nine and forty-eight hundredths (209.48) feet.

Also: A sixty (60) foot access road measuring Three hundred and thirty-three hundredths (300.33) feet from S.C. Highway 527 also known as Nelson Boulevard to the aforementioned property described in Tract No. 1 as shown through Lot No. 1D on said map prepared by J. B. Ellis,

A423 PAGE 238

R.L.S. dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102.

Save and Except the Following Described Properties Which are Specifically Excluded from the Premises Herein Conveyed:

Tract No. I: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1B on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred sixty and forty-eight hundredths (260.48) feet; on the East by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and sixty-eight (300.68) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and twenty-three (260.23) hundredths feet; and on the West by Lot 1A as shown on said map and measuring thereon a distance of Three hundred and seventy-three hundredths (300.73) feet.

Tract No. II: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and forty-five hundredths (1.45) acres, more or less, and more fully shown and delineated as Lot 1C on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by Lot 3 as shown on said map and measuring thereon a distance of Two hundred nine and eighty-two hundredths (209.82) feet; on the East by Lot 1D as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred nine and seventy-one hundredths (209.71) feet; and on the West by Lot 1B as shown on said map and measuring thereon a distance of Three hundred and sixty-eight hundredths (300.68) feet.

Tract No. III: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing one and eighty hundredths (1.80) acres, more or less, and more fully shown and delineated as Lot 1D on a map made by

A423PAGE 239

J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al. as shown on said map and measuring thereon a distance of Two hundred sixty and seventy-six hundredths (260.76) feet; on the East by Lot 2 as shown on said map, a sixty (60) foot access road being the dividing line, and measuring thereon a distance of Three hundred and thirty-three hundredths (300.33) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred sixty and seventy-nine hundredths (260.79) feet; on the West by Lot 1C as shown on said map and measuring thereon a distance of Three hundred and eleven hundredths (300.11) feet.

Tract No. IV: All that certain piece, parcel or tract of land lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing two and two hundredths (2.02) acres, more or less, and more fully shown and delineated as Lot 2 on a map made by J. B. Ellis, R.L.S., dated March 19, 1998, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 102, and bounded and described as follows, to-wit: On the North by lands of the Williamsburg Historical Society, Inc., et al., as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; on the East by proposed Porter Street of the Town of Kingstree, as shown on said map and measuring thereon a distance of Four hundred twenty (420.00) feet; on the South by S.C. Highway 527, also known as Nelson Boulevard of the Town of Kingstree, as shown on said map and measuring thereon a distance of Two hundred ten (210.00) feet; and on the West by Lot 1D as shown on said map, a sixty (60) foot access road being the dividing line, and by lands of the Williamsburg Historical Society, Inc., et al., measuring thereon a distance of Four hundred twenty (420.00) feet.

DERIVATION: Deed of Distribution of the Estate of Marie L. Nelson dated August 5, 1997, and recorded in the Office of the Register of Deeds for Williamsburg County in Deed Book A-389 at page 242.

ASSESSOR'S TAX MAP REFERENCE: TM# 11-039-001

This sale is subject to all covenants and restrictions of record (provided they do not make the title unmarketable) and to all government statutes, ordinances, rules and regulations.

A423PAGE240

Grantee's Address: Post Office Box 207
Kingstree, SC 29556

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 Town of Kingstree, its Successors and Assigns forever.

And Grantor, for itself and its successors and assigns, hereby covenants with the Grantee, its successors and assigns, that Grantor has not conveyed the above-described Premises to another; that the Premises are free from all encumbrances made by it; that Grantor and its successors and assigns will forever warrant and defend all and singular the Premises unto Grantee, its successors and assigns, against itself and every person lawfully claiming the same or any part thereof by, through, or under the Grantor, but against no others; that Grantor, its successors and assigns, will guarantee the quiet enjoyment of the Premises unto Grantee, its successors and assigns, against itself and every person lawfully claiming the same or any part thereof by, through, or under the Grantor, but against no others; and that Grantor, its successors and assigns, will, on demand of Grantee, or its successors or assigns, execute any instrument necessary for the further assurance of the title to the Premises that may be reasonably required.

IN WITNESS WHEREOF Grantor has caused these presents to be executed by its heretofore duly authorized officer and its corporate seal to be hereunto affixed this 13th day of July in the year of our Lord one thousand nine hundred and ninety-eight

A423_{page}241

and in the two hundred and twenty-third year of the Sovereignty and Independence
of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Alonso Delgado
Thomas B. Ballard, Jr.

PRESBYTERIAN HOME OF SOUTH
CAROLINA

By: John R. Kelley
Its President

A423 PAGE 242

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named Grantor, Presbyterian Home of South Carolina by John R. Kelbaugh, its President, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Melissa DelPolo

SWORN TO BEFORE ME THIS
13th day of July, 1998

Thomas J. Ballard
Notary Public for South Carolina
My Commission Expires: Oct. 18, 2005

A423 PAGE 243

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in the Town of Kingstree, bearing Williamsburg County Tax Map Number 11-39-00, was transferred by Presbyterian Home of South Carolina to the Town of Kingstree on July , 1998.
3. Check one of the following: The deed is
 - (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X exempt from the deed recording fee because (See Information section of affidavit):
Transfer to Town of Kingstree, a political subdivision of the State of South Carolina (exemption No. 2).
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of .
 - (b) The fee is computed on the fair market value of the realty which is .
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is .
5. Check Yes or No to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: .
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here:
 - (b) Place the amount listed in item 5 above here:
(If no amount is listed, place zero here.)
 - (c) Subtract Line 6(b) from Line 6(a) and place result here:
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: .
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: President of the Seller, a South Carolina not for profit corporation.

A423 PAGE 244

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

John R. Kelbaugh
Responsible Person Connected with the Transaction

SWORN to before me this 13th
day of July, 1998
John R. Kelbaugh
Notary Public for South Carolina
My Commission Expires: Oct 18, 2005

John R. Kelbaugh, President of Seller
Presbyterian Home of South Carolina
Print or Type Name Here

Recorded 13/4/98
SALLY M. [unclear]
[unclear]
WILLIAMSBURG CO., S.C.

50 DEC-14 PM 12:15

INFORMATION

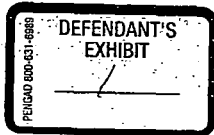
Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim used to confirm title vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

RECORDED 12-4-98
BOOK 4423 PAGE 236
CAROLYN F. WILLIAMS
Clerk of Court
WILLIAMSBURG CO., S.C.

A423 PAGE 245



A CERTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

James H. Keels C.C.P. }
To } conveyance } State of South Carolina,
John T. Nelson } } County of Williamsburg.

Know all men by these presents, That whereas Martha E. & G. P. Nelson Trustee, did on the 20th day of Jan'y A.D. 1870 file and exhibit in the Honorable Court of Equity for Williamsburg County, their original bill of complaint against James M. Nelson & others the children & remaindermen of the said Martha E. Nelson, defendants, in & by which said Bill they prayed for an order of said Court authorizing & empowering the said Trustee to sell certain Town Lots the property of the Trust Estate of the said Martha E. Nelson situate in the Town of Kingstree in the County of Williamsburg & State aforesaid, And whereas upon the hearing of the said Bill by the said Court & by virtue of certain subsequent proceedings therein had, after the death of the said Martha E. Nelson, the said Court did order, adjudge & decree that the said George P. Nelson Trustee have leave to sell all the Lots & parcels of Real Estate, up to the death of the said Martha E. Nelson, undisposed of: & in the said subsequent proceedings mentioned, at public auction after advertising the same for twenty one days as provided by law, as will more fully appear by reference to the proceedings in said cause now of record in the Clerk's Office in Kingstree. And whereas in pursuance of said order & after due advertisement, the said Trustee did expose & offer the said Town Lots & other Real Estate therein mentioned to public sale on the day of December A.D. 1879, And whereas at said sale John T. Nelson was the highest ^{last} bidder for all that certain plantation known as the Nelson plantation, also for certain Town Lots hereinafter more particularly described for the sum of Twenty seven Hundred Dollars, And whereas the said John T. Nelson at the time of said sale being a minor under the age of Twenty one years, the Court by its order authorized the Trustee not to execute Title to said John T. Nelson until he arrived at the age of twenty one, providing the one third of the purchase money to wit: The sum of Nine hundred Dollars, in pursuance of the terms of sale, was immediately after said sale complied with - And whereas the said John T. Nelson complied by paying the said sum of Nine hundred Dollars, & did on the 10th day of November 1880 arrive at age - & whereas by an order of the Court dated the day of - 1880, the said G. P. Nelson Trustee as aforesaid was removed and James H. Keels 2^d C.C.P. appointed in his place and stead. And whereas the said John T. Nelson has applied to have his title executed to the premises hereinbefore mentioned - and whereas the same James H. Keels under an order of the Court dated 24th of Dec. 1880, is thereby authorized & empowered to execute said title.

318

Now therefore, I the said James H. Keels C.C.P. by virtue of said order hereinbefore referred to, for and in consideration of premises & of the said sum of Twenty seven Hundred Dollars to me in hand paid & secured to be paid before the sealing and date of these presents, the receipt whereof I do hereby acknowledge, have granted bargained sold & released and by these Presents do grant bargain sell and release & convey unto the said John T. Nelson All that certain plantation, partly lying in the town of Kingst. County & State aforesaid & containing five hundred acres more or less known as the Nelson Plantation & bounded as follows North by Main St. of said Town & lands of Harper & lands of Lot of W. Maurice, E. by lands of Mowry S. by lands of Presbyterian Parson & Black River & W. by lands of J. A. Kelley Joseph F. Blakely & Henry Blakely, - also all that certain lot, adjoining the above, known as the plat of the Town of Kingstree as number 165, containing one & a half acre, be the same more or less, the regular chain of title to which is vested in the late Samuel F. Plitt of said County; and which plantation & lot amongst various others, were conveyed in Trust to the said Samuel Plitt for the use and benefit of the said Martha E. Nelson as will more fully appear by reference to a copy of the said deed of Trust, filed as an exhibit to the said Bill of Complaint hereinbefore mentioned. Together with all & singular rights, members hereditaments & appurtenances to the said premises belonging or in anywise incident or appertaining. To have said J. T. Nelson his heirs & assigns forever. In testimony whereof I hereunto set my hand & seal this 10th day of November A.D. 1880 & in the 1st year of the sovereignty & Independence of the United States of America signed sealed and delivered in the presence of

M. J. Hirsch
J. A. Brockinton
State of South Carolina,

J. H. Keels L.S. C.C.P.

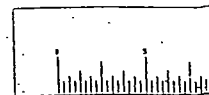
Williamsonburg County, Personally appeared M. J. Hirsch who being duly sworn says he was present and saw J. H. Keels sign seal & deliver the within deed & that he and J. A. Brockinton attested the execution thereof.

Sworn to before me this
16th July A.D. 1890

L.S. S. M. B. Scott
Notary Public S.C.

M. J. Hirsch
Recorded this 10th day of
August 1899.
W. W. Grayson
C.C.P. & S.

2

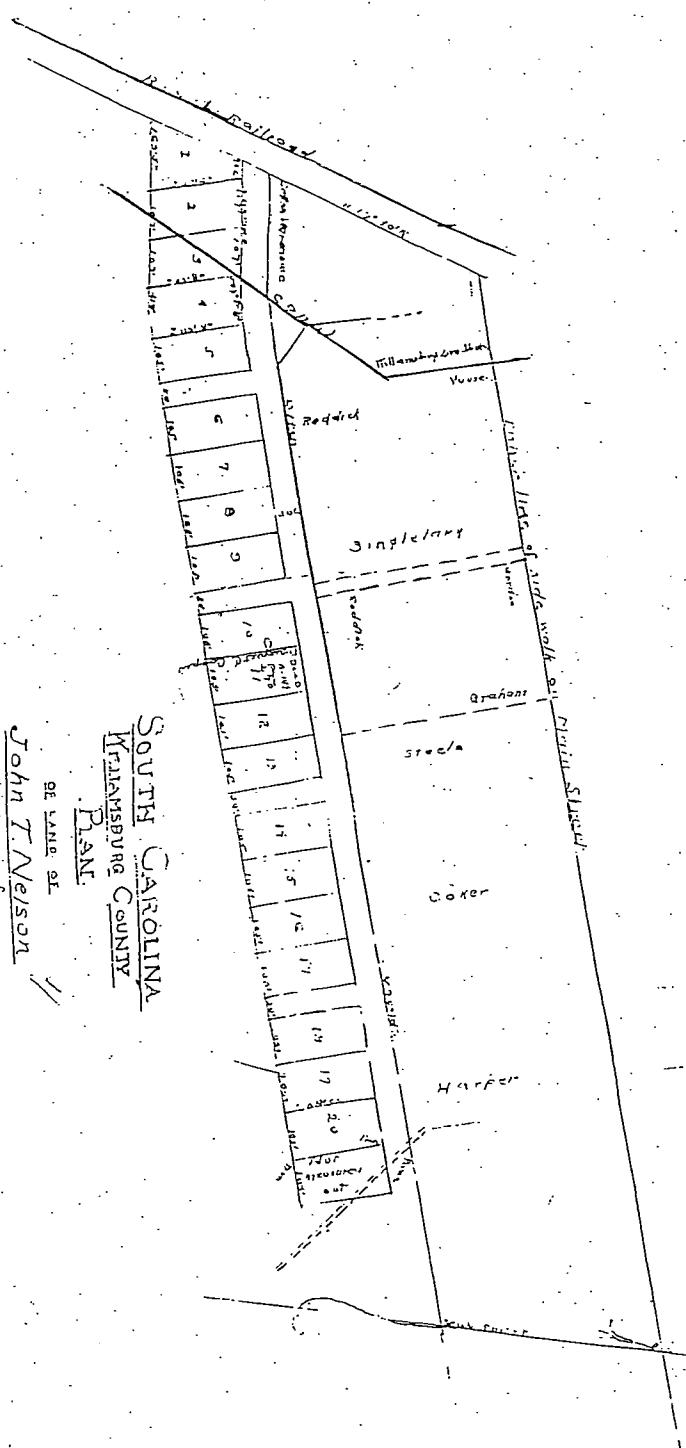


A CERTIFIED TRUE COPY
of the
ORIGINAL
FILED IN CASE
NO. 100-10000
AT
KILPATRICK COUNTY

Subscribed and sworn to before me this 1st day of May, 1904
at Kilpatrick County, Georgia

SEAL OF
John T. Nelson
in the County of
Kilpatrick
divided into lots and
subdivided
Surveyed by me in
March 1902
John T. Nelson
Clerk

SOUTH CAROLINA
KILPATRICK COUNTY
PLAN



DEFENDANT'S
EXHIBIT
2
PERCUT-BAYON, N.Y.

Register of Mesne Conveyances, Williamsburg County, S. C.—Deeds.

John T. Nelson { Title }
to { to } State of South Carolina,
H. V. Bittion { Real Estate }

KNOW ALL MEN BY THESE PRESENTS, That John T. Nelson of the County of Williamsburg, Town of Kingstree, in the State aforesaid, for and in consideration of the sum of \$35.00 Three Hundred and fifty Dollars, to me paid by H. V. Bittion 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 H. V. Bittion, his heirs and assigns, "All that certain piece, parcel or lot of land lying, being and situate within the Town of Kingstree, County of Williamsburg and State of South Carolina, containing one half (1/2) acre, more or less, and bounded as follows to wit: North by a new street, East by lands of John T. Nelson, East #15; West by a new street and South by lands of John T. Nelson, and known as lot #14 on a plat of same made by P. J. Sanders Surveyor, measuring 106 feet front and 208 1/2 feet depth. This being the tract of land conveyed this day, to me by the said John T. Nelson."

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 premises before mentioned, unto the said H. V. Bittion, his

Heirs and Assigns forever.

And I do hereby bind myself, my heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

H. V. Bittion, his

Heirs and Assigns, against me and my heirs, and all other persons whomsoever,

lawfully claiming, or in claim the same, or any part thereof.

WITNESS my Hand and Seal, this 6th day of May in the year of our Lord one thousand

nine hundred and nine and in the one hundred and 33rd

year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

J. E. Porter

J. B. Fessenden

J. T. Nelson (L. S.)

(L. S.)

THE STATE OF SOUTH CAROLINA,

Williamsburg County

PERSONALLY APPEARED before me, J. E. Porter

saw the within named J. T. Nelson sign, seal, and as this act and deed, deliver the within written Deed;

and that he with J. B. Fessenden witnessed the execution thereof.

SWORN and subscribed before me, this 6th day of May A.D. 1909

R. K. Wallace (S.) Magistrate J. E. Porter

THE STATE OF SOUTH CAROLINA,

Williamsburg County

I, R. K. Wallace Magistrate

do hereby certify unto all whom it may concern that Mrs. Maggie E. Nelson

wife of the within named John T. Nelson did this day appear before me, and

upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named H. V. Bittion

his

Heirs and Assigns, all her interest and estate, and

also all her right and claim of Dower of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 6th day of May Anno Domini 1909

R. K. Wallace (S.) Magistrate Maggie E. Nelson



A CERTIFIED TRUE COPY
Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

Register of Mesne Conveyances, Williamsburg County, S. C.—Deeds.

John T. Nelson.) Title to
TO Real Estate.
C.C. Brinkley.)

State of South Carolina,

KNOW ALL MEN BY THESE PRESENTS, That I, John T. Nelson of the County of Williamsburg,
town of Kingstree,
for and Three Hundred (\$300.00) Dollars in the State aforesaid
to me paid by C.C. Brinkley of the County of Williamsburg,
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 C.C. Brinkley, his heirs and
assigns, "All that certain piece, parcel or lot of land lying, being and situate in the town of
Kingstree, County of Williamsburg and State of South Carolina, containing one half (1/2) acre, more
or less, and bounded as follows, to wit, North by New Street, East by a New Side Street, South by
John T. Nelson, West by John T. Nelson, or Lot No 12, And known as Lot No 13, on a plat of same made
by P.G. Gourdin Surveyor, measuring 105 feet front and 208 3/4 deep. This being the tract of
land conveyed, this day to me by the said John T. Nelson.

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 premises before mentioned, unto the said C.C. Brinkley, his

And I do hereby bind myself & my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said
C.C. Brinkley, his

Heirs and Assigns, against me and my Heirs and all other persons whomsoever

WITNESS my Hand and Seal, this 10th day of July in the year of our Lord one thousand
nine hundred nine and in the one hundred and 33rd

year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

J.T. Nelson.

J.E. Porter.

J.B. Lesesne.

THE STATE OF SOUTH CAROLINA,
Williamsburg County.

J.E. Porter

PERSONALLY APPEARED before me John T. Nelson and made oath that he
saw the within named John T. Nelson sign, seal, and as his act and deed, deliver the within written
and that he with J.B. Lesesne. witnessed the execution thereof.

SWORN and subscribed before me, this 12th day of July 19 09

(LS) Hoxie G. Askins. (LS)
Notary Public S.C.

J.E. Porter. (LS)

THE STATE OF SOUTH CAROLINA,
Williamsburg County.

Renunciation of

I, Hoxie G. Askins Notary Public for S.C.

do hereby certify unto all whom it may concern that Mrs. Maggie E. Nelson
wife of the within named John T. Nelson did this day appear before me
upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons
soever, renounce, release and forever relinquish unto the within named C.C. Brinkley, his

Heirs and Assigns, all her interest and estate

unto all her right and claim of Dower of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 12th day of July Anno Domini 19 09

(LS) Hoxie G. Askins (LS) CERTIFIED TRUE COPY Maggie E. Nelson.



STATE OF SOUTH CAROLINA,

County of Williamsburg.

Ex Parte: Maggie E. Nelson

In Re: Estate of J. T. Nelson,

Petitioner.

Deceased.

FORM 474—The F. L. Bryan Co., Columbia, S. C.

IN THE PROBATE COURT.

PETITION FOR LETTERS OF ADMINISTRATION AND ORDER FOR CERTIFICATION TO ISSUE

To Hon. Flora K. Snowden,

Probate Judge for said County

The petition of the undersigned respectfully represents:

1. That J. T. Nelson, who last dwelt in Kingstree, in said County of Williamsburg, State aforesaid, died intestate on the 12th day of December, in the year of our Lord one thousand nine hundred and thirty-eight, possessed of goods and estate remaining to be administered, leaving as his only heirs-at-law and next of kin, the persons whose names, residence, age and relationship to the deceased are as follows, viz:

(Show by subdivision into family groups the names of persons taking through any predeceased heir-at-law. Bracket off each group and show opposite each bracket the name of the predeceased heir through whom they take.)

Name	Age	Residence	Relationship
Maggie E. Nelson	77 Yrs.	Kingstree, S.C.	Widow
Charles Edward Nelson	45 yrs.	Kingstree, S.C.	Son
Marie L. Nelson	43 yrs.	Kingstree, S.C.	Daughter

*Enter the exact age at date of decedent's death if then living; if not then living, enter in the age column the word "Dead."

2. That the intestate died seized and possessed of a personal estate of about the value of Seventeen Hundred Seventy-one and 75/100 (\$1,771.75) Dollars, consisting of the following money, goods and chattels:

(a) Cash on hand and in banks	\$ 371.75
(b) Moneys due intestate on account of bonds, mortgages and other securities	None
(c) Corporate and governmental bonds and stocks	None
(d) Open accounts due intestate	\$ 50.00
(e) Goods, wares, merchandise, furniture, machinery and equipment used in profession, trade or business	None
(f) Household goods	None
(g) Farming implements, machinery and equipment	\$ 150.00
(h) Farm products	\$ 450.00
(i) Mules, horses, cattle, hogs, sheep, etc.	\$ 750.00
(j) Automobiles, auto trucks, motorcycles, etc.	None
(k) Jewelry, silver plate, watches and other personal effects	None
(l) Life or other insurance made payable to the estate	None
(m) Value of all other personal property not listed above	None

3. That the intestate died seized and possessed of real estate of about the value of Twenty-seven Thousand, Nine Hundred Seventy-five (\$27,975.00) Dollars, as follows:

DESCRIPTION OF REAL ESTATE AND APPROXIMATE VALUES

(Enter each tract and lot on a separate line)

No. of Acres or lots (State whether acres or lots)	Value of land	No. of buildings	Value of buildings	Total value of each lot and tract including buildings	Exact Location (Show County, Township and School District)
1 Business Lot	\$400.00	1	\$1100.00	\$1500.00	South side Main St. Kingstree, S.
1 Business Lot	500.00	1	1500.00	2000.00	South side Main St. Kingstree "
1 Business Lot	750.00	1	2250.00	3000.00	South side Main St. Kingstree "
1 Business Lot	750.00	1	4250.00	5000.00	South side Main St. Kingstree "
1 Residence Lot	3000.00	1	2000.00	5000.00	South side Main St. Kingstree "
284 Acres	7100.00	6	400.00	7500.00	Kingstree Township, S.D. #16
265 Acres	3975.00			3975.00	King Township, S. D. No. 16

(All of the lots and the 284 Acres of farm land are in Williamsburg County, Kingstree Township, School District No. 16, and the 265 acre tract is in King Township, School District No. 16.)

(Over)



STATE OF SOUTH CAROLINA
County of Williamsburg

Oath of Fiduciary

Personally appeared before me Marie L. Nelson, Administratrix of the estate of J. T. Nelson, who being duly sworn, says that the annexed Inventory is in all respects just and true; that it contains a true statement of all the real and personal property of the said deceased, whether the interest of the deceased be absolute or otherwise, which has come to the knowledge of this deponent, together with a list of all property disposed of by decedent within the last five years that may be found or adjudged to have been in contemplation of death.

Sworn to before me this 25th day of January, 1939
[Signature]
Notary Public for South Carolina

Marie L. Nelson

Certificate of Appraisers

(This certificate to be signed after appraisal is made.)

We, whose names are hereunder signed, appraisers, appointed by the Probate Judge of Williamsburg County, South Carolina, having first taken and subscribed the oath hereinbefore inserted, do certify that we have estimated and appraised the property in the annexed inventory contained exhibited to us, according to the best of our knowledge and ability.

Dated this 25th day of January, A. D. 1939.

[Signature]
[Signature]
B. B. Broad

Appraisers.

Box No. _____	Package No. _____
THE STATE OF SOUTH CAROLINA	
County of <u>Williamsburg</u>	
IN THE PROBATE COURT	
In the Matter of the Estate of <u>J. T. Nelson</u> , Deceased.	
WARRANT OF APPRAISEMENT, INVENTORY, AND RETURN OF APPRAISERS.	
Filed this <u>25th</u> day of <u>Jan</u> , A. D. 19 <u>39</u> .	<u>[Signature]</u> Probate Judge <u>Williamsburg</u> County S. C.
Recorded in Inventory and Appraisement Book this <u>25th</u> day of <u>Jan</u> , 19 <u>39</u> .	<u>[Signature]</u> Probate Judge <u>Williamsburg</u> County S. C.

Declaration by the Probate Judge.

The within affidavits and the schedules have been examined by me and are approved. I do not regard the facts and figures submitted as sufficiently complete and conclusive, within the scope of the appraisal ordered, to serve as the final basis for the determination of values of the estate.

Kingsree, S. C. 25th day of January, 1939.

[Signature]
Probate Judge,
Williamsburg County, South Carolina.

intestate

4. That the testator made transfers which may, upon investigation, be adjudged to have been in contemplation of death as follows:

(Include all gifts within five years prior to death and all other transfers, real and personal, either where the consideration may appear to have been inadequate or where the transfer was to a relative or personal friend or to any person, firm, association, or corporation in which the decedent was interested, regardless of consideration. Describe the transfer in full; state the approximate value of the property transferred and the amount of the consideration, stated or claimed, if any.)

None

5. That your petitioner, who is a resident and citizen of Williamsburg County, in the State aforesaid, is advised that an administration on said estate is necessary.

WHEREFORE, she prays that Letters of Administration on the estate of the within-named deceased be granted by this Court to Marie L. Nelson.
December 20, 1938.

Maggie E. Nelson
Petitioner

Postoffice Address Kingstree, S. C.

THE STATE OF SOUTH CAROLINA,

County of Williamsburg

PERSONALLY appeared Maggie E. Nelson, who, being duly sworn, says that to the best of her knowledge, information and belief, the statements contained in the foregoing petition are true and complete.

Maggie E. Nelson

Sworn to and subscribed before me this 30th day of December, 1938.

M. A. Butler
Notary Public for S. C. (L. S.)

Qualification of Administrator

STATE OF SOUTH CAROLINA,

County of Williamsburg

I DO SOLEMNLY SWEAR or affirm that deceased died without any Will, as far as I know or believe, and that I will well and truly administer all and singular the goods and chattels, rights and credits of the said deceased, and pay all his just debts, as far as the same will extend and the law require me, and that I will make a true, exact and perfect inventory of all the said goods and chattels, rights and credits, and return a just account thereof when required. So help me, God.

Sworn to before me, this 31st day of December, A. D. 1938.

Marie L. Nelson
Kingstree, S. C.

(SEAL) Flora A. Snowden
As Probate Judge for Williamsburg
County, S. C.

(The postoffice address of each Administrator must be shown)

ORDER

Upon reading and filing the foregoing petition, *It is Ordered*, THAT CITATION DO ISSUE, and made returnable at 11 o'clock A. M. December 30, 1938, and that the same be published on the Williamsburg County Court House door for two successive weeks, and published in The County Record, a newspaper published in said County and State, once a week for two successive weeks.

December 20, 1938. *Flora K. Snowden*

Probate Judge Williamsburg Co., S. C.

Box No.

Package No.

The State of South Carolina

County of Williamsburg

In the PROBATE COURT

Ex Parte

Maggie T. Nelson

Petitioner

In Re: the Estate of

T. T. Nelson,

Deceased

Petition for

**Letters of Administration
and Order for Citation to Issue**

Filed Dec 30 1938

Flora K. Snowden

Probate Judge Williamsburg Co., S. C.

I. E. & Shuler,

Attorney for Petitioner.

THE S. C. STATE CO., EDWARDS, S. C. 21100

STATE OF SOUTH CAROLINA
County of Williamsburg

In the Probate Court

A CERTIFIED TRUE COPY

Rudell M. Gamble

Warrant of Appraisement

Rudell M. Gamble
Probate Judge
Williamsburg County

Flora K. Snowden - - - - - , Probate Judge:

THESE are to authorize and empower you, or any three of you, whose names are here underwritten, repair to all such parts and places within this County as you shall be directed unto by Marie L. Nelson, - - - - - administratrix executrix, trustee, of all and singular the goods, rights, and credits of J. T. Nelson - - - - - , late of Williamsburg - - - - - County, deceased, wheresoever any of the goods, chattels or real estate of the said deceased are or do remain within the said parts and places, and which shall be shown unto you by the said administratrix executrix, trustee, and there view and appraise all and every of the said goods, chattels, or real estate, being first sworn on the Holy Evangelists of Almighty God, to make a true and perfect inventory and appraisement thereof, and to cause the same to be returned under your hands, or any three or four of you, to the said Flora K. Snowden - - - - - , Probate Judge for Williamsburg - - - - - County, South Carolina, on or before the 30th - - - - - day of January, 1939 - - - - - , 192 - - - - -

Dated the 30th - - - - - day of December, - - - - - Anno Domini 1938, and in the one hundred and sixty-third - - - - - year of American Independence.

To M. H. Jacobs
J. B. Alsbrook
H. B. Hood
James F. Cooper
W. H. Welch

or any three of them

Flora K. Snowden
Probate Judge,
Williamsburg - - - - - County, South Carolina.

Oath of Appraisers

(This oath to be taken before appraisement is made.)

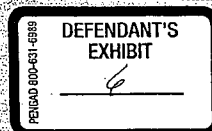
STATE OF SOUTH CAROLINA
County of Williamsburg

You, M. H. Jacobs, J. B. Alsbrook, and H. B. Hood - - - - -

do swear that you will make a just and true appraisement of all and singular the goods, chattels (ready money fully excepted) and real estate of J. T. Nelson - - - - - deceased, as shall be produced by Marie L. Nelson, - - - - - administratrix executrix, trustee, of the estate of the said J. T. Nelson, - - - - - , deceased, and that you will return the same, certified under your hands, unto the Probate Judge of Williamsburg - - - - - County within the time prescribed by law.

Sworn to before me this 25th - - - - - day of January, A. D. 1939.
Flora K. Snowden (L. S.)
Notary Public for S. C.

M. H. Jacobs
J. B. Alsbrook
H. B. Hood



(NOTE: If necessary attach other sheets to this, following the same ruling as this has.)

INVENTORY AND APPRAISEMENT OF REAL ESTATE OF ESTATE OF Est. J. T. Nelson DECEASED

DESCRIPTION	Assessed Value for Year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest	CAUTION (Do not write in this space)
tts Jewelry store)				
tore lot and Bldg		1,500.00		
gstreet Grocery Co.				
tore and Lot		2,000.00		
g Hdwe Co.				
tore and lot		3,000.00		
edy Furniture Store				
tore and lo t		5,000.00		
Nelson house				
welling and lot		6,000.00		
Academy street				
acant lot corner Ashton Ave		150.00		
# 16				
acres in Kingstree township		7,500.00		
acres in King township #16		3,975.00		
		29,125.00		

OTE: In column 1 insert assessed value as shown by County Auditor's Books. In column 2 insert what in your opinion is the fair marketable value of the entire tract. In column 3 insert what in your opinion is a fair marketable value of decedent's interest.

OTE: Indicate in the description of the land whether the valuation is based upon undivided interest or upon the value of the entire tract. Where the interest is in an undivided tract of land, so state.

INVENTORY AND APPRAISEMENT OF PERSONAL PROPERTY OF THE ESTATE

DECEASED

NOTE: When face value does not appear on property, insert cost price as near as possible, and length of time owned by deceased.

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

LAST WILL AND TESTAMENT

I, Marie Louise Nelson, do hereby make, publish and declare this to be my last will and testament and hereby revoke all wills and codicils heretofore made by me.

ITEM I: I give and bequeath three thousand dollars to my cousin, Alice S. Cottle.

ITEM II: I give and bequeath three thousand dollars to my cousin, Jennie Lee S. Cannon.

ITEM III: I give and bequeath three thousand dollars to my cousin, Elizabeth S. Weller.

ITEM IV: I give and bequeath three thousand dollars to my cousin, Lesesne Richbourg.

ITEM V: I give and bequeath five thousand dollars to my cousin, Emily S. Nelson.

ITEM VI: I give and bequeath five thousand dollars to my cousin, Diane Nelson Morris.

ITEM VII: I give and bequeath five thousand dollars to my cousin, Lyndon Nelson Arthur.

ITEM VIII: I give and bequeath five thousand dollars to my cousin, David Nelson.

ITEM IX: I give and bequeath ten thousand dollars to my friend, Bessie H. Black.

ITEM X: I give and bequeath five thousand dollars to my friend, Dr. R. E. Atkinson.

ITEM XI: I give and bequeath three thousand dollars to my friend, Lawrence Harrison Gamble.

ITEM XII: I give and bequeath three thousand dollars to my friend, Mary Ann Black Robertson.

ITEM XIII: I give and bequeath five hundred dollars to my namesake, Marie Leigh Rigby.



A CERTIFIED TRUE COPY

Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

ITEM XIV: I give and bequeath five hundred dollars to Mary Rigby, sister of Marie Leigh Rigby.

ITEM XV: I give and bequeath one thousand dollars to my nurse, Joseph K. Caulder.

ITEM XVI: I give and bequeath five hundred dollars to my nurse, Lurena B. Nexsen.

ITEM XVII: I give and bequeath five hundred dollars to my sitter, Leona F. Bell.

ITEM XVIII: I give and bequeath five hundred dollars to my sitter, Anna G. Nesmith.

ITEM XIX: I give and bequeath two hundred fifty dollars to my sitter, Annie Mae Bradley.

ITEM XX: I give and bequeath twenty thousand dollars to St. Alban's Episcopal Church, Kingstree, South Carolina.

ITEM XXI: I give and bequeath thirty thousand dollars to the Williamsburg County Historical Society, Kingstree, South Carolina. The Historical Society shall apply these funds, to the extent necessary, to the payment of any indebtedness of the Historical Society existing at the time these funds are distributed to the Historical Society.

ITEM XXII: I give and bequeath my Parlor Favorite Piano, originally owned by my grandmother, Mary Jane Lesesne Porter, and my melodeon, originally owned by my grandfather, Edward John Porter, to the Williamsburg County Historical Society, Kingstree, South Carolina.

ITEM XXIII: I give and bequeath all of my remaining personal and household effects of every kind, including jewelry, household furniture, furnishings, silverware, books, paintings and similar items of tangible personal property, to my friend, Samuel E. McIntosh. I request, but do not require, that Samuel E. McIntosh abide by any written or oral instructions by me directing the disposition of this property or any part thereof. Any expenses

-2-

A CERTIFIED TRUE COPY

Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

of storing, packing, shipping, delivering and insuring property bequeathed under this item shall be paid by my executors as an expense of administering my estate.

ITEM XXIV: I give and bequeath the original exterior kitchen building of my grandfather's home, situated immediately to the rear of my home at 128 Mill Street, Kingstree, South Carolina, to the Williamsburg County Historical Society, Kingstree, South Carolina. I request that the Historical Society relocate the exterior kitchen within Fluit-Nelson Memorial Park, to be used as an exterior kitchen for the Historical Society's house-museum, Thorntree.

ITEM XXV: I give and devise all that certain piece, parcel or tract of land situate, lying and being in the town of Kingstree, County of Williamsburg, State of South Carolina, being in shape a triangle, and bounded on the North by Main Street, on the East by property of Seaboard Coastline Railroad Company, and on the Southwest and West by Academy Street (including the property presently known as 108 through 120 East Main Street), as follows:

W. E. M.
(1) I give and devise a one-half interest in said property to my cousin, George A. Nelson. If George A. Nelson shall predecease me, I give and devise said one-half interest equally to such of the wife and children of George A. Nelson who shall survive me.

(2) I give and devise a one-half interest in said property equally to Hazel Miller Nelson, widow of my deceased cousin, Francis Napoleon Nelson, and their daughter, Jane C. Nelson. If either Hazel Miller Nelson or Jane C. Nelson shall predecease me, I give and devise said one-half interest to the survivor of them.

ITEM XXVI: I give and devise to my friend, Samuel E. McIntosh, all those certain lots or parcels of land situate, lying and being in the town of Kingstree, County of Williamsburg, State of

-3-

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Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

South Carolina, presently known as 124 South Academy Street (including the lot on which the John T. Nelson house is located and the adjacent lot); and bounded on the North by property of R. M. Hinson and measuring thereon 115.06 feet, on the East by Academy Street and measuring thereon 211.5 feet, on the South by Short Street and measuring thereon 115.16 feet, and on the West by property of the estate of R. E. Harrell and measuring thereon 210.07 feet, be all measurements a little more or less.

ITEM XXVII: I give and devise to my friend, Samuel E. McIntosh, all those certain lots or parcels of land situate, lying and being in the town of Kingstree, County of Williamsburg, State of South Carolina, presently known as 120 through 128 Mill Street, measuring 217 feet on Mill and Church Streets and four hundred twenty feet on Jackson Street, be all measurements a little more or less, excepting therefrom the exterior kitchen herein bequeathed by Item XXIV.

ITEM XXVIII: I give and devise to my friend, Samuel E. McIntosh, all that certain piece, parcel or tract of land situate, lying and being in the town of Kingstree, County of Williamsburg, State of South Carolina, containing 18 acres, more or less; and bounded on the North by Ashton Avenue, Williamsburg American Legion Post Number 8, Bostwick Street, property of Alberta Gordon, property of James B. Reed, property of Gaynell Hammett and property of W. J. Britton; on the East by South Carolina Highway number 377; on the South by Nelson Boulevard; and on the West by an imaginary line extending from Ashton Avenue along the eastern side of Porter Street to Nelson Boulevard.

ITEM XXIX: I give and devise to my friend, Samuel E. McIntosh, all that certain piece, parcel or tract of land, situate, lying and being partially within and partially outside the present corporate limits of the town of Kingstree, in the County of

-4-

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Probate Judge
Williamsburg County

Williamsburg, State of South Carolina, containing 272.5 acres,
more or less, including 142.5 acres, more or less, in Black River
Swamp, and being more particularly described as follows: Commencing
at a concrete monument on the eastern bank of Black River at the
southern boundary of property of the estate of W. L. McFarlin and
running N77°10'E, 1,867.1 feet to a right-of-way of Seaboard
Coastline Railroad Company; thence along said right-of-way
S19°35'W, 1,399.2 feet to a right-of-way of Central Electric
Power Cooperative, Incorporated; thence along said right-of-way
in an easterly direction to South Carolina Highway number 377;
thence in a southerly direction along South Carolina Highway
number 377 to the southern boundary of property of Williamsburg
County School District; thence in an easterly direction along the
southern boundary of property of Williamsburg County School
District to the western boundary of property of Roscoe Hinson;
thence in a southerly direction along the western boundary of
property of Roscoe Hinson to a concrete monument; thence S11°33'E,
1,342.4 feet to a concrete monument; thence S87°42'W, 776.2 feet
to a concrete monument; thence S79°48'W, 3,948.8 feet to a gum
tree; thence S75°20'W, 246.8 feet to a gum tree; thence S78°55'W,
1,420.3 feet to the run of Black River; thence along the run of
Black River to the point of commencement; be all measurements a
little more or less; also, together with and including as part of
the aforesaid tract, all of my right, title and interest in and
to all railroad rights-of-way or roadbeds, utility rights-of-way,
roads, streets, roadbeds and roadways lying upon, crossing,
butting or bounding upon the aforesaid tract and also including
with the devise of said land all of the tobacco allotment to
which I am entitled on and with respect to all of the farmland
which I own at the time of my death.

-5-

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Probate Judge
Williamsburg County

ITEM XXX: I give and devise to the Williamsburg County Historical Society, Kingstree, South Carolina, all that certain piece, parcel or tract of land, lying, being and situate in the town of Kingstree, County of Williamsburg, State of South Carolina, containing 10 acres, more or less; and bounded on the North by Ashton Avenue and Williamsburg Livestock Company; on the East by Fluitt Street as shown on a plat prepared by J. D. Brockington, surveyor, dated September 12, 1969, and recorded in the office of the Clerk of Court for Williamsburg County in Plat Book 17 at page 19; on the South by property of the Williamsburg County Historical Society; and on the West by a right-of-way of Seaboard Coastline Railroad Company.

ITEM XXXI: I give and bequeath two hundred thousand dollars to my trustees hereinafter named, to be held in trust, administered and distributed as follows:

(1) Commencing with the date of my death, my trustees shall pay to or apply for the benefit of my friend and companion, Patty Scott Epps, during her lifetime, all of the net income from this trust in monthly installments.

(2) My trustees may pay to or apply for the benefit of Patty Scott Epps, during her lifetime, such sums from the principal of this trust as my trustees in their sole discretion shall determine to be necessary or advisable from time to time for the health, maintenance and support of Patty Scott Epps, taking into consideration to the extent my trustees deem advisable, any other income or resources of Patty Scott Epps known to my trustees.

(3) Upon the death of the survivor of Patty Scott Epps and me, my trustees shall distribute this trust as then constituted to my friend, Samuel E. McIntosh, if he is then living. If Samuel E. McIntosh is not then living, my trustees shall distribute this trust as then constituted to the beneficiaries named in Item XXXIV below, in the same proportions in which my residuary estate

-6-

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Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

is to be distributed to such beneficiaries pursuant to Item XXXIV below, and for the same purposes and with the same restrictions as provided for in Item XXXIV below.

(4) My trustees shall distribute income and principal from this trust in such of the following ways as my trustees deem best: directly to Patty Scott Epps; to the legally appointed committee of Patty Scott Epps; to some relative or friend for the health, maintenance and support of Patty Scott Epps; by using such amounts for the benefit of Patty Scott Epps.

(5) My trustees may pay the funeral expenses and the expenses of the last illness of Patty Scott Epps from the corpus of this trust.

ITEM XXXII: I give, devise and bequeath fifty thousand dollars, the residence located at 201 Church Street, Kingstree, South Carolina, and the residence located at 205 North Jackson Street, Kingstree, South Carolina, to my trustees hereinafter named, to be held in trust, administered and distributed as follows:

(1) My trustees shall allow Esserine Conyers to live in the residence at 201 Church Street, Kingstree, South Carolina, for so long as she shall desire, without payment of rent. For so long as Esserine Conyers shall live in such residence, my trustees shall pay from the income and principal of this trust all real estate taxes and hazard insurance premiums on such residence and shall use such sums from the income and principal of this trust as my trustees in their sole discretion shall determine to be necessary or advisable from time to time to maintain such residence in suitable condition and repair. Upon the death of Esserine Conyers or at such earlier time when she shall no longer be living in such residence, my trustees may sell such residence

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-7-

Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

upon such terms and conditions and at such time as my trustees in their sole discretion shall determine to be appropriate.

(2) Except as provided in paragraph (3) below, my trustees shall allow my loyal domestic servant, Alcess Burgess, to live in the residence at 205 North Jackson Street, Kingstree, South Carolina, for so long as she shall desire, without payment of rent. For so long as Alcess Burgess shall live in such residence, my trustees shall pay from the income and principal of this trust all real estate taxes and hazard insurance premiums on such residence and shall use such sums from the income and principal of this trust as my trustees in their sole discretion shall determine to be necessary or advisable from time to time to maintain such residence in suitable condition and repair. Upon the death of Alcess Burgess or at such earlier time when she shall no longer be living in such residence, my trustees may sell such residence upon such terms and conditions and at such time as my trustees in their sole discretion shall determine to be appropriate.

W. L. W.
8
(3) After the death of the survivor of Esserine Conyers and me, or after Esserine Conyers shall no longer be living in the residence at 201 Church Street, Kingstree, South Carolina, my trustees may sell the residence at 205 North Jackson Street, Kingstree, South Carolina, upon such terms and conditions and at such time as my trustees in their sole discretion shall determine to be appropriate. If my trustees shall sell such residence, they shall provide substitute living accommodations for Alcess Burgess which my trustees in their sole discretion shall determine to be suitable for her needs and shall allow her to live in such substitute living accommodations for so long as she shall desire, without payment of rent. For so long as Alcess Burgess shall live in such substitute living accommodations, my trustees shall pay from the income and principal of this trust any real estate taxes

-8-

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Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

and hazard insurance premiums on such substitute living accommodations and shall use such sums from the income and principal of this trust as my trustees in their sole discretion shall determine to be necessary or advisable from time to time to maintain such substitute living accommodations in suitable condition and repair.

(4) Commencing with the date of my death, my trustees shall pay to or apply for the benefit of Esserine Conyers the sum of two hundred dollars per month. Such payments shall cease with the monthly payment preceding the death of Esserine Conyers. In addition, my trustees may pay to or apply for the benefit of Esserine Conyers such sums from the income and principal of this trust as my trustees in their sole discretion shall determine to be necessary or advisable from time to time for the health, maintenance and support of Esserine Conyers, taking into consideration to the extent my trustees deem advisable, any other income or resources of Esserine Conyers known to my trustees. My trustees shall distribute income and principal from this trust in such of the following ways as my trustees deem best: directly to Esserine Conyers; to the legally appointed committee of Esserine Conyers; to some relative or friend for the health, maintenance and support of Esserine Conyers; by using such amounts for the benefit of Esserine Conyers.

(5) If from time to time my trustees in their sole discretion shall determine that this trust contains more assets than are needed for the proper administration of this trust, my trustees shall distribute such excess assets to the beneficiaries named in Item XXXIV below, in the same proportions in which my residuary estate is to be distributed to such beneficiaries pursuant to Item XXXIV below, and for the same purposes and with the same restrictions as provided for in Item XXXIV below.

(6) Upon the death of the survivor of Esserine Conyers, Alcess Burgess and me, my trustees shall distribute this trust as

-9-

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Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

then constituted to the beneficiaries named in Item XXXIV below, in the same proportions in which my residuary estate is to be distributed to such beneficiaries pursuant to Item XXXIV below, and for the same purposes and with the same restrictions as provided for in Item XXXIV below.

(7) My trustees may pay the funeral expenses and the expenses of the last illness of Esserine Conyers from the corpus of this trust.

ITEM XXXIII: I give and bequeath five thousand dollars to the Williamsburg Cemetery Association, to be invested and reinvested by the Cemetery Association as a separate fund. Income from the fund shall be used to maintain my gravesite and the gravesites of my relatives in the Williamsburg Cemetery, including, but not limited to, the gravesites of John T. Nelson, Edward J. Porter, George P. Nelson, and those of my Fluitt and Nelson ancestors situated north and south of the George P. Nelson gravesite. Any income which is not needed to maintain such gravesites may be used for the general maintenance of the Cemetery.

ITEM XXXIV: I give, devise and bequeath all of the rest, residue, and remainder of my property and estate, including lapsed legacies and devises, hereinafter referred to as "my residuary estate," as follows:

(1) I authorize my executors to sell all or any part of the property of my residuary estate upon such terms and conditions and at such time or times as my executors in their sole discretion shall determine to be appropriate, and I authorize my executors to hold my estate open for such period of time as they shall determine to be necessary in order to obtain a favorable market for such property. I direct that my executors shall be relieved of any liability which might result from a failure to sell such property until such time or times as they deem appropriate. The proceeds of any such sale or sales shall become a

-10-

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Rudell M. Gamble
Probate Judge
Williamsburg County

part of my residuary estate, and my executors, after retaining such amounts as they determine to be necessary for the proper administration of my estate, shall make partial distributions from time to time of such proceeds.

(2) I give, devise and bequeath one-fourth of my residuary estate to the Williamsburg County Historical Society, Kingstree, South Carolina, as a permanent endowment to be known as "The Marie Louise Nelson Endowment." The Endowment shall be invested and reinvested by the Historical Society as a separate fund. Income from the Endowment shall be used to defray the cost of historical projects of the Historical Society, to defray the cost of publications of the Historical Society relating to the history of Williamsburg County, for the payment of salaries of personnel employed by the Historical Society, for the maintenance of property owned by the Historical Society, and for such other purposes as the Board of Trustees or governing body by whatever name of the Historical Society shall determine to be appropriate.

I request, but do not require, that a portion of the Endowment be used to construct a fireproof museum at Fluit-Nelson Memorial Park, Kingstree, South Carolina. However, no more than an amount equal to thirty percent of the value of the Endowment as finally determined in the federal estate tax proceeding relating to my estate shall be used for such purpose.

11
(3) I give, devise and bequeath one-half of my residuary estate to the Williamsburg County Memorial Hospital, Kingstree South Carolina, as a permanent endowment to be known as "The Marie Louise Nelson Endowment." The Endowment shall be invested and reinvested by the Hospital as a separate fund. No part of the Endowment shall be merged with the general fund or building fund of the Hospital. Income from the Endowment shall be used for such purposes as the Board of Trustees or governing body by whatever name of the Hospital shall determine to be appropriate.

-11-

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Probate Judge
Williamsburg County

(4) I give, devise and bequeath one-fourth of my residuary estate in equal shares to the following institutions: the Connie Maxwell Church Home for Children, Greenwood, South Carolina; the Epworth Home for Children, Columbia, South Carolina; the Thornwell Home for Children, Clinton, South Carolina; the Episcopal Church Home for the Aging, Charleston, South Carolina; the Methodist Home for the Aging, Orangeburg, South Carolina; and the Presbyterian Home of South Carolina, Summerville, South Carolina. I request, but do not require, that the Connie Maxwell Church Home for Children memorialize my cousin, Marvin Lesesne, in such a dignified and suitable way as the Board of Trustees or governing body by whatever name of such institution shall determine to be appropriate and that the remaining institutions named above so memorialize the testatrix.

W.H.W. 21
✓ ITEM XXXV: I nominate, constitute and appoint as co-executors of this my will and co-trustees of the trusts created herein Samuel E. McIntosh and Frank F. Lesesne. If for any reason either of them shall be unable or unwilling to serve or continue to serve as executor or trustee, I nominate, constitute and appoint the other of them as sole executor or trustee. If for any reason neither of them shall be able or willing to serve or continue to serve as executor or trustee, I nominate, constitute and appoint as substitute or successor executor or trustee the First National Bank of South Carolina.

ITEM XXXVI: To the extent allowed by law, no fiduciary who shall serve under this will shall be required to give bond.

ITEM XXXVII: My individual executors and trustees shall be entitled to compensation for their services in an amount which shall be determined by the laws of South Carolina in effect at the time of my death relating to commissions of executors and trustees. The bequests and devises made herein to Samuel E. McIntosh shall not be in lieu or diminution of compensation for

-12-

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Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

services by him as executor or trustee. If the First National Bank of South Carolina shall serve as substitute or successor executor or trustee, it shall be entitled to compensation for its services in an amount which shall be determined by its standard fee schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

ITEM XXXVIII: Either of my individual executors and trustees may act alone from time to time if they shall so agree in writing. Either of my individual executors and trustees may also resign by delivering a written instrument of resignation to the Probate Judge of Williamsburg County. Except as provided in this Item XXXVIII, my individual executors and trustees shall act jointly in all matters relating to the administration of my estate and of the trusts provided for herein.

ITEM XXXIX: All fiduciaries who shall serve under this will are authorized in their absolute discretion with respect to any property, real or personal at any time held under any provision of this will and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this will or by statute or general rule of law:

(1) To retain any security or property or undivided interest in property owned by me at the time of my death, including residential property, regardless of any lack of diversification, risk or nonproductivity, as long as they deem advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of my estate or the trust estate or even the entirety thereof.

(2) To invest and reinvest all or any part of my estate or the trust estate in any property and undivided interests in property wherever located, including bonds, debentures, notes

-13-

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Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

secured and unsecured, stocks of corporations regardless of class, real estate or any interest in real estate, interests in limited partnerships, interests in trusts, investment trusts, whether of the open and/or closed end types, and common trust funds, without being limited by any statute or rule of law concerning investments by fiduciaries.

(3) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my estate or the trust estate, for cash or upon credit, to exchange any property of my estate or the trust estate for other property, at such times and upon such terms and conditions as they may deem best, and no person dealing with them shall be bound to see to the application of any monies paid.

(4) To hold any securities or other property in their own names as fiduciaries, in their own names, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(5) To sell or exercise stock subscription or conversion rights.

(6) To refrain from voting or to vote shares of stock owned by my estate or the trust estate at shareholders' meetings in person or by special, limited or general proxy, and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of my estate or the trust estate.

(7) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of my estate or the trust estate, to deposit such stock or other securities under the plan of reorganization or with any protective committee, to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and

-14-

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Rudell M. Gamble
Probate Judge
Williamsburg County

any assessments levied under any such plan, to accept and retain new securities received by them pursuant to any such plan, to exercise all conversion, subscription, voting and other rights of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as they may deem advisable in connection therewith.

(8) To borrow money and to encumber, mortgage or pledge any asset of my estate or the trust estate for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in them.

(9) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(10) To subdivide and develop real property, to dedicate real property to public use, to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(11) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, and to raze existing or erect new party walls or buildings.

(12) To collect, receive and receipt for rents, issues, profits and income of my estate or the trust estate.

(13) To insure the assets of my estate or the trust estate against damage or loss and themselves against liability with respect to third persons.

(14) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with themselves in their separate or any fiduciary capacity.

-15-

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Rudell M. Gamble
Probate Judge
Williamsburg County

(15) To compromise, adjust, arbitrate, sue on, defend, abandon or otherwise deal with and settle claims in favor of or against my estate or the trust estate as they shall deem best.

(16) To employ and compensate agents, accountants, investment advisors, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors and other assistants and advisors deemed by them needful for the proper settlement of my estate or administration of the trust estate, and to do so without liability for any neglect, omission, misconduct or default of any such agent or professional representative provided he was selected and retained with reasonable care.

(17) To determine, irrespective of custom, statute or rule of law, what shall be fairly and equitably charged or credited to income and what to principal and whether or not to establish depreciation reserves.

(18) To make payment in cash or in kind, or partly in cash and partly in kind, upon any division or distribution of my estate or the trust estate, and to value and appraise any asset and to distribute such asset in kind at its appraised value.

(19) To make adjustments in the rights of beneficiaries and among the principal and income accounts to compensate for the consequences of any tax decision or election or of any investment or administrative decision, but they shall not be required to make any such adjustments.

(20) To determine whether any or all of the allowable expenses of administering my estate shall be used as estate tax deductions or as income tax deductions.

(21) In general, to exercise all powers in the management of my estate and the trust estate which any individual could exercise in his own right upon such terms and conditions as they may deem best, and to do all acts which they may deem necessary or proper to carry out the purposes of this my will.

-16-

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Probate Judge
Williamsburg County

ITEM XL: If any beneficiary under this will and I should die in a common accident or disaster or otherwise under such circumstances as to render it doubtful or uncertain who died first, all the provisions of this will shall take effect as though such beneficiary predeceased me.

ITEM XLI: I direct that all estate, inheritance, succession, death or similar taxes assessed with respect to my estate or any part thereof, or on any bequest or devise contained in this will or any codicil hereto, or on any insurance upon my life, or on any property held jointly by me with another, or on any transfer made by me during my lifetime, or on any other property or interest in property included in my estate for such tax purposes be paid out of my residuary estate and not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interest in property included in my estate for such tax purposes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of JANUARY, 1980.

Marie L. Nelson

Marie Louise Nelson (Seal)

Signed, sealed, published and declared by Marie Louise Nelson, as and for her last will and testament, in the presence of us, who at her request, in her presence and in the presence of each other, have hereunto subscribed our names as witnesses.

Thinniel D. Jones of Kingstree, S.C.
E. C. Bungan Jr of Kingstree, S.C.
H. H. Porter Jr of Kingstree S.C.

-17-

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Probate Judge
Williamsburg County

(NOTE: If necessary, attach additional sheets to this return following same ruling as is set up herein.)

INVENTORY AND APPRAISEMENT OF PERSONAL PROPERTY OF THE ESTATE

OF MARIE LOUISE NELSON

...DECEASED

ITEM 2:

The Personal Representative is to complete Item 2, as to "Face Value" and deliver this Inventory to the Appraisers, who shall complete Item 2, as to "Appraised Value"

ARTICLES	FACE VALUE		APPRAISED VALUE	
Cash on hand at death	None		None	
Cash in banks, depositories, etc. (attach schedule)	5,342	09	5,342	09
Life Insurance payable to estate (attach schedule)	13,604	45	13,604	45
15 units, Southeast Tax Exempt Income Trust	None		13,893	90
U. S. Treasury Bonds	300,000	00	300,000	00
Municipal Bonds(See attached schedule)	520,000	00	✓393,937	04
Household furniture and furnishings	None		15,341	00
Jewelry	None		200	00
TOTAL:			742,318	48

INVENTORY AND APPRAISEMENT OF REAL ESTATE OF ESTATE

OF MARIE LOUISE NELSON

DECEASED

ITEM 3:

The Personal Representative is to insert description of property under Item 3, and the Appraisers are to complete this form in detail.

	1	2	3	4
DESCRIPTION (Show County, Township and School District)	ASSESSED VALUE FOR YEAR OF DECEDENT'S DEATH	APPRAISED VALUE	APPRAISED VALUE OF DECEDENT'S INTEREST	CAUTION (Do not write in this space)
(See attached schedule)	40,300 00	3,198,150 00	3,198,150 00	
TOTAL:	40,300 00	3,198,150 00	3,198,150 00	

ITEM 4:

JOINTLY OWNED PROPERTY WITH RIGHT OF SURVIVORSHIP (If None-So State)
(Sec. 65-463, S. C. Code of Laws 1952, as amended)

A. Jointly Owned United States Government Bonds With Right Of Survivorship

<u>Face Value</u>	<u>Series</u>	<u>Exact Names in Which Standing</u>	<u>Value at Date of Death</u>	<u>Decedent's Contribution</u>
\$ <u>None</u>			\$	\$

B. Jointly Owned Bank Accounts, Building And Loans, And Other Depository Accounts With Right Of Survivorship

<u>Amount</u>	<u>Name and Location of Institution</u>	<u>Exact Names in Which Standing</u>	<u>Decedent's Contribution</u>
\$ None			\$

C. Jointly Owned Stocks, Bonds And Other Property With Right Of Survivorship

<u>No. of Shares</u>	<u>Unit Value</u>	<u>Description or Name of Corporation</u>	<u>Exact Names in Which Standing</u>	<u>Decedent's Contribution</u>
None				\$

With reference to property listed under Item 4, above, where the survivor can positively establish original ownership to any part thereof in such joint tenancy arrangements, such part as can be identified as having originally belonged to the survivor is not subject to tax. Attested affidavits and other information necessary to establish original ownership, in whole or in part, must be furnished direct to the Inheritance Tax Division, South Carolina Tax Commission.

ITEM 5:

LIFE INSURANCE, ANNUITIES AND/OR ENDOWMENT CONTRACTS PAYABLE TO BENEFICIARIES
OTHER THAN THE DECEDENT'S ESTATE.

<u>Face Value</u>	<u>Contract Number</u>	<u>Name of Company</u>
None		

ITEM 6:

TRANSFERS INTENDED TO TAKE EFFECT AT DEATH
(Sec. 65-461, S. C. Code of Laws, 1952, as amended)

A. United State Government Bonds "Payable On Death" (If None-So State)

<u>Face Value</u>	<u>Series</u>	<u>Exact Names in Which Standing</u>	<u>Value at Date of Death</u>
\$ None			\$

B. Trust Created By Decedent In Which Income For Life Was Retained, Power To Revoke Or Other Incidents Of Ownership Retained Which Would Preclude A Fee Simple Title Passing Until The Death Of The Transferor: (If None-So State)

<u>Description and Location</u>	<u>Fair Market Value at Date of Death</u>
None	\$

C. Lifetime transfer Of Real Property In Which Decedent Retained a Life Estate Or Other Incidents Of Ownership: (If None-So State)

<u>Description and Location</u>	<u>Transferee</u>	<u>Fair Market Value at Date of Death</u>
None		\$

D. Other Lifetime Transfers Intended To Take Effect At Death (If None-So State)

<u>Description</u>	<u>Transferee</u>	<u>Fair Market Value at Date of Death</u>
None		\$

ITEM 7:

POWER OF APPOINTMENT

(Sec. 65-462, S. C. Code of Laws, 1952, as amended)

A. Property Over Which Decedent Possessed A Power Of Appointment, Both Real And Personal, Whether Testamentary Or Otherwise (If None-So State)

<u>Description</u>	<u>Fair Market Value of Assets Over Which Power of Appointment Held</u>
None	\$

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

OATH OF FIDUCIARY

Personally appeared before me Samuel E. McIntosh and Frank F. Lesesne
Administrat....., Execut.ORS....., Trustee....., of the estate of Marie L. Nelson
....., who being duly sworn, says that the annexed Inventory is in all respects just and true; that
contains a true statement of all the real and personal property of the said deceased, whether the interest of the deceased b
absolute or otherwise, which has come to the knowledge of this deponent, together with a list of all property disposed of b
decendent within the last three years that may be found or adjudged to have been in contemplation of death.

Sworn to before me this 31st day
of July, A. D., 1981
Cecil H. Robinson (L. S.)
Notary Public for South Carolina

Samuel E. McIntosh
Frank F. Lesesne

CERTIFICATE OF APPRAISERS

(This certificate to be signed after appraisal is made.)

We, whose names are hereunder signed, appraisers, appointed by the Probate Judge of Williamsburg
County, South Carolina, having first taken and subscribed the oath hereinbefore inserted, do certify that we have estimated an
appraised the property in the annexed inventory contained, exhibited to us, according to the best of our knowledge and ability

Dated this 31st day of August A. D., 1981

G. C. Robinson Jr
Thomas A. Blakey Jr
James F. Cooper Jr

Appraisers

File No.....
Box No. 400 Package No. 7
The State of South Carolina
COUNTY OF WILLIAMSBURG
IN THE PROBATE COURT
In the Matter of the Estate of:
MARIE LOUISE NELSON Deceased.
WARRANT OF APPRAISEMENT
INVENTORY AND RETURN
OF APPRAISERS
Filed this 31st day of July
A. D., 1981..
Cecil H. Robinson Probate Judge
Williamsburg County, S. C.
Recorded in Inventory and Appraisement
Book....., at page....., this
day of.....
19.....
....., Probate Judge
Williamsburg County, S. C.
567890 Revised 1973

A CERTIFIED TRUE COPY

Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

8

IN THE PROBATE COURT
A CERTIFIED TRUE COPY

WARRANT OF APPRAISEMENT

Rudell M. Gamble

By Cecil H. Robinson, Probate Judge.

Rudell M. Gamble
Probate Judge

THESE are to authorize and empower you, or any three of you, whose names are hereunder written, to repair to all such parts and places within this County as you shall be directed unto by Samuel E. McIntosh and Frank F. Lesesne

Administrators, Executorsors, Trusteees, of all and singular the goods, rights, and credits of Marie L. Nelson, late of Williamsburg County, deceased, wheresoever any of the goods, chattels or real estate of the said deceased are or do remain within the said parts and places, and which shall be shown unto you by the said Administrators, Executorsors, Trusteees, and there view and appraise all and every of the said goods, chattels, or real estate, being first sworn on the Holy Evangelists of Almighty God, to make a true and perfect inventory and appraisement thereof, and to cause the same to be returned under your hands, or any three or four of you, to the said Cecil H. Robinson

Probate Judge for Williamsburg County, South Carolina on or before the 31st day of August, 1981.

Dated the 31st day of July, Anno Domini, 1981, and in the two hundred and fifth year of American Independence.

To E. C. Burgess, Jr.

Thomas A. Blakely, Jr.

James F. Cooper, Jr.

or any three of them.



Cecil H. Robinson
Judge of Probate Court,

Williamsburg County, South Carolina

OATH OF APPRAISERS

(This oath to be taken before appraisement is made.)

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg

You, E. C. Burgess, Jr., Thomas A. Blakely, Jr. and James F. Cooper, Jr.

do swear that you will make a just and true appraisement of all and singular the goods, chattels (ready money only excepted) and real estate of Marie L. Nelson deceased as shall be produced by Samuel E. McIntosh and Frank F. Lesesne

the Administrators, Executorsors, Trusteees, of the estate of the said Marie L. Nelson, deceased, and that you will return the same, certified under your hands unto the Probate Judge of Williamsburg County within the time prescribed by law

Sworn to before me this 20th day of 20th of August, A. D., 1981
Samuel E. McIntosh (L. S.)
Notary Public for South Carolina

E. C. Burgess, Jr.
Thomas A. Blakely, Jr.
James F. Cooper, Jr.

ITEM 1:

TRANSFERS WITHIN THREE YEARS PRIOR TO DATE OF DEATH
(Sec. 65-464, S. C. Code of Laws 1952, as amended) (If None-So State)

(NOTE: If the fiduciary takes the position that transfers listed below were not made in Contemplation of Death, affidavits sustaining such position must be submitted direct to the Inheritance Tax Division, South Carolina Tax Commission, for consideration).

Description of Property	Transferee	Fair Market Value at Date of Death
1. <u>Cash</u>	<u>Samuel E. McIntosh</u>	<u>\$ 2,000.00</u>
2. <u>Cash</u>	<u>Mary Ann Black Roberson</u>	<u>2,000.00</u>
3. <u>Cash</u>	<u>Patty Scott Epps</u>	<u>4,000.00</u>
4. <u>Cash</u>	<u>George A. Nelson</u>	<u>3,000.00</u>
5. <u>Cash</u>	<u>Mrs. George A. Nelson</u>	<u>1,000.00</u>

This form revised by the South Carolina Tax Commission November 1, 1961. (Continued on attached schedule)
(To be used in all cases where the decedent died after December 31, 1961.)

A CERTIFIED TRUE COPY

Rudell M. Gamble

Rudell M. Gamble
Probate Judge
Williamsburg County

(Item I continued)

<u>Description of Property</u>	<u>Transferee</u>	<u>Fair Market Value at Date of Death</u>
6. Cash	Francis Napoleon Nelson	3,000
7. Cash	Presbyterian Home of South Carolina on behalf of Patty Scott Epps	25,300
8. Cash	Presbyterian Home of South Carolina on behalf of Frank F. Lesesne and Kathleen S. Lesesne	25,300
9. Stock, Exchange Bank of Kingstree	Samuel E. McIntosh	116,475
10. Cash	Joseph Kirkley Caulder	500
11. Lot and warehouse	Samuel E. McIntosh	29,500
12. Cash	Celeste P. Hodges	2,000
13. Cash	Samuel E. McIntosh	169,157
14. Cash	Joseph Kirkley Caulder	2,500
15. Cash	Lurena B. Nexsen	600
16. Cash	Alcess Burgess	300
17. Cash	Leona F. Bell	700
18. Cash	Anna G. Nesmith	550
19. Cash	Annie Mae Bradley	100
20. Cash	Esserine G. Conyers	350
21. Cash	Howard H. Poston	3,000
22. Diamond ring	Samuel E. McIntosh	240

Cash in Banks

First National Bank of South Carolina	2,499.31
Exchange Bank of Kingstree	1,115.87
Liquid Capital Income Fund (Bank of New York)	1,340.42
Exchange Bank of Kingstree	173.50
Williamsburg First National Bank	212.99

Life Insurance Payable to Estate

Southwestern Life Insurance Co.	12,461.42
Aetna Life and Casualty	1,143.03

Municipal Bonds

Face Amount	Description	Appraised Value
5,000	Wade Hampton Water and Sewer	4,546.15
5,000	Wade Hampton Water and Sewer	4,376.50
10,000	Chesterfield County School District	9,298.60
10,000	County of Dorchester	8,951.80
10,000	City of Newberry Public Utility	8,947.20
10,000	Pickens County School	9,051.70
5,000	York County	4,260.15
5,000	Pickens County	4,138.70
20,000	City of Camden	16,405.20
10,000	Spartanburg County Hospital	8,661.90
5,000	Abbeville County School District	4,318.55
15,000	City of Anderson	11,485.95
10,000	York County School District	7,972.70
5,000	Spartanburg County Hospital	3,948.20
35,000	Oconee City School District	29,702.05
10,000	State of S. C. Capital Improvement	7,464.90
20,000	Williamsburg County School District	15,283.00
15,000	City of Anderson	9,567.15
20,000	Florence County	15,532.00
20,000	City of Spartanburg Waterworks	11,434.40
10,000	State College Board of Trustees Student Facility	7,693.00
10,000	S. C. Public Service Authority	6,738.40
50,000	Anderson County Revere Copper	33,527.50
25,000	School District No. 2 of Dorchester County	16,383.25
25,000	Aiken County School District	15,699.25
25,000	Orangeburg County	19,263.75
25,000	Aiken County School District	15,561.50
25,000	Newberry County School District	16,419.50
20,000	Clemson University	11,116.60
25,000	School District of Lancaster County	19,011.25
25,000	Sea Pines Public Service General Obligation	19,260.50
10,000	Town of Allendale	10,000.00

Item 3: Real Estate

<u>Description</u>	<u>Assessed Value</u>	<u>Appraised Value</u>
Lot, 120-128 Mill Street (11-25-127)	2,980	73,500
Lot, 200 Mill Street (11-25-48)	2,580	51,000
Lot, 124 S. Academy Street (11-26-137)	1,410	50,000
Lot, 108 E. Main Street (11-25-145)	1,380	33,000
Lot, 110-112 E. Main Street (11-25-146)	6,270	110,000
Lot, 114-116 E. Main Street (11-25-147)	2,000	48,000
Lot, 118 E. Main Street (11-25-148)	940	20,500
Lot, 120 E. Main Street (11-25-149)	560	14,000
Rear, 108-120 E. Main Street (11-25-144)	600	20,000
Lot, 101-105 Short Street (11-26-130)	360	4,000
Lot, W. Ashton Avenue (11-26-138)	50	600
Lot, E. Ashton Avenue (11-38-16)	600	10,000
One acre, West of Eastside Motors (11-38-147)	600	22,500
Lot, Eastland Avenue (11-38-145)	90	1,950
375 acres within city limits (11-39-1)	15,700	2,580,100
109 acres, King Township (18-41-1)	3,920	130,800
94 acres, Hope Township (45-129-4)	260	28,200

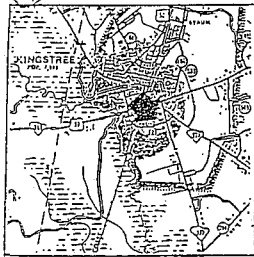
Unmended Schedule
W/A

Municipal Bonds

<u>Face Amount</u>	<u>Description</u>	<u>Appraised Value</u>
5,000	Wade Hampton Water and Sewer	4,546.15
5,000	Wade Hampton Water and Sewer	4,376.50
10,000	Chesterfield County School District	9,298.60
10,000	County of Dorchester	8,951.80
10,000	City of Newberry Public Utility	8,947.20
10,000	Pickens County School	9,051.70
5,000	York County	4,260.15
5,000	Pickens County	4,138.70
20,000	City of Camden	16,405.20
10,000	Spartanburg County Hospital	8,661.90
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15,000	City of Anderson	11,485.95
10,000	York County School District	7,972.70
5,000	Spartanburg County Hospital	3,948.20
35,000	Oconee City School District	29,702.05
10,000	State of S. C. Capital Improvement	7,464.90
20,000	Williamsburg County School District	15,283.00
15,000	City of Anderson	9,567.15
20,000	Florence County	15,532.00
20,000	City of Spartanburg Waterworks	11,434.40
10,000	State College Board of Trustees Student Facility	7,693.00
10,000	S. C. Public Service Authority	6,738.40
50,000	Anderson County Revere Copper	33,527.50
25,000	School District No. 2 of Dorchester County	16,383.25
25,000	Aiken County School District	15,699.25
25,000	Orangeburg County	19,263.75
25,000	Aiken County School District	15,561.50
25,000	Newberry County School District	16,419.50
20,000	Clemson University	11,116.60
25,000	School District of Lancaster County	19,011.25
25,000	Sea Pines Public Service General Obligation	19,260.50
10,000	Town of Allendale	10,000.00
5,000	Wade Hampton Water and Sewer District	4,925.00
10,000	Greenville County School District	9,850.00

PROPERTY DESCRIPTION

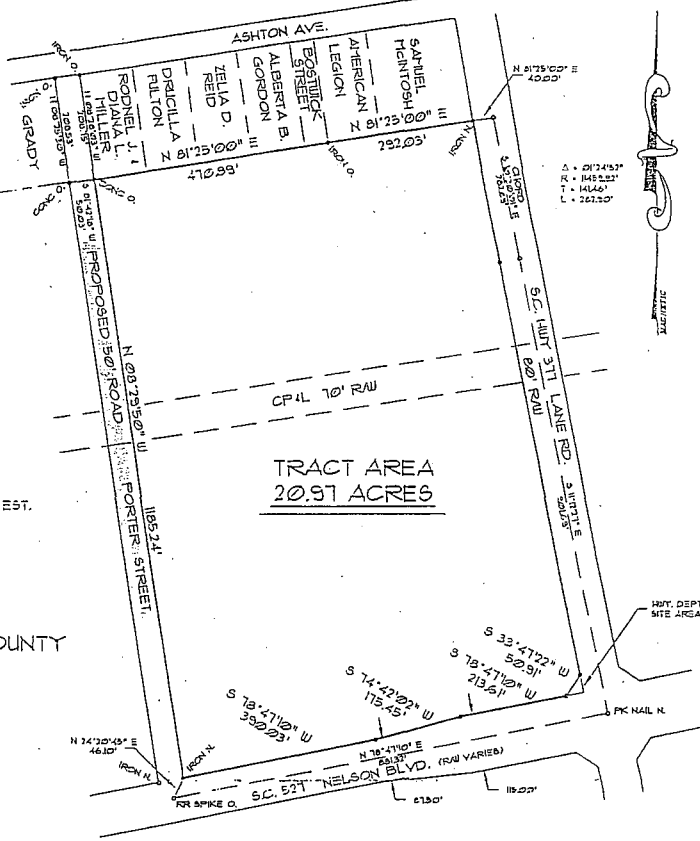
All that certain piece, parcel or tract of land situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing One hundred thirty-seven (137) acres, more or less, and bounded on the North by lands of Williamsburg County Historical Society and by Nelson Boulevard; on the East by S. C. State Highway #377; on the South by lands of S. E. McIntosh; and on the Southwest and West by lands of the Town of Kingstree and by lands of Williamsburg County Historical Society, said tract of land being a portion of a 633-acre tract of land shown on a map of the lands of Marie L. Nelson made by J. D. Brockington, Surveyor, dated June 18, 1964, and is a portion of the residual estate of the said Marie L. Nelson who died testate on the 9th day of January, 1981, leaving in full force and effect her Last Will and Testament dated January 15, 1980, duly admitted to probate in the office of the Probate Judge for Williamsburg County on the 13th day of January, 1981, and filed in said office as Case #7 - 400, a copy of this portion of said tract of land is hereby attached as a part and parcel hereof.



VICINITY MAP
SCALE: 1" = 2 MI.

TAX PARCEL
11-39-11
KINGSTREE
WILLIAMSBURG COUNTY
SOUTH CAROLINA

MARIE NELSON EST.



TRACT AREA
20.97 ACRES

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

PLAT OF

LAND LOCATED IN THE TOWN OF KINGSTREE
SURVEYED AT THE REQUEST OF

ALICE H. KELLAHAN &
LYDIA F. DUKE

REFERENCES:

1. PLAN FOR JOHN T. NELSON BY P.G. GOURDIN DATED MAY 22, 1909.

STATEMENT

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

SURVEYED:
AUGUST 19, 1993

KELLAHAN & ASSOCIATES
ENGINEERS and SURVEYORS, Inc.
116 N. JACKSON STREET KINGSTREE, S.C. 29556
TELEPHONE 803/334-2293 OR 803/334-510

William N. Kellahan
WILLIAM N. KELLAHAN, JR.
SC PE RL59263

FILED
93 SEP -08 AM 9:00
RECORDED
BOOK 5852 PAGE 63
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.
WILLIAMSBURG CO., S.C.

C-713 NB-71

B-510



10

Page 42

TIMECOVER BLANK No. 7 - TITLE TO REAL ESTATE
PRIVATE PERSON TO PRIVATE PERSON
TIMECOVER PUBLISHING CO., CONWAY, S. C.

STATE OF SOUTH CAROLINA,

COUNTY OF Williamsburg

A CERTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

Know all Men by these Presents,

That Samuel E. McIntosh

In the State aforesaid ----- In consideration of the
sum of One Hundred Thousand Dollars and exchange of property ~~XXXX~~

to me paid by Alice H. Kellahan and Lydia F. Duke

In the State aforesaid, (Receipt whereof is hereby acknowledged) -----

have granted, bargained, sold and released: and by these presents do grant, bargain, sell and release unto the said
Alice H. Kellahan and Lydia F. Duke, their heirs and assigns, the
following:

All that certain tract of land, lying, being and situate in the
Town of Kingstree, County of Williamsburg, State of South Carolina,
containing twenty and ninety-seven hundredths (20.97) acres more or
less; and being more fully and in detail shown on a map thereof
prepared by William N. Kellahan, Jr., Surveyor, dated August 19,
1993, and recorded in the Office of the Clerk of Court for
Williamsburg County in Plat Book § 852 at Page 6B, and being
bounded and described according to said map as follows:

On the North by Lot of Rodnel J. and Diana L. Miller, by lot of
Drucilla Fulton, by lot of Zelia D. Reid, by lot of Alberta B.
Gordon, by a 50 foot street, by lot of the American Legion, and by
lot of Samuel E. McIntosh; on the East by South Carolina Highway
377, on the South by lands of Nelson Boulevard and on the West by
a proposed 50' (fifty foot) road known as Porter Street. Said tract
of land being one of the tracts of land devised to me said Samuel
E. McIntosh by Marie L. Nelson in her last will and testament dated
January 15, 1980, admitted to probate January 13, 1981, and filed
in the Office of the Probate Judge, Williamsburg County, in Roll 7,
Apartment 400.

Grantees, Alice H. Kellahan and Lydia F. Duke, will be responsible
for any Roll Back taxes for the year of conveyance and all previous
years.

A311 PAGE 231



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 premises before mentioned unto the said:

Alice H. Kellahan and Lydia F. Duke, their

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs and Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said:

Alice H. Kellahan and Lydia F. Duke, their _____ Heirs and Assigns, against
them and their Heirs; and all persons whomsoever _____
_____ lawfully claiming, or to claim
the same or any part thereof.

Witness the execution hereof by grantor this 7th day of September

In the year of our Lord one thousand nine hundred and ninety-three

and in the two hundred and eighteenth year

of the Sovereignty and Independence of the United States of America.

Samuel E. McIntosh (L. S.)
Samuel E. McIntosh (L. S.)

Signed, Sealed and Delivered
in the Presence of

Samuel E. McIntosh
Wendell O. Brown

_____ (L. S.)

A311 PAGE 232

STATE OF SOUTH CAROLINA,

COUNTY OF Williamsburg

PERSONALLY appeared before me, Sammy Grayson

and made oath that he saw the within named Samuel E. McIntosh

____ Sign, Seal and as his Act and Deed deliver the within written Deed; and that he with
Wendell O. Brown witnessed the execution thereof.

Sworn to before me this 7th

day of September A. D. 19 93

Wendell O. Brown (Seal)
Notary Public for South Carolina

My Commission expires 7/27/99

Sammy Grayson

WY A311 PAGE 233

0807

Acres for \$

Township

Purchased

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg

Samuel E. McIntosh

TO (Address)

Alice H. Kellahan
and

Lydia F. Duke

TITLE TO REAL ESTATE

(Private Individual to Another)

I hereby certify that the within deed has been this

day of Sept A. D.

1923 Recorded in Book 11 of

deeds, Page 231 at 11 o'clock A. M.

Philip J. Williams Clerk of Court of Williamsburg County

I hereby certify that the within deed has been this

16th day of Sept A. D. 1923

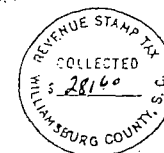
Transferred on Auditor's Book Page J-236

J. Malvin Brown
Auditor of Williamsburg County

TIMESAVER
PUBLISHING CO.

No. 7
TIMESAVER PUBLISHING CO.
CONWAY, S. C.

A311 PAGE 234



665.60
281.60

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

EASEMENT

Whereas, by deed of even date, herewith Samuel E. McIntosh has conveyed unto Alice H. Kellahan and Lydia F. Duke a certain tract of land situate in the Town of Kingstree, County of Williamsburg, State of South Carolina containing twenty and ninety-seven hundredths (20.97) acres, more or less, which parcel of land is bounded on the West by a proposed fifty (50) foot street or road known as Porter Street.

Whereas the lands on the Western side of proposed road or street known as Porter Street were devised by Marie L. Nelson to the trustees under her last Will and Testament as will appear by reference to same and whereas said devise may have included the proposed fifty (50) foot road or street known as Porter Street; and

Whereas it is deemed to the mutual benefit and interest of the said Alice H. Kellahan and Lydia F. Duke and Samuel E. McIntosh as Personal Representative and Trustee under the last Will and Testament of Marie L. Nelson, deceased, that said proposed fifty (50) foot road or street should be opened and remain open for the mutual use and benefit of the owners of the lands of the Estate of Marie L. Nelson now held in trust and the owners of the twenty and ninety-seven hundredths (20.97) acres this day conveyed to the Alice H. Kellahan and Lydia F. Duke; and

Whereas the parties have agreed that efforts should be made to have said street opened and used for their benefit and members of the public who may need to use the same.

A311 PAGE 235

A CERTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY



last Will and Testament dated January 15, 1980, and admitted to probate January 13, 1981, and filed in the Office of the Probate Judge for Williamsburg County in Roll 7, Apartment 400.

The grantor does agree that the grantees, their heirs or assigns may take such steps and make such improvements as may be necessary to have said street or road opened and maintained as a public street or road and that grantor will assist in such endeavor and that said street or road when opened shall be for the mutual use and benefit of the owners of property lying on either side of the same.

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 premises before mentioned unto the said:

Alice H. Kellahan and Lydia F. Duke, their Heirs and Assigns forever.

And I do hereby bind myself and my Heirs and Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said:

Alice H. Kellahan and Lydia F. Duke, their Heirs and Assigns, against them and their Heirs, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the execution hereof by grantor this 7th day of September in the year of our Lord one thousand nine hundred and ninety-three and in the two hundred and eighteenth year of the Sovereignty and Independence of the United States of America.

W-111A311PAGE237

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS THAT Samuel P. McIntosh, individually and as Personal Representative and Trustee under the last Will and Testament of Marie L. Nelson, deceased, of the County of Williamsburg, State of South Carolina in considerations of the recitals and the sum of five (\$5.00) dollars to me in hand paid by Alice H. Kellahan and Lydia F. Duke of the County of Williamsburg, State of South Carolina, receipt whereof is hereby acknowledged, have granted, bargained, sold, and released and by these presents do grant, bargain, sell and release unto the said Alice H. Kellahan and Lydia F. Duke, their heirs and assigns, the following:

An easement or right-of-way over, upon, and along that certain piece, parcel or strip of land approximately fifty (50') feet in width lying, being and situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, bounded on the North by Ashton Avenue of the Town of Kingstree; on the East by lot now formerly of Rodnell J. and Diana L. Miller and by lands of Alice H. Kellahan and Lydia F. Duke; on the South by Nelson Boulevard of the Town of Kingstree; and on the West by lands of the Estate of Marie L. Nelson and lot of Grady and being more fully shown on a map of a tract of land containing twenty and ninety-seven hundredths (20.97) acres more or less made by William W. Kellahan, Jr., Surveyor, dated August 19, 1993, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 585.2 at Page 68 and being designated thereon as "proposed fifty (50') foot road, Porter Street" and being a portion of the lands devised to the trustees of her estate by Marie L. Nelson by her

WMA311PAGE236

Samuel E. McIntosh

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Sammy Grayson
Robert D. Frazer

Samuel E. McIntosh (Seal)
Samuel E. McIntosh, Individually
and as Personal Representative and
Trustee under the last Will and
Testament of Marie L. Nelson, deceased

STATE OF SOUTH CAROLINA,
COUNTY OF WILLIAMSBURG.

Personally appeared before me, Sammy Grayson
and made oath that he/she saw the within named Samuel E. McIntosh,
Individually, and as Personal Representative and Trustee under the
last Will and Testament of Marie L. Nelson, deceased, Sign, Seal
and as his Act and Deed deliver the within written Easement; and
that he/she with Robert D. Frazer witnessed the
execution thereof.

Sammy Grayson

Sworn to before me this 7th
day of September A.D. 1993

Robert D. Frazer
Notary Public for South Carolina

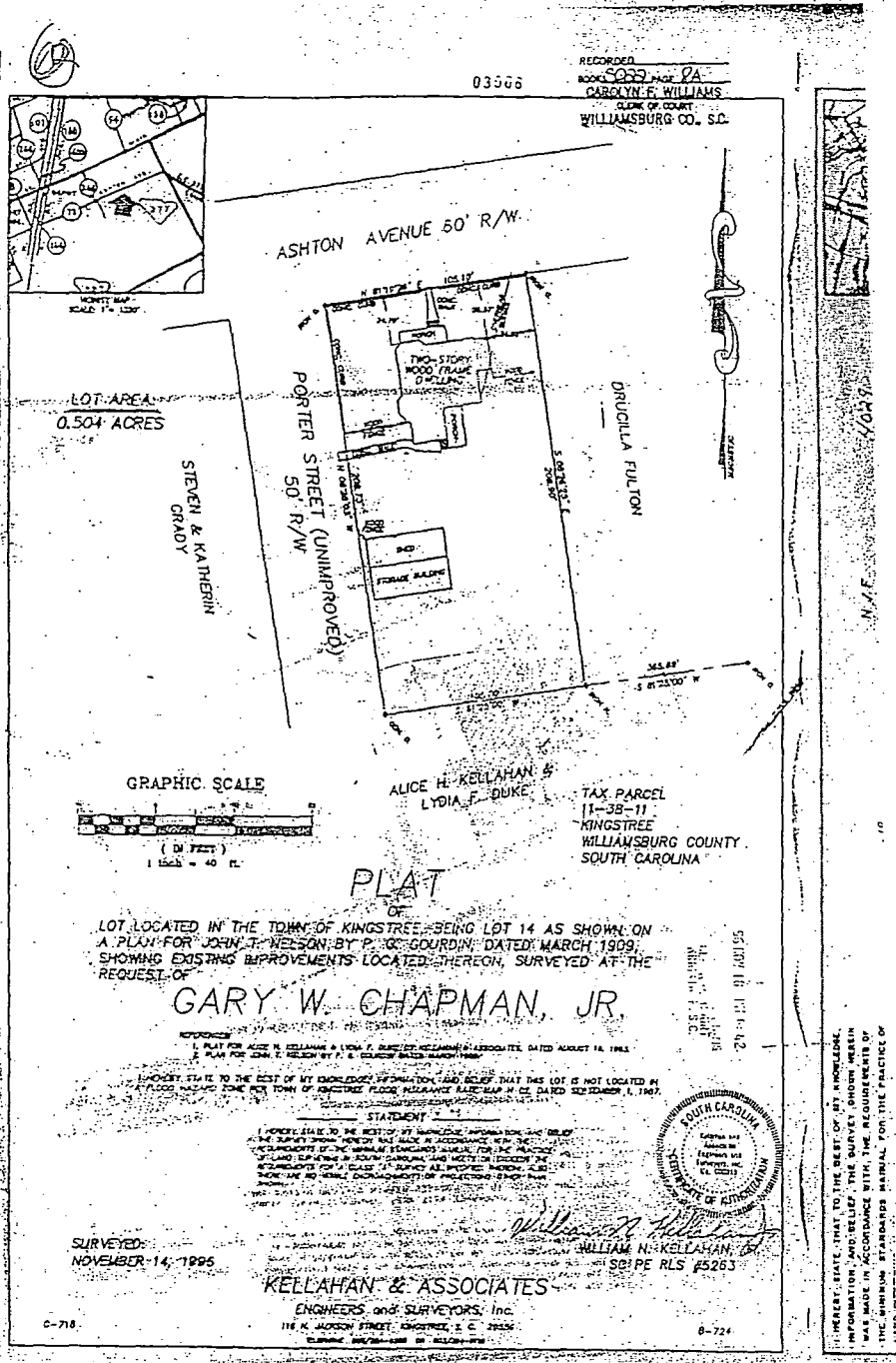
My Commission expires 09/22/2002

93 SEP -8 AM 9:21
FILED
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG, S.C.

RECORDED
BOOK A311 PAGE 235
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG CO., S.C.

BOOK A311 PAGE 238

12



DEFENDANT'S
EXHIBIT
12

State of South Carolina

COUNTY OF WILLIAMSBURG

TITLE TO REAL ESTATE
PATYLLA PRINTING CO., FLORENCE, S. C.
FORM NO. 99

04176

A CERTIFIED TRUE COPY

Carol W. Chapman, Jr.

CAROL W. CHAPMAN, JR.
CLERK OF COURT
WILLIAMSBURG COUNTY

Know All Men by These Presents, That I, GARY W. CHAPMAN, JR.

of the County of WILLIAMSBURG in the State aforesaid, for and in consideration
of the sum of FIVE AND NO/100 (\$5.00) DOLLARS, LOVE AND AFFECTION

to me paid by GARY W. CHAPMAN, JR. AND MISTY L. WHITLEY

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

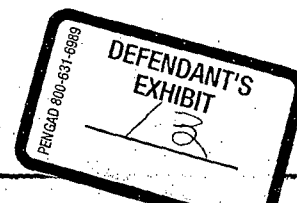
GARY W. CHAPMAN, JR. AND MISTY L. WHITLEY

as tenants in common, for and during their joint lives, and upon the death of either of them, then to the
survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent
remainder and right of reversion.

All that certain piece, parcel or lot of land situate in the Town
of Kingstree, County of Williamsburg, containing 0.504 acres and
being known as Lot No. Fourteen (14) on a plat made by Peter G.
Gourdin, Surveyor, dated March, 1909, and recorded in the office of
the Clerk of Court for Williamsburg County in Plat Book B at Page
55. Also see more recent plat prepared for Gary W. Chapman, Jr.,
by Kellahan & Associates, dated November 14, 1996, and recorded in
Plat Book _____ at Page _____, Williamsburg County Records.

This being the same property conveyed to Grantor by deed of
Benjamin C. Cooper and Renee E. Cooper recorded in the office of
the Clerk of Court for Williamsburg County herewith.

BOOK A372 PAGE 019



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 premises before mentioned unto the said GARY W. CHAPMAN, JR. AND MISTY L. WHITLEY, as tenants in common, for and during their joint lives, and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

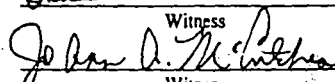
And I do hereby bind myself, my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said GARY W. CHAPMAN, JR. AND MISTY L. WHITLEY, as tenants in common, for and during their joint lives, and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

against myself and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 15th day of November
in the year our Lord one thousand nine hundred and ninety-six
and in the two hundred and twenty-first year of the Sovereignty
and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

 (Seal)
GARY W. CHAPMAN, JR. (Seal)


Witness
Witness

372 PAGE 020

STATE OF SOUTH CAROLINA, }

FLORENCE

County. }

PERSONALLY appeared before me the undersigned witness
and made oath that she saw the within named GARY W. CHAPMAN, JR.
sign, seal and, as his act and deed, deliver the within written Deed for the uses and purposes therein
mentioned, and that she, with the other subscribing witness witnessed the
execution thereof.

SWORN to before me this

15th day of November

1996

John A. McCutcheon (L.S.)
Notary Public of S. C.

My Commission Expires: 11-1-99

Witness

5011A372M6021

Ret → M. GLENN ODOM
P. O. Box 4887
FLORENCE, SC 29502

State of South Carolina

County of WILLIAMSBURG

GARY W. CHAPMAN, JR.

TO

GARY W. CHAPMAN, JR. & MISTY L. WHITLEY
400 ASHTON AVE.
KINGSTREE, SC 29556

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for
record in my office at _____ M. o'clock on

the _____ day of _____
19____, and was immediately entered upon the proper

indexes and duly recorded in Book 372
of Deeds, page 96 DEC -5 AM 10:53

Carolyn F. Williams
Clerk of Court of Common Pleas and General
Sessions for WILLIAMSBURG County, S. C.

I hereby certify that the within Deed has been this
day of _____

A. D. _____, Recorded in Book
of Deeds, page _____

..... Author
for _____ County

BOOK A372 PAGE 022

State of South Carolina

COUNTY OF WILLIAMSBURG

TITLE TO REAL ESTATE
PATFIELD PRINTING CO., FLORENCE, S. C.
FORM NO. 48

Grantees Address:
400 Ashton Ave.
Kingstree, S.C. 29556

Ret. Steven G. Mikell, Attorney at Law
BTC-015, 181 East Evans Street
Florence, S.C. 29506

A CERTIFIED TRUE COPY

GAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

Know All Men by These Presents, That I, Misty L. Whitley

of the County of Williamsburg, in the State aforesaid, for and in consideration
of the sum of Five and no/100's (\$5.00) Dollars

to me paid by Gary W. Chapman, Jr.

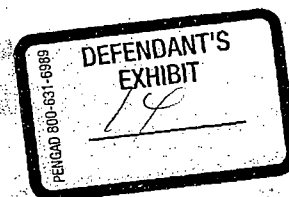
in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and
released and by these presents do grant, bargain, sell and release unto the said

Gary W. Chapman, Jr. his Heirs and Assigns forever:
All my right title and interest in and to the following:
All that certain piece, parcel or lot of land situate in the Town of
Kingstree, County of Williamsburg, containing 0.504 acres and being known
as Lot No. 14 on a plat made by Peter G. Gourdin, Surveyor, dated March,
1909, and recorded in the Office of the Clerk of Court for Williamsburg
County in Plat Book B at Page 55. Also see the more recent plat prepared
for Gary W. Chapman, Jr. by Kellahan & Associates, dated November 14, 1996,
and recorded in Plat Book (slide) 922, at page 8A, with the Williamsburg
County Clerk of Court.

This being the same property conveyed to Gary W. Chapman, Jr. by deed of
Benjamin C. Cooper and Renee E. Cooper recorded in Deed Book A371, at Page
109. Gary W. Chapman, Jr. then conveyed the subject property to to himself
and the grantor herein as tenants in common, in Deed Book A 372, at Page
19, on December 5, 1996.

TMS# 11-038-011

4409 PAGE 020



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 premises before mentioned unto the said

Gary W. Chapman, Jr., his

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

Gary W. Chapman, Jr., his

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 4TH day of May

in the year our Lord one thousand nine hundred and ninety-eight

and in the two hundred and twenty-second year of the Sovereignty

and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

Wanda F. Hoff
Grace L. Reed

5-22-2001

Notary Public of South Carolina

Misty L. Whitely (Seal)
Misty L. Whitely
(Seal)

FORM A409 PAGE 021

STATE OF SOUTH CAROLINA, }

FLORENCE County. }

PERSONALLY appeared before me Traci L. Reed

and made oath that I saw the within named Misty L. Whitley

sign, seal and, as her act and deed, deliver the within written Deed for the uses and purposes therein

mentioned, and that he, with

Traci L. Reed

witnessed the

execution thereof.

SWORN to before me this 4th

day of May, 19 98

Traci L. Reed (L.S.)

Notary Public of S. C.

5-02-2001 Expiration Date

Wanda J. Neff

BOOK A409 PAGE 022

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF WILLIAMSBURG)

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

That WE, STEVEN D. GRADY and KATHERINE L. GRADY, now or formerly of the County of Williamsburg, State of South Carolina, in consideration of the sum of SIXTY-EIGHT THOUSAND DOLLARS and 00/100 (\$68,000.00) Dollars to us in hand paid at and before the sealing of these presents by TERILYN J. McCLARY, of the County of Williamsburg, in the State aforesaid, receipt whereof is hereby acknowledged, have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said, TERILYN J. McCLARY, her Heirs and Assigns:

All that certain piece, parcel or lot of land situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, known and designated as Lot No. 13 on the map hereinafter referred to, and bounded on the North by Ashton Avenue of the Town of Kingstree, measuring One Hundred Five (105) feet; on the East by a Fifty (50) foot alley, measuring Two Hundred Eight and Seventy-five Hundredths (208.75) feet; and on the South by lands of Marie Nelson Estate, measuring One Hundred Five (105) feet; and on the West by lot of Vera McC. Brown Estate, measuring Two Hundred Eight and Seventy-five Hundredths (208.75) feet; and more fully shown on a map thereof made by P. G. Gourdin, Surveyor, dated March, 1909, for John T. Nelson, recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book "B" at page 55; and being the same lot of land conveyed to Steven D. Grady and Katherine L. Grady by Susie K. Britton by deed dated August 17, 1976, recorded in said Clerk's Office in Deed Book A-125 at page 136:

Tax Map No. 11-38-10

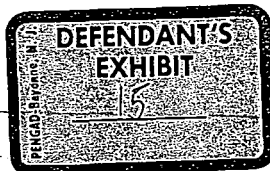
Grantee's Address: 312 Ashton Avenue
Kingstree, SC 29556

BOOK A392 PAGE 101

A CERTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY



TOGETHER with all and singular, the Rights, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said: TERILYN J. McCLARY, her Heirs and Assigns forever.

And we do hereby bind ourselves and our Heirs, Successors and Executors and Administrators to warrant and forever defend all and singular the said premises unto the said TERILYN J. McCLARY, her Heirs and Assigns, against us and our Heirs, Successors, and all other persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the execution hereof by grantor this 25th day of September in the year of our Lord one thousand nine hundred and ninety-seven and in the two hundred twenty-second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Karen S. Cartwright
William M. O'Neil

Steven D. Grady
STEVEN D. GRADY
Katherine L. Grady
KATHERINE L. GRADY

BOOK A392 PAGE 102

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

PERSONALLY appeared before me, Karen S. Cartwright and
made oath that he/she saw the within named STEVEN D. GRADY and KATHERINE L. GRADY,
sign, seal and as their Act and Deed deliver the within written Deed; and that he/she with
William M. O'Brien witnessed the execution thereof.

SWORN to before me this
25th day of Sept 1997.

William M. O'Brien
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 12-15-97

Karen S. Cartwright

BOOK A392 PAGE 103

STATE OF SOUTH CAROLINA }
COUNTY OF WILLIAMSBURG }

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in Town of Kingstree, bearing Williamsburg County Tax Map Number 11-38-10, was transferred by Steven D. Grady, et al to Terilyn McClary on _____.
3. Check one of the following: The deed is
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit):
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$68,000.00.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ Or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$68,000.00
 - (b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$259.00.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____.

BOOK 1392 PAGE 104

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 25th
day of September, 1999

Notary Public for
My Commission Expires: 6/16/2001

Responsible Person Connected with the Transaction

Print or Type Name Here

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty, Personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or exoneration of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interest in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity, provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in the statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

Page 2 of 2

BOOK A992 PAGE 105

\$176.80
C 74.50

State of South Carolina,

RETURN TO:
JENKINSON & JENKINSON, P. A.
P. O. Drawer 669
Kingslee, SC 29556

County of WILLIAMSBURG

Steven D. Grady and Katherine L. Grady

To

Terilyn J. McClary

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record 16523 and
in my office at 3:25 P M. o'clock on the 08 9 11
25th day of September
1997 and was immediately entered upon the proper indexes
and duly recorded in Book 16523 Page 101 of Deeds,
page 101
Carlynn F. Williamson
Clerk of Court of Common Pleas and General Sessions for
Williamsburg County County, S. C.
I hereby certify that the within Deed has been this
3rd day of
October, A. D. 19 97. Recorded in
Book 16523 of Deeds, page 101
Sally M. Mazon Auditor
for WILLIAMSBURG County

BOOK 16523 PAGE 101

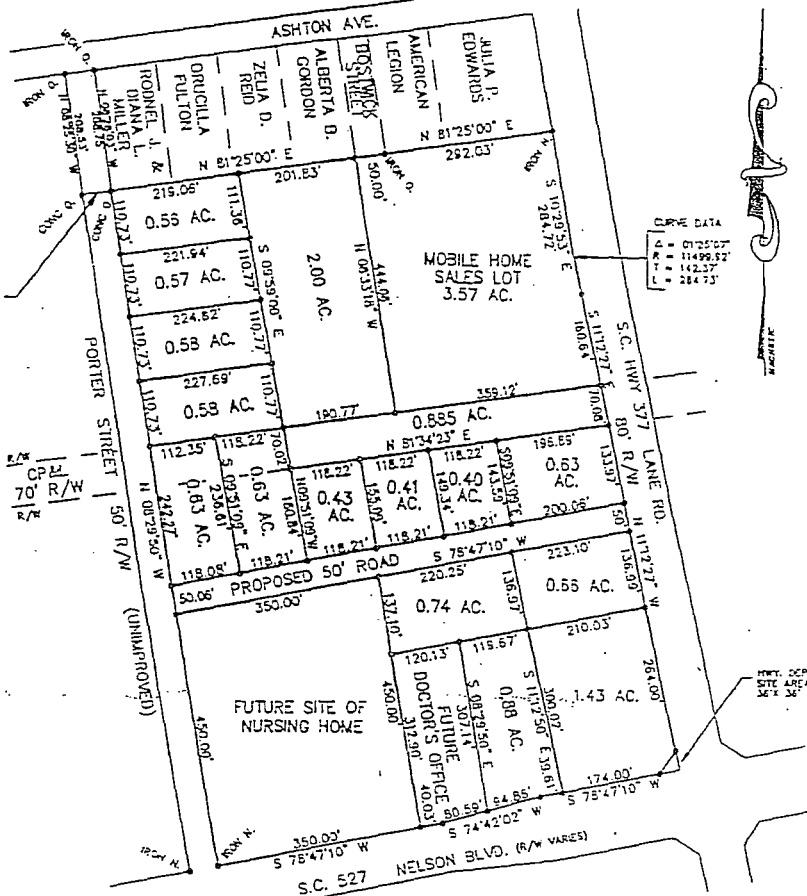


VICINITY MAP
SCALE: 1" = 2MI

N 51°42'18" E
50.03'

MANIE NELSON EST.

000002253 05/27/2001 10:30:59AM
RECORDED BY 510
CLERK OF COURT
CAROLYN F. WILLIAMS
RECORDED 6-3-2001
BOOK 30-2-6 PAGE 24
CAROLYN F. WILLIAMS



TAX PARCEL
11-39-11
KINGSTREE
WILLIAMSBURG COUNTY
SOUTH CAROLINA

GRAPHIC SCALE



(.IN FEET)
1 inch = 200 ft

PLAT OF LAND LOCATED IN THE TOWN OF KINGSTREE SURVEYED AND DIVIDED AT THE REQUEST OF ALICE H. KELLAHAN & LYDIA F. DUKE

REFERENCES:

1. PLAN FOR JOHN T. NELSON BY P.G. COURDIN DATED MAY 22, 1909.

STATEMENT

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

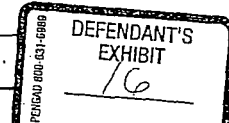
PREPARED:
MAY 1999.

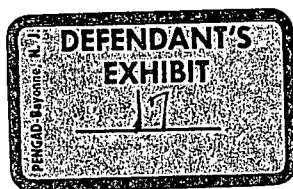
William N. Kellahan, Jr.
WILLIAM N. KELLAHAN, JR.
SC PE RLS#5263

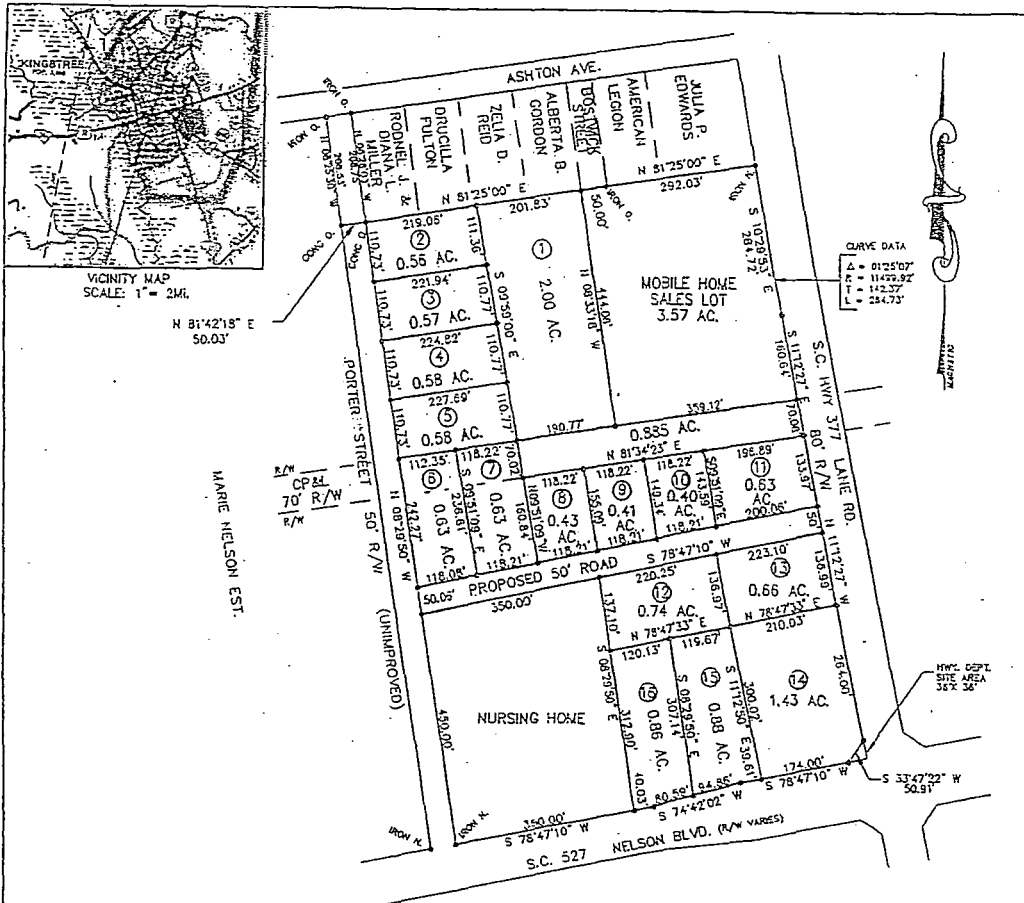
A CERTIFIED TRUE COPY KELLAHAN & ASSOCIATES

Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

ENGINEERS and SURVEYORS, Inc.
116 N. JACKSON STREET KINGSTREE, S. C. 29556
TELEPHONE: 803/354-9255 OR 803/354-9118

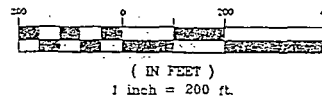






TAX PARCEL
11-39-11
KINGSTREE
WILLIAMSBURG COUNTY
SOUTH CAROLINA

GRAPHIC SCALE



PLAT
OF
LAND LOCATED IN THE TOWN OF KINGSTREE
SURVEYED AND DIVIDED AT THE REQUEST OF
ALICE H. KELLAHAN &
LYDIA F. DUKE

REFERENCES:

1. PLAN FOR JOHN T. NELSON BY P.G. GOURDIN DATED MAY 22, 1909.

STATEMENT

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

PREPARED:
MAY 1999.
REVISED MAY 17, 2002
TO SHOW LOT NUMBERS

KELLAHAN & ASSOCIATES

ENGINEERS and SURVEYORS, Inc.
116 N. JACKSON STREET KINGSTREE, S. C. 29556
TELEPHONE: 803/334-9225 OR 803/334-2110



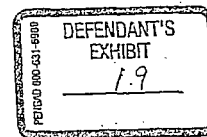
WILLIAM N. KELLAHAN, JR.
SC PE RLS#5263

C-718 NB-71

B-510-A



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	CASE NO: 2005-CP-45-434
Town of Kingstree, a Body	)	
Corporate and Politic,	)	
	)	
Plaintiff,	)	
	)	MEMORANDUM IN SUPPORT OF
vs.	)	MOTION TO ALTER OR AMEND
	)	JUDGMENT PURSUANT TO RULE
	)	59(e) AND RULE 60, SCRCP OF
Gary W. Chapman, Jr., Terilyn J.	)	DEFENDANTS LYDIA F. DUKE
McClary, Waccamaw Housing	)	AND ALICE H. KELLAHAN
Inc., Lydia F. Duke, Alice H.	)	
Kellahan and South Carolina	)	
Department of Transportation.	)	
	)	
Defendants.	)	



TO: ERNEST J. JARRETT, ESQUIRE, ATTORNEY FOR TOWN OF KINGSTREE;
 GARY W. CHAPMAN, JR., PRO SE; TERILYN J. MCCLARY, PRO SE; NATE
 FATA, ESQUIRE, ATTORNEY FOR WACCAMAW HOUSING, INC. AND
 BARBARA WESSINGER, ESQUIRE, ATTORNEY FOR S.C. DEPT OF
 TRANSPORTATION

DEFENDANTS LYDIA F. DUKE AND ALICE H. KELLAHAN, by and through
 their undersigned attorneys, respectfully submit this Memorandum in support of
 their Motion to Alter and Amend the Order and Judgment of the Court dated
 October 22, 2010, pursuant to Rule 59(e) and Rule 60 of the South Carolina
 Rules for Civil Procedure. It is respectfully submitted that the Court should
 reconsider the matter and the Order of October 22, 2010 be altered and amended
 and to provide for the following:

1. Alter and amend the Order of October 22, 2010 to deny the closure

of a portion of Porter Street (which has never been paved), as set forth in the Order on the ground that the closure of the road was not proper based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

2. Alter and amend the Order of October 22, 2010 to specifically find and hold that any closure of a portion of Porter Street (which has never been paved) should be totally and completely subject to the private easement of DEFENDANTS KELLAHAN/DUKE on the ground that DEFENDANTS KELLAHAN/DUKE retain their private easement, based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

3. Alter and amend the Order of October 22, 2010 to specifically find and hold that DEFENDANTS KELLAHAN/DUKE retain their private easement on the ground that, under Section 57-9-10 of the S. C. Code of Laws, 1976, as amended, the Plaintiff was not entitled to seek the elimination of private easement held by DEFENDANTS KELLAHAN AND DUKE.

4. Alter and amend the Order dated October 22, 2010 to specifically find and hold that DEFENDANTS KELLAHAN/DUKE retain their private easement on the ground that there was never a dedication of Porter Street (a portion of which has never been paved) by these Defendants sufficient to meet the required burden of proof based upon the pleadings, evidence, and testimony before the Court, as well as the applicable laws of this state.

5. Alter or amend the Order of October 22, 2010 to find and hold that DEFENDANTS KELLAHAN/DUKE continue to retain their private easement on the ground that the Plaintiff failed to allege in its pleadings that there had been any dedication of the easement to a public use by DEFENDANTS KELLAHAN/DUKE, or that there was any merger of the easement and the roadway, based upon the pleadings, evidence, and testimony before the Court, as well as the applicable laws of this state.

6. Alter or amend the Order of October 22, 2010 to find and hold that the evidence before the Court failed to establish that there was any dedication by DEFENDANTS KELLAHAN AND DUKE, of an easement or other property right and also failed to establish that there was any merger of the easement into the roadway sufficient to meet the required burden of proof based upon the pleadings, evidence, and testimony before the Court, as well as the applicable laws of this state.

7. Alter or amend the Order of October 22, 2010 to find and hold that there was no agency relationship between Senator Yancey McGill and William N. Kellahan, Jr. on the ground that the evidence before the Court failed to meet the required burden of proof to establish an agency relationship between Senator Yancey McGill and William N. Kellahan, Jr., based upon the pleadings, evidence, and testimony before the Court, as well as the applicable laws of this state.

8. Alter or amend the Order of October 22, 2010 to find and hold that there was no agency relationship between Senator Yancey McGill and

DEFENDANTS KELLAHAN/DUKE on the ground that the evidence and testimony before the Court failed to meet the required burden of proof to establish an agency relationship between Senator Yancey McGill and DEFENDANTS KELLAHAN/DUKE, based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

9. Alter and amend the Order of October 22, 2010 so as to deny the closure of the roadway on the ground that a determination of the equitable rights of the parties was not an appropriate remedy based upon the fact that no estoppel or equitable estoppel was pled, and, since the same had not been pled, the equitable estoppel was waived and based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

10. Alter or amend the Order of October 22, 2010 so as to deny the request for relief of the Plaintiff and deny the closure of the roadway on the ground that the property rights of the DEFENDANTS KELLAHAN AND DUKE, being private easement rights, could not be divested from those Defendants and vested in a third party or in a person or entity, not a party to this action, by the closing of the roadway, based upon the pleadings and the evidence presented, as well as the applicable laws of this state.

11. Alter or amend the Order of October 22, 2010 to find and hold that DEFENDANTS KELLAHAN/DUKE retained their private easement rights on the ground that, based upon the Order that no taking occurred, and therefore if no taking occurred, then the private easement rights of the DEFENDANTS

KELLAHAN/DUKE could not be extinguished, removed or otherwise affected, based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

12. Alter or amend the Order of October 22, 2010 to find and hold that the DEFENDANTS KELLAHAN/DUKE retained their private easement rights on the ground that, since no taking had occurred, and, accordingly, those rights could not be extinguished or transferred to a third party, or to a person or entity, not a party to this action, based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

13. Alter or amend the Order of October 22, 2010 to find and hold that the DEFENDANTS KELLAHAN/DUKE should be compensated in the amount of One Hundred Thousand and No/100 (\$100,000.00) Dollars for their retained private easement rights on the ground that those rights could not be extinguished or transferred to a third party, or to a person or entity, not a party to this action, without just compensation under the Constitutions of the United States and the State of South Carolina, as well as the applicable laws of this state.

STATEMENT OF THE CASE

On November 14, 2005, the Plaintiff filed a Petition for Abandonment and Closure of an area that is called "a portion of Porter Street". Defendant South Carolina Department of Transportation filed an Answer dated December 9, 2005, and Defendant Waccamaw Housing, Inc. filed an Answer dated December 20, 2005, in which both admitted the allegations of the Petition. Defendants Gary W.

Chapman Jr. and Terilyn J. McClary did not file an Answer, and both are thereby in default. Defendants, Lydia F. Duke and Alice F. Kellahan, filed their Answer and Counterclaim on January 18, 2006, requesting that the Petition be dismissed, but if granted, that they be paid just compensation for the closure of the undeveloped portion of Porter Street. The Plaintiff replied to the Answer and Counterclaim of DEFENDANTS DUKE AND KELLAHAN on February 7, 2006.

This matter was referred to the Honorable G. Wells Dickson, Jr. by Order of Reference with Finality by the Honorable Clifton Newman dated December 1, 2005.

The Notice of Intention to File Petition for Abandonment and Closure of a portion of Porter Street of the Town of Kingstree, County of Williamsburg, was published in The News, a newspaper of general circulation in Williamsburg County on October 26, 2005, November 2, 2005, and November 8, 2005.

The Honorable G. Wells Dickson, Jr., Special Referee, received testimony and evidence, as well as the arguments of counsel, at hearings on April 26, 2006 and on April 16, 2007. Other evidence was received thereafter.

The Special Referee issued an Order on October 22, 2010 which granted the relief sought by the Plaintiff. DEFENDANTS KELLAHAN/DUKE timely filed and served their Motion for reconsideration on November 4, 2010.

STATEMENT OF FACTS

1. The area in question, which is the subject of this action, is called a portion of Porter Street by the Plaintiff. The larger tract of land which is between

what is now Ashton Avenue and Nelson Blvd. in the Town of Kingstree was owned by a John T. Nelson and subsequently by his daughter, Marie T. Nelson. The area in question was reserved by the Nelson family as shown on a plat prepared by P. G. Gourdin, Surveyor dated March 1903 and recorded in the office of the Office of the Clerk of Court for Williamsburg County in Plat Book B page 55 (D. Ex. 2)

2. The area that the plaintiff seeks to abandon and close first appeared on a plat prepared for John T. Nelson by Peter G. Gourdin dated March, 1903, recorded in Plat Book "B" page 55. The survey identified twenty (20) lots that were located on the south side of what appeared to be a roadway, but was not designated as a roadway and, in fact, no name or other designation was used to describe that area. That area became known as Ashton Avenue. Lots 13 and 14, as shown on said plat, were subsequently sold by Nelson, and those lots are the two lots that border the area which is the subject of this action.

There is a fifty (50') foot wide area in between lots 13 and 14 on the March 1903 Gourdin plat, which is not designated in any manner. It was obviously reserved for access to the remainder of the Nelson property, but not designated as a street or roadway.

Defendants Alice H. Kellahan and Lydia Duke (DEFENDANTS KELLAHAN/DUKE) purchased a 20.97 acre tract of land from Samuel E. McIntosh adjoining Porter Street by deed dated September 7, 1993 recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book "A- 311" at page 231.

(D. Exhibit 10) At the same time and as part of the acquisition, in order to have access for the development of the property, DEFENDANTS KELLAHAN/DUKE, also acquired a fifty (50) foot easement from Ashton Avenue to Nelson Blvd. along a proposed roadway- Porter Street and the extension of the same to Ashton Ave. from Samuel E. McIntosh, Individually and Executor and Trustee under the Last Will and Testament of Marie L. Nelson, the said easement was dated September 7, 1993 of record in Office of the Clerk of Court for Williamsburg County in Deed Book A-311 at page 235. (D. Ex. 11) When DEFENDANTS KELLAHAN/DUKE purchased the 20.97 acres, they obtained an easement across this 50 foot wide strip which is about 208 feet long, as well as along the area designated as "proposed 50' road" Porter Street, to insure access to the property. A review of this easement and the plat, as referenced in the easement, finds that, although DEFENDANTS KELLAHAN/DUKE received the easement with a width of 50 feet for the entire distance from Nelson Blvd. to Ashton Ave., the last 208 feet are not part of the area designated as "PROPOSED 50' ROAD PORTER STREET." No party, including the PLAINTIFF, has contested the fact that DEFENDANTS KELLAHAN/DUKE have an easement which completely covers the area in question and also extends from Ashton Ave. to Nelson Blvd.

The PLAINTIFF commissioned and received from J. B. Ellis, Jr., Surveyor, dated October 4, 2005, obviously in preparation of this litigation the survey which is an attachment to the Petition and the Published Notice, does not designate the area which is the subject of this action as a "portion of Porter (undeveloped

street)". The survey shows Porter Street coming to, but stopping at, the property which is the subject of this action on the Ellis survey.

DEFENDANTS KELLAHAN/DUKE never acquired the fee simple ownership to the area in question.

At the hearing on April 16, 2007, the Plaintiff introduced deeds to the Town of Kingstree concerning the property in question from Williamsburgh Historical Society dated July 1, 1998 and recorded November 23, 1998 in the Office of the Clerk of Court for Williamsburg County in Deed Book A422 at page 280; from Methodist Oaks in Deed Book A422 at page 290; from Espiscopal Church in Deed Book A422 at page 300; from Connie Maxwell Church Home in Deed Book A423 at page 1; from Epworth Children's Home in Deed Book A423 at Page 11; from Thornwell Home in Deed Book A423 at page 22; from Presbyterian Home of SC in Deed Book A423 at page 236. (P. Ex. 7)

These deeds were subsequent to, and accordingly, subject to the easement to DEFENDANTS KELLAHAN/DUKE. Those conveyances did not remove or defeat the property right of DEFENDANTS KELLAHAN/DUKE.

The Plaintiff's plat that was prepared for this litigation has no written designation of the area in question as a road way or even a proposed road. Likewise, there is no document by the owner of the fee simple title dedicating the area in question to the Town of Kingstree or any other public entity for a road or street. The Plaintiff produced no evidence that the Town of Kingstree or any other public entity ever took control of or maintained the area in question as a

roadway prior to the institution of this litigation. The Plaintiff does seek to reserve an easement for a sewer line.

Michael Kirby, Community Planning and Development Director for the Plaintiff, admitted that the area in question has never been opened or developed as a road, never been paved, and had no documentation of a written dedication of the area in question as a roadway. (Tr.-4/26/2006-p. 20, l. 2 – p. 21,l. 24) Mr. Kirby testified on direct examination that he did not believe that the closure of the area in question would diminish the value of the property owned by DEFENDANTS KELLAHAN/DUKE. However on cross examination, Mr. Kirby admitted it would be reasonable that closure of the area in question would diminish the value of DEFENDANTS KELLAHAN/DUKE'S property due to the fact that one of the means of access (the area in question) would be eliminated.

W. N. Kellahan, Jr. testified that the closure of the area in question would diminish the value of the remainder of the tract of land by \$100,000.00.

The adjoining landowners, who stand to gain property from the action, asked for the closure of the area. Defendant Waccamaw Housing, Inc., the purchaser of the property that was re-zoned as a Planned Unit Development, consented to the relief sought by the Plaintiff by its answer.

The Town Council of Kingstree held a public hearing and at two council meetings agreed that a portion of the 20.97 acre tract purchased by DEFENDANTS KELLAHAN/DUKE be re-zoned from Highway Commercial to Planned Unit Development.

William N. Kellahan, Jr., attended a meeting of the Kingstree Town Council for the first reading of an ordinance to re-zone a portion of DEFENDANTS KELLAHAN/DUKE'S property to allow for a senior housing project was held on January 26, 2004 to voice his support for the project. Senator John Yancey McGill and other community leaders also attended the meeting to also emphasize the need for senior housing in Kingstree. Senator McGill also appeared to offer his assistance in obtaining funds for the paving of Porter Street from Nelson Boulevard to within 208 feet of Ashton Ave. While the ordinance received a first reading, the Kingstree Town Council scheduled a public hearing to allow comment on the re-zoning based upon the request of a member of the Council.

A public hearing was held on February 2, 2004 and, immediately following the public hearing, Kingstree Town Council held a meeting for the second reading of Ordinance 2004-01, Ordinance to Rezone a Portion of Tax Map Property 11-39-11. The Ordinance passed the second reading with the following in the minutes: Porter Street would be blocked on the Ashton Avenue side with a fence to be erected on the Kingstree Recreation Department property line up to the paved portion of Porter Street, that the Developer would fence its property line as well, and Mrs. Kellahan would fence her property line within fifty (50) feet of Highway 377.

Mr. Kellahan was not able to attend the public meeting or the council meeting on February 2, 2004. Senator McGill attended both the public hearing and the subsequent Kingstree Town Council meeting as did Defendant Waccamaw

Housing, Inc. Senator McGill appeared on February 2, 2004 because he believed that there was a need for senior housing in Kingstree. Also, Senator McGill was there to provide support for the use of CTC funds for the paving of Porter Street. Thereafter, CTC provided appropriate funds for the paving of Porter Street from Nelson Boulevard. The paved area is known as Porter Street, but is not a part of the state, county, or any other road system.

At the hearing on April 16, 2007, Senator McGill testified that he did not represent W. N. Kellahan, Jr. or Defendants, Alice H. Kellahan and Lydia Duke. Neither the record of the public meeting nor the minutes of the Town Council meeting, which were both held on February 2, 2004 have any implication or inference that Senator McGill appeared on behalf of W. N. Kellahan, Jr. or DEFENDANTS KELLAHAN/DUKE. Additionally, there is no evidence that any person at the public hearing or council meeting relied on apparent authority of Senator McGill as an agent of W. N. Kellahan, Jr. or DEFENDANTS KELLAHAN/DUKE.

The record does not reflect that the unpaved area, the area in question, has been dedicated or accepted by written instrument.

AUTHORITIES

ARGUMENT I

DEFENDANTS KELLAHAN/DUKE HOLD AN EXPRESS WRITTEN EASEMENT WHICH HAS NOT BEEN ABANDONED.

Neither the Plaintiff, nor any other party, has challenged the fact that

DEFENDANTS KELLAHAN/DUKE have an easement with a width of 50 feet for the entire distance from Nelson Blvd. to Ashton Ave., the last 208 feet are not part of the area designated as "PROPOSED 50' ROAD PORTER STREET." DEFENDANTS KELLAHAN/DUKE acquired the express written easement to secure access to the 20.97 acres. Until the 1993 plat that DEFENDANTS KELLAHAN/DUKE used to purchase the property and delineate the extent and location of the easement, no plat had used the word "street" or "road" or any similar term to describe any portion of the 50 foot easement from Nelson Blvd. to Ashton Ave. No plat to date that is part of the record in this matter has described the area in question-the area between Lots 13 and 14 as a "street" or "roadway". This is why DEFENDANTS KELLAHAN/DUKE obtained the easement.

The easement constitutes a private property right held by DEFENDANTS KELLAHAN/DUKE.

Further, the grant of this easement to Kellahan and Duke was in writing and any abandonment or release of that easement by Kellahan and Duke or of any successor in title would have to be also in writing to satisfy the statute of frauds. The Plaintiff has failed to prove any release or abandonment of this express written easement. In Blue Ridge Realty Co. Vs Williamson 247 SC 112 (SC 1965), the Court held that where lots in a subdivision are sold by reference to a map or plat upon which roads are shown which are or become public highways, the private easement which arises upon such a sale survives the vacation, abandonment, or closing of the road or highway by the public

ARGUMENT II

THERE WAS NEVER A DEDICATION OF THE PORTION OF PORTER STREET THAT THE PLAINTIFF SEEKS TO CLOSE.

The case of Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (S.C., 1997) sets forth the requirements for dedication.

"Two elements are required to perfect dedication. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be acceptance of such property by the public. Helsel v. City of North Myrtle Beach, 307 S.C. 24, 413 S.E.2d 821 (1992). Dedication is an exceptional manner of passing an interest in land and proof thereof must be strict, cogent, and convincing. Mack v. Edens, 320 S.C. 236, 464 S.E.2d 124 (Ct. App. 1995). To have a completed dedication, there must be some form of acceptance of the offer to dedicate. Baugus v. Wessinger, supra; 23 Am. Jur. 2d Dedication § 42 at 38 (1983); Hodge v. Manning, 241 S.C. 142, 127 S.E.2d 341 (1962). The use, repair, and working of the streets by public authorities is a mode of acceptance. Chafee v. City of Aiken, 57 S.C. 507, 35 S.E. 800 (1900). The mere fact the County approved the plat does not constitute an acceptance of the proposed public dedication. S.C. Code Ann. § 6-7-1070 (1976)." Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (S.C., 1997).

The evidence in the record clearly shows that the area in question has never been dedicated for a public roadway or street. A careful examination of the 1993 Kellahan plat together with the written easement, reveals that the 50 feet easement extends the entire distance from Nelson Blvd. to Ashton Ave., the last 208 feet are not part of the area which is designated as "PROPOSED 50' ROAD PORTER STREET."

The plat prepared for John T. Nelson by Peter G. Gourdin dated March, 1903 recorded in Plat Book "B" page 55 reserved for access at four different

places it is significant that from what became Ashton Ave. to the remainder of the Nelson property, none of the four access areas was designated as a street or roadway.

Our Courts have recognized that dedication as an exceptional mode of passing an interest in land and proof of dedication must be strict, cogent and convincing. The act to prove dedication must not be consistent with any other construction other than that of a dedication. State vs. Beach Company, 271SC 2425 248 SE 2nd 115. The Plaintiff has not proved any dedication by written dedication or implied dedication which requires strict, cogent and convincing evidence. The Plaintiff has failed to prove either of two required elements for dedication of a roadway.

ARGUMENT III

THE APPROVAL OF PLAN OR PLAT BY GOVERNMENTAL AGENCY IS
NOT ACCEPTANCE OR DEDICATION OF LAND.

The approval of the land development plan or subdivision plat may not be deemed to automatically constitute or affect an acceptance by the municipality or the county or the public of the dedication of any street, easement, or other ground shown upon the plat. Public acceptance of the lands must be by action of the governing body customary to these transactions. S.C. Code Ann. 6-29-1170.

ARGUMENT IV

THE TOWN OF KINGSTREE DID NOT HAVE A RIGHT TO PETITION TO ABANDON OR CLOSE THE FIFTY (50') FOOT WIDE AREA BETWEEN LOTS 13 AND 14 AS SHOWN ON THE GOURDIN PLAT FOR NELSON IN 1903.

Any right to close the area which the Plaintiff has called Porter Street between lots 13 and 14 or anyone else for that matter, must be derived from a statutory authority. This authority is S.C. Code Ann. §57-9-10 which states in part "any interest person, the state or any of its political subdivisions or agencies may petition the Court of competent jurisdiction to abandon or close any street, road or highway, whether opened or not . . . S.C. Code 57-9-10, 1976, as amended". The operative words in the statute are "street", "road" or "highway". The Plaintiff has failed to prove that the area in question was, at the time of the filing of the Petition, or at any later time, ever a roadway, street or highway. The area in question has never been paved and the Plaintiff has failed to meet the burden of proof of strict, cogent and convincing evidence of the dedication as to the unpaved area. The Plaintiff's own plat, which was obtained for the purpose of this litigation, does not designate the area as a street.

§57-9-20 of the 1976 Code as amended, states that the street, road or highway can be abandoned or closed if the Court determines that it is in the best interest of all concerned. Again, the words street, road or highway are used. The area that is in question has never been used or maintained as a street, road or highway, there has been no dedication and no acceptance by the Town of

Kingstree, and accordingly, neither does the Town of Kingstree nor any other party has the right to use this statute to close the area in question.

Under Title 57, the title under which the Plaintiff seeks to close the area in question our statutory law defines street, roadway or highway as follows:

§57-3-120. Definitions.

For the purposes of this title, the following words, phrases, and terms are defined as follows:

(1) "Highway", "street", or "road" are general terms denoting a public way for the purpose of vehicular travel, including the entire area within the right-of-way, and the terms shall include roadways, pedestrian facilities, bridges, tunnels, viaducts, drainage structures, and all other facilities commonly considered component parts of highways, streets, or roads. §57-3-120, 1976 Code, as amended

ARGUMENT V

THE PLAINTIFF HAS FAILED TO PROVE THAT THE AREA IN QUESTION IS NOT SUBJECT TO THE EASEMENT OF DEFENDANTS KELLAHAN/DUKE.

The Town of Kingstree has received deeds for the area in question for lots 13 and 14 on July 11, 1998, after the grant of the easement to the Plaintiff. This conveyance had to be subject to the easement rights of DEFENDANTS KELLAHAN AND DUKE.

In the case of Hoganboon vs. The City of Beaufort 315 SC 306, 433 SE 2nd 875, the South Carolina Court of Appeals stated that under § 57-9-20, the court cannot divest a property owner of legal title under § 57-9-20 and vest it in another, but merely declare who owns title according to the law. The court also

recognized that while a municipality can acquire a fee simple title to the property in the case of the dedication, the municipality acquires merely a right of passage and title remains with the landowner who initially dedicated the property to public use. If the municipality abandons the right of passage then the fee simple interest becomes unencumbered in the original land owner.

DEFENDANTS, KELLAHAN/DUKE are entitled to their easement rights. If this Court finds that the Town of Kingstree is entitled to the taking of those easement rights under §57-9-10, et sequi, DEFENDANTS, KELLAHAN/DUKE are entitled to compensation.

ARGUMENT VI

THE PLAINTIFF HAS FAILED TO PROVE THAT IT IS IN THE BEST INTEREST OF ALL CONCERNED THAT THE AREA IN QUESTION BE CLOSED.

The 20.97 acre tract was acquired by DEFENDANTS, KELLAHAN/DUKE for commercial development and the acquisition and development was predicated on access to said property along Porter Street with ingress and egress being available on both Ashton Avenue and Nelson Boulevard. §57-9-20, of the 1976 South Carolina Code of Laws requires that the court determine “that it is in the best interest of all concerned” that the street, road or highway be abandoned. An important consideration should be the fact that the property was acquired by DEFENDANTS KELLAHAN/DUKE for investment purposes. The elimination of a means of access will negatively impact the subdivision of the property and the access to various parcels, as well as negatively impact the value of the property of

DEFENDANTS KELLAHAN/DUKE. It is clearly not in the best interest of all parties that they be deprived of a means of access, and particularly, to the holder of a valid easement. The relief sought by the Town would only benefit the property owners on Ashton Ave and could create a situation where if you had a event like the Pig Picking festival, baseball tournament or other functions at the Recreation center, emergency vehicles could not get through including EMS vehicles in route to the Williamsburg County Hospital.

The evidence provided by the Plaintiff to comply with §57-9-20 to support the premise that it would be in the best interest of all concerned is primarily and exclusively from the individuals who were the adjoining land owners and who would benefit by receiving title to a portion of the area that was to be closed. Defendant Waccamaw Housing, Inc. consented to the relief, but it must be noted that Defendant was present at the public meeting on February 2, 2004 and the Town Council meeting on the same date. Defendant Waccamaw Housing, Inc. benefitted directly from the closure and re-zoning.

ARGUMENT VII

THE PLAINTIFF FAILED TO EITHER ALLEGE OR PROVE ANY AGENCY OR ESTOPPEL THAT WOULD BIND DEFENDANTS KELLAHAN/DUKE TO THE ACTION BY THE TOWN COUNCIL ON FEBRUARY 2, 2004.

It appears that the Order of October 22, 2010 has, as part of its basis, the premise that DEFENDANTS KELLAHAN/DUKE would be estopped to object to the closing of the area in question based upon their easement and their sale of the

portion of their property to the Defendant Waccamaw Housing, Inc. Also, the Order has as its basis in part that there was an agency relationship between Senator McGill and DEFENDANTS KELLAHAN/DUKE.

The Plaintiff did not plead or prove any agency by Senator McGill or equitable estoppel. Equitable estoppel is in the nature of an affirmative defense and must be pled or it is waived. Rule 8(c) South Carolina Rules of Civil Procedure. Plaintiff has failed to allege equitable estoppel in its pleadings and as such may not assert it at trial.

DEFENDANT KELLAHAN/DUKE maintain that the failure to pled equitable estoppel constitutes a waiver, but, without waiving their rights, maintained that the Plaintiff has made no showing that Senator McGill was acting as an authorized agent of the Defendant's, Kellahan and Duke in attending the meeting to close the street and had no authority to bind them. American Jurisprudence 2nd Estoppel & Waiver Sec 57

The elements which must be proven to establish apparent agency are: (1) purported principal consciously or impliedly represented another to be his agent; (2) third party reasonably relied on the representation; and (3) third party detrimentally changed his or her position in reliance on the representation." R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 540 S.E.2d 113, 118 (2000).

As to the burden of proof, the party asserting the agency as a basis of liability has the burden of proving the existence of the agency. Vereen v. Liberty

Life Ins. Co., 306 S.C. 423, 412 S.E.2d 425, CT APP. (1991). Additionally, agency must be clearly established by the facts. McCall v. Finley, 294 S.C. 162, S.E.2d 26 (CT.APP) (1987) (Citing Paramount Fund, Inc. v. Cusaac, 282 S.C. 497, 319 S.E.2d 354 (CT. APP) (1984).

The failure to either pled or prove the equitable estoppel or any agency relationship between Senator McGill and DEFENDANTS KELLAHAN/DUKE prevents the Plaintiff from binding DEFENDANTS KELLAHAN/DUKE to any action taken by the Kingstree Town Council on February 2, 2004.

An essential element of estoppel is that any injury claimed must be actual, material and substantial. "Broadly speaking, injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel or estoppel in pais. Since the function and purpose of the doctrine of estoppel are the prevention of fraud and injustice, there can be no estoppel when there is no loss, injury, damage, judgment, prejudice to the party claiming it, moreover, the injury or prejudice involved must be actual and material or substantial and not merely technical or formal" American Jurisprudence 2nd Estoppel & Waiver Sec 78. In the present case, it was clearly established by testimony that the property owned by the DEFENDANTS KELLAHAN/DUKE was previously zoned Highway Commercial, which is the least restrictive use of the property and can be used for almost any legal purpose. The re-zoning reclassified the property as a Planed Unit Development (PUD) classification, which is far more restrictive as to use. The testimony was that the residents of Ashton Avenue were

concerned with traffic through the neighborhood and the reclassification to a PUD classification would serve to limit the traffic in the area that might otherwise exist under a Highway Commercial use and, as such, the Plaintiff has failed to prove any actual or material injury that would justify applying equitable estoppel.

Under the state's Eminent Domain Law no private property right may be taken without compensation. South Carolina recognizes the doctrine of inverse condemnation, whereby owners may suffer a taking as a result of a change in access to their property. This doctrine is recognized in the City of Rockhill vs. Cothran, 209SC 357 40 SE 2nd 239, cited in the Court of Appeals decision in Harden vs. SCAPT. 359 SC 244 597 SE 2nd 814. The property was acquired by DEFENDANTS KELLAHAN/DUKE for commercial development and the acquisition and development was predicated on access to said property along Porter Street with ingress and egress being available on both Ashton Avenue and Nelson Boulevard. DEFENDANTS KELLAHAN/DUKE have established by uncontroverted testimony that special injury will occur to their property if their access to Porter Street is terminated and they are entitled to recover damages for such injury.

DEFENDANTS KELLAHAN/DUKE easement rights cannot be taken without just compensation.

CONCLUSION

The Plaintiff has failed to prove that the area in question, which it seeks to close, was ever a street, road or highway. Since there was not an express dedication of the area in question as a street, road or highway, the Plaintiff has

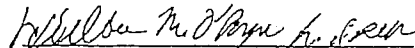
also failed to prove by strict, cogent and convincing evidence that there was a dedication. DEFENDANTS KELLAHAN/DUKE have easement rights of the strongest nature since they were established expressly, by written instrument. The Plaintiff failed to plead or establish estoppel. Likewise, the Plaintiff failed to establish any apparent authority that Senator Yancey McGill was the agent of DEFENDANTS KELLAHAN/DUKE or that any party relied upon any apparent authority that Senator McGill was their agent. Finally, DEFENDANTS KELLAHAN/DUKE are entitled to their easement rights. If the closure of this area is allowed and ordered by the Court, these Defendants are entitled to full compensation of these easement rights in the amount of One Hundred Thousand and No/100 (\$100,000.00) Dollars for the unjust and unconstitutional taking of their property rights without just compensation.

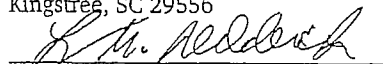
Based upon the forgoing, DEFENDANTS KELLAHAN/DUKE are entitled to have the Order of this Court dated October 22, 2010 altered and amended as to each of the thirteen (13) specific grounds as set forth above and as set forth in this memorandum.

Respectfully submitted,

March 8, 2011

Kingstree, SC


WILLIAM M. O'BRYAN, JR.
O'BRYAN & O'BRYAN
P. O. Box 1105
Kingstree, SC 29556


LARRY G. REDDECK
NETTLES, TURBEVILLE & REDDECK
P. O. Box 699, Lake City, SC 29560
(843) 374-8511

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	CASE NO: 2005-CP-45-434
Town of Kingstree, a Body	)	
Corporate and Politic,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE BY MAIL
	)	
Gary W. Chapman, Jr., Terilyn J.	)	
McClary, Waccamaw Housing,	)	
Inc., Lydia F. Duke, Alice H.	)	
Kellahan and South Carolina	)	
Department of Transportation.	)	
	)	
Defendants.	)	
	)	

PERSONALLY APPEARED BEFORE ME Lynn S. Keefe, who first being duly sworn, deposes and says: That she is a Secretary for Nettles, Turbeville and Reddeck, attorneys for the Defendants Alice H. Kellahan and Lydia F. Duke in this matter; that on March 8, 2011, a copy of the attached Memorandum in Support of Motion to Alter or Amend Judgment pursuant to Rule 59(e) and Rule 60, SCRCP of Defendants Lydia F. Duke and Alice H. Kellahan, dated March 8, 2011 was placed in an envelope, with first-class postage prepaid, and mailed to:

Ernest J. Jarrett
Jenkinson, Jarrett &
Kellahan
PO Box 669
Kingstree, SC 29556

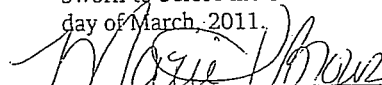
Nate Fata
Waccamaw Housing, Inc.
PO Box 16620
Surfside Beach, SC 29587

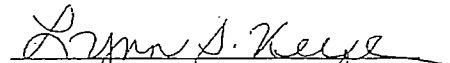
Barbara M. Wessinger
SC Dept. of Transportation
PO Box 191
Columbia, SC 29202-0191

Terilyn J. McClary
4835 Renaissance Ridge Rd.
Apt 436
Charlotte, NC 28217-2563

Gary W. Chapman, Jr.
400 Ashton Avenue
Kingstree, SC 29556

Sworn to before me this 8th
day of March, 2011.

 (LS)
Notary Public for S.C.
My Commission Expires: 12/20/15


Lynn S. Keefe

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO: 2005-CP-45-434

Town of Kingstree, a Body)
Corporate and Politic,)
)
Plaintiff,)

vs.)

REPLY MEMORANDUM IN SUPPORT
OF DEFENDANTS LYDIA F. DUKE
AND ALICE H. KELLAHAN'S MOTION
FOR RECONSIDERATION

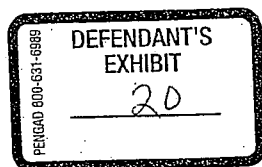
Gary W. Chapman, Jr., Terilyn J.)
McClary, Waccamaw Housing)
Inc., Lydia F. Duke, Alice H.)
Kellahan and South Carolina)
Department of Transportation.)
)
Defendants.)

TO: ERNEST J. JARRETT, ESQUIRE, ATTORNEY FOR TOWN OF KINGSTREE; GARY W. CHAPMAN, JR., PRO SE; TERILYN J. MCCLARY, PRO SE; NATE FATA, ESQUIRE, ATTORNEY FOR WACCAMAW HOUSING, INC. AND BARBARA WESSINGER, ESQUIRE, ATTORNEY FOR S.C. DEPT OF TRANSPORTATION

Defendants Lydia F. Duke and Alice H. Kellahan would respectfully submit the following Memorandum in reply to the Memorandum in Opposition submitted by the Town of Kingstree to support these Defendant's Motions to Alter and Amend pursuant to Rule 59(e) and 60 of the South Carolina Rules of Civil Procedure.

SUPPLEMENTAL FACTS

The Petitioner admitted the existence and the validity of Defendants Duke and Kellahan easement (Defendants Duke and Kellahan, Ex. No. 11) in its Petition. (Page 2, Paragraph 2, Line 3-4) The statement is clear, unequivocal and without qualification.



ARGUMENT I

DUKE AND KELLAHAN EASEMENT FROM MCINTOSH

The Plaintiff has attempted, throughout its Memorandum in Opposition, to argue that the easement from McIntosh to Duke and Kellahan is void because the road had already been dedicated to public use. The Plaintiff, in its Petition, specifically states that Defendants, Duke and Kellahan, have an easement. The statement is clear, unequivocal and without any qualification. There is no testimony, no other pleading or any other action by the Plaintiff to retract this admission in any manner.

Additionally, the Town of Kingstree obtained deeds for a portion of the Nelson property which included, the road bed for Porter Street as a separate tract, also received a deed for the area in question with legally binding notice that there was an easement on record (Pl. Ex. 7).

The language of the McIntosh easement does not mandate or create a dedication, but only suggests cooperation in making the area a public road. The easement in and of itself is strong evidence that no dedication had occurred.

The language of the easement from Samuel McIntosh makes reference to the area in question as a "proposed road or street" throughout the entire document. As to the use at the time the easement was granted in 1993, the grantor and grantees agreed:

"It is deemed to the mutual benefit and interest of the said Alice H. Kellahan and Lydia F. Duke and Samuel E. McIntosh as Personal Representative and Trustee under the Last Will and Testament of Marie L. Nelson, deceased, that said proposed fifty (50) foot road or street should be opened and remain open for the mutual use and benefit of the owners of the lands of the Estate of Marie L. Nelson now held in trust and the owners of the twenty and ninety-seven hundredths (20.97) acres this day conveyed to the Alice H. Kellahan

and Lydia F. Duke.” (Defendants Duke and Kellahan, Ex. No. 11)

As to the future use the McIntosh easement stated:

“Whereas the parties have agreed that efforts should be made to have said street opened and used for their benefit and members of the public who may need to use the same (Defendants Duke and Kellahan, Ex. No. 11).

The easement also stated:

The grantor does agree that the grantee, their heirs or assigns may take such steps to make such improvements as may be necessary to have said street or road opened and maintained as a public street or road and that grantor will assist in such endeavor and that said street or road when opened shall be for the mutual use and benefit of the owners of property lying on either side of the same.” (Defendants Duke and Kellahan, Ex. No. 11).

The testimony provided indicates that neither the Town of Kingstree or any other entity had taken any action to accept that property is a roadway or to actually maintain it. W.N. Kellahan, Jr. testified that he could find that there was no indication that any governmental entity had the roadway in its system, especially the South Carolina Department of Transportation. Again, the area of Porter Street which concerns this action has not been paved and was only reserved as access to the remainder of the Nelson property.

ARGUMENT II

The Plaintiff's argument that the easement from Samuel McIntosh to Defendants Duke and Kellahan was an express written dedication is absurd. The language of the easement cited in the supplemental facts above clearly states that the road is proposed and Defendants Duke and Kellahan can take such action to have it made a public road and that the Grantor would cooperate. It is elemental that an entire document must be read to

obtain its full meaning. The three areas for the use of the area in question in the easement clearly reflect two things:

1. The easement is for the benefit of the both the Grantor and the Grantees of Samuel McIntosh, as well as, Defendants Duke and Kellahan and their heirs and assigns for them to have access to their respective parcels of property.

2. The easement deals with the future use. Additionally, the argument that the paving of the area up to the senior citizens facility certainly indicates where the area has occurred, there is dedication, but, until that time, there was no real evidence of dedication and just because a portion of that property was paved does not mean that the other part was dedicated.

It should also be noted that the Plaintiff's argument that the easement to Defendant's Duke and Kellahan that was void (which these Defendants deny), and it is so crystal clear to the Plaintiff that the dedication had already occurred (which is most strongly denied by the Defendants Duke and Kellahan), then the Town of Kingstree would not have needed to purchase the area in question. Those deeds would be void also (Pl. Ex. No. 7). That is just not the case. The Town of Kingstree purchased the property subject to the Duke and Kellahan easement.

The public may acquire a prescriptive easement from the use of property for a roadway or a street but for dedication to occur, there must be some action by a public entity (SC Code Ann. § 6-29-1170).

ARGUMENT III

NOT ENTITLED TO ESTOPPEL

W.N. Kellahan, Jr. testified that Senator McGill was not authorized to take any action for him. (Tr. 4/26/006, P. 64 lines 7-13) Senator McGill's testimony clearly states that he did not represent Defendants, Duke and Kellahan or W.N. Kellahan, Jr. (Tr. 4/16/07, Pp. 2-3)

There is no evidence in the record to show that anyone thought that Senator McGill was acting as agent for Defendants Duke or Kellahan or W.N. Kellahan, Jr. at meetings on February 2, 2004. W.N. Kellahan, Jr. testified on cross-examination (TR. 4/26/06, P. 72 line 4) that Senator McGill attended Town meeting to represent "his interest", not that of Alice Kellahan or Lydia Duke.

At the time Defendants Duke and Kellahan purchased the property, some research was and there was no evidence that Porter Street was public road, it was not maintained by City, was primarily grown up in broom straw. (Tr. 4/26/06, P. 60 & 61.

The Plaintiff's argument concerning apparent authority and estoppel should be rejected. As an affirmative defense, estoppel must be pled or it is waived. There has been no motion to conform the pleadings to the proof. Additionally, in order to allow such an amendment, there must be proof to which the pleadings can be conformed. There has been no showing of any action by Defendants Duke or Kellahan or W.N. Kellahan, Jr. on their behalf to the Plaintiff, the Kingstree Town Council or any third other person at the public hearing or council meeting on February 2, 2004, that Senator Yancey McGill was acting on their behalf as their agent. This is an essential and required element of apparent authority.

(R&G Construction, Inc. vs. Low Country Regional Transportation Authority, 343 SC 424, 540 SE2d 113 2000). The burden of proof is upon the Plaintiff to show this agency and the Plaintiff has failed to have any evidence of representation by Defendants Duke or Kellehan or W.N. Kellahan, Jr. that Senator Yancey McGill was their agent at the hearing and public meeting.

An essential element of estoppel is that any injury claimed must be actual, material and substantial. "Broadly speaking injury, detriment, or prejudice to the party claiming the estoppel in pais. Since the function and purpose of the doctrine of estoppel are the prevention of fraud and injustice, there can be no estoppel when there is no loss, injury, damage, judgment, prejudice to the party claiming it moreover, the injury or prejudice involved must be actual and material or substantial and not merely technical or formal." *"American Jurisprudence 2nd Estoppel & Waiver.*

The Plaintiff has made no showing of injury in order to invoke the application of estoppel.

The only testimony that W.N. Kellahan, Jr. gave concerning Senator McGill's action at the meeting and hearing was to represent him and testified specifically that he did not send him with any authority. Senator McGill also confirmed the fact that he did not have any authority to act on the behalf W.N. Kellahan, Jr. or Defendants Duke or Kellahan.

The Plaintiff is trying to "Bootstrap" agency, and apparent authority to its petition and to those claims, it is trying to "Bootstrap" estoppel. This is prohibited.

In the case of Collins Entertainment, Inc. v. White, 363 S.C. 546; 611 S.E.2d 262(S.C.App.,2005) the Court stated:

Appellants assert the issue of estoppel was raised in the pleadings under the arguments for breach of contract accompanied by a fraudulent act. We disagree and find that estoppel must be affirmatively pled as a defense and cannot be bootstrapped onto another claim. See Rule 8, SCRPC; *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 929 (Ct.App.1994) (finding estoppel is an affirmative defense). *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262(S.C.App.,2005)

Additionally the *Collins* Court held:

As we found above, Appellants failed to plead estoppel as an affirmative defense and the court properly denied their motion to include it as a defense. Additionally, laches is an affirmative defense which must be specifically pled. *Rule 8(c), SCRPC*. The failure to plead an affirmative defense is deemed a waiver of the right to assert it. E.g., *Adams v. B & D, Inc.*, 297 S.C. 416, 419, 377 S.E.2d 315, 317 (1989). Accordingly, we find the trial court properly refused to dismiss Collins' claims under either theory. *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262(S.C.App.,2005)

ARGUMENT IV
THE TAKING OF PROPERTY RIGHTS ENTITLES DEFENDANT DUKE AND KELLAHAN
TO COMPENSATION

The March 1903 plan for John T. Nelson plan did not designate the (50') foot wide area in between Lots 13 and 14 in any manner. It was not designated as a street or road.

Duke and Kellahan counterclaimed for taking of a property right stated a claim inverse condemnation. The property right sought to be taken was a fifty (50) easement granted to Defendants Duke and Kellahan by a written easement dated September 7, 1993 from Samuel E. McIntosh recorded in Deed Book A-311 at page 235.

The property has not been paved and has not been dedicated to public use. Defendants Duke and Kellahan had a valid easement that the Plaintiff admitted was valid in its pleadings. The Plaintiff cannot now disavow that admission in this case. The area that is in question is not paved.

Under the laws and the Constitution of our state and the Constitution of The United States, no private property may be taken without just compensation.

Under the Eminent Domain Law no private property right may be taken without compensation. South Carolina recognizes the doctrine of inverse condemnation, whereby owners may suffer a taking as a result of a change in access to their property. This doctrine is recognized in the *City of Rockhill vs. Cothran*, 209SD 357 40 SE2d 2369, cited in the Court of Appeals decision in *Harden vs. SCAPT*, 359 SC 244 597 SE2d 814. The property was acquired by Defendants Duke and Kellahan for commercial development and the acquisition and development was predicated on access to said property along Porter Street with ingress and egress being available on both Ashton Avenue and Nelson Boulevard. The Defendants Duke and Kellahan have established by uncontroverted testimony that special injury will occur to their property if their access to Porter Street is terminated and they are entitled to recover damages for such injury in the amount of One Hundred Thousand and no/100 (\$100,000.00) Dollars.

ARGUMENT V CLOSURE NOT IN THE BEST INTEREST OF ALL CONCERNED

Section 57-9-20 of the S.C. Code of Laws 1976 as amended, requires that the closing of a street must be in the best interest of all concerned. Clearly, the closing of the street is not in the best interest of Defendants Duke and Kellahan. The only people that really benefit from the closing are the owners of the property on Ashton Avenue that will receive an additional twenty-five (25') feet of property. The only Town of Kingstree citizens who testified, Defendants Gary W. Chapman, Jr. and Terilyn J. McClary, no longer own Lots 13

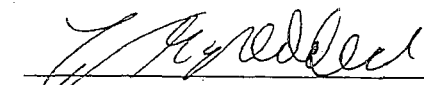
or 14. The need for emergency vehicles to have an alternative exit from Nelson Boulevard and the recreational center will benefit the people of the Town of Kingstree by having that area open, closing that access would be to the detriment of many more people than those who could claim an injury. The close proximity of the hospital and other medical providers on Hwy. 377 and Nelson Blvd. makes the closure detrimental to the citizens of the town and county.

CONCLUSION

Based upon the foregoing and the memorandum originally provided by Defendants Duke and Kellahan which is incorporated herein by reference, the Defendants respectfully requests the Court to reconsider its Order and grant the relief as requested in these Defendants' Motion.

Lake City, S.C.

March 28, 2011


Larry G. Reddeck

NETTLES, TURBEVILLE & REDDECK

Post Office Box 699

Lake City, S.C. 29560

(843) 374-8511

Attorneys for the Defendants

William M. O'Bryan, Jr.

O'BRYAN & O'BRYAN

Post Office Box 1105

Kingstree, SC 29556

(843)-355-7471

Attorney for the Defendants

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG) THIRD JUDICIAL CIRCUIT
10 SEP 24 PM 1:14
2005-CP-45-434

Town of Kingstree, a Body)
Corporate and Politic,)
) PLAINIFF,)
) VS.) AFFIDAVIT OF ROBERT E. EATON
) AND SHARON M. EATON, TRUSTEES

Gary W. Chapman, Jr., Terilyn J.)
McClary, Waccamaw Housing,)
Inc., Lydia F. Duke, Alice H.)
Kellahan and South Carolina)
Department of Transportation,)
) DEFENDANTS.)

A CERTIFIED TRUE COPY
Carolyn Williams
CAROLYN A. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

PERSONALLY appeared before me, Robert E. Eaton and Sharon M. Eaton, who after being duly sworn, do depose and state as following:

1. We are the current owners of the property as Trustees, under the EATON LIVING TRUST dated November 14, 2008, designated as Tax Map No. 11-038-010, located on Ashton Avenue in the Town of Kingstree, County of Williamsburg, State of South Carolina, which is bounded on Porter Street on the Eastern side of property.
2. We are aware that the Town of Kingstree has filed an action as indicated above, wherein the Town seeks to close a portion of Porter Street, essentially beginning at the Recreation Center property and extending to Ashton Avenue for a distance of 208.53 feet. We are fully in favor of the Town's petition to close the road and agree to accept the portion designated as Tract No. 2 on the map entitled "Surveyed and Divided as Requested by: Town of Kingstree" made by J. B.

Jr., L.L.S., dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Book 47 at page 140, a copy of which is attached hereto and incorporated herein by reference, and agree for the Tract to be merged with our property.

3. We understand by accepting this, we will have to maintain this property and it will be added to our property in the tax rolls for Williamsburg County.

4. We gladly accept this property in exchange for this portion of Porter Street to be closed.

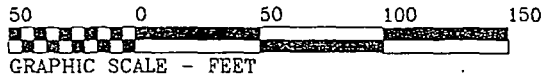
SWORN to before me, this 23rd
Day of September, 2010

EATON LIVING TRUST DATED
NOVEMBER 14, 2008

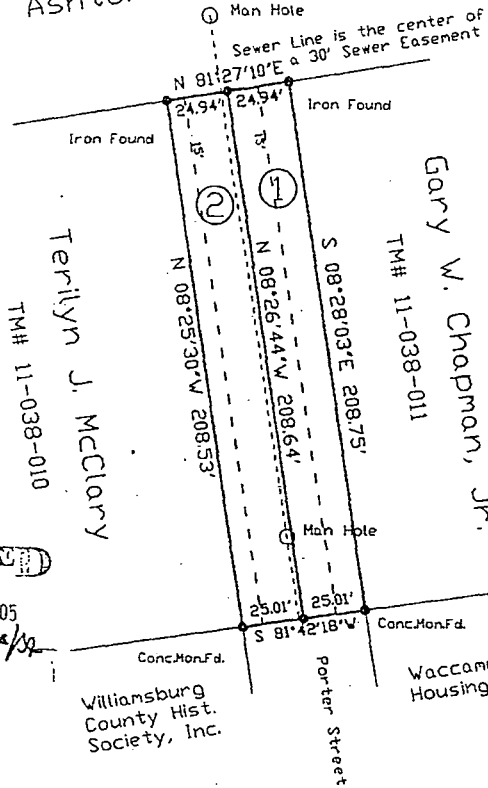
BY: [Signature]
Robert E. Eaton, Trustee

BY: [Signature]
Sharon M. Eaton, Trustee

[Signature] (SEAL)
NOTARY PUBLIC OF SOUTH CAROLINA



Ashton Avenue 60'



Parcels are
0.120 Acre Each.

APPROVED

OCT 11 2005

Wm. Handley

THIS PROPERTY DESIGNATED AS *Split*
DIST. *11* MAP *238* PARCEL *212*
ON WILLIAMSBURG COUNTY TAX MAPS.
SPLIT FROM *one acre*
Bluff Springs 100 10/11/05
JAMES COUNTY TAX ASSESSOR

State of South Carolina
County of Williamsburg
Tax Parcel: 11-038-

Surveyed: October 4, 2005

000003524
RECORDED 10/11/2005 11:42:03AM
Bk:00047 Ps:00140 Pages:1
Williamsburg County, SC
Clerk of Court
Carolyn F. Williams

Surveyed and Divided
As Requested By:

Town of Kingstree

J.B. Ellis, Jr.

J.B. Ellis, Jr.
LLS 13849

415 East Main Street
Kingstree, SC
843-355-6872

I hereby certify that this boundary
survey was prepared in accordance
with the South Carolina Minimum Standards
Manual and meets or exceeds the require-
ments there in.

KING3647

A 3647

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG) THIRD JUDICIAL CIRCUIT

10 SEP 24 PM 1:14 2005-CP-45-434

Town of Kingstree, a Body)
Corporate and Politic,)

PLAINTIFF,)

VS.)

AFFIDAVIT OF HARTWELL
PENDERGRASS AND HATTIE
PENDERGRASS

Gary W. Chapman, Jr., Terilyn J.)
McClary, Waccamaw Housing,)
Inc., Lydia F. Duke, Alice H.)
Kellahan and South Carolina)
Department of Transportation,)

DEFENDANTS.)

A CERTIFIED TRUE COPY
[Signature]
CAROLYN A. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

PERSONALLY appeared before me, Hartwell Pendergrass and Hattie Pendergrass, who after being duly sworn, do depose and state as following:

1. We are the current owners of the property designated as Tax Map No. 11-038-011, located on Ashton Avenue in the Town of Kingstree, County of Williamsburg, State of South Carolina, which is bounded on Porter Street on the Western side of property.
2. We are aware that the Town of Kingstree has filed an action as indicated above, wherein the Town seeks to close a portion of Porter Street, essentially beginning at the Recreation Center property and Waccamaw Housing property and extending to Ashton Avenue for a distance of 208.75 feet. We are fully in favor of the Town's petition to close the road and agree to accept the portion designated as Lot No. 1 on the map entitled "Surveyed and Divided as Requested by: Town of Kingstree" made by J. B. Ellis, Jr., L.L.S., dated October 4, 2005, and

recorded in the Office of the Clerk of Court for Williamsburg County in Book 47 at page 140, a copy of which is attached hereto and incorporated herein by reference, and agree for the Tract to be merged with our property.

3. We understand by accepting this, we will have to maintain this property and it will be added to our property in the tax rolls for Williamsburg County.

4. We gladly accept this property in exchange for this portion of Porter Street to be closed.

SWORN to before me, this 24th
Day of September, 2010

Hartwell Pendergrass
Hartwell Pendergrass

James R. May (SEAL)
NOTARY PUBLIC OF SOUTH CAROLINA

Hattie Pendergrass
Hattie Pendergrass



① Man Hole
Sewer Line is the center of
a 30' Sewer Easement

24.94' 24.94'

Iron Found

Terilyn J. McClary
TM# 11-038-010

Gary W. Chapman, Jr.
200-011

Parcels are
0.120 Acre Each.

APPROVED

OCT 11 2005

WM Chandler Ds/Sz

Conc. Mon. Fd

Williamsburg
County Hist.
Society, Inc.

Man Hole

Conc. Mon. Fd

Waccamaw
Housing, Inc.

THIS PROPERTY DESIGNATED AS 011 (2011)
DIST. 11 MAP 038 PARCEL 012 (2012)

SPILT FROM ~~401~~ - sunbend street
 by Jeff L. J. 10/11/05
 ... AND COUNTY TAX ASSESSOR

State of South Carolina
County of Williamsburg

Tax Parcel: 11-038-

Surveyed: October 4, 2005

000003524
RECORDED 10/11/2005 11:42:03AM
Ek:00047 Pg:00140 Pages:1
Williamsburg County, SC
Clerk of Court
Carolyn F. Williams

Surveyed and Divided
As Requested By:

Town of Kingstree

J.B. Ellis, J

J.B. Ellis, Jr
LLS 13849

415 East Main Street
Kingstree, SC
843-355-6872

I hereby certify that this boundary survey was prepared in accordance with the South Carolina Minimum Standards Manual and meets or exceeds the requirements there in.

KING3647

A 3647

LAW OFFICES
NETTLES, TURBEVILLE & REDDECK

P. O. BOX 699
261 KELLEY STREET
LAKE CITY, SOUTH CAROLINA 29560

E. LEROY NETTLES
ELBERT K. TURBEVILLE
LARRY G. REDDECK
MARIAN D. NETTLES

843-374-8511
843-493-2221
FAX: 843-374-3211

June 24, 2011

The Honorable G. Wells Dickson, Jr.
Post Office Box 819
Kingstree, SC 29556
ktree@wellsdickson.com

IN RE: Town of Kingstree vs. Gary W. Chapman, Jr., et al.
Case No: 2005-CP-45-434

Dear Judge Dickson:

From my review of your instructions at the closing of the hearing on March 29, 2011 with Monty O'Bryan, we understood that you wanted each side to respond with any additional information for your consideration. As you instructed, Monty O'Bryan and I are providing this correspondence in response to the hearing. The following is respectfully submitted for the Court's consideration.

As you instructed, I am responding with several matters that we believe to be important:

- I. Dedication of the area between Lots 13 and 14 that the Plaintiff calls Porter Street.
 - A. The 1903 plat by Peter Gourdin is not a dedication of the area as a street.
 - B. The Plaintiff has failed to prove by clear, cogent and convincing evidence that there was any dedication of the area between Lots 13 and 14.
 - C. The paving of the area from Nelson Blvd. to the Senior Citizens Housing in no way indicates any dedication of the area the Plaintiff seeks to close.
 - D. There is an unpaved area (about 50 to 75 ft.) between the paving to the Senior Citizens Housing and the area that the Plaintiff seeks to close.
 - E. The paving of the area which is not being closed should not have any affect on or be used as any evidence of dedication of the part the Plaintiff seeks to close.

- F. In 1998, the Plaintiff received deeds for five tracts of land, which included the area that the Plaintiff desires to close. The deeds and the plats evidence the fact that the transfer to the Plaintiff was subject to Defendants Kellahan/Duke easement for access to Ashton Ave.
- G. The area that the Plaintiff seeks to close has never been in any city, county or state road system.

II. The Plaintiff is not entitled to close the area under S.C. Code §57-9-10, et seq.

- A. Since there was never any dedication of the area as a road, the S.C. Code §57-9-10, et seq. is inapplicable.
- B. The closure of any roadway must be in the best interest of all concerned, a public interest. This is not the case in this matter.
 - 1. The *First Baptist Church of Mauldin v. City of Mauldin*, (S.C., 1992), 308 S.C. 226, 417 S.E.2d 592 clearly states that there can be no consideration for private rights or interest in taking action to close a road. In this matter, the adjoining land owners desire to limit traffic and based on that desire, the Town Council's refused to rezone the property without those personal interests being served. The test from the First Baptist Church of Mauldin case, "it must appear clearly that no consideration other than that of public interest could have prompted the action". The action to close the road by the Plaintiff had, as a major and primary consideration, the interest of individuals.
 - 2. The access to the remainder of the property is limited and closure is not in the best interest of the public as whole, given the proximity of the hospital.

III. The Plaintiff has failed either to plead or prove estoppel, or agency as to Senator Yancey McGill.

The Defendants Kellahan/Duke never held Senator McGill out to others as their agent. Senator McGill denied that he was acting on behalf of Defendants Kellahan/Duke. There is no testimony in the record that any person at the public hearing or at either Kingstree Town Council meeting that Senator McGill was acting on behalf of the Defendants. There is no evidence of any injury to the Plaintiff by any representation made by Senator McGill.

The Honorable G. Wells Dickson, Jr.
June 24, 2011
Page 3

IV. Defendants Kellahan/Duke's easement rights and taking of rights.

- A. Defendants Kellahan/Duke have easement rights that survive any closure of the area. Those rights predate and are superior to any rights of the public or the Plaintiff.
- B. Under the cases of Hardin v. SCDOT, 371 S.C. 598, 641 S.E.2d 437 and Carolina Chloride, Inc. v. SCDOT, 391, S.C. 429, 706 S.E.2d 501 it is the taking of an easement right as the Plaintiff is compensable. The only testimony as to the value of the taking of the easement right was testimony by W.N. Kellahan, Jr.
- C. The closure of the area in question deprives the Defendant of their access easement to Ashton Ave. Mr. Kellahan testified that the damage for the loss of the access was One Hundred Thousand and No/100 (\$100,000.00) Dollars. This testimony is uncontroverted. Since the easement of Defendants Kellahan/Duke has been taken by this litigation for over 5½ years, the Defendants Kellahan and Duke are entitled to full compensation of One Hundred Thousand and No/100 (\$100,000.00) Dollars. Even though the area should be reopened, the Defendants Kellahan/Duke should be entitled to their compensation due to this taking.
- D. While the closure of the road should be denied, the action by the Plaintiff was a compensable taking and continues to be.

I have attached copies of the Hardin, Carolina Chloride and First Baptist Church of Mauldin cases. We are also attaching an Order for the Court's consideration.

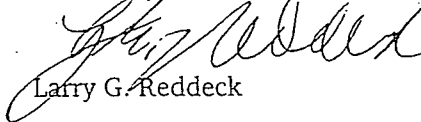
I will be glad to provide any other information or response. Thank you for considering this matter.

By copy of this letter, I am forwarding copies to Ernie, Mandy and Monty. If anyone needs to be sent a copy, please inform me.

With kind regards, I am,

Very truly yours,

NETTLES, TURBEVILLE AND REDDECK



Larry G. Reddeck

LGR/lsk
Enclosures

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	CASE NO. 2005-CP-45-434
TOWN OF KINGSTREE, A BODY CORPORATE	)	
AND POLITIC,	)	
PLAINTIFF,	)	
	)	ORDER GRANTING DEFENDANTS
vs.	)	DUKE AND KELLAHAN'S MOTION
	)	FOR RECONSIDERATION AND TO
GARY W. CHAPMAN, JR., TERILYN J.	)	ALTER AND AMEND THE ORDER OF
MCCLARY, WACCAMAW HOUSING, INC.,	)	THIS COURT OCTOBER 22, 2010
LYDIA F. DUKE, ALICE H. KELLAHAN AND	)	AND VACATING ORDER FOR
SOUTH CAROLINA DEPARTMENT OF	)	ABANDONMENT OF CLOSURE OF
TRANSPORTATION,	)	PORTION OF PORTER STREET
	)	
		<u>DEFENDANTS.</u>

PRESIDING JUDGE:	THE HONORABLE G. WELLS DICKSON, JR.
HEARING DATE:	TUESDAY, MARCH 29, 2011
PLACE OF HEARING:	COUNCIL CHAMBERS, WILLIAMSBURG COUNTY COURTHOUSE ANNEX
COURT REPORTER:	ANDREA KELLY
APPEARANCES:	
FOR PLAINTIFF:	ERNEST J. JARRETT, ESQUIRE AMANDA M. HARRELSON SHULER, ESQUIRE
FOR DEFENDANTS	
LYDIA F. DUKE AND	WILLIAM M. O'BRYAN, JR., ESQUIRE AND LARRY G.
ALICE H. KELLAHAN	REDDECK, ESQUIRE
GARY W. CHAPMAN:	PRO SE (NOT APPEARING)
TERILYN J. MCCLARY:	PRO SE (NOT APPEARING)
WACCAMAW HOUSING, INC.:	NATE FATA, ESQUIRE (NOT APPEARING)
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION:	BARBARA WESSINGER, ESQUIRE (NOT APPEARING)

INTRODUCTION

DEFENDANTS KELLAHAN/DUKE'S Motion to Alter or Amend was heard on March 29, 2011. Ernest J. Jarrett, Esquire and Amanda M. Harrelson Shuler, Esquire, Attorneys for the Plaintiff, Town of Kingstree, were present, as well as William M. O'Bryan, Jr., Esquire and Larry G. Reddeck, Esquire, Attorneys for Lydia Floyd Duke and Alice H. Kellahan. No other attorneys or parties were present. Also present was W. N. Kellahan, Jr., Civil and Structural Engineer.

DEFENDANTS KELLAHAN/DUKE submitted a Memorandum in Support for their Motion to Alter or Amend, as well as a Reply Memorandum to the Memorandum which was submitted by the Plaintiff.

I have carefully reviewed the entire record in this matter, which including the transcript of two previous hearings, the transcript of the Hearing of March 29, 2011, all exhibits, the briefs, memoranda and arguments of counsel. I also received a response from DEFENDANTS KELLAHAN/DUKE and the Plaintiff after their hearing.

Based upon my review and reconsideration of this matter, for the reasons as hereinafter set forth, based upon the facts presented to me and the applicable law, I find that the Motion of DEFENDANTS KELLAHAN/DUKE should be granted, the Order of October 22, 2010 vacated in its entirety, and that this Order shall be the Order of this Court and shall replace the Order of October 22, 2010.

STATEMENT OF THE CASE

On November 14, 2005, the Plaintiff filed a Petition for Abandonment and Closure of an area that was referred in the Petition as "a portion of Porter Street." Defendant South

Carolina Department of Transportation filed an Answer dated December 9, 2005, and Defendant Waccamaw Housing, Inc. filed an Answer dated December 20, 2005, in which both admitted the allegations of the Petition. Defendants, Gary W. Chapman Jr. and Terilyn J. McClary did not file an Answer, and both are thereby in default. Defendants, Lydia F. Duke and Alice F. Kellahan, filed their Answer and Counterclaim on January 18, 2006, requesting that the Petition be dismissed, but if granted, that they be paid just compensation for the closure of the undeveloped portion of Porter Street. The Plaintiff replied to the Answer and Counterclaim of DEFENDANTS DUKE AND KELLAHAN on February 7, 2006.

This matter was referred to the undersigned by Order of Reference with Finality by the Honorable Clifton Newman dated December 1, 2005.

The Notice of Intention to File Petition for Abandonment and Closure of a portion of Porter Street of the Town of Kingstree, County of Williamsburg, was published in The News, a newspaper of general circulation in Williamsburg County on October 26, 2005, November 2, 2005, and November 8, 2005.

At hearings on April 26, 2006 and April 16, 2007, this Court received testimony and evidence, as well as the arguments of counsel. Other evidence was received thereafter.

An Order was issued on October 22, 2010, which granted the relief sought by the Plaintiff. DEFENDANTS KELLAHAN/DUKE timely filed and served their Motion for reconsideration in the form of a Motion to Alter or Amend on November 4, 2010.

STATEMENT OF FACTS

The area in question, which is the subject of this action, is called a portion of Porter Street by the Plaintiff. It was a portion of the larger tract of land which is between what is

now Ashton Avenue and Nelson Blvd. in the Town of Kingstree was owned by a John T. Nelson and subsequently by his daughter, Marie T. Nelson. The ownership of area which the Plaintiff seeks to close was reserved by the Nelson family, as a part of a larger tract of land, as shown on a plat prepared by P. G. Gourdin, Surveyor dated March 1903 and recorded in the office of the Office of the Clerk of Court for Williamsburg County in Plat Book B page 55 (D. Ex. 2) The survey identified twenty (20) lots that were located on the south side of what appeared to be a roadway, but was not designated as a roadway and, in fact, no name or other designation was used to describe that area. That area later became known as Ashton Avenue. Lots 13 and 14, as shown on said plat, were subsequently sold by Nelson, and those lots are the two lots that border the area which is the subject of this action. There is a fifty (50') foot wide area in between lots 13 and 14 on the March 1903 Gourdin plat, which is not designated in any manner. It was obviously reserved for access to and a plat of the remainder of the Nelson property, but it was not designated as a street or roadway.

Defendants, Alice H. Kellahan and Lydia Duke (DEFENDANTS KELLAHAN/DUKE) purchased a 20.97 acre tract of land from Samuel E. McIntosh adjoining Porter Street by deed dated September 7, 1993 recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book "A- 311" at page 231. (D. Exhibit 10) At the same time and as part of the acquisition by DEFENDANTS KELLAHAN/DUKE in order to have access for the development of the purchased property, DEFENDANTS KELLAHAN/DUKE, also acquired a fifty (50) foot easement from Ashton Avenue to Nelson Blvd. along a proposed roadway - Porter Street and the extension of the same to Ashton Ave. from Samuel E.

McIntosh, Individually and Executor and Trustee under the Last Will and Testament of Marie L. Nelson, the said easement was dated September 7, 1993 and recorded in Office of the Clerk of Court for Williamsburg County in Deed Book A-311 at Page 235. (D. Ex. 11)

A review of the easement to DEFENDANTS KELLAHAN/DUKE and the plat, as referenced in the easement, finds that, although DEFENDANTS KELLAHAN/DUKE received the easement with a width of 50 feet for the entire distance from Nelson Blvd. to Ashton Ave., the last 208 feet are not part of the area designated as "PROPOSED 50' ROAD PORTER STREET."

No party, including the PLAINTIFF, has contested the fact that DEFENDANTS KELLAHAN/DUKE have an easement which completely covers the area in question and also extends from Ashton Ave. to Nelson Blvd. In fact, the Plaintiff's Petition specifically states and admits the validity of the easement in favor of DEFENDANTS KELLAHAN/DUKE.

Even though DEFENDANTS KELLAHAN/DUKE never acquired the fee simple ownership to the property in question, they still held a property rights in interest in the property in the form of their easement.

At the hearing on April 16, 2007, the Plaintiff introduced deeds to the Town of Kingstree concerning the property in question from Williamsburgh Historical Society dated July 1, 1998 and recorded November 23, 1998 in the Office of the Clerk of Court for Williamsburg County in Deed Book A422 at page 280; from Methodist Oaks in Deed Book A422 at page 290; from Episcopal Church in Deed Book A422 at page 300; from Connie Maxwell Church Home in Deed Book A423 at page 1; from Epworth Children's Home in

Deed Book A423 at Page 11; from Thornwell Home in Deed Book A423 at page 22; from Presbyterian Home of SC in Deed Book A423 at page 236. (P. Ex. 7) The Plaintiff purchased the property five (5) years after the easement was granted to DEFENDANTS KELLAHAN/DUKE was executed and properly filed in the Office of the Clerk of Court for Williamsburg County. The area in question is designated as Tract 5 in each of the above deeds and reference that areas as "Porter Street 50' easement," not a public road.

The Plaintiff's plat that was prepared for this litigation has no written designation of the area in question as a roadway or even a proposed road. Likewise, there is no document by the owner of the fee simple title dedicating the area in question to the Town of Kingstree or any other public entity for a road or street. The Plaintiff produced no evidence that the Town of Kingstree or any other public entity ever took control of or maintained the area in question as a roadway prior to the institution of this litigation.

Michael Kirby, Community Planning and Development Director for the Plaintiff, admitted that the area in question has never been opened or developed as a road, never been paved, and had no documentation of a written dedication of the area in question as a roadway. (Tr.-4/26/2006-p. 20, l. 2 – p. 21, l. 24) Mr. Kirby testified on direct examination that he did not believe that the closure of the area in question would diminish the value of the property owned by DEFENDANTS KELLAHAN/DUKE. However on cross examination, Mr. Kirby admitted it would be reasonable that closure of the area in question would diminish the value of DEFENDANTS KELLAHAN/DUKE'S property due to the fact that one of the means of access (the area in question) would be eliminated.

W. N. Kellahan, Jr. testified that the closure of the area in question would diminish the value of the remainder of the tract of land by \$100,000.00.

The adjoining landowners, who will receive each one-half (½) of the property from the action, asked for the closure of the area. Defendant Waccamaw Housing, Inc., the purchaser of the property that was re-zoned as a Planned Unit Development, consented to the relief sought by the Plaintiff by its answer.

The Town Council of Kingstree held a public hearing and at two council meetings agreed that a portion of the 20.97 acre tract purchased by DEFENDANTS KELLAHAN/DUKE be re-zoned from Highway Commercial to Planned Unit Development.

William N. Kellahan, Jr., attended a meeting of the Kingstree Town Council for the first reading of an ordinance to re-zone a portion of DEFENDANTS KELLAHAN/DUKE'S property to allow for a senior housing project was held on January 26, 2004 to voice his support for the project. Senator John Yancey McGill and other community leaders also attended the meeting to also emphasize the need for senior housing in Kingstree. Senator McGill also appeared to offer his assistance in obtaining funds for the paving of Porter Street from Nelson Boulevard to the Senior Citizens Housing. While the ordinance received a first reading, the Kingstree Town Council scheduled a public hearing to allow comment on the re-zoning based upon the request of a member of the Council.

A public hearing was held on February 2, 2004 and, immediately following the public hearing, Kingstree Town Council held a meeting for the second reading of Ordinance 2004-01, Ordinance to Rezone a Portion of Tax Map Property 11-39-11. The Ordinance passed the second reading with the following in the minutes: Porter Street would be blocked on the

Ashton Avenue side with a fence to be erected on the Kingstree Recreation Department property line up to the paved portion of Porter Street, that the Developer would fence its property line as well, and Mrs. Kellahan would fence her property line within fifty (50) feet of Highway 377.

W. N. Kellahan, Jr. who was the agent for DEFENDANTS KELLAHN/DUKE was not able to attend the public meeting or the council meeting on February 2, 2004. Senator McGill attended both the public hearing and the subsequent Kingstree Town Council meeting as did Defendant Waccamaw Housing, Inc. Senator McGill appeared on February 2, 2004 because he believed that there was a need for senior housing in Kingstree. Also, Senator McGill was there to provide support for the use of CTC funds for the paving of Porter Street. Thereafter, CTC provided appropriate funds for the paving of Porter Street from Nelson Boulevard. The paved area is known as Porter Street, but is not a part of the state, county, or any other road system.

At the hearing on April 16, 2007, Senator McGill testified that he did not represent W. N. Kellahan, Jr. or Defendants, Alice H. Kellahan and Lydia Duke. Neither the record of the public meeting nor the minutes of the Town Council meeting, which were both held on February 2, 2004 have any implication or inference that Senator McGill appeared on behalf of W. N. Kellahan, Jr. or DEFENDANTS KELLAHAN/DUKE. Additionally, there is no evidence that any person or entity at the public hearing or council meeting relied on apparent authority of Senator McGill as an agent of W. N. Kellahan, Jr. or DEFENDANTS KELLAHAN/DUKE.

The record does not reflect that the unpaved area, the area in question, has been dedicated or accepted by written instrument.

Based upon the forgoing, I make the following findings of facts and when those facts are applied to the law, conclude that the legal results are as set forth herein.

FACTUAL FINDINGS

1. I find that the Town of Kingstree did not have a right to petition to abandon or close the fifty (50') foot wide area between lots 13 and 14 as shown on the Gourdin plat for Nelson in 1903.

2. I find that there was never a dedication of the portion of Porter Street that the Plaintiff seeks to close likewise, I find that the unpaved portion of easement which was not closed, under the order of October 22, 2010 has never been dedicated.

3. I find that the approval of plan or plat by Governmental Agency is not acceptance or dedication of land.

4. I find that DEFENDANTS KELLAHAN/DUKE hold an express written easement which has not been abandoned.

5. I find that the DEFENDANTS KELLAHAN/DUKE purchased the 20.97 acre tract of land for investment purposes and in reliance on the fifty (50') foot easement from Ashton Avenue to Nelson Blvd along the proposed roadway of Porter Street which constitutes a private property right.

6. I find that the Plaintiff has failed to prove that the area in question is not subject to the easement of DEFENDANTS KELLAHAN/DUKE.

7. I find that the Plaintiff has failed to prove that it is in the best interest of all

concerned that the area in question be closed.

8. I find that the Plaintiff failed to either allege or prove any agency or estoppel that would bind DEFENDANTS KELLAHAN/DUKE to the action by the Town Council on February 2, 2004.

9. I find that the Defendants Kellahan/Duke did not authorize, either directly or indirectly, Senator McGill to enter into an agreement to close a section of Porter Street.

10. I find that if the area in question that the Plaintiff seeks to close were closed, DEFENDANTS KELLAHAN/DUKE, their successors and assigns have a right to use the easement over and across the area. That easement is still valid and enforceable.

11. I find that a primary consideration in this action to close the area called a portion of Porter Street was not in the public interest.

12. I find that if the section of the roadway granting DEFENDANTS KELLAHAN/DUKE and their successors in title access to their property via Porter Street to Ashton Avenue is closed, it would cause a diminution in value of the DEFENDANTS KELLAHAN/DUKE'S property in the amount of One Hundred Thousand and No/100 (\$100,000.00) Dollars.

CONCLUSIONS OF LAW

I

PLAINTIFF'S RIGHT TO CLOSE ROAD

Any right to close the area which the Plaintiff has called Porter Street between lots 13 and 14 or any where else for that matter, must be derived from a statutory authority. Our Courts, construing S. C. Code §57-9-10, have stated:

"In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Byrant v. City of Charleston*, 295 S.C. 408, 368 S.E.2d 899 (1988)" *First Baptist Church of Mauldin v. City of Mauldin*, (S.C.,1992), 308 S.C. 226, 417 S.E.2d 592, construing S.C. Code § 57-9-10.

This authority is S.C. Code Ann. §57-9-10 which states in part "any interested person, the state or any of its political subdivisions or agencies may petition the Court of competent jurisdiction to abandon or close any street, road or highway, whether opened or not . . . S.C. Code §57-9-10, 1976, as amended. The operative words in the statute are "street", "road" or "highway." The Plaintiff has failed to prove that the area in question was, at the time of the filing of the Petition, or at any later time, ever a roadway, street or highway.

The area in question has never been paved and the Plaintiff has failed to meet the burden of proof of strict, cogent and convincing evidence of the dedication as to the unpaved area. The Plaintiff's own plat, which was obtained for the purpose of this litigation, does not designate the area as a street. §57-9-20 of the 1976 Code as amended, states that the street, road or highway can be abandoned or closed if the Court determines that it is in the best interest of all concerned. Again, the words street, road and highway are used.

Under Title 57, the title under which the Plaintiff seeks to close the area in question our statutory law defines street, roadway or highway as follows:

§57-3-120. Definitions.

For the purposes of this title, the following words, phrases, and terms are defined as follows:

(1) "Highway", "street", or "road" are general terms denoting a public way for the purpose of vehicular travel, including the entire area within the right-of-

way, and the terms shall include roadways, pedestrian facilities, bridges, tunnels, viaducts, drainage structures, and all other facilities commonly considered component parts of highways, streets, or roads. §57-3-120, 1976 Code, as amended

The area that is in question has never been used or maintained as a street, road or highway. There has been no dedication and has been no acceptance by the Town of Kingstree, and accordingly, neither does the Town of Kingstree nor any other party has the right to use this statute to close the area in question.

II

NO DEDICATION

The approval of the land development plan or subdivision plat may not be deemed to automatically constitute or affect an acceptance by the municipality or the county or the public of the dedication of any street, easement, or other ground shown upon the plat. Public acceptance of the lands must be by action of the governing body customary to these transactions. S.C. Code Ann. 6-29-1170.

The case of Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (S.C., 1997) sets forth the requirements for dedication.

“Two elements are required to perfect dedication. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be acceptance of such property by the public. Helsel v. City of North Myrtle Beach, 307 S.C. 24, 413 S.E.2d 821 (1992). Dedication is an exceptional manner of passing an interest in land and proof thereof must be strict, cogent, and convincing. Mack v. Edens, 320 S.C. 236, 464 S.E.2d 124 (Ct. App. 1995). To have a completed dedication, there must be some form of acceptance of the offer to dedicate. Baugus v. Wessinger, supra; 23 Am.Jur.2d Dedication § 42 at 38 (1983); Hodge v. Manning, 241 S.C. 142, 127 S.E.2d 341 (1962). The use, repair, and working of the streets by public authorities is a mode of acceptance. Chafee v. City of Aiken, 57 S.C. 507, 35 S.E. 800 (1900). The mere fact the County

approved the plat does not constitute an acceptance of the proposed public dedication. S.C. Code Ann. § 6-7-1070 (1976).” Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (S.C.,1997)

The evidence in the record clearly shows that the area in question has never been dedicated for a public roadway or street. A careful examination of the 1993 Kellahan plat together with the written easement, reveals that the 50 foot easement extends the entire distance from Nelson Blvd. to Ashton Ave., the last 208 feet are not part of the area which is designated as “PROPOSED 50' ROAD PORTER STREET.”

At the time DEFENDANTS KELLAHAN AND DUKE purchased the property, some research was undertaken and there was no evidence that Porter Street was ever a public road, it was not maintained by City, was primarily grown up in broom straw. (Tr. 4/26/06, P. 60 & 61).

The plat prepared for John T. Nelson by Peter G. Gourdin dated March, 1903 recorded in Plat Book “B” page 55 reserved for access at four different places it is significant that from what became Ashton Ave. to the remainder of the Nelson property, none of the four access areas was designated as a street or roadway. These areas were not separated in any manner on the Gourdin plat, but were part of the larger tract.

Our Courts have recognized that dedication as an exceptional mode of passing an interest in land and proof of dedication must be strict, cogent and convincing. The act to prove dedication must not be consistent with any other construction other than that of a dedication. State vs. Beach Company, 271SC 2425 248 SE 2nd 115. The Plaintiff has not proven any dedication by written dedication or implied dedication which requires strict,

cogent and convincing evidence. The Plaintiff has failed to prove either of two required elements for dedication of a roadway.

III

DEFENDANTS KELLAHAN/DUKE HOLD VALID EASEMENT

The Town of Kingstree has received deeds for the area in question between lots 13 and 14 on July 11, 1998, after the grant of the easement to the Plaintiff. Accordingly, the Plaintiff had and is charged with Constructive Notice of the priority of that easement over the purchase of the property by the Plaintiff. SC Code §30-7-10; *Spence vs. Spence*. (SC 2006) 386 SC 106, 628 SE2d 689, Rehearing Denied. This conveyance had to be subject to the easement rights of DEFENDANTS KELLAHAN AND DUKE. These deeds were subsequent to, and accordingly, subject to the easement to DEFENDANTS KELLAHAN/DUKE. Accordingly, those conveyances did not remove or defeat the property right of DEFENDANTS KELLAHAN/DUKE.

The Plaintiff, in its Petition, specifically states that DEFENDANTS KELLAHAN/DUKE, have an easement. The statement is a clear, unequivocal admission by the plaintiff, without any qualification. There is no testimony, no other pleading or any other action by the Plaintiff to retract this admission in any manner.

In the case of *Hoganboon vs. The City of Beaufort* 315 SC 306, 433 SE 2nd 875, the South Carolina Court of Appeals stated that, under § 57-9-20, the court cannot divest a property owner of legal title under § 57-9-20 and vest it in another, but merely declare who owns title according to the law. The court also recognized that while a municipality can acquire a fee simple title to the property in the case of the dedication, the municipality

acquires merely a right of passage and title remains with the landowner who initially dedicated the property to public use. If the municipality abandons the right of passage then the fee simple interest becomes unencumbered in the original land owner. Even assuming some type of implied dedication in this case, of which there has been no showing by the Plaintiff, then title to the property reverts to the Marie Nelson estate and its successors in title through whom the Defendant's, Kellahan and Duke claim their easement for this property.

DEFENDANTS KELLAHAN/DUKE are entitled to retain their easement rights.

Neither the Plaintiff, nor any other party, has challenged the fact that DEFENDANTS KELLAHAN/DUKE have an easement with a width of 50 feet for the entire distance from Nelson Blvd. to Ashton Ave.

The last 208 feet on the plat are not part of the area designated as "PROPOSED 50' ROAD PORTER STREET" that referenced a plat with the easement. DEFENDANTS KELLAHAN/DUKE acquired the express written easement to secure access to the 20.97 acres.

The easement constitutes a private property right held by DEFENDANTS KELLAHAN/DUKE.

Further, the grant of this easement to Kellahan and Duke was in writing and any abandonment or release of that easement by Kellahan and Duke or of any successor in title would have to be also in writing to satisfy the statute of frauds. The Plaintiff has failed to prove any release or abandonment of this express written easement. In Blue Ridge Realty Co. vs Williamson, 247 SC 112 (SC 1965), the Court held that where lots in a subdivision

are sold by reference to a map or plat upon which roads are shown which are or become public highways, the private easement which arises upon such a sale survives the vacation, abandonment, or closing of the road or highway by the public. Our Court has further held in Blue Ridge Realty Co. Vs Williamson 247 SC 112 (SC 1965) that where lots in a subdivision are sold by reference to a map or plat upon which roads are shown which are or become public highways, the private easement which arises upon such a sale survives the vacation, abandonment, or closing of the road or highway by the public. Under this reasoning, even if the roadway should be closed or abandoned pursuant to Section 57-9-10 et seq., the private easement of the DEFENDANT'S KELLAHAN/DUKE survives any abandonment of the public's interest in the roadway. In contradiction to its position as to the easement of DEFENDANTS KELLAHAN/DUKE, the Plaintiff does seek to reserve an easement for a sewer line if the road closure does not extinguish the easement for the sewer line, then the DEFENDANTS KELLAHAN/DUKE easement cannot be extinguished.

If the Plaintiff's relief is granted and the area that it seeks to closed is ordered to be closed by some subsequent Court Order, I find that the DEFENDANTS KELLAHAN/DUKE'S easement continues to be effective and is a property right which DEFENDANTS KELLAHAN/DUKE are entitled to exercise and use freely and completely without any restrictions.

IV

THE PLAINTIFF HAS FAILED TO PROVE THAT IT IS IN THE BEST INTEREST OF ALL CONCERNED THAT THE AREA IN QUESTION BE CLOSED

The 20.97 acre tract was acquired by DEFENDANTS, KELLAHAN/DUKE for commercial development and the acquisition and development was predicated on access to

said property along Porter Street with ingress and egress being available on both Ashton Avenue and Nelson Boulevard. §57-9-20, of the 1976 South Carolina Code of Laws requires that the court determine “that it is in the best interest of all concerned” that the street, road or highway be abandoned. An important consideration should be the fact that the property was acquired by DEFENDANTS KELLAHAN/DUKE for investment purposes. The elimination of a means of access will negatively impact the subdivision of the property and the access to various parcels, as well as negatively impact the value of the property of DEFENDANTS KELLAHAN/DUKE. It is clearly not in the best interest of all parties and the public that they be deprived of a means of access, and particularly, to the holder of a valid easement. The relief sought by the Town would only benefit the property owners on Ashton Ave and could create a situation where, if you had an event like the Pig Picking Festival, baseball tournament or other functions at the Recreation center, emergency vehicles could not get through including EMS vehicles in route to the Williamsburg County Hospital.

Our Supreme Court has stated:

“In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Byrant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988)”

First Baptist Church of Mauldin v. City of Mauldin, (S.C., 1992), 308 S.C. 226, 417 S.E.2d 592, Construing S.C. Code SECTION 57-9-10.

Under Section 57-9-20, the Court in Mauldin also stated:

“The Court is empowered to close roads on a finding that it is in the best interest of all concerned. A public street may not be vacated for the sole purpose of benefitting an abutting owner. City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239 (1946). However, the mere fact that the vacation was at the instigation of an individual who owns abutting property does not

invalidate the vacation or constitute abuse of discretion, nor does the fact that some private interest may be served incidentally. Id. On the other hand, it must appear clearly that no consideration other than that of public interest could have prompted the action. Id.

First Baptist Church of Mauldin v. City of Mauldin, (S.C.,1992), 308 S.C. 226, 417 S.E.2d 592, Construing S.C. Code SECTION 57-9-10.

The evidence provided by the Plaintiff to comply with §57-9-20 to support the premise that it would be in the best interest of all concerned is primarily and exclusively from the individuals who were the adjoining land owners and who would benefit by receiving title to a portion of the area that was to be closed. Defendant Waccamaw Housing, Inc. consented to the relief, but it must be noted that Defendant Waccamaw was present at the public meeting on February 2, 2004 and the Town Council meeting on the same date. Defendant Waccamaw Housing, Inc. benefitted directly from the closure and rezoning. It is clear from the minutes of the public hearing and action of counsel (Plaintiffs Exhibits 3, 4, 5) that the action to close the road in this matter had, as a primary consideration, the benefit of the individual including the abutting land owners which prompted the action and accordingly, it is violative of Section 57-3-20. See First Baptist Church of Mauldin v. City of Mauldin, (S.C.,1992), 308 S.C. 226, 417 S.E.2d 592, Construing S.C. Code SECTION 57-9-10.

V

NO AGENCY OR ESTOPPEL PLED OR PROVEN

The Plaintiff has maintained that DEFENDANTS KELLAHAN/DUKE should be estopped to object to the closing of the area in question based upon their easement and their sale of the portion of their property to the Defendant, Waccamaw Housing, Inc., and that

an agency relationship existed between Senator McGill and DEFENDANTS KELLAHAN/DUKE.

The Plaintiff did not plead or prove any agency by Senator McGill or equitable estoppel. Equitable estoppel is in the nature of an affirmative defense and must be pled or it is waived. Rule 8(c) South Carolina Rules of Civil Procedure. The Plaintiff has failed to allege equitable estoppel in its pleadings and, was not entitled to, and did not, as such, assert it at trial.

In addition to failing and thereby waiving any right to assert estoppel, the Plaintiff has made no showing that Senator McGill was acting as an authorized agent of the DEFENDANTS KELLAHAN AND DUKE when attending the meeting to close the street and had no authority to bind them. American Jurisprudence 2nd Estoppel & Waiver Sec 57

The elements which must be proven to establish apparent agency are: (1) purported principal consciously or impliedly represented another to be his agent; (2) third party reasonably relied on the representation; and (3) third party detrimentally changed his or her position in reliance on the representation." R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 540 S.E.2d 113, 118 (2000).

As to the burden of proof, the party asserting the agency as a basis of liability has the burden of proving the existence of the agency. Vereen v. Liberty Life Ins. Co., 306 S.C. 423, 412, S.E.2d 425, CT APP. (1991). Additionally, agency must be clearly established by the facts. McCall v. Finley, 294, S.C. 162, S.E.2d 26 (CT.APP) (1987) (Citing Paramount Fund, Inc. v. Cusaac, 282, S.C. 497, 319 S.E.2d, 354 (CT. APP) (1984).

The failure to either pled or prove the equitable estoppel or any agency relationship between Senator McGill and DEFENDANTS KELLAHAN/DUKE prevents the Plaintiff from binding DEFENDANTS KELLAHAN/DUKE to any action taken by the Kingstree Town Council on February 2, 2004.

An essential element of estoppel is that any injury claimed must be actual, material and substantial. "Broadly speaking, injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel or estoppel in pais. Since the function and purpose of the doctrine of estoppel are the prevention of fraud and injustice, there can be no estoppel when there is no loss, injury, damage, judgment, prejudice to the party claiming it, moreover, the injury or prejudice involved must be actual and material or substantial and not merely technical or formal" American Jurisprudence 2nd Estoppel & Waiver Sec 78.

The Plaintiff is trying to "Bootstrap" agency, and apparent authority to its petition and to those claims, it is trying to "Bootstrap" estoppel. This is prohibited.

In the case of Collins Entertainment, Inc. v. White, 363 S.C. 546, 611 S.E.2d 262(S.C.App.,2005) the Court stated:

Appellants assert the issue of estoppel was raised in the pleadings under the arguments for breach of contract accompanied by a fraudulent act. We disagree and find that estoppel must be affirmatively pled as a defense and cannot be bootstrapped onto another claim. See Rule 8, SCRPC; Provident Life & Accident Ins. Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924, 929 (Ct.App.1994) (finding estoppel is an affirmative defense). Collins Entertainment, Inc. v. White, 363 S.C. 546, 611 S.E.2d 262(S.C.App.,2005)

Additionally the *Collins* Court held:

As we found above, Appellants failed to plead estoppel as an affirmative defense and the court properly denied their motion to include it as a defense.

Additionally, laches is an affirmative defense which must be specifically pled. *Rule 8(c), SCRPC*. The failure to plead an affirmative defense is deemed a waiver of the right to assert it. E.g., *Adams v. B & D, Inc.*, 297 S.C. 416, 419, 377 S.E.2d 315, 317 (1989). Accordingly, we find the trial court properly refused to dismiss Collins' claims under either theory. *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262(S.C.App.,2005)

In the present case, it was clearly established by testimony that the property owned by the DEFENDANTS KELLAHAN/DUKE was previously zoned Highway Commercial, which is the least restrictive use of the property and can be used for almost any legal purpose. The re-zoning reclassified the property as a Planed Unit Development (PUD) classification, which is far more restrictive as to use. The testimony was that the residents of Ashton Avenue were concerned with traffic through the neighborhood and the reclassification to a PUD classification would serve to limit the traffic in the area that might otherwise exist under a Highway Commercial use and, as such, the Plaintiff has failed to prove any actual or material injury that would justify applying equitable estoppel.

VI

TAKING OF DEFENDANTS KELLAHAN/DUKE EASEMENT RIGHTS

Under this state's Eminent Domain Law, no private property right may be taken without compensation. South Carolina recognizes the doctrine of inverse condemnation, whereby owners may suffer a taking as a result of a change in access to their property. This doctrine is recognized in the *City of Rockhill vs. Cothran*, 209SC 357 40 SE 2nd 239, cited in the Court of Appeals decision in *Harden vs. SCDOT*. 359 SC 244 597 SE 2nd 814. The property was acquired by DEFENDANTS KELLAHAN/DUKE for commercial development and the acquisition and development was predicated on access to said property along Porter Street with ingress and egress being available on both Ashton Avenue and Nelson Boulevard.

Our Courts have held that road closings and realignments which do not take land or an easement from a property owner do not give rise to compensable takings; these actions do not directly interfere with the owner's rights and the property as a whole, USCA, Constitutional Amendment V; Constitutional Article I, Section XIII. Hardin vs. SC Department of Transportation, 641 SE 2d 437 371 SC 598, 2007, Rehearing Denied.

In Hardin, the Court recognized the right to compensation if a landowner's rights to property have been adversely affected. The Court stated:

In doctrinal terms, modern takings principles instruct that road closings and realignments which do not take land or an easement from a property owner do not give rise to compensable takings because these actions do not directly interfere with the owner's rights and the property as a whole. Hardin vs. SC Department of Transportation, 641 SE 2d 437 371 SC 598, 2007, Rehearing Denied.

In this matter, however, if the road were closed, it would directly affect DEFENDANTS KELLAHAN/DUKE in that the easement rights of DEFENDANTS KELLAHAN/DUKE to access Ashton Ave. would be taken.

The Court, in Hardin, further stated:

"As this analysis indicates, the focus of our inquiry must be on the landowner's actual property interest; that is his easement. We therefore overrule "the special injury" analysis contained in our jurisprudence in this area and specify that their focus in these cases is on how any road reconfiguration affects the property owner's easement. An easement is either taken or it is not. That is "the inquiry different in kind and not merely in degree" with which we are concerned.

.....because the Plaintiffs and Harden continue to access to and from Dave Lyle Boulevard and the public road system, similarly, no aspects of the Tallent Plaintiff property have been physically taking by the SCDOT. Accordingly, we reversed the Court of Appeals decision and hold there has been no take in this case. Hardin vs. SC Department of Transportation, 641 SE 2d 437 371 SC 598, 2007, Rehearing Denied.

The right of recovery for the taking of an easement is confirmed by the case of Carolina Chloride, Inc. v. SCDOT, 391, S.C. 429, 706 S.E.2d 501. DEFENDANTS KELLAHAN/DUKE have established by uncontradicted testimony that their easement rights have been taken and they will suffer injury if their access to Ashton Ave. is terminated. DEFENDANTS KELLAHAN/DUKE easement rights cannot be taken without just compensation. The only testimony as to the value of the taking was from W. N. Kellahan, Jr. who stated that the value was \$100,000.00. If the relief sought by the Plaintiff is granted by some subsequent Order which prevents these Defendants from using the areas and easement to access their other property, then the DEFENDANTS KELLAHAN/DUKE are entitled to compensation for the taking of their easement rights in the amount of One Hundred Thousand and No/100 (\$100,000.00) Dollars.

CONCLUSION

The Plaintiff has failed to prove that the area in question, which it seeks to close, was ever a street, road or highway. Since there was not an express dedication of the area in question as a street, road or highway, the Plaintiff has also failed to prove by strict, cogent and convincing evidence that there was a dedication.

DEFENDANTS KELLAHAN/DUKE have easement rights of the strongest nature since they were established expressly, by written instrument. The Plaintiff failed to plead or establish estoppel. Likewise, the Plaintiff failed to establish any apparent authority that Senator Yancey McGill was the agent of DEFENDANTS KELLAHAN/DUKE or that any party relied upon any apparent authority that Senator McGill was their agent. Finally,

DEFENDANTS KELLAHAN/DUKE are entitled to their full easement rights to use for access to Ashton Ave. across the area that the Plaintiff seeks to close.

IT IS ORDERED, ADJUDGED AND DECREED that the Petition to close a section of Porter Street is denied and the gate should be removed in order that the DEFENDANTS KELLAHAN/DUKE can exercise their easement rights in full.

IT IS FURTHER ORDERED that if area that the Plaintiff seeks to close is closed by some subsequent Order, the DEFENDANTS KELLAHAN/DUKE will continue to have a valid easement rights that will continue to be effective as to that property for access to Ashton Ave.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED if the closure of this area is allowed by some subsequent Court Order or action and DEFENDANTS KELLAHAN/DUKE are prohibited from using the easement completely, fully and freely, then DEFENDANTS KELLAHAN/DUKE would be entitled to full compensation for their easement for the taking of these easement rights in the amount of One Hundred Thousand and No/10 (\$100,000.00) Dollars for the unjust, unconstitutional taking of their property without just compensation.

AND IT IS SO ORDERED!

_____, 2011

Kingstree, SC

G. WELLS DICKSON, JR.
PRESIDING JUDGE

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641 S.E.2d 437
371 S.C. 598, 641 S.E.2d 437
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H

Supreme Court of South Carolina.

John A. HARDIN and Martha Hardin Curran, as Trustees of Marital Trust 2 under the will of Martha S. Hardin, Deceased, Respondents,
v.

The SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, Petitioner.

and

Elisha B. Tallent, d/b/a Elisha's California Hair, Respondent

v.

The South Carolina Department of Transportation, Petitioner.

No. 26262.

Hardin heard April 5, 2006.

Tallent heard May 2, 2004.

Decided Feb. 12, 2007.

Rehearing Denied March 8, 2007.

Background: Landowners brought inverse-condemnation action against South Carolina Department of Transportation (SCDOT). Following a bench trial, the Circuit Court, York County, Paul E. Short, Jr., J., found that a taking had occurred. SCDOT appealed. The Court of Appeals, 359 S.C. 244, 597 S.E.2d 814, affirmed. In separate case, commercial landowner brought inverse-condemnation action against SCDOT. The Circuit Court, Greenville County, Charles B. Simmons, Jr., J., found that SCDOT's actions constituted compensable taking, and SCDOT appealed. The Court of Appeals, 363 S.C. 160, 609 S.E.2d 544, affirmed. SCDOT filed petitions for writs of certiorari, which were granted.

Holdings: The Supreme Court, Toal, C.J., held that:

- (1) in determining whether road reconfiguration amounts to a taking, focus is on how reconfiguration affects property owner's easements to access public road system; overruling City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239, and Gray v. South Carolina Dep't of Highways and Public Transp., 311 S.C. 144, 427 S.E.2d 899;
- (2) reconfiguration of divided highway's intersection did not constitute a taking; and
- (3) reconfiguration of road did not constitute a taking.

Court of Appeals' decisions reversed.

Waller, J., concurred in part, dissented in part, and filed opinion, in which Moore, J., concurred.

West Headnotes

11 Eminent Domain 148 ⇐91

148 Eminent Domain

148II Compensation

148II(B) Taking or Injuring Property as Ground for Compensation

148k89 Nature of Injury to Property Not Taken

148k91 k. General or Special Injuries. Most Cited Cases

Eminent Domain 148 ⇐106

148 Eminent Domain

148II Compensation

148II(B) Taking or Injuring Property as Ground for Compensation

148k94 Elements of Compensation for Injuries to Property Not Taken

148k106 k. Obstruction of Access. Most Cited Cases

In determining whether a road re-configuration amounts to a taking of property, the focus is on how the reconfiguration affects property owner's easements to access public road system, not on whether property owner has suffered special injury that is different in kind and not merely in degree from that suffered by public at large; overruling *City of Rock Hill v. Cothran*, 209 S.C. 357, 40 S.E.2d 239, and *Gray v. South Carolina Dep't of Highways and Public Transp.*, 311 S.C. 144, 427 S.E.2d 899, U.S.C.A. Const.Amend. 5; Const. Art. I, § 13.

121 Constitutional Law 92 ⇐3855

92 Constitutional Law

92XXVII Due Process

92XXVII(A) In General

92k3848 Relationship to Other Constitutional Provisions; Incorporation

92k3855 k. Fifth Amendment. Most Cited Cases

(Formerly 92k280)

Fifth Amendment's takings clause applies to the actions of state governments through the due process clause of the Fourteenth Amendment. U.S.C.A. Const.Amend. 5, 14.

131 Eminent Domain 148 ⇐2.1

148 Eminent Domain

148I Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.1 k. In General. Most Cited Cases

Governmental regulations which control or limit the use of property can "take" the property in the constitutional sense. U.S.C.A. Const.Amend. 5; Const. Art. I, § 13.

141 Eminent Domain 148 ⇐2.1

148 Eminent Domain

148I Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.1 k. In General. Most Cited Cases

Determining whether government action effects a taking requires a court to examine the character of the government's action and the extent to which this action interferes with the owner's rights in the property as a whole. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 13.

151 Eminent Domain 148 ⇨ 2.1

148 Eminent Domain

1481 Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.1 k. In General. Most Cited Cases

Ad hoc, factual inquiries into whether government action effects a taking of property involve examining the character of the government's action, the economic impact of the action, and the degree to which the action interferes with the owner's investment-backed expectations. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 13.

161 Eminent Domain 148 ⇨ 2.1

148 Eminent Domain

1481 Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.1 k. In General. Most Cited Cases

Physical occupation of private property by the government generally results in a taking regardless of the public interest the government's action serves. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 13.

171 Eminent Domain 148 ⇨ 2.1

148 Eminent Domain

1481 Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.1 k. In General. Most Cited Cases

Enforcement of a government regulation will usually effect a taking when the regulation denies all economically beneficial or productive use of land. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 13.

181 Eminent Domain 148 ⇨ 2.1

148 Eminent Domain

1481 Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.1 k. In General. Most Cited Cases

In order to have taken any part of landowners' properties, the South Carolina Department of Transportation (SCDOT) must have physically appropriated some aspect of them; alleged taking did not involve enactment of any regulation that directly regulated any use of properties. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 13.

191 Highways 200 ⇨ 85

200 Highways

200V Title to Fee and Rights of Abutting Owners

200k85 k. Right of Access. Most Cited Cases

Owner of a corner lot has an easement for access to and from both roads that abut his property.

110 Highways 200 ⇨ 85

200 Highways

200V Title to Fee and Rights of Abutting Owners

200k85 k. Right of Access. Most Cited Cases

A landowner has an easement for access to and from the public road system.

111 Highways 200 ⇨ 85

200 Highways

200V Title to Fee and Rights of Abutting Owners

200k85 k. Right of Access. Most Cited Cases

Owner whose property does not abut any public road will not be denied access to the public road system.

112 Eminent Domain 148 ⇨ 106

148 Eminent Domain

148II Compensation

148II(B) Taking or Injuring Property as Ground for Compensation

148k94 Elements of Compensation for Injuries to Property Not Taken

148k106 k. Obstruction of Access. Most Cited Cases

When only a portion of a public road abutting a landowner's property is closed, leaving the property in a cul-de-sac, no taking has occurred; as long as the landowner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 13.

113 Eminent Domain 148 ⇨ 106

148 Eminent Domain

148II Compensation

148II(B) Taking or Injuring Property as Ground for Compensation

148k94 Elements of Compensation for Injuries to Property Not Taken

148k106 k. Obstruction of Access. Most Cited Cases

There is no taking when a government entirely closes one of the roads that abuts a corner lot; so long as a landowner has access to the public road system, the landowner's easement by necessity is intact. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 13.

114 Eminent Domain 148 ⇨ 2.19(1)

148 Eminent Domain

148I Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.19 Highways and Streets

148k2.19(1) k. In General. Most Cited Cases

Road closings and realignments which do not take land or an easement from a property owner do not give rise to compensable takings; these actions do not directly interfere with an owner's rights in the property as a whole. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 13.

115 Eminent Domain 148 ⇨ 2.1

148 Eminent Domain

1481 Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.1 k. In General. Most Cited Cases

Government action can effect no taking unless it has deprived an owner of a property interest. U.S.C.A. Const.Amend. 5; Const. Art. I, § 13.

1161 Eminent Domain 148 ⇐ 106

148 Eminent Domain

148II Compensation

148II(B) Taking or Injuring Property as Ground for Compensation

148k94 Elements of Compensation for Injuries to Property Not Taken

148k106 k. Obstruction of Access. Most Cited Cases

Reconfiguration of divided highway's intersection did not constitute a taking of property on either side of highway's intersection with road, although reconfiguration resulted in inability to make any left turns at intersection; landowners continued to have access to and from highway and public road system. U.S.C.A. Const.Amend. 5; Const. Art. I, § 13.

1171 Eminent Domain 148 ⇐ 106

148 Eminent Domain

148II Compensation

148II(B) Taking or Injuring Property as Ground for Compensation

148k94 Elements of Compensation for Injuries to Property Not Taken

148k106 k. Obstruction of Access. Most Cited Cases

Reconfiguration of road that led to highway did not constitute a taking of landowner's property, although reconfiguration situated property on cul-de-sac and limited landowner's access to highway by requiring landowner to navigate series of secondary roads; no aspect of property had been physically taken. U.S.C.A. Const.Amend. 5; Const. Art. I, § 13.

****439** Linda C. McDonald and Beacham O. Brooker, Jr., both of Columbia, and Robert L. Widener, of McNair Law Firm, of Columbia, for Petitioner.

David A. White, of Robinson, Bradshaw & Hinson, of Rock Hill, for Respondents.

Andrew F. Lindemann, of Davidson Morrison & Lindemann, of Columbia, and Danny C. Crowe, of Turner Padgett Graham & Laney, of Columbia, for Amicus Curiae Municipal Association of South Carolina.

Richard D. Bybee, of Smith Bundy Bybee & Barnett, of Mt. Pleasant, for Amicus Curiae South Carolina Landowners Association.

Robert E. Lyon, Jr., and M. Clifton Scott, both of the South Carolina Association of Counties, of Columbia, for Amicus Curiae South Carolina Association of Counties.

Robert Clyde Childs, III, of Greenville, for Respondent.

Chief Justice TOAL:

*602 These cases deal with the issue of whether and to what degree realignments and closures of public roads constitute "takings" **440 within the meaning of Article I, § 13 of the South Carolina Constitution and the Fifth Amendment to the United States Constitution. Lower courts separately determined that the property owners in both Hardin and Tallent suffered takings as a result of actions of the South Carolina Department of Transportation (SCDOT). We reverse.

FACTUAL/PROCEDURAL BACKGROUND

In light of our disposition of these two appeals, we engage in only a brief review of the facts.

A. Hardin

Dave Lyle Boulevard is a high-speed, divided, controlled-access highway connecting the City of Rock Hill to Interstate Highway 77. No private driveway has direct access to the highway. Instead, private driveways exit onto side roads which have intermittent access to the highway. The highway has a number of turn lanes in the median which allow traffic to cross the median and access the many intersecting surface streets.

The plaintiffs own two properties that are located on the north side of Dave Lyle Boulevard. The properties sit on either side of the highway's intersection with Garrison Road. For several years, this intersection contained a break in the median which runs down Dave Lyle Boulevard. This break allowed vehicles at the intersection to access both Garrison Road and the highway in either direction. In 1998, the City of Rock Hill requested that SCDOT construct a new intersection approximately 1,000 feet east of the existing intersection to *603 accommodate an industrial park and a technical college. SCDOT advised that creating a new intersection would require that the Garrison/Dave Lyle intersection be closed due to the limitations of cross streets on the highway. After a public hearing, SCDOT consented to the construction of the new intersection. As a result, SCDOT closed the break in the median at the Garrison/Dave Lyle intersection. This prevented vehicle traffic from making any left turns at the Garrison/Dave Lyle intersection.

In 2001, the plaintiffs filed an inverse condemnation action against SCDOT alleging that depriving the traffic leaving their properties the ability to cross Dave Lyle Boulevard constituted a taking for which the plaintiffs were owed compensation. The trial court ruled that the plaintiffs suffered a compensable taking, and the court of appeals affirmed. See Hardin v. South Carolina Dep't of Transp., 359 S.C. 244, 597 S.E.2d 814 (Ct.App.2004).

B. Tallent

In this case, the plaintiff purchased a tract of property located on Old Easley Bridge Road near Greenville. The plaintiff opened and operated a hair salon and tanning studio on the property. At the time she purchased the property, the property had access to Highway 123 via Old Easley Bridge Road. As the roads were then aligned, Old Easley Bridge Road split off Highway 123 as a tangent and gradually curved to intersect White Horse Road, which runs perpendicular to Highway 123.

Sometime after the plaintiff purchased the property, SCDOT began construction of a controlled-access "diamond" interchange at the intersection of Highway 123 and White Horse Road. This re-configuration involved closing access points between Old Easley Bridge Road and White Horse Road. Specifically, SCDOT closed Old Easley Bridge Road to through traffic, removed a traffic light, and made several cosmetic changes along the road. These changes altered the character of Old Easley Bridge Road from a through-connecting surface street to a road ending in a cul-de-sac.

As in Hardin, the plaintiff brought an inverse condemnation action against SCDOT. Using the fact that the road re-*604 configuration situated her property on a cul-de-sac and limited her access to Highway 123 by requiring her to navigate a series of secondary roads running through low income neighborhoods, the plaintiff alleged SCDOT had "taken" her property. The plaintiff alleged the road re-configuration decreased her property value and resulted in her business being less accessible to the public (and thus less valuable). The trial court ruled that the plaintiff suffered a compensable taking, and the court of appeals affirmed. See Tallent v. South Carolina Dep't of Transp., 363 S.C. 160, 609 S.E.2d 544 (Ct.App.2005).

**441 LAW/ANALYSIS

[1] As we have previously held, a plaintiff's right to recovery in an inverse condemnation case is premised upon the ability to show that he or she has suffered a taking. Byrd v. City of Hartsville, 365 S.C. 650, 657, 620 S.E.2d 76, 80 (2005). Although it has been recognized that the existence of property interests are often determined by reference to sources such as state law, see Georgia v. Randolph, 547 U.S. 103, 126 S.Ct. 1515, 1540, 164 L.Ed.2d 208 (2006) (Scalia, J., dissenting), South Carolina courts have embraced federal takings jurisprudence as providing the rubric under which we analyze whether an interference with someone's property interests amounts to a constitutional taking. Byrd, 365 S.C. at 656 n. 6, 620 S.E.2d at 79 n. 6 (citing Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 306, 534 S.E.2d 270, 275 (2000)).

[2][3] Both Article I, § 13 of the South Carolina Constitution and the Fifth Amendment to the United States Constitution provide that private

property shall not be taken for public use without the payment of "just compensation." ^{FN1} Although the takings clause was once understood to apply only to a direct appropriation of property or the functional equivalent of an ouster of possession, it is now universally accepted that regulations which control or limit the use of property can "take" the property in the constitutional sense. See *605 Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1014, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992) (reviewing nineteenth century takings jurisprudence); see also Penn Central Transp. Co. v. City of New York, 438 U.S. 104, 122 n. 2, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978); and Byrd 365 S.c. at 656, 620 S.E.2d at 79.

^{FN1} The Fifth Amendment's takings clause applies to the actions of state governments through the due process clause of the Fourteenth Amendment to the United States Constitution. Chicago, B. & O.R. Co. v. City of Chicago, 166 U.S. 226, 241, 17 S.Ct. 581, 41 L.Ed. 979 (1897).

[4][5][6][7] Although no set formula exists for determining whether property has been "taken" by the government, the relevant jurisprudence does provide significant guideposts. Determining whether government action effects a taking requires a court to examine the character of the government's action and the extent to which this action interferes with the owner's rights in the property as a whole. Penn Central, 438 U.S. at 130-31, 98 S.Ct. 2646. Stated more specifically, these "ad hoc, factual inquiries" involve examining the character of the government's action, the economic impact of the action, and the degree to which the action interferes with the owner's investment-backed expectations. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) (quoting Penn Central, 438 U.S. at 124, 98 S.Ct. 2646); Byrd, 365 S.C. at 658-59, 620 S.E.2d at 80 (quoting the same). Generally, the physical occupation of private property by the government results in a taking regardless of the public interest the government's action serves. See Loretto, 458 U.S. at 426-28, 102 S.Ct. 3164; see also Lucas, 505 U.S. at 1015, 112 S.Ct. 2886. Additionally, the enforcement of a government regulation will usually effect a taking when the regulation denies all economically beneficial or productive use of land. Lucas, 505 U.S. at 1015, 112 S.Ct. 2886.

[8] In the instant cases, it is instructive to begin by classifying the nature of the government's actions which the property owners allege give rise to takings. Neither Hardin nor Tallent involves the enactment of any regulation which directly regulates any use of the owners' properties. Thus, in order to have "taken" any part of these properties, SCDOT must have physically appropriated some aspect of them. Determining this question requires that we analyze what property interests exist with reference to the public road system and a property owner's access thereto.

*606 In some jurisdictions, a property owner merely has an easement for the purpose of accessing the public road system. Therefore, as long as a property owner has access to the public road system, his easement is intact. For this reason, any road re-configuration that does not cut off an owner's access to the public road system effects no taking upon him.

**442 [9][10][11] In South Carolina, however, a property owner has more rights. As we have held, a property owner in South Carolina has an easement for access to and from any public road that abuts his property, regardless of whether he has access to and from an additional public road. South Carolina State Hwy. Dep't v. Allison, 246 S.C. 389, 393, 143 S.E.2d 800, 802 (1965). Thus, for example, in South Carolina, an owner of a corner lot has an easement for access to and from both roads that abut his property. Of course, an owner in South Carolina also has an easement for access to and from the public road system. This principle provides that an owner whose property does not abut any public road will not be denied access to the public road system.

In finding that takings occurred in these cases, the court of appeals relied on this Court's opinion in City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239 (1946). In that case, the City of Rock Hill closed a portion of a street which rendered the remaining part of the street a cul-de-sac. Id. at 361-62, 40 S.E.2d at 240-41. The property owner of a corner lot which fronted both the cul-de-sac and another street brought an action against the city for a taking, and the trial court ruled in the city's favor. Id. at 365, 40 S.E.2d at 242. This Court reversed, stating:

The right of a landowner to recover damages because of the vacation of a street depends on the location of his land with reference to the street vacated, or the part of the street vacated, and the effect of such vacation on his rights as an abutting owner. It is well settled that an owner is not entitled to recover damages unless he has sustained an injury different in kind and not merely in degree from that suffered by the public at large. If it appears that there is a special injury, the owner may recover damages notwithstanding his property does not abut, as in this case, on the *607 part of the street vacated, because this amounts to a 'taking.'

In the absence of special injury, no recovery will be allowed. The test is, not whether the property abuts, but whether there is a special injury, and the first practical question which presents itself is whether one whose property does not abut immediately on the part of the street vacated-the part vacated being in the same block between his property and the next connecting cross street-is so specially injured as to be entitled to recover compensation on the ground that his access is cut off in one direction, but not in the opposite direction.

Id. at 368-69. 40 S.E.2d at 243-44.

[12][13] Cothran is representative of a line of cases which provide that the closing of a portion of a road abutting a piece of private property necessarily constitutes some degree of a taking of that property. *E.g.*, Gray v. South Carolina Dep't of Highways and Public Transp., 311 S.C. 144, 427 S.E.2d 899 (Ct.App.1992). A critical examination of the property interests at work in these cases, however, yields no plausible explanation for this rule. When only a portion of a public road abutting a landowner's property is closed, leaving the property in a cul-de-sac, no taking has occurred. As long as the owner has access to and from the remainder of the road that continues to abut his property, his easement with respect to that road remains intact. Further, as long as a landowner still has access to the public road system, this easement is unaffected.^{FN2} This reasoning is in line with the notion that a landowner has no right to access abutting roads in more than one direction. *See* 73 A.L.R.2d 689, 691-698.

FN2. Returning to the corner lot example, the natural extension of this analysis is that if the government were to entirely close one of the roads that abutted the owner's property, there would be no taking. This is exactly correct. The existence of the road was the condition that created the easement, not the other way around. So long as a landowner has access to the public road system, his easement by necessity is intact. The easement for access to the (now closed) abutting road has not been taken, it has been extinguished.

*608 This Court came very close to expressing this analysis in another similar case. In South Carolina State Highway Dep't v. Carodale Assoc., this Court stated:

**443 A landowner has no vested right in the continuance of a public highway; the abandonment of a highway, without its being closed, is *damnum absque injuria*. Likewise, the State is under no duty to maintain a minimum level of traffic flow. Nonetheless, the vacation of a street or the creation of a cul de sac with the concomitant diversion of traffic and loss of frontage has been held a "taking" of property.

Closing a street inherently produces a diversion of traffic and loss of frontage on a viable traffic artery. However, these repercussions are not compensable elements of damage. Succinctly, the restriction of ingress or egress to and from one's property is the right which must be compensated if infringed when a highway is closed by condemnation.

The landowner has no property right in the continuation or maintenance of the flow of traffic past its property. Traffic on the highway, to which they have access, is subject to the same police power regulations as every other member of the traveling public. Re-routing and diversion of traffic are police power regulations.

268 S.C. 556, 561, 235 S.E.2d 127, 128-29 (1977) (emphasis in original, internal citations omitted).

[14] Though it does not expressly provide so, Carodale implicitly recognizes that road closings and re-alignments are actions of a far different character than government conduct which affects an owner's rights in his or her property in a constitutionally significant sense. Stated in doctrinal terms, modern takings principles instruct that road closings and realignments which do not "take" land or an easement from a property owner do not give rise to compensable takings because these actions do not directly interfere with an owner's rights in the property as a whole.^{FN3}

FN3. The dissent attempts to take us to task for "ignoring well-established precedent" in reaching our decision. Of course, we do not ignore precedent as the dissent suggests; we expressly overrule it.

*609 This Court's prior decisions holding that the closing of a road constituted a taking actually imply that a property owner possesses more

than an easement; they imply possession of a property interest in the existence of a particular public road. That cannot be correct. See *Tuggle v. Tribble*, 177 Ark. 296, 6 S.W.2d 312, 314 (1928) (not passing on the takings issue, but finding that a landowner can have no vested interest in the existence of an abutting road); cf. *Carodale*, 268 S.C. at 561, 235 S.E.2d at 128-29 (stating that a landowner has no vested rights in the continuance of a public highway and in the continuation of maintenance of traffic flow past his property). Thus, to the extent the rationale for these holdings was that the government had caused the owner to lose a property right, this reasoning collapses on itself.

[15] As this analysis indicates, the focus of our inquiry must be on a landowner's actual property interests; that is, his easements. We therefore overrule the "special injury" analysis contained in our jurisprudence in this area and specify that our focus in these cases is on how any road re-configuration affects a property owner's easements. An easement is either taken or it is not. That is the "injury different in kind and not merely in degree" with which we are concerned. Under *Coltran's* legal standard, an owner might prevail in a takings claim despite the fact that all of his relevant property interests-his easements for access-have not been disturbed. Not only was the result in *Coltran* incorrect, its pronouncement of the law must be abandoned.^{FN4}

FN4. The contrary rule the dissent advances is curious on its own terms. As a primary matter, neither landowner in this case has been deprived of ingress or egress to his or her property, nor have these landowners been injured in their ability to enter or exit their property. Instead, these cases involve alterations to the road system which have not disturbed the landowners' easements of access. Government action can effect no taking unless it has deprived an owner of a property interest. To the degree that the dissent's analysis focuses on particular uses to which landowners put their property and the change of a property's use-driven value following alterations in the public road system, the dissent suggests that a significant economic impairment of a landowner's expectations may give rise to a taking. This analysis puts the cart before the horse and overlooks the critical factor in these cases which is the character of the government's action. No property rights of these owners have been taken or directly interfered with. To find a taking in either of these cases would be to stretch reason beyond reality.

**444 *610 [16] Because the plaintiffs in *Hardin* continue to have access to and from Dave Lyle Boulevard and the public road system, their property rights have not been disturbed. The ability to turn only one way onto the boulevard is irrelevant. We therefore reverse the court of appeals' decision and hold that there has been no taking in this case.

[17] Similarly, no aspect of the *Tallent* plaintiff's property has been physically taken by SCDOT. Accordingly, we reverse the court of appeals' decision and hold that there has been no taking in this case.

CONCLUSION

For the foregoing reasons, we reverse the court of appeals' decisions in these cases.

BURNETT and PLEICONES, JJ., concur. WALLER, J., concurring in part, dissenting in part in a separate opinion in which MOORE, J., concurs. Justice WALLER, concurring in part, and dissenting in part:

I concur in part and dissent in part.

Although I concur in result with the majority's holding that *Hardin* has not suffered a compensable taking, I disagree with the rationale underlying its decision. Further, I disagree with the majority's conclusion that *Tallent* has not suffered a compensable taking.

In my view, the majority ignores well-established precedent and then, without direct citation of authority, holds that "modern takings principles instruct that road closings and realignments which do not "take" land ... do not give rise to compensable takings because these actions do not directly interfere with an owner's rights in the property as a whole." To the contrary, it has long been the law of this state that an actual physical taking of property is not necessary to entitle one to compensation. *611 *Gasque v. Town of Conway*, 194 S.C. 15, 8 S.E.2d 871 (1940), overruled on other grounds *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985) (to deprive one of the ordinary beneficial use and enjoyment of property is, in law, equivalent to the taking of it, and is as much a "taking" as though the property itself were actually appropriated).

As this Court noted in *South Carolina State Highway Dep't v. Allison*, 246 S.C. 389, 393, 143 S.E.2d 800, 802 (1965), "an obstruction that materially injures or deprives the abutting property owner of ingress or egress to and from his property is a 'taking' of the property, for which

recovery may be had. The fact that other means of access to the property are available affects merely the amount of damages, and not the right of recovery."

I agree with the majority that *City of Rock Hill v. Cothran*, 209 S.C. 357, 40 S.E.2d 239 (1946) was wrongly decided upon its facts and should therefore be limited. In *Cothran*, the plaintiff's property did not directly abut the closed portion of the road, such that there was no direct denial of ingress or egress. Cothran was not deprived of one of the immediate means of access to his property. Accordingly, under the facts of *Cothran*, the plaintiff suffered, at best, a diversion of traffic flow which, as the majority points out, this Court has recognized is not compensable. *Curodale* (landowner has no property right in the continuation or maintenance of the flow of traffic past its property).^{FN5}

^{FN5} It has been noted that although a loss of traffic, loss of business, and circuity of travel are not themselves compensable, they are factors to be considered in determining the reasonableness of the remaining access to and from an abutting roadway. *Cady v. N.D. Dep't of Transp.*, 472 N.W.2d 467 (N.D.1991).

However, in my view, the fact that a diversion in traffic flow is not compensable does not mean that closure of a road which materially deprives the abutting property owner of ingress or egress to and from his property is not a compensable taking. See 46 Am.Jur. *Proof of Facts* 3d 493 § 17 (2004) (courts have often noted important distinction between a limitation of access, which may be compensable, and a change in traffic flow, which is not compensable).

**445 *612 On the facts of the *Hardin* case, I agree with the majority that there has been no taking. Hardin's property does not directly abut the median which was closed by the Department of Transportation, and he was not materially deprived of ingress or egress to and from his property. Accordingly, I concur in result only with *Hardin*.

I dissent from the majority opinion's holding in *Tallent*. In Tallent's ^{FN6} case, as a result of SDCOT's closure of access points between Old Easley Bridge Road and Highway 123, Old Easley Bridge Road was rendered a cul de sac at one end, the end used by Tallent and her customers to access her salon. Tallent's only remaining access to Highway 123 was by means of a series of secondary roads running through a low-income neighborhood. Due to the closure, the value of the residential properties increased, while the value of Tallent's commercial property decreased.

^{FN6} Tallent's beauty shop was located on Old Easley Bridge Road.

Courts have generally held, consistent with South Carolina law, that a landowner on a partially closed road, whose land is on the opened portion, cannot claim damages if he still has reasonable access to the general system of roads. There is an exception to this rule, however, if the road closing leaves the landowner in a cul de sac. *Mill Creek Properties v. City of Columbia*, 944 So.2d 67 (Miss.App.2006), citing *Miss. State Highway Comm'n v. Fleming*, 248 Miss. 187, 157 So.2d 792 (1963); *Kick's Liquor Store, Inc. v. City of Minneapolis*, 587 N.W.2d 57 (Minn.Ct.App.1998) (holding that creation of a cul de sac may be compensable if losses of access to and from existing roads "substantially impairs [the landowner's] right to reasonably convenient and suitable access to the main thoroughfare"). See also *DuPuy v. City of Waco*, 396 S.W.2d 103, 110 (Tex.1965) (where construction of viaduct left property owner in cul-de-sac, he was deprived of reasonable access, even though he could still physically get to public roads from his property); *Boehm v. Bockes*, 493 N.W.2d 671 (N.D.1992) (Highway Department's construction of overpass that converted street in front of auto repair business into cul-de-sac by closing off direct access to street from nearby highway was a *613 taking; access to business after permanent closure forced use of indirect route of additional four large blocks, through residential neighborhood, distance comparable to six regular city blocks, and this physical interference specially affected property).

Here, the road on which Tallent's business is located has essentially been rendered a cul de sac. In my view, therefore, if Tallent has suffered a special injury, she has a compensable taking.^{FN7}

^{FN7} As this Court recognized in *Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963), the test of whether a landowner is entitled to recover damages for the vacation of a street is the existence of special injury amounting to a taking.

As noted by the Court of Appeals in this case, "The expert appraiser ... testified that [Tallent's] business losses differed from those in the area because the other entities were 'destination' businesses, such that people will seek them out regardless of the lack of immediate access from Highway 123.... [W]hile the surrounding residential area benefited from the actions of SCDOT, the value of Tallent's commercial property had been adversely affected. The realtor ... testified that there had been no interest in the property due to the current lack of access to Highway 123." Tallent, 363 S.C. at 168, 609 S.E.2d at 547. Moreover, the Master indicated that several of Tallent's patrons testified they had difficulty reaching the property since the closure, and were reluctant to do so for safety reasons in driving through the low income neighborhood.

I would affirm the Court of Appeals' holding that Tallent suffered a compensable taking.

MOORE, J., concurs.

S.C., 2007.

Hardin v. South Carolina Dept. of Transp.
371 S.C. 598, 641 S.E.2d 437

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391 S.C. 429, 706 S.E.2d 501
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C

Supreme Court of South Carolina.
CAROLINA CHLORIDE, INC., Respondent,
v.
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, Appellant.

No. 26930.
Heard Nov. 3, 2010.
Decided Feb. 22, 2011.

Background: Property owner brought inverse condemnation action against South Carolina Department of Transportation (SCDOT), seeking damages for lost value of land after SCDOT closed portion of road that property owner used to access another road. The Circuit Court, Richland County, Joseph M. Strickland, Master in Equity, granted summary judgment in favor of SCDOT. Property owner appealed.

Holdings: The Supreme Court, Pleicones, J., held that:

- (1) Supreme Court's Hardin decision, which abandoned the "special injury" analysis regarding inverse-condemnation claims involving re-configuration of road access, applies retroactively, and
- (2) genuine issue of material fact as to whether SCDOT's actions constituted a taking precluded summary judgment.

Reversed and remanded.

Kiureddge, J., filed concurring opinion.

West Headnotes

[1] Courts 106 ⇌ 100(1)

106 Courts

106[1] Establishment, Organization, and Procedure

106II(II) Effect of Reversal or Overruling

106k100 In General

106k100(1) k. In general; retroactive or prospective operation. Most Cited Cases

Supreme Court's *Hardin* decision, which abandoned the "special injury" analysis regarding inverse-condemnation claims involving re-configuration of road access and specified that focus in those cases should be how any road re-configuration affects a property owner's easements, applies retroactively. Const. Art. I, § 13.

[2] Courts 106 ⇌ 100(1)

106 Courts

106II Establishment, Organization, and Procedure

106II(II) Effect of Reversal or Overruling

106k100 In General

106k100(1) k. In general; retroactive or prospective operation. Most Cited Cases

The general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively.

[3] Courts 106 ⇌ 100(1)

106 Courts

106II Establishment, Organization, and Procedure

106II(II) Effect of Reversal or Overruling

106k100 In General

106k100(1) k. In general; retroactive or prospective operation. Most Cited Cases

A judicial decision requires only prospective application when liability is created where formerly none existed.

[4] Judgment 228 ⇌ 181(15.1)

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary Judgment

228k181(15) Particular Cases

228k181(15.1) k. In general. Most Cited Cases

Genuine issue of material fact as to whether actions of South Carolina Department of Transportation (SCDOT) in closing portion of first road containing railroad grade crossing near intersection with second road constituted a taking precluded summary judgment in favor of SCDOT in inverse-condemnation action, which was brought by property owner, which could no longer use first road to directly access second road, which abutted its property. Const. Art. I, § 13.

[5] Appeal and Error 30 ⇌ 863

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k862 Extent of Review Dependent on Nature of Decision Appealed from

30k863 k. In general. Most Cited Cases

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. Rules Civ.Proc., Rule 56(c).

[6] Judgment 228 ⇌ 181(5.1)

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary Judgment

228k181(5) Matters Affecting Right to Judgment

228k181(5.1) k. In general. Most Cited Cases

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Rules Civ.Proc., Rule 56(c).

171 Judgment 228 ⇌ 185(2)

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185 Evidence in General

228k185(2) k. Presumptions and burden of proof. Most Cited Cases

In determining whether any triable issues of fact exist, as would preclude granting of summary judgment motion, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Rules Civ.Proc., Rule 56(c).

181 Eminent Domain 148 ⇌ 266

148 Eminent Domain

148IV Remedies of Owners of Property; Inverse Condemnation

148k266 k. Nature and grounds in general. Most Cited Cases

The elements of an action for an inverse condemnation are: (1) affirmative conduct of a government entity, (2) the conduct effects a taking, and (3) the taking is for a public use. Const. Art. 1, § 13.

191 Eminent Domain 148 ⇌ 266

148 Eminent Domain

148IV Remedies of Owners of Property; Inverse Condemnation

148k266 k. Nature and grounds in general. Most Cited Cases

Plaintiff's right to recovery in an inverse-condemnation case is premised upon the ability to show that he or she has suffered a taking. Const. Art. 1, § 13.

1101 Highways 200 ⇌ 85

200 Highways

200V Title to Fee and Rights of Abutting Owners

200k85 k. Right of access. Most Cited Cases

A property owner has an easement for access to and from any public road that abuts his property, regardless whether he has additional access to and from another public road.

111 Highways 200 ⇌ 85

200 Highways

200V Title to Fee and Rights of Abutting Owners

200k85 k. Right of access. Most Cited Cases

A property owner has an easement for access to and from the public road system.

112 Eminent Domain 148 ➡ 2.19(1)

148 Eminent Domain

148I Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.19 Highways and Streets

148k2.19(1) k. In general. Most Cited Cases

Eminent Domain 148 ➡ 106

148 Eminent Domain

148II Compensation

148II(B) Taking or Injuring Property as Ground for Compensation

148k94 Elements of Compensation for Injuries to Property Not Taken

148k106 k. Obstruction of access. Most Cited Cases

In inverse-condemnation cases addressing road re-configuration, the focus must be on a landowner's actual property interests; that is, his easements of access to and from the public road.

****502** Beacham O. Brooker, Jr. and Natalie J. Moore, both of Columbia, for Appellant.

Edward D. Sullivan, Christian Stegmaier, and Amy L. Neuschafer, all of Collins & Lacy, of Columbia, for Respondent.

Justice PLEICONES.

***432** Respondent brought this inverse condemnation action against South Carolina Department of Transportation (SCDOT). The master in equity granted summary judgment in favor of respondent, SCDOT appeals. We reverse and remand.

FACTS

Respondent owned a tract of land located at the southeast corner of the intersection of Killian Road (running east to west) and Farrow Road (running north to south). A railroad track owned by Norfolk Southern Corporation (Norfolk Southern) runs parallel to Farrow Road, adjacent to respondent's property. Respondent never had direct access to Farrow Road from its property. Respondent directly accessed Killian Road using a driveway to the right of the railroad track.

****503** In 2006, Norfolk Southern entered an agreement with SCDOT whereby SCDOT closed the portion of Killian Road that contained a railroad grade crossing near the intersection of Farrow Road.^{FN1} After the road closing, respondent could no longer access Farrow Road by turning left onto Killian road and crossing the Norfolk Southern tracks. Instead, respondent had to turn right onto Killian Road, then right onto Longtown Road, and travel around the back of the property to the point where Longtown Road intersects Farrow Road.

^{FN1}. This agreement was made pursuant to S.C. Code Ann. § 58-15-1625 (Supp. 2009). The agreement also provided for the construction of a highway overpass over the tracks at the next intersection to the north.

***433** Respondent subsequently brought this inverse condemnation action seeking damages for the lost value of its land that purportedly resulted from the taking of its access rights to Farrow Road. The master in equity granted summary judgment in favor of respondent.

ISSUES

I. Did the master err in finding Hardin v. S.C. Dep't of Transp., 371 S.C. 598, 641 S.E.2d 437 (2007) does not apply to this case?

II. Did the master err in granting summary judgment in favor of respondent?

DISCUSSION

I. Applicable Law

[1] SCDOT argues the master erred in finding Hardin should only apply prospectively. We agree.

Prior to the Court's decision in Hardin, a landowner's ability to recover damages as a result of a re-configuration of road access depended on the location of his land with reference to the road vacated and the effect of the vacation on his rights as an abutting landowner. See City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239 (1946). The Cothran Court held a landowner is not entitled to recover damages unless he has sustained a "special injury," which is an injury different in kind and not merely in degree from that suffered by the public at large. Id. at 368-69, 40 S.E.2d at 243-44.

In Hardin, the Court abandoned the "special injury" analysis which previously existed in this state's jurisprudence, and specified that the focus in these cases should be how any road re-configuration affects a property owner's easements. Hardin, 371 S.C. at 609, 641 S.E.2d at 443.

[2][3] "The general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively." Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989). "Prospective application is required when *434 liability is created where formerly none existed." Id.; See also Marcum v. Bowden, 372 S.C. 452, 643 S.E.2d 85 (2007) (the holding that an adult social host who knowingly and intentionally serves an alcoholic beverage to a person between the ages of 18 and 20 created tort liability where formerly there was none, and thus, the Court's decision should be applied prospectively); Ludwick v. This Minute of Carolina, 287 S.C. 219, 337 S.E.2d 213 (1985) (employment law case first recognizing the tort of retaliatory discharge, thereby creating a new cause of action and a new substantive right); McCasker v. Shaw, 295 S.C. 372, 368 S.E.2d 672 (Cl.App.1988) (the Court's recognition of a tort for the negligent infliction of emotional distress created a new cause of action and should be applied prospectively).

We find the master erred in concluding Hardin should only be applied prospectively. At the outset, we note counsel for respondent candidly agreed at oral argument that Hardin should apply here. We find Hardin created no new right or cause of action, but, rather restated the focus in determining whether a road re-configuration amounts to a taking. Thus, Hardin applies retrospectively.

**504 II. Summary Judgment

[4] SCDOT argues the master in equity erred in granting summary judgment in favor of respondent. We agree.

[5][6][7] When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. US44 Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Fleming, 350 S.C. at 493-94, 567 S.E.2d at 860.

[8][9] *435 Private property shall not be taken for public use without the payment of "just compensation." S.C. Const. art. I, § 13. The elements of an action for an inverse condemnation are: (1) affirmative conduct of a government entity; (2) the conduct effects a taking; and (3) the taking is for a public use. Byrd v. City of Hartsville, 365 S.C. 650, 657, 620 S.E.2d 76, 79 (2005). A plaintiff's right to recovery in an inverse condemnation case is premised upon the ability to show that he or she has suffered a taking. Hardin, 371 S.C. at 604, 641 S.E.2d at 441.

[10][11][12] A property owner in South Carolina has an easement for access to and from any public road that abuts his property, regardless whether he has additional access to and from another public road. Hardin, 371 S.C. at 606, 641 S.E.2d at 442. A property owner also has an

easement for access to and from the public road system. *Id.* In cases addressing road re-configuration, the focus must be on a landowner's actual property interests; that is, his easements. *Hardin*, 371 S.C. at 609, 641 S.E.2d at 443.

As explained above, the master in equity erred in finding *Hardin* does not apply to this case. The master, however, went on to state respondent would prevail even under *Hardin*. Specifically, the master found the railroad track did not destroy the contiguity of respondent's property for purposes of determining whether the property abuts Farrow Rd. Thus, the master concluded SCDOT's closing of the grade crossing effected a taking of respondent's easement of access to Farrow Road.

We find the master erred in granting summary judgment in favor of respondent. There is no question respondent satisfied the first element of inverse condemnation, as SCDOT's closing of Killian Road was affirmative conduct of a government entity. Viewing the evidence in the light most favorable to SCDOT, however, we find that while the closure was effected for a public purpose, there remains a genuine issue of material fact whether SCDOT's actions constituted a taking. Specifically, there is a question whether respondent had an easement of access as an abutting landowner to Farrow Road. Respondent's property is separated from Farrow Road by the strip of land surrounding the railroad track, and there has *436 been no evidence presented of the quantum of the estate of that portion of land. Because further inquiry into the facts of this case is desirable to clarify the application of the law, we find summary judgment was not appropriate.

CONCLUSION

Based on our finding the factual record is insufficient for summary judgment, the decision of the master is

REVERSED AND REMANDED.

TOAL, C.J., BEATTY and HEARN, JJ., concur.
KITREDGE, J., concurring in a separate opinion.
Justice KITREDGE.

I concur in result and agree that the presence of a genuine issue of material fact renders summary judgment inappropriate. I write separately because my view of the law is reflected in Justice Waller's dissent in **505 *Hardin v. S.C. Dep't. of Transportation*, 371 S.C. 598, 641 S.E.2d 437 (2007).

S.C., 2011.
Carolina Chloride, Inc. v. South Carolina Dept. of Transp.
391 S.C. 429, 706 S.E.2d 501

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308 S.C. 226, 417 S.E.2d 592

(Cite as: 308 S.C. 226, 417 S.E.2d 592)

C

Supreme Court of South Carolina.
FIRST BAPTIST CHURCH OF MAULDIN, South Carolina; John Center as Chairman of the Deacons, Respondent,
v.
CITY OF MAULDIN, Appellant.

No. 23649.
Heard March 10, 1992.
Decided April 27, 1992.

Church brought action seeking to close unpaved road which ran through church property. The Circuit Court, Greenville County, Charles B. Simmons, J., found that it was in best interest of all concerned that road be closed and provided for transfer of title to church. City appealed. The Supreme Court, Toal, J., held that: (1) Circuit Court's jurisdiction to close roads is concurrent with that of city, and (2) Circuit Court properly considered public interest in determining that road should be closed.

Affirmed.

West Headnotes

[1] Statutes 361 ↔ 188

361 Statutes

361 VI Construction and Operation

361 VI(A) General Rules of Construction

361 k187 Meaning of Language

361 k188 k In General. Most Cited Cases

In construing statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand statute's operation.

[2] Municipal Corporations 268 ◀657(6)

268 Municipal Corporations

268X1 Use and Regulation of Public Places, Property, and Works

268X1(A) Streets and Other Public Ways

268k657 Vacation or Abandonment

268k657(6) k. Review. Most Cited Cases

Circuit Court's jurisdiction to close roads within city limits is concurrent with that of city; no applicable statute gives city exclusive jurisdiction over roads or limits Circuit Court's review to determination of whether city's actions constituted abuse of discretion. Code 1976, §§ 5-27-150, 57-9-10 et seq., 57-9-20, 57-9-40.

[3] Municipal Corporations 268 ◀657(1)

268 Municipal Corporations

268X1 Use and Regulation of Public Places, Property, and Works

268X1(A) Streets and Other Public Ways

268k657 Vacation or Abandonment

268k657(1) k. In General. Most Cited Cases

Although public street may not be vacated for sole purpose of benefiting abutting owner, mere fact that vacation was at instigation of individual who owns abutting property does not invalidate vacation or constitute abuse of discretion, nor does fact that some private interest may be served incidentally.

[4] Municipal Corporations 268 ◀657(1)

268 Municipal Corporations

268X1 Use and Regulation of Public Places, Property, and Works

268X1(A) Streets and Other Public Ways

268k657 Vacation or Abandonment

268k657(1) k. In General. Most Cited Cases

Decision to close unpaved road which cut through church property was not abuse of discretion where church was conceded to be community asset and its continued growth in public interest, danger road posed to both its users and to children attending church's day care clearly outweighed any minor inconvenience to those who used road primarily to avoid traffic lights on major thoroughfares, and any detrimental effect closure would have on alternative routes could be avoided. Code 1976, § 57-9-20.

**593 *227 H. Michael Spivey, Mauldin, for appellant.

Timothy E. Madden and David H. Wilkins, Wilkins and Nelson, Greenville, for respondent.

TOAL, Justice.

The issue presented in this appeal is whether the lower court erred in ordering the closure of a road within the City of Mauldin ("City") under S.C. Code Ann. Section 57-9-10 et seq. We find the closure was proper and affirm.

FACTS

The First Baptist Church of Mauldin ("Church") owns 12.7 acres which is divided, 7.8 acres on one side and 4.1 acres on the other side of an unpaved public road. The Church is the *228 only property owner abutting this road. The Church's day care facility was adjacent to the road. In order to expand the day care facility, the Church sought to close the roads. After several City council members indicated they would be unwilling to close the road, the Church brought this action in Circuit Court under Section 57-9-10 of the South Carolina Code. Under this provision, any interested party may petition the court to close any road, street or highway. The court may order the road closed upon a determination that it is in the best interest of all concerned and transfer title to an appropriate party. S.C. Code Ann. Section 57-9-20 (1991).

At the hearing, the Church presented testimony supporting its need to expand. The parties stipulated the Church was an asset to the community. Additionally, the Church submitted competent testimony attesting to the dangerous use of this road which aside from church traffic served as a "cut through" for traffic trying to avoid the traffic lights on the major roadways. The road is narrow and it has a substantial curve with limited visibility. The road presented a danger to its travelers and the children attending the Church day care. There was testimony that the closure of the road would increase traffic on a parallel residential street. However, there was additional testimony that this concern would be alleviated by the use of traffic signs. It was undisputed this type of cut through traffic should be discouraged. The lower court found it was in the best interest of all concerned that the road be closed and provided for transfer of title to the Church.

[1][2] The City brought this appeal raising essentially two issues. First, the City argues Section 5-27-150 of the South Carolina Code gives the City exclusive rights to close roads within the City limits. Under the City's argument, the Circuit Court's review would be appellate and limited to determining whether the City's actions constituted fraud or clear abuse of discretion. City of Greenville v. Bozeman, 254 S.C. 306, 175 S.E.2d 211 (1970). Section 5-27-150 provides in part:

The city council of any city containing more than five thousand inhabitants may open new streets, close, widen, or alter streets in the city when, in its judgment, it may be necessary for the improvement of the city.

*229 In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Byrant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). We can find no language supporting the City's contention of exclusive jurisdiction in the text of Section 5-27-150. Nor does the language of Section 57-9-10 et seq. support its inapplicability to roads within a city. To the contrary, Section 57-9-40 clearly provides it is to be considered cumulative to other provisions of the law. Accordingly, we are compelled to find the City's jurisdiction to close roads concurrent with the court's.

[3] Second, the City contends the court abused its discretion in ordering this road closed. We disagree. Under Section 57-9-20, the court is empowered to close roads **594 on a finding that it is in the best interest of all concerned. A public street may not be vacated for the sole purpose of benefiting an abutting owner. City of Rock Hill v. Colbran, 209 S.C. 357, 40 S.E.2d 239 (1946). However, the mere fact that the vacation was at the instigation of an individual who owns abutting property does not invalidate the vacation or constitute abuse of discretion, nor does the fact that some private interest may be served incidentally. Id. On the other hand, it must appear clearly that no consideration other than that of public interest could have prompted the action. Id.

[4] In this case, the lower court properly considered the public's interest. The Church was conceded to be a community asset and its continued growth was in the public interest as well as in its own private interest. The danger this road posed to both the user of the road and the children at the Church's day care clearly outweighed any minor inconvenience to those who would use the road to avoid the traffic lights on the major roads designed to handle this traffic. The court also considered the effect the closure would have on alternative routes. Its conclusion that any detrimental effect could be avoided was supported by the evidence. Accordingly, we find the lower court's closure of this road and transferring title to the Church was not an abuse in discretion. We AFFIRM.

HARWELL, C.J., and CHANDLER, FINNEY and MOORE, JJ., concur.

S.C., 1992.

First Baptist Church of Mauldin v. City of Mauldin
308 S.C. 226, 417 S.E.2d 592

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	CASE NO: 2005-CP-45-434
Town of Kingstree, a Body	)	
Corporate and Politic,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO ALTER OR AMEND
	)	JUDGMENT PURSUANT TO RULE
	)	59(e) AND RULE 60, SCRPC OF
Gary W. Chapman, Jr., Terilyn J.	)	DEFENDANTS LYDIA F. DUKE
McClary, Waccamaw Housing	)	AND ALICE H. KELLAHAN
Inc., Lydia F. Duke, Alice H.	)	
Kellahan and South Carolina	)	
Department of Transportation.	)	
	)	
Defendants.	)	

TO: ERNEST J. JARRETT, ESQUIRE, ATTORNEY FOR TOWN OF KINGSTREE;
 GARY W. CHAPMAN, JR., PRO SE; TERILYN J. MCCLARY, PRO SE; NATE
 FATA, ESQUIRE, ATTORNEY FOR WACCAMAW HOUSING, INC. AND
 BARBARA WESSINGER, ESQUIRE, ATTORNEY FOR S.C. DEPT OF
 TRANSPORTATION

DEFENDANTS LYDIA F. DUKE AND ALICE H. KELLAHAN, by and through
 their undersigned attorneys, respectfully submit this Memorandum in support of
 their Motion to Alter and Amend the Order and Judgment of the Court dated
 October 22, 2010, pursuant to Rule 59(e) and Rule 60 of the South Carolina
 Rules for Civil Procedure. It is respectfully submitted that the Court should
 reconsider the matter and the Order of October 22, 2010 be altered and amended
 and to provide for the following:

1. Alter and amend the Order of October 22, 2010 to deny the closure

of a portion of Porter Street (which has never been paved), as set forth in the Order on the ground that the closure of the road was not proper based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

2. Alter and amend the Order of October 22, 2010 to specifically find and hold that any closure of a portion of Porter Street (which has never been paved) should be totally and completely subject to the private easement of DEFENDANTS KELLAHAN/DUKE on the ground that DEFENDANTS KELLAHAN/DUKE retain their private easement, based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

3. Alter and amend the Order of October 22, 2010 to specifically find and hold that DEFENDANTS KELLAHAN/DUKE retain their private easement on the ground that, under Section 57-9-10 of the S. C. Code of Laws, 1976, as amended, the Plaintiff was not entitled to seek the elimination of private easement held by DEFENDANTS KELLAHAN AND DUKE.

4. Alter and amend the Order dated October 22, 2010 to specifically find and hold that DEFENDANTS KELLAHAN/DUKE retain their private easement on the ground that there was never a dedication of Porter Street (a portion of which has never been paved) by these Defendants sufficient to meet the required burden of proof based upon the pleadings, evidence, and testimony before the Court, as well as the applicable laws of this state.

5. Alter or amend the Order of October 22, 2010 to find and hold that DEFENDANTS KELLAHAN/DUKE continue to retain their private easement on the ground that the Plaintiff failed to allege in its pleadings that there had been any dedication of the easement to a public use by DEFENDANTS KELLAHAN/DUKE, or that there was any merger of the easement and the roadway, based upon the pleadings, evidence, and testimony before the Court, as well as the applicable laws of this state.

6. Alter or amend the Order of October 22, 2010 to find and hold that the evidence before the Court failed to establish that there was any dedication by DEFENDANTS KELLAHAN AND DUKE, of an easement or other property right and also failed to establish that there was any merger of the easement into the roadway sufficient to meet the required burden of proof based upon the pleadings, evidence, and testimony before the Court, as well as the applicable laws of this state.

7. Alter or amend the Order of October 22, 2010 to find and hold that there was no agency relationship between Senator Yancey McGill and William N. Kellahan, Jr. on the ground that the evidence before the Court failed to meet the required burden of proof to establish an agency relationship between Senator Yancey McGill and William N. Kellahan, Jr., based upon the pleadings, evidence, and testimony before the Court, as well as the applicable laws of this state.

8. Alter or amend the Order of October 22, 2010 to find and hold that there was no agency relationship between Senator Yancey McGill and

DEFENDANTS KELLAHAN/DUKE on the ground that the evidence and testimony before the Court failed to meet the required burden of proof to establish an agency relationship between Senator Yancey McGill and DEFENDANTS KELLAHAN/DUKE, based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

9. Alter and amend the Order of October 22, 2010 so as to deny the closure of the roadway on the ground that a determination of the equitable rights of the parties was not an appropriate remedy based upon the fact that no estoppel or equitable estoppel was pled, and, since the same had not been pled, the equitable estoppel was waived and based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

10. Alter or amend the Order of October 22, 2010 so as to deny the request for relief of the Plaintiff and deny the closure of the roadway on the ground that the property rights of the DEFENDANTS KELLAHAN AND DUKE, being private easement rights, could not be divested from those Defendants and vested in a third party or in a person or entity, not a party to this action, by the closing of the roadway, based upon the pleadings and the evidence presented, as well as the applicable laws of this state.

11. Alter or amend the Order of October 22, 2010 to find and hold that DEFENDANTS KELLAHAN/DUKE retained their private easement rights on the ground that, based upon the Order that no taking occurred, and therefore if no taking occurred, then the private easement rights of the DEFENDANTS

KELLAHAN/DUKE could not be extinguished, removed or otherwise affected, based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

12. Alter or amend the Order of October 22, 2010 to find and hold that the DEFENDANTS KELLAHAN/DUKE retained their private easement rights on the ground that, since no taking had occurred, and, accordingly, those rights could not be extinguished or transferred to a third party, or to a person or entity, not a party to this action, based upon the pleadings, evidence and testimony before the Court, as well as the applicable laws of this state.

13. Alter or amend the Order of October 22, 2010 to find and hold that the DEFENDANTS KELLAHAN/DUKE should be compensated in the amount of One Hundred Thousand and No/100 (\$100,000.00) Dollars for their retained private easement rights on the ground that those rights could not be extinguished or transferred to a third party, or to a person or entity, not a party to this action, without just compensation under the Constitutions of the United States and the State of South Carolina, as well as the applicable laws of this state.

STATEMENT OF THE CASE

On November 14, 2005, the Plaintiff filed a Petition for Abandonment and Closure of an area that is called "a portion of Porter Street". Defendant South Carolina Department of Transportation filed an Answer dated December 9, 2005, and Defendant Waccamaw Housing, Inc. filed an Answer dated December 20, 2005, in which both admitted the allegations of the Petition. Defendants Gary W.

Chapman Jr. and Terilyn J. McClary did not file an Answer, and both are thereby in default. Defendants, Lydia F. Duke and Alice F. Kellahan, filed their Answer and Counterclaim on January 18, 2006, requesting that the Petition be dismissed, but if granted, that they be paid just compensation for the closure of the undeveloped portion of Porter Street. The Plaintiff replied to the Answer and Counterclaim of DEFENDANTS DUKE AND KELLAHAN on February 7, 2006.

This matter was referred to the Honorable G. Wells Dickson, Jr. by Order of Reference with Finality by the Honorable Clifton Newman dated December 1, 2005.

The Notice of Intention to File Petition for Abandonment and Closure of a portion of Porter Street of the Town of Kingstree, County of Williamsburg, was published in The News, a newspaper of general circulation in Williamsburg County on October 26, 2005, November 2, 2005, and November 8, 2005.

The Honorable G. Wells Dickson, Jr., Special Referee, received testimony and evidence, as well as the arguments of counsel, at hearings on April 26, 2006 and on April 16, 2007. Other evidence was received thereafter.

The Special Referee issued an Order on October 22, 2010 which granted the relief sought by the Plaintiff. DEFENDANTS KELLAHAN/DUKE timely filed and served their Motion for reconsideration on November 4, 2010.

STATEMENT OF FACTS

1. The area in question, which is the subject of this action, is called a portion of Porter Street by the Plaintiff. The larger tract of land which is between

what is now Ashton Avenue and Nelson Blvd. in the Town of Kingstree was owned by a John T. Nelson and subsequently by his daughter, Marie T. Nelson. The area in question was reserved by the Nelson family as shown on a plat prepared by P. G. Gourdin, Surveyor dated March 1903 and recorded in the office of the Office of the Clerk of Court for Williamsburg County in Plat Book B page 55 (D. Ex. 2)

2. The area that the plaintiff seeks to abandon and close first appeared on a plat prepared for John T. Nelson by Peter G. Gourdin dated March, 1903, recorded in Plat Book "B" page 55. The survey identified twenty (20) lots that were located on the south side of what appeared to be a roadway, but was not designated as a roadway and, in fact, no name or other designation was used to describe that area. That area became known as Ashton Avenue. Lots 13 and 14, as shown on said plat, were subsequently sold by Nelson, and those lots are the two lots that border the area which is the subject of this action.

There is a fifty (50') foot wide area in between lots 13 and 14 on the March 1903 Gourdin plat, which is not designated in any manner. It was obviously reserved for access to the remainder of the Nelson property, but not designated as a street or roadway.

Defendants Alice H. Kellahan and Lydia Duke (DEFENDANTS KELLAHAN/DUKE) purchased a 20.97 acre tract of land from Samuel E. McIntosh adjoining Porter Street by deed dated September 7, 1993 recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book "A- 311" at page 231.

(D. Exhibit 10) At the same time and as part of the acquisition, in order to have access for the development of the property, DEFENDANTS KELLAHAN/DUKE, also acquired a fifty (50) foot easement from Ashton Avenue to Nelson Blvd. along a proposed roadway- Porter Street and the extension of the same to Ashton Ave. from Samuel E. McIntosh, Individually and Executor and Trustee under the Last Will and Testament of Marie L. Nelson, the said easement was dated September 7, 1993 of record in Office of the Clerk of Court for Williamsburg County in Deed Book A-311 at page 235. (D. Ex. 11) When DEFENDANTS KELLAHAN/DUKE purchased the 20.97 acres, they obtained an easement across this 50 foot wide strip which is about 208 feet long, as well as along the area designated as "proposed 50' road" Porter Street, to insure access to the property. A review of this easement and the plat, as referenced in the easement, finds that, although DEFENDANTS KELLAHAN/DUKE received the easement with a width of 50 feet for the entire distance from Nelson Blvd. to Ashton Ave., the last 208 feet are not part of the area designated as "PROPOSED 50' ROAD PORTER STREET." No party, including the PLAINTIFF, has contested the fact that DEFENDANTS KELLAHAN/DUKE have an easement which completely covers the area in question and also extends from Ashton Ave. to Nelson Blvd.

The PLAINTIFF commissioned and received from J. B. Ellis, Jr., Surveyor, dated October 4, 2005, obviously in preparation of this litigation the survey which is an attachment to the Petition and the Published Notice, does not designate the area which is the subject of this action as a "portion of Porter (undeveloped

street)". The survey shows Porter Street coming to, but stopping at, the property which is the subject of this action on the Ellis survey.

DEFENDANTS KELLAHAN/DUKE never acquired the fee simple ownership to the area in question.

At the hearing on April 16, 2007, the Plaintiff introduced deeds to the Town of Kingstree concerning the property in question from Williamsburgh Historical Society dated July 1, 1998 and recorded November 23, 1998 in the Office of the Clerk of Court for Williamsburg County in Deed Book A422 at page 280; from Methodist Oaks in Deed Book A422 at page 290; from Espiscopical Church in Deed Book A422 at page 300; from Connie Maxwell Church Home in Deed Book A423 at page 1; from Epworth Children's Home in Deed Book A423 at Page 11; from Thornwell Home in Deed Book A423 at page 22; from Presbyterian Home of SC in Deed Book A423 at page 236. (P. Ex. 7)

These deeds were subsequent to, and accordingly, subject to the easement to DEFENDANTS KELLAHAN/DUKE. Those conveyances did not remove or defeat the property right of DEFENDANTS KELLAHAN/DUKE.

The Plaintiff's plat that was prepared for this litigation has no written designation of the area in question as a road way or even a proposed road. Likewise, there is no document by the owner of the fee simple title dedicating the area in question to the Town of Kingstree or any other public entity for a road or street. The Plaintiff produced no evidence that the Town of Kingstree or any other public entity ever took control of or maintained the area in question as a

roadway prior to the institution of this litigation. The Plaintiff does seek to reserve an easement for a sewer line.

Michael Kirby, Community Planning and Development Director for the Plaintiff, admitted that the area in question has never been opened or developed as a road, never been paved, and had no documentation of a written dedication of the area in question as a roadway. (Tr.-4/26/2006-p. 20, l. 2 - p. 21,l. 24) Mr. Kirby testified on direct examination that he did not believe that the closure of the area in question would diminish the value of the property owned by DEFENDANTS KELLAHAN/DUKE. However on cross examination, Mr. Kirby admitted it would be reasonable that closure of the area in question would diminish the value of DEFENDANTS KELLAHAN/DUKE'S property due to the fact that one of the means of access (the area in question) would be eliminated.

W. N. Kellahan, Jr. testified that the closure of the area in question would diminish the value of the remainder of the tract of land by \$100,000.00.

The adjoining landowners, who stand to gain property from the action, asked for the closure of the area. Defendant Waccamaw Housing, Inc., the purchaser of the property that was re-zoned as a Planned Unit Development, consented to the relief sought by the Plaintiff by its answer.

The Town Council of Kingstree held a public hearing and at two council meetings agreed that a portion of the 20.97 acre tract purchased by DEFENDANTS KELLAHAN/DUKE be re-zoned from Highway Commercial to Planned Unit Development.

William N. Kellahan, Jr., attended a meeting of the Kingstree Town Council for the first reading of an ordinance to re-zone a portion of DEFENDANTS KELLAHAN/DUKE'S property to allow for a senior housing project was held on January 26, 2004 to voice his support for the project. Senator John Yancey McGill and other community leaders also attended the meeting to also emphasize the need for senior housing in Kingstree. Senator McGill also appeared to offer his assistance in obtaining funds for the paving of Porter Street from Nelson Boulevard to within 208 feet of Ashton Ave. While the ordinance received a first reading, the Kingstree Town Council scheduled a public hearing to allow comment on the re-zoning based upon the request of a member of the Council.

A public hearing was held on February 2, 2004 and, immediately following the public hearing, Kingstree Town Council held a meeting for the second reading of Ordinance 2004-01, Ordinance to Rezone a Portion of Tax Map Property 11-39-11. The Ordinance passed the second reading with the following in the minutes: Porter Street would be blocked on the Ashton Avenue side with a fence to be erected on the Kingstree Recreation Department property line up to the paved portion of Porter Street, that the Developer would fence its property line as well, and Mrs. Kellahan would fence her property line within fifty (50) feet of Highway 377.

Mr. Kellahan was not able to attend the public meeting or the council meeting on February 2, 2004. Senator McGill attended both the public hearing and the subsequent Kingstree Town Council meeting as did Defendant Waccamaw

Housing, Inc. Senator McGill appeared on February 2, 2004 because he believed that there was a need for senior housing in Kingstree. Also, Senator McGill was there to provide support for the use of CTC funds for the paving of Porter Street. Thereafter, CTC provided appropriate funds for the paving of Porter Street from Nelson Boulevard. The paved area is known as Porter Street, but is not a part of the state, county, or any other road system.

At the hearing on April 16, 2007, Senator McGill testified that he did not represent W. N. Kellahan, Jr. or Defendants, Alice H. Kellahan and Lydia Duke. Neither the record of the public meeting nor the minutes of the Town Council meeting, which were both held on February 2, 2004 have any implication or inference that Senator McGill appeared on behalf of W. N. Kellahan, Jr. or DEFENDANTS KELLAHAN/DUKE. Additionally, there is no evidence that any person at the public hearing or council meeting relied on apparent authority of Senator McGill as an agent of W. N. Kellahan, Jr. or DEFENDANTS KELLAHAN/DUKE.

The record does not reflect that the unpaved area, the area in question, has been dedicated or accepted by written instrument.

AUTHORITIES

ARGUMENT I

DEFENDANTS KELLAHAN/DUKE HOLD AN EXPRESS WRITTEN EASEMENT WHICH HAS NOT BEEN ABANDONED.

Neither the Plaintiff, nor any other party, has challenged the fact that

DEFENDANTS KELLAHAN/DUKE have an easement with a width of 50 feet for the entire distance from Nelson Blvd. to Ashton Ave., the last 208 feet are not part of the area designated as "PROPOSED 50' ROAD PORTER STREET."

DEFENDANTS KELLAHAN/DUKE acquired the express written easement to secure access to the 20.97 acres. Until the 1993 plat that DEFENDANTS KELLAHAN/DUKE used to purchase the property and delineate the extent and location of the easement, no plat had used the word "street" or "road" or any similar term to describe any portion of the 50 foot easement from Nelson Blvd. to Ashton Ave. No plat to date that is part of the record in this matter has described the area in question-the area between Lots 13 and 14 as a "street" or "roadway". This is why DEFENDANTS KELLAHAN/DUKE obtained the easement.

The easement constitutes a private property right held by DEFENDANTS KELLAHAN/DUKE.

Further, the grant of this easement to Kellahan and Duke was in writing and any abandonment or release of that easement by Kellahan and Duke or of any successor in title would have to be also in writing to satisfy the statute of frauds. The Plaintiff has failed to prove any release or abandonment of this express written easement. In Blue Ridge Realty Co. Vs Williamson 247 SC 112 (SC 1965), the Court held that where lots in a subdivision are sold by reference to a map or plat upon which roads are shown which are or become public highways, the private easement which arises upon such a sale survives the vacation, abandonment, or closing of the road or highway by the public

ARGUMENT II

THERE WAS NEVER A DEDICATION OF THE PORTION OF PORTER STREET THAT THE PLAINTIFF SEEKS TO CLOSE.

The case of Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (S.C.,1997) sets forth the requirements for dedication.

“Two elements are required to perfect dedication. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be acceptance of such property by the public. Helsel v. City of North Myrtle Beach, 307 S.C. 24, 413 S.E.2d 821 (1992). Dedication is an exceptional manner of passing an interest in land and proof thereof must be strict, cogent, and convincing. Mack v. Edens, 320 S.C. 236, 464 S.E.2d 124 (Ct. App.1995). To have a completed dedication, there must be some form of acceptance of the offer to dedicate. Baugus v. Wessinger, supra; 23 Am.Jur.2d Dedication § 42 at 38 (1983); Hodge v. Manning, 241 S.C. 142, 127 S.E.2d 341 (1962). The use, repair, and working of the streets by public authorities is a mode of acceptance. Chafee v. City of Aiken, 57 S.C. 507, 35 S.E. 800 (1900). The mere fact the County approved the plat does not constitute an acceptance of the proposed public dedication. S.C. Code Ann. § 6-7-1070 (1976).” Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (S.C.,1997)

The evidence in the record clearly shows that the area in question has never been dedicated for a public roadway or street. A careful examination of the 1993 Kellahan plat together with the written easement, reveals that the 50 feet easement extends the entire distance from Nelson Blvd. to Ashton Ave., the last 208 feet are not part of the area which is designated as “PROPOSED 50' ROAD PORTER STREET.”

The plat prepared for John T. Nelson by Peter G. Gourdin dated March, 1903 recorded in Plat Book “B” page 55 reserved for access at four different

places it is significant that from what became Ashton Ave. to the remainder of the Nelson property, none of the four access areas was designated as a street or roadway.

Our Courts have recognized that dedication as an exceptional mode of passing an interest in land and proof of dedication must be strict, cogent and convincing. The act to prove dedication must not be consistent with any other construction other than that of a dedication. State vs. Beach Company, 271SC 2425 248 SE 2nd 115. The Plaintiff has not proved any dedication by written dedication or implied dedication which requires strict, cogent and convincing evidence. The Plaintiff has failed to prove either of two required elements for dedication of a roadway.

ARGUMENT III

THE APPROVAL OF PLAN OR PLAT BY GOVERNMENTAL AGENCY IS NOT ACCEPTANCE OR DEDICATION OF LAND.

The approval of the land development plan or subdivision plat may not be deemed to automatically constitute or affect an acceptance by the municipality or the county or the public of the dedication of any street, easement, or other ground shown upon the plat. Public acceptance of the lands must be by action of the governing body customary to these transactions. S.C. Code Ann. 6-29-1170.

ARGUMENT IV

THE TOWN OF KINGSTREE DID NOT HAVE A RIGHT TO PETITION TO ABANDON OR CLOSE THE FIFTY (50') FOOT WIDE AREA BETWEEN LOTS 13 AND 14 AS SHOWN ON THE GOURDIN PLAT FOR NELSON IN 1903.

Any right to close the area which the Plaintiff has called Porter Street between lots 13 and 14 or anyone else for that matter, must be derived from a statutory authority. This authority is S.C. Code Ann. §57-9-10 which states in part "any interest person, the state or any of its political subdivisions or agencies may petition the Court of competent jurisdiction to abandon or close any street, road or highway, whether opened or not . . . S.C. Code 57-9-10, 1976, as amended. The operative words in the statute are "street", "road" or "highway". The Plaintiff has failed to prove that the area in question was, at the time of the filing of the Petition, or at any later time, ever a roadway, street or highway. The area in question has never been paved and the Plaintiff has failed to meet the burden of proof of strict, cogent and convincing evidence of the dedication as to the unpaved area. The Plaintiff's own plat, which was obtained for the purpose of this litigation, does not designate the area as a street.

§57-9-20 of the 1976 Code as amended, states that the street, road or highway can be abandoned or closed if the Court determines that it is in the best interest of all concerned. Again, the words street, road or highway are used. The area that is in question has never been used or maintained as a street, road or highway, there has been no dedication and no acceptance by the Town of

Kingstree, and accordingly, neither does the Town of Kingstree nor any other party has the right to use this statute to close the area in question.

Under Title 57, the title under which the Plaintiff seeks to close the area in question our statutory law defines street, roadway or highway as follows:

§57-3-120. Definitions.

For the purposes of this title, the following words, phrases, and terms are defined as follows:

(1) "Highway", "street", or "road" are general terms denoting a public way for the purpose of vehicular travel, including the entire area within the right-of-way, and the terms shall include roadways, pedestrian facilities, bridges, tunnels, viaducts, drainage structures, and all other facilities commonly considered component parts of highways, streets, or roads. *§57-3-120, 1976 Code, as amended*

ARGUMENT V

THE PLAINTIFF HAS FAILED TO PROVE THAT THE AREA IN QUESTION IS NOT SUBJECT TO THE EASEMENT OF DEFENDANTS KELLAHAN/DUKE.

The Town of Kingstree has received deeds for the area in question for lots 13 and 14 on July 11, 1998, after the grant of the easement to the Plaintiff. This conveyance had to be subject to the easement rights of DEFENDANTS KELLAHAN AND DUKE.

In the case of Hoganboon vs. The City of Beaufort 315 SC 306, 433 SE 2nd 875, the South Carolina Court of Appeals stated that under § 57-9-20, the court cannot divest a property owner of legal title under § 57-9-20 and vest it in another, but merely declare who owns title according to the law. The court also

recognized that while a municipality can acquire a fee simple title to the property in the case of the dedication, the municipality acquires merely a right of passage and title remains with the landowner who initially dedicated the property to public use. If the municipality abandons the right of passage then the fee simple interest becomes unencumbered in the original land owner.

DEFENDANTS, KELLAHAN/DUKE are entitled to their easement rights. If this Court finds that the Town of Kingstree is entitled to the taking of those easement rights under §57-9-10, et sequi, DEFENDANTS, KELLAHAN/DUKE are entitled to compensation.

ARGUMENT VI

THE PLAINTIFF HAS FAILED TO PROVE THAT IT IS IN THE BEST INTEREST OF ALL CONCERNED THAT THE AREA IN QUESTION BE CLOSED.

The 20.97 acre tract was acquired by DEFENDANTS, KELLAHAN/DUKE for commercial development and the acquisition and development was predicated on access to said property along Porter Street with ingress and egress being available on both Ashton Avenue and Nelson Boulevard. §57-9-20, of the 1976 South Carolina Code of Laws requires that the court determine “that it is in the best interest of all concerned” that the street, road or highway be abandoned. An important consideration should be the fact that the property was acquired by DEFENDANTS KELLAHAN/DUKE for investment purposes. The elimination of a means of access will negatively impact the subdivision of the property and the access to various parcels, as well as negatively impact the value of the property of

DEFENDANTS KELLAHAN/DUKE. It is clearly not in the best interest of all parties that they be deprived of a means of access, and particularly, to the holder of a valid easement. The relief sought by the Town would only benefit the property owners on Ashton Ave and could create a situation where if you had a event like the Pig Picking festival, baseball tournament or other functions at the Recreation center, emergency vehicles could not get through including EMS vehicles in route to the Williamsburg County Hospital.

The evidence provided by the Plaintiff to comply with §57-9-20 to support the premise that it would be in the best interest of all concerned is primarily and exclusively from the individuals who were the adjoining land owners and who would benefit by receiving title to a portion of the area that was to be closed. Defendant Waccamaw Housing, Inc. consented to the relief, but it must be noted that Defendant was present at the public meeting on February 2, 2004 and the Town Council meeting on the same date. Defendant Waccamaw Housing, Inc. benefitted directly from the closure and re-zoning.

ARGUMENT VII

THE PLAINTIFF FAILED TO EITHER ALLEGE OR PROVE ANY AGENCY OR ESTOPPEL THAT WOULD BIND DEFENDANTS KELLAHAN/DUKE TO THE ACTION BY THE TOWN COUNCIL ON FEBRUARY 2, 2004.

It appears that the Order of October 22, 2010 has, as part of its basis, the premise that DEFENDANTS KELLAHAN/DUKE would be estopped to object to the closing of the area in question based upon their easement and their sale of the

portion of their property to the Defendant Waccamaw Housing, Inc. Also, the Order has as its basis in part that there was an agency relationship between Senator McGill and DEFENDANTS KELLAHAN/DUKE.

The Plaintiff did not plead or prove any agency by Senator McGill or equitable estoppel. Equitable estoppel is in the nature of an affirmative defense and must be pled or it is waived. Rule 8(c) South Carolina Rules of Civil Procedure. Plaintiff has failed to allege equitable estoppel in its pleadings and as such may not assert it at trial.

DEFENDANT KELLAHAN/DUKE maintain that the failure to pled equitable estoppel constitutes a waiver, but, without waiving their rights, maintained that the Plaintiff has made no showing that Senator McGill was acting as an authorized agent of the Defendant's, Kellahan and Duke in attending the meeting to close the street and had no authority to bind them. American Jurisprudence 2nd Estoppel & Waiver Sec 57

The elements which must be proven to establish apparent agency are: (1) purported principal consciously or impliedly represented another to be his agent; (2) third party reasonably relied on the representation; and (3) third party detrimentally changed his or her position in reliance on the representation." R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 540 S.E.2d 113, 118 (2000).

As to the burden of proof, the party asserting the agency as a basis of liability has the burden of proving the existence of the agency. Vereen v. Liberty

Life Ins. Co., 306 S.C. 423, 412, S.E.2d 425, CT APP. (1991). Additionally, agency must be clearly established by the facts. McCall v. Finley, 294, S.C. 162, S.E.2d 26 (CT.APP) (1987) (Citing Paramount Fund. Inc. v. Cusaac, 282, S.C. 497, 319 S.E.2d 354 (CT. APP) (1984).

The failure to either pled or prove the equitable estoppel or any agency relationship between Senator McGill and DEFENDANTS KELLAHAN/DUKE prevents the Plaintiff from binding DEFENDANTS KELLAHAN/DUKE to any action taken by the Kingstree Town Council on February 2, 2004.

An essential element of estoppel is that any injury claimed must be actual, material and substantial. "Broadly speaking, injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel or estoppel in pais. Since the function and purpose of the doctrine of estoppel are the prevention of fraud and injustice, there can be no estoppel when there is no loss, injury, damage, judgment, prejudice to the party claiming it, moreover, the injury or prejudice involved must be actual and material or substantial and not merely technical or formal" American Jurisprudence 2nd Estoppel & Waiver Sec 78. In the present case, it was clearly established by testimony that the property owned by the DEFENDANTS KELLAHAN/DUKE was previously zoned Highway Commercial, which is the least restrictive use of the property and can be used for almost any legal purpose. The re-zoning reclassified the property as a Planed Unit Development (PUD) classification, which is far more restrictive as to use. The testimony was that the residents of Ashton Avenue were

concerned with traffic through the neighborhood and the reclassification to a PUD classification would serve to limit the traffic in the area that might otherwise exist under a Highway Commercial use and, as such, the Plaintiff has failed to prove any actual or material injury that would justify applying equitable estoppel.

Under the state's Eminent Domain Law no private property right may be taken without compensation. South Carolina recognizes the doctrine of inverse condemnation, whereby owners may suffer a taking as a result of a change in access to their property. This doctrine is recognized in the City of Rockhill vs. Cothran, 209SC 357 40 SE 2nd 239, cited in the Court of Appeals decision in Harden vs. SCAPT. 359 SC 244 597 SE 2nd 814. The property was acquired by DEFENDANTS KELLAHAN/DUKE for commercial development and the acquisition and development was predicated on access to said property along Porter Street with ingress and egress being available on both Ashton Avenue and Nelson Boulevard. DEFENDANTS KELLAHAN/DUKE have established by uncontroverted testimony that special injury will occur to their property if their access to Porter Street is terminated and they are entitled to recover damages for such injury.

DEFENDANTS KELLAHAN/DUKE easement rights cannot be taken without just compensation.

CONCLUSION

The Plaintiff has failed to prove that the area in question, which it seeks to close, was ever a street, road or highway. Since there was not an express dedication of the area in question as a street, road or highway, the Plaintiff has

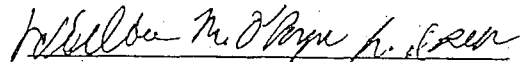
also failed to prove by strict, cogent and convincing evidence that there was a dedication. DEFENDANTS KELLAHAN/DUKE have easement rights of the strongest nature since they were established expressly, by written instrument. The Plaintiff failed to plead or establish estoppel. Likewise, the Plaintiff failed to establish any apparent authority that Senator Yancey McGill was the agent of DEFENDANTS KELLAHAN/DUKE or that any party relied upon any apparent authority that Senator McGill was their agent. Finally, DEFENDANTS KELLAHAN/DUKE are entitled to their easement rights. If the closure of this area is allowed and ordered by the Court, these Defendants are entitled to full compensation of these easement rights in the amount of One Hundred Thousand and No/100 (\$100,000.00) Dollars for the unjust and unconstitutional taking of their property rights without just compensation.

Based upon the forgoing, DEFENDANTS KELLAHAN/DUKE are entitled to have the Order of this Court dated October 22, 2010 altered and amended as to each of the thirteen (13) specific grounds as set forth above and as set forth in this memorandum.

Respectfully submitted,

March 8, 2011

Kingstree, SC


WILLIAM M. O'BRYAN, JR.

O'BRYAN & O'BRYAN

P. O. Box 1105

Kingstree, SC 29556


LARRY G. REDDECK

NETTLES, TURBEVILLE & REDDECK

P. O. Box 699, Lake City, SC 29560

(843) 374-8511

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO: 2005-CP-45-434

Town of Kingstree, a Body
Corporate and Politic,
Plaintiff,

vs.

Gary W. Chapman, Jr., Terilyn J.
McClary, Waccamaw Housing,
Inc., Lydia F. Duke, Alice H.
Kellahan and South Carolina
Department of Transportation.
Defendants.

CERTIFICATE OF SERVICE BY MAIL

PERSONALLY APPEARED BEFORE ME Lynn S. Keefe, who first being duly sworn, deposes and says: That she is a Secretary for Nettles, Turbeville and Reddeck, attorneys for the Defendants Alice H. Kellahan and Lydia F. Duke in this matter; that on March 8, 2011, a copy of the attached Memorandum in Support of Motion to Alter or Amend Judgment pursuant to Rule 59(e) and Rule 60, SCRCP of Defendants Lydia F. Duke and Alice H. Kellahan, dated March 8, 2011 was placed in an envelope, with first-class postage prepaid, and mailed to:

Ernest J. Jarrett
Jenkinson, Jarrett &
Kellahan
PO Box 669
Kingstree, SC 29556

Nate Fata
Waccamaw Housing, Inc.
PO Box 16620
Surfside Beach, SC 29587

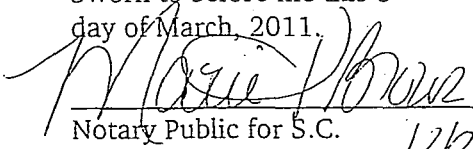
Barbara M. Wessinger
SC Dept. of Transportation
PO Box 191
Columbia, SC 29202-0191

Terilyn J. McClary
4835 Renaissance Ridge Rd.
Apt 436
Charlotte, NC 28217-2563

Gary W. Chapman, Jr.
400 Ashton Avenue
Kingstree, SC 29556

Sworn to before me this 8th
day of March, 2011.


Lynn S. Keefe


Notary Public for S.C.

My Commission Expires: 12/20/15

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG) THIRD JUDICIAL CIRCUIT

2005-CP-45-434

Town of Kingstree, a Body
Corporate and Politic,

PLAINTIFF,

VS.

Gary W. Chapman, Jr., Terilyn J.
McClary, Waccamaw Housing,
Inc., Lydia F. Duke, Alice H.
Kellahan and South Carolina
Department of Transportation,

DEFENDANTS.

MEMORANDUM IN OPPOSITION TO
DEFENDANTS LYDIA F. DUKE AND
ALICE H. KELLAHAN'S MOTION TO
ALTER OR AMEND JUDGMENT
PURSUANT TO RULES 59(e) AND 60

TO: WILLIAM M. O'BRYAN, JR. AND LARRY G. REDDECK, ATTORNEYS
FOR LYDIA F. DUKE AND ALICE H. KELLAHAN; GARY W. CHAPMAN,
PRO SE; TERILYN J. MCCLARY, PRO SE; NATE FATA, ESQUIRE,
ATTORNEY FOR WACCAMAW HOUSING, INC., AND BARBARA
WESSINGER, ESQUIRE, ATTORNEY FOR S.C. DEPARTMENT OF
TRANSPORTATION

This matter is before the Court on Defendants Alice H. Kellahan and Lydia
F. Duke's Motion to Alter or Amend Judgment pursuant to South Carolina Rules of
Civil Procedure Rules 59(e) and 60. For the reasons stated herein, the motion
should be denied.

STATEMENT OF THE FACTS

This matter was before the Court for a final hearing on the Plaintiff's Petition
for Abandonment and Closure of a Portion of Porter Street filed with the Court on
November 14, 2005. This matter was referred to the Honorable G. Wells Dickson,
Jr., Special Referee by Order of Reference with Finality of the Honorable Clifton

Newman dated December 1, 2005. The Defendant, South Carolina Department of Transportation, filed an Answer dated December 9, 2005, admitting the allegations of the Petition. The Defendant Waccamaw Housing, Inc. filed an Answer dated December 20, 2005, admitting the allegations of the Petition. The Defendants, Gary W. Chapman, Jr. and Terilyn J. McClary did not file an Answer and are thereby in default. The Defendants, Lydia F. Duke and Alice H. Kellahan, filed their Answer and Counterclaim on January 18, 2006, requesting that the Petition be dismissed and if granted, that they be paid just compensation for the closure of the portion of Porter Street. The Plaintiff filed its Reply to the Answer and Counterclaim of the Defendants, Lydia F. Duke and Alice H. Kellahan, on February 7, 2006.

Based upon the pleadings on file in the matter, it is apparent that the Notice of Intention to File Petition for Abandonment and Closure of Portion of Porter Street of the Town of Kingstree, County of Williamsburg was published in *The News*, a newspaper of general circulation in the Town of Kingstree, County of Williamsburg on October 26, 2005, November 2, 2005, and November 8, 2005. Furthermore, the Notice of Intention to File Petition for Abandonment and Closure of a Portion of Porter Street of the Town of Kingstree, County of Williamsburg was served on each of the Defendants by certified mail, return receipt requested, as indicated on the Proofs of Service filed with the Court. The Summons and Petition for Closure of a Portion of Porter Street of the Town of Kingstree, County of Williamsburg was filed November 14, 2005, and properly served upon each of the Defendants, and the proper Proofs of Service are contained in the Court file.

A hearing was held on this matter on April 26, 2006, and April 16, 2007. Present at the call of the case on April 26, 2006, were the following: Ernest J. Jarrett, attorney for the Plaintiff Town of Kingstree; Alice H. Kellahan, Defendant; William M. O'Bryan, Jr., attorney for the Defendants, Lydia Floyd Duke and Alice H. Kellahan; Gary Wayne Chapman, Jr., Defendant; Terilyn McClary, Defendant; Mike Kirby, Community Planning and Development Director for the Town of Kingstree; and W. N. Kellahan, Jr., civil and structural engineer. The Defendant Lydia F. Duke was not present. Present at the call of the case on April 16, 2007, were the following: Ernest J. Jarrett, attorney for the Plaintiff Town of Kingstree; Terilyn McClary, Defendant; W. M. O'Bryan, Jr., attorney for the Defendants, Lydia F. Duke and Alice H. Kellahan; Terilyn J. McClary, Defendant; Mike Kirby; and John Yancey McGill, Senator.

Prior to the hearing on April 26, 2006, Mr. Jarrett informed the Court that Barbara Wessinger, attorney for the South Carolina Department of Transportation, had informed him that she was not going to be present for the hearing but the Defendant, South Carolina Department of Transportation, had no objection to the closure of the portion of Porter Street. Nate Fata, the attorney for the Defendant Waccamaw Housing, Inc., had informed Mr. Jarrett, the Plaintiff's attorney, that he was aware of the hearing but he did not plan to attend as his client had no objection to the closing of the portion of Porter Street. The Court heard testimony from Michael Chalmers Kirby, Terilyn J. McClary, Gary W. Chapman, Jr., Alice H. Kellahan, W. N. Kellahan, and Senator J. Yancey McGill.

The Court closed the subject street which is located in the Town of Kingtree, County of Williamsburg, State of South Carolina, and is more particularly described as "portion of Porter (undeveloped street)" on a plat attached to the Summons and Complaint filed in this action. The portion of the street being closed is an undeveloped street leading from Ashton Avenue to the Town of Kingtree Recreation Center in the Town of Kingtree. The abutting property owners to the portion of the subject undeveloped street affected by the closing at the time of the hearing are Terilyn J. McClary, Gary W. Chapman, Jr., and Waccamaw Housing, Inc., a duly organized corporation under South Carolina law which transacts business in the County of Williamsburg. All of these Defendants were in favor of closing this portion of Porter Street. The South Carolina Department of Transportation is an agency of the State of South Carolina charged with the responsibility of maintaining roads and highways and has no objection to the closing of this portion of Porter Street. (The current owners Robert E. Eaton and Sharon M. Eaton, as Trustees of the Eaton Living Trust, are also in favor of the closing of the road.)

The Defendants, Alice H. Kellahan and Lydia F. Duke, were named as party Defendants based upon a fifty (50) foot easement granted from Samuel E. McIntosh to them found in Deed Book A-311 at page 235, dated September 7, 1993. Said Easement indicates that "the parties have agreed that efforts should be made to have said street opened and used for their benefit and members of the public, who made need to use the same."

The portion of the subject street to be closed is an undeveloped street that is no longer needed for public purposes, and the access, ingress, and egress can be found by the public through using Nelson Boulevard. Additionally, there are plats recorded by the Defendants, Alice H. Kellahan and Lydia F. Duke, subdividing their property indicating a proposed fifty (50) foot road from Porter Street to S. C. Highway 377, although Mr. Kellahan testified that the plans for this road may change in the future.

The issue of the closing of this portion of Porter Street is associated clearly with the issue of rezoning a portion of Tax Map No. 11-39-11 from Highway Commercial to Planned Unit Development at the request of Waccamaw Housing to allow the placement of senior housing. The Sellers of Tax Map No. 11-39-011 to Waccamaw Housing were the Defendants, Lydia F. Duke and Alice H. Kellahan. Ms. Kellahan testified that the property was in her name but her husband handled all of the dealings for Ms. Duke and herself and she was unfamiliar with any aspects of the property. The first reading of Ordinance 2004-01 to rezone the property was held on January 26, 2004. William N. Kellahan along with Senator John Yancey McGill and other community leaders attended this Town Council meeting to voice their support of the project due to the need for senior housing in Kingtree. Town Council passed first reading but indicated that there needed to be a public hearing on the rezoning of this property because some citizens along Ashton Avenue expressed concern over allowing the housing project. Those citizens were concerned about increased pedestrian use and traffic if the zoning was

changed. A public hearing was held on February 2, 2004. Mr. Kellahan had a scheduling conflict and could not attend the hearing. However, he testified that he sent Senator Yancey McGill to represent Ms. Kellahan and Ms. Duke's interests in the proceeding. Senator McGill and several citizens from neighboring Ashton Avenue expressed concerns about increase in noise and traffic as well as other problems associated with paving Porter Street, which would be necessary to accommodate the traffic to and from the new Senior Housing Project. Senator McGill brokered a deal with all the parties and the official minutes reflect the "understanding that Porter Street will be closed off permanently from Ashton Avenue side, a barricade will be put there and put up a fence." Senator McGill asked that a letter be sent from the Town to CTC to request the funds to paved Porter Road. Immediately following the public hearing, Town Council held a meeting on February 2, 2004, and second reading of Ordinance No. 2004-01, Ordinance to Rezone a Portion of Tax Map Property 11-39-011 was passed with the understanding that Porter Street would be blocked on the Ashton Avenue side, a fence to be erected on the Kingstree Recreation Department property line up to Porter Street. The Developer will fence his property line as well as Mr. Kellahan will fence his property line within fifty (50) feet of Highway 377. Thereafter, CTC provided appropriate funds for surfacing of Porter Road from Nelson Boulevard to the Senior Housing Project which was the approved Planned Unit Development. The motion carried and the property was rezoned to accommodate the request to rezone the property and allow the Center. As a result, the Defendants, Alice H.

Kellahan and Lydia F. Duke, were able to consummate the sale to Waccamaw Housing by deed dated May 3, 2004, and recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-552 at page 242, with a consideration of \$60,000.00. Without the approved rezoning by the Town of Kingstree Council based upon the negotiated agreement with Senator Yancey McGill, who was the agent of the Defendants, Alice Kellahan and Lydia Duke, the sale to Waccamaw would not have gone through because the Housing Project would not have been allowed on the property as originally zoned. Thereafter, the Defendants, Lydia Duke and Alice H. Kellahan, erected a fence erected from the closed portion of Porter Street to within fifty (50) feet of Highway 377 as required under the agreement brokered by Senator Yancey McGill on their behalf.

STANDARD OF REVIEW

Rule 59(e) of the South Carolina Rules of Civil Procedure states:

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

Rule 60 of the South Carolina Rules of Civil Procedure states that Relief from Judgment may be had based on:

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or

omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Based upon the content of the Rules, it is apparent that the Defendants' Motion is based on Rule 59(e). Rule 59(e) allows the trial judge to reconsider matters properly encompassed in its decision on the merits. Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). A party may not use this Rule as a means to present an issue that could have been raised prior to judgment but was not. Crary v. Diebelli, 321 S.C. 38, 467 S.E.2d 128 (1998) (reversed on other grounds) See also Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

ARGUMENT

Public Dedication

In order for a road to be dedicated to the public, the owner must express in a positive and unmistakable manner the intention to dedicate the property for public

use. Secondly, there must be acceptance of the property by the public. Dedication need not be formal. It may be implied from long use by the public of the land claimed to be dedicated. In addition, formal acceptance is not necessary. It may also be implied by continued use. Boyd v. Hyatt, 294 S.C. 360, 364 S.E.2d 478 (Ct. App. 1988). Porter Street was dedicated to the public in 1903 when the first subdivision plat was recorded. With this plat, the property was expressly dedicated for use by the public. The public later accepted that dedication by use, albeit light use by the public.

Defendants Kellahan/Duke argue that they have an express written easement that has not been abandoned. They suggest that since the easement was granted in writing then any abandonment or release would have to be in writing. This argument is simply absurd and contrary to the above stated law. A dedication by writing is not required by law. In addition, the parties did make such a dedication by writing.

Defendants Kellahan/Duke dedicated the easement to the public and it, therefore, became a public road. Defendants' Exhibit 11 submitted at trial is the document whereby Defendants Kellahan/Duke obtained the easement. Contained within that grant is language that indicates a dedication by writing. The language in the Easement states "the parties have agreed that efforts should be made to have [Porter] street opened and used for their benefit and members of the public who may need to use the same." Defendants' Exhibit 11. In addition, Porter Street appears in recorded subdivision plats as early as 1909. It even appears on

Defendant's Exhibit #9, a plat surveyed at the request of Mrs. Kellahan and Mrs. Duke on August 19, 1993. Mr. Kirby, Community Planning and Development Director for the Town of Kingstree, testified that the Town of Kingstree has been responsible for maintaining the portion of Porter Street that was not paved. Without question, the Defendants have dedicated Porter Street for public use.

Porter Street is definitely a public road. The street was owned by the Town of Kingstree as evidenced by their deeds in purchasing the recreation complex. Although there is no formal written dedication of the road for public use, the Court may look to the actions of the parties as to whether a dedication has occurred. "In situations where title to real estate is claimed by dedication rather than actual conveyance, the action of the parties must be unequivocal and positive as to leave little doubt that it was the intention of the owner to dedicate the same to the public use." Louis V. Vick, Jr. v. South Carolina Department of Transportation, 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001). The Town of Kingstree as well as the Defendants, Alice H. Kellahan and Lydia H. Duke, have equivocally indicated that Porter Street would be used as a public road. Public funds were used for the paving of Porter Street and the original easement conveyance to the Defendants, Alice H. Kellahan and Lydia H. Duke, indicates a strong desire to have the street opened and used for their benefit and members of the public. Additionally, the portion of Porter Street which is to be closed was "cut in" in the 1980's although the plat showing its existence was recorded in 1903.

Although there was never an express public written dedication of Porter Street, Porter Street has been used by the public and has been paved using public CTC funds and is therefore a public street. The road was dedicated and accepted well before the paving. The road was never paved until the deal was brokered with Defendants Kellahan/Duke which provided for the paving on one portion and the other portion to be closed permanently. Once the road is deemed "dedicated" for public use by the parties' actions, a landowner may no longer retain discretion to alter or control future uses of the property once it has been accepted by the public. Timberlake Plantation Company vs. County of Lexington, 314 S.C. 556, 431 S.E.2d 573, (1993). Although Mr. McIntosh granted an easement to Defendants Kellahan/Duke, since the road was a public road at that time, he did not have the ability to make such a conveyance. The conveyance would then be void.

Further, as evidenced by the Deed of the Defendants, Alice H. Kellahan and Lydia H. Duke, to Waccamaw Housing dated May 3, 2004, and recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-552 at page 242, there was no easement contained in the deed for access to the property evidencing the Defendants' belief that Porter Street was indeed a public street. As a public street, such recitation of an easement would no longer be necessary. In fact, if Porter Street is deemed private as maintained by the Defendants, Alice H. Kellahan and Lydia F. Duke, Waccamaw Housing would have claims against the Defendants, Alice H. Kellahan and Lydia F. Duke, due to having no public access to the property.

Agency and Estoppel

Generally, any affirmative defense that a party seeks to assert must be pleaded. However, if the affirmative defense is raised before the trial court, it is properly preserved for appeal. Here, the issue as to estoppel was properly raised and ruled upon by the trial court. Simply because the defense of estoppel was not entered as a defense in the reply to the counter-claim does not prohibit the Special Referee from considering the equitable defense. See Adams v. B & D, Inc., 297 S.C. 416, 377 S.E.2d 315 (1989). The issue as to estoppel was tried before the Special Referee. The Special Referee also took additional testimony from Senator Yancey McGill as to the issue of agency and estoppel. The rule as to the pleading requirement exists so the defending party may have the opportunity to refute the claim. Here, Defendants Kellahan/Duke were on notice as to the claim of estoppel and had the opportunity to defend the claim. The issue of estoppel was tried by the consent of all parties involved. Therefore, it is proper for the Special Referee to consider the argument of estoppel. See Collins Entm't, Inc. v. White, 363 S.C. 546, 611 S.E.2d 262, (Ct. App. 2005).

The elements of equitable estoppel are split between the estopped party and the party claiming estoppel.

The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct 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 that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to

the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped.

Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007). During the February 2, 2004 Public Hearing, Senator Yancey McGill, agent of Defendants Kellahan/Duke, made the recommendation to Council for a second reading for an ordinance to rezone property from Highway Commercial to Planned Unit Development for the purpose of building Senior Citizen Housing. As a part of the reading, Senator McGill brokered a deal where Porter Road would be closed permanently from Ashton Avenue and a barricade and fence to block the area. The Town would put up a fence on the Town's side; the developer would put the fence on the development side. Senator McGill also requested that a letter be sent from the Town to CTC requesting funds to pave the remaining unclosed portion of Porter Street. Due to Senator McGill's actions, the rezoning was consummated and the development for Senior Housing was allowed. The funds for the paving of Porter Street were then appropriated.

It is clear from the record that an agency relationship was established between Senator Yancey McGill and the Defendants, Alice H. Kellahan and Lydia F. Duke. William N. Kellahan testified that he handled the property for Defendants Kellahan/Duke. During trial, William N. Kellahan testified that he had a scheduling conflict and could not attend the meeting; therefore, he sent Senator Yancey McGill to "represent them." When asked, "On February 2, and you sent

Senator McGill I guess to represent your interest, is that correct?" Mr. Kellahan responded "Yes." (Hearing Tr. P. 72 ll. 4-6).

"An agency relationship may be established by evidence of actual or apparent authority." Fochman v. Clanton's Auto Auction Sales, 233 S. C. 581, 583, 106 S.E.2d 272, 274-75 (1958). While actual authority is that which is expressly conferred upon the agent by the principal, apparent authority is that which though not actually granted, the principal knowingly permits the agent to exercise, or which the principal holds the agent out as possessing." Clearly, Senator Yancey McGill was an agent of these ladies. It is not relevant that Senator McGill testified at the second hearing that he did not represent the Defendants, Alice H. Kellahan and Lydia F. Duke, because W. N. Kellahan testified that he sent Senator McGill to represent him. It is the intent of the principal that is key in any agency relationship, not the intent of the agent. Mr. Kellahan testified that he handled all of the business concerning these properties for the Defendants, Alice H. Kellahan and Lydia F. Duke, and that he sent Senator Yancey McGill to represent them due to his scheduling conflict. It is always the intent of the principal that the Court must look to in determining whether an agency relationship exists.

Since Senator McGill was the agent of these ladies, "the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." WDI Meredith & Co. v. American Telesis, Inc.,

359 S.C. 474, 597 S.E.2d 885 (Ct. App. 2004). As such, the Defendants, Alice H. Kellahan and Lydia F. Duke, are bound by the deal brokered by their agent, Senator Yancey McGill. After all, the deal was brokered in order to allow them to sell a two acre lot for \$60,000.00 for development. Since Senator McGill agreed to the closing of the road in order to have the property rezoned that would provide for the sale of the property at such an inflated rate, Defendants Kellahan/Duke are estopped from now arguing that they do not want the road closed.

Senator McGill stated that he understood that Porter Street would be closed permanently to allow for the rezoning. This is the conduct that conveyed that the Defendants would agree to the closing of Porter Street. Currently, Defendants Kellahan/Duke are opposed to the closing of Porter Street. The representation that this portion of Porter Street would be permanently closed was made so that Town Council would agree to the rezoning. This representation by Defendants Kellahan/Duke would be reasonably calculated to induce the other party, The Town of Kingstree, to act. Defendants Kellahan/Duke had the actual or constructive knowledge that they would later oppose the closing of Porter Street.

The Town had no reason to know that Defendants Kellahan/Duke would later oppose the closing of Porter Street due to the acts of their agent, Senator McGill. The Town had no way to know that they would later oppose the closing of the Street. Based upon the representations of Senator McGill and the deal he brokered, Town Council relied upon the conduct of the Defendants Kellahan/Duke. Now, Defendants Kellahan/Duke have prejudiced the Town by their change of position by

hindering the closing of the Porter Street which has been deemed to be in the best interests of the citizens of the Town and not prejudicial in any way to abutting property owners or other interested parties.

Just Compensation

The land was dedicated to the public. Since the land was dedicated to the public, Defendants Kellahan/Duke are not entitled to compensation. Mr. McIntosh did not have an easement to grant the Defendants despite the grant otherwise. In the alternative, if he did have the ability to make such a grant, the grant was dedicated to the public for the use by the public. Therefore, any claim for just compensation is lost. Furthermore, the Defendants Kellahan/Duke specifically agreed to the closing of this portion of Porter Street based on the deal brokered by their agent, Senator McGill.

In Timberlake Plantation Co. v. County of Lexington, 314 S.C. 556, 431 S.E.2d 573 (1993), the Court found that there was no difference between an express dedication and a grant. The Court further stated "that while a landowner may dedicate land for a specific, limited, and defined purpose, he cannot retain discretion to alter or control future use of the property once it has been accepted by the public." Id at 561, 576. Defendants Kellahan/Duke cannot dedicate land for a road then claim that they are entitled to compensation for the closing of the road after the Town has deemed it in the best interest of the Town. Any control over that land was lost after the road was dedicated.

Porter Street is a Road and Closing it is in the Best Interests of the Town
of Kingstree's Citizens

As evidenced and outlined above, Porter Street is without a doubt a public road. As such, the Town may petition to close the road according to South Carolina Code Section 57-9-10 et. seq. This public road is not subject to the easement of Defendant Kellahan/Duke as there was no easement to grant. Alternatively, if there was an easement to grant, that easement was dedicated to and accepted by the public. The public including the Defendants Kellahan/Duke then spoke and decided to close that road for the safety of the Town of Kingstree's citizens.

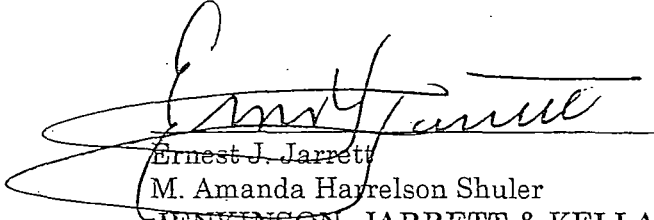
The Town has provided safe access to the Recreation Center. The closing of the portion of Porter Street is for the safety of landowners surrounding the area, the public, and Town of Kingstree property. Porter Street travels into the rear of the Recreation center. It is for the safety of the users of the Recreation Center that the public use the access from the front of the Recreation Center. The closing of Porter Street also decreases foot and automobile traffic to the rear of the Recreation Center. It decreases the traffic to the residential neighborhood is behind the Recreation Center. The Town has provided sufficient proof that the closing of Porter Street is in the best interests of the residents of the Town of Kingstree.

CONCLUSION

The Court has accurately considered the evidence presented to it at the hearings. Porter Street is a public road and has been such since 1903. The Town has the right to close it, and it is in the best interests of the citizens of the Town. The easement that Mr. McIntosh conveyed to Defendants Kellahan/Duke was not

valid as he did not possess this land to convey the easement. In the alternative, if he did possess the land to convey the easement to Defendants Kellahan/Duke, the easement was dedicated to the public in the deed to the easement. After the dedication, Defendants Kellahan/Duke no longer have any control over the easement. The decision to close the road is well supported. Therefore, based upon the forgoing, the judgment of the Court from October 22, 2010, should be affirmed.

March 23, 2011



Ernest J. Jarrett

M. Amanda Hayrelson Shuler

JENKINSON, JARRETT & KELLAHAN, P.A.

Post Office Drawer 669

Kingstree, SC 29556

Ph. (843) 355-2000

Fax (843) 355-2010

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	
		2005-CP-45-434
Town of Kingstree, a Body	)	
Corporate and Politic,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	CERTIFICATE OF SERVICE
	)	
Gary W. Chapman, Jr., Terilyn J.	)	
McClary, Waccamaw Housing,	)	
Inc., Lydia F. Duke, Alice H.	)	
Kellahan and South Carolina	)	
Department of Transportation,	)	
	)	
DEFENDANTS.	)	

THIS IS TO CERTIFY that the foregoing Memorandum in Opposition to Defendants Lydia F. Duke and Alice H. Kellahan's Motion to Alter or Amend Judgment Pursuant to Rules 59(e) and 60 dated March 23, 2011, was served by mailing a copy, postage prepaid, to the following:

William M. O'Bryan, Jr., Esquire
O'Bryan & O'Bryan
Attorneys at Law
Post Office Box 1105
Kingstree, South Carolina 29556

Larry G. Reddeck, Esquire
Nettles, Turbeville and Reddeck
Attorneys at Law
Post Office Box 699
Lake City, SC 29560

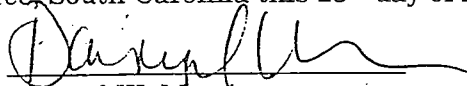
Nate Fata, Esquire
Post Office Box 16620
Surfside Beach, SC 29587

Barbara M. Wessinger, Esquire
SC Department of Transportation
Post Office Box 191
Columbia, SC 29202-0191

Terilyn J. McClary, Pro Se
4835 Renaissance Ridge Road, Apt. 436
Charlotte, NC 28217-2563

Gary W. Chapman, Jr., Pro Se
400 Ashton Avenue
Kingstree, SC 29556

DATED at Kingstree, South Carolina this 23rd day of March, 2011.



Dainyel W. Morris

JENKINSON, JARRETT & KELLAHAN, P.A.

Post Office Drawer 669

Kingstree, SC 29556

Ph. (843) 355-2000

Fax (843) 355-2010

Legal Assistant to Ernest J. Jarrett

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO: 2005-CP-45-434

Town of Kingstree, a Body)
Corporate and Politic,)
)
Plaintiff,)

vs.)

Gary W. Chapman, Jr., Terilyn J.)
McClary, Waccamaw Housing)
Inc., Lydia F. Duke, Alice H.)
Kellahan and South Carolina)
Department of Transportation.)
)
Defendants.)

REPLY MEMORANDUM IN SUPPORT
OF DEFENDANTS LYDIA F. DUKE
AND ALICE H. KELLAHAN'S MOTION
FOR RECONSIDERATION

FILED
11 MAR 31 PM 3:57
CLERK OF COURT
WILLIAMSBURG COUNTY, S.C.

TO: ERNEST J. JARRETT, ESQUIRE, ATTORNEY FOR TOWN OF KINGSTREE; GARY W. CHAPMAN, JR., PRO SE; TERILYN J. MCCLARY, PRO SE; NATE FATA, ESQUIRE, ATTORNEY FOR WACCAMAW HOUSING, INC. AND BARBARA WESSINGER, ESQUIRE, ATTORNEY FOR S.C. DEPT OF TRANSPORTATION

Defendants Lydia F. Duke and Alice H. Kellahan would respectfully submit the following Memorandum in reply to the Memorandum in Opposition submitted by the Town of Kingstree to support these Defendant's Motions to Alter and Amend pursuant to Rule 59(e) and 60 of the South Carolina Rules of Civil Procedure.

SUPPLEMENTAL FACTS

The Petitioner admitted the existence and the validity of Defendants Duke and Kellahan easement (Defendants Duke and Kellahan, Ex. No. 11) in its Petition. (Page 2, Paragraph 2, Line 3-4) The statement is clear, unequivocal and without qualification.

A CERTIFIED TRUE COPY
Carolyn E. Williams
CAROLYN E. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

ARGUMENT I

DUKE AND KELLAHAN EASEMENT FROM MCINTOSH

The Plaintiff has attempted, throughout its Memorandum in Opposition, to argue that the easement from McIntosh to Duke and Kellahan is void because the road had already been dedicated to public use. The Plaintiff, in its Petition, specifically states that Defendants, Duke and Kellahan, have an easement. The statement is clear, unequivocal and without any qualification. There is no testimony, no other pleading or any other action by the Plaintiff to retract this admission in any manner.

Additionally, the Town of Kingstree obtained deeds for a portion of the Nelson property which included, the road bed for Porter Street as a separate tract, also received a deed for the area in question with legally binding notice that there was an easement on record (Pl. Ex. 7).

The language of the McIntosh easement does not mandate or create a dedication, but only suggests cooperation in making the area a public road. The easement in and of itself is strong evidence that no dedication had occurred.

The language of the easement from Samuel McIntosh makes reference to the area in question as a "proposed road or street" throughout the entire document. As to the use at the time the easement was granted in 1993, the grantor and grantees agreed:

"It is deemed to the mutual benefit and interest of the said Alice H. Kellahan and Lydia F. Duke and Samuel E. McIntosh as Personal Representative and Trustee under the Last Will and Testament of Marie L. Nelson, deceased, that said proposed fifty (50) foot road or street should be opened and remain open for the mutual use and benefit of the owners of the lands of the Estate of Marie L. Nelson now held in trust and the owners of the twenty and ninety-seven hundredths (20.97) acres this day conveyed to the Alice H. Kellahan

and Lydia F. Duke.” (Defendants Duke and Kellahan, Ex. No. 11)

As to the future use the McIntosh easement stated:

“Whereas the parties have agreed that efforts should be made to have said street opened and used for their benefit and members of the public who may need to use the same (Defendants Duke and Kellahan, Ex. No. 11).

The easement also stated:

The grantor does agree that the grantee, their heirs or assigns may take such steps to make such improvements as may be necessary to have said street or road opened and maintained as a public street or road and that grantor will assist in such endeavor and that said street or road when opened shall be for the mutual use and benefit of the owners of property lying on either side of the same.” (Defendants Duke and Kellahan, Ex. No. 11).

The testimony provided indicates that neither the Town of Kingstree or any other entity had taken any action to accept that property is a roadway or to actually maintain it. W.N. Kellahan, Jr. testified that he could find that there was no indication that any governmental entity had the roadway in its system, especially the South Carolina Department of Transportation. Again, the area of Porter Street which concerns this action has not been paved and was only reserved as access to the remainder of the Nelson property.

ARGUMENT II

The Plaintiff's argument that the easement from Samuel McIntosh to Defendants Duke and Kellahan was an express written dedication is absurd. The language of the easement cited in the supplemental facts above clearly states that the road is proposed and Defendants Duke and Kellahan can take such action to have it made a public road and that the Grantor would cooperate. It is elemental that an entire document must be read to

obtain its full meaning. The three areas for the use of the area in question in the easement clearly reflect two things:

1. The easement is for the benefit of the both the Grantor and the Grantees of Samuel McIntosh, as well as, Defendants Duke and Kellahan and their heirs and assigns for them to have access to their respective parcels of property.

2. The easement deals with the future use. Additionally, the argument that the paving of the area up to the senior citizens facility certainly indicates where the area has occurred, there is dedication, but, until that time, there was no real evidence of dedication and just because a portion of that property was paved does not mean that the other part was dedicated.

It should also be noted that the Plaintiff's argument that the easement to Defendant's Duke and Kellahan that was void (which these Defendants deny), and it is so crystal clear to the Plaintiff that the dedication had already occurred (which is most strongly denied by the Defendants Duke and Kellahan), then the Town of Kingstree would not have needed to purchase the area in question. Those deeds would be void also (Pl. Ex. No. 7). That is just not the case. The Town of Kingstree purchased the property subject to the Duke and Kellahan easement.

The public may acquire a prescriptive easement from the use of property for a roadway or a street but for dedication to occur, there must be some action by a public entity (SC Code Ann. § 6-29-1170).

ARGUMENT III

NOT ENTITLED TO ESTOPPEL

W.N. Kellahan, Jr. testified that Senator McGill was not authorized to take any action for him. (Tr. 4/26/006, P. 64 lines 7-13) Senator McGill's testimony clearly states that he did not represent Defendants, Duke and Kellahan or W.N. Kellahan, Jr. (Tr. 4/16/07, Pp. 2-3)

There is no evidence in the record to show that anyone thought that Senator McGill was acting as agent for Defendants Duke or Kellahan or W.N. Kellahan, Jr. at meetings on February 2, 2004. W.N. Kellahan, Jr. testified on cross-examination (TR. 4/26/06, P. 72 line 4) that Senator McGill attended Town meeting to represent "his interest", not that of Alice Kellahan or Lydia Duke.

At the time Defendants Duke and Kellahan purchased the property, some research was and there was no evidence that Porter Street was public road, it was not maintained by City, was primarily grown up in broom straw. (Tr. 4/26/06, P. 60 & 61.

The Plaintiff's argument concerning apparent authority and estoppel should be rejected. As an affirmative defense, estoppel must be pled or it is waived. There has been no motion to conform the pleadings to the proof. Additionally, in order to allow such an amendment, there must be proof to which the pleadings can be conformed. There has been no showing of any action by Defendants Duke or Kellahan or W.N. Kellahan, Jr. on their behalf to the Plaintiff, the Kingstree Town Council or any third other person at the public hearing or council meeting on February 2, 2004, that Senator Yancey McGill was acting on their behalf as their agent. This is an essential and required element of apparent authority.

(R&G Construction, Inc. vs. Low Country Regional Transportation Authority, 343 SC 424, 540 SE2d 113 2000). The burden of proof is upon the Plaintiff to show this agency and the Plaintiff has failed to have any evidence of representation by Defendants Duke or Kellehan or W.N. Kellahan, Jr. that Senator Yancey McGill was their agent at the hearing and public meeting.

An essential element of estoppel is that any injury claimed must be actual, material and substantial. "Broadly speaking injury, detriment, or prejudice to the party claiming the estoppel in pais. Since the function and purpose of the doctrine of estoppel are the prevention of fraud and injustice, there can be no estoppel when there is no loss, injury, damage, judgment, prejudice to the party claiming it moreover, the injury or prejudice involved must be actual and material or substantial and not merely technical or formal." *"American Jurisprudence 2nd Estoppel & Waiver.*

The Plaintiff has made no showing of injury in order to invoke the application of estoppel.

The only testimony that W.N. Kellahan, Jr. gave concerning Senator McGill's action at the meeting and hearing was to represent him and testified specifically that he did not send him with any authority. Senator McGill also confirmed the fact that he did not have any authority to act on the behalf W.N. Kellahan, Jr. or Defendants Duke or Kellahan.

The Plaintiff is trying to "Bootstrap" agency, and apparent authority to its petition and to those claims; it is trying to "Bootstrap" estoppel. This is prohibited.

In the case of Collins Entertainment, Inc. v. White, 363 S.C. 546, 611 S.E.2d 262(S.C.App.,2005) the Court stated:

Appellants assert the issue of estoppel was raised in the pleadings under the arguments for breach of contract accompanied by a fraudulent act. We disagree and find that estoppel must be affirmatively pled as a defense and cannot be bootstrapped onto another claim. See Rule 8, SCRPC; *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 929 (Ct.App.1994) (finding estoppel is an affirmative defense). *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262(S.C.App.,2005)

Additionally the *Collins* Court held:

As we found above, Appellants failed to plead estoppel as an affirmative defense and the court properly denied their motion to include it as a defense. Additionally, laches is an affirmative defense which must be specifically pled. Rule 8(c), SCRPC. The failure to plead an affirmative defense is deemed a waiver of the right to assert it. E.g., *Adams v. B & D, Inc.*, 297 S.C. 416, 419, 377 S.E.2d 315, 317 (1989). Accordingly, we find the trial court properly refused to dismiss Collins' claims under either theory. *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262(S.C.App.,2005)

ARGUMENT IV THE TAKING OF PROPERTY RIGHTS ENTITLES DEFENDANT DUKE AND KELLAHAN TO COMPENSATION

The March 1903 plan for John T. Nelson plan did not designate the (50') foot wide area in between Lots 13 and 14 in any manner. It was not designated as a street or road.

Duke and Kellahan counterclaimed for taking of a property right stated a claim inverse condemnation. The property right sought to be taken was a fifty (50) easement granted to Defendants Duke and Kellahan by a written easement dated September 7, 1993 from Samuel E. McIntosh recorded in Deed Book A-311 at page 235.

The property has not been paved and has not been dedicated to public use. Defendants Duke and Kellahan had a valid easement that the Plaintiff admitted was valid in its pleadings. The Plaintiff cannot now disavow that admission in this case. The area that is in question is not paved.

Under the laws and the Constitution of our state and the Constitution of The United States, no private property may be taken without just compensation.

Under the Eminent Domain Law no private property right may be taken without compensation. South Carolina recognizes the doctrine of inverse condemnation, whereby owners may suffer a taking as a result of a change in access to their property. This doctrine is recognized in the *City of Rockhill vs. Cothran*, 209SD 357 40 SE2d 2369, cited in the Court of Appeals decision in *Harden vs. SCAPT*, 359 SC 244 597 SE2d 814. The property was acquired by Defendants Duke and Kellahan for commercial development and the acquisition and development was predicated on access to said property along Porter Street with ingress and egress being available on both Ashton Avenue and Nelson Boulevard. The Defendants Duke and Kellahan have established by uncontroverted testimony that special injury will occur to their property if their access to Porter Street is terminated and they are entitled to recover damages for such injury in the amount of One Hundred Thousand and no/100 (\$100,000.00) Dollars.

ARGUMENT V CLOSURE NOT IN THE BEST INTEREST OF ALL CONCERNED

Section 57-9-20 of the S.C. Code of Laws 1976 as amended, requires that the closing of a street must be in the best interest of all concerned. Clearly, the closing of the street is not in the best interest of Defendants Duke and Kellahan. The only people that really benefit from the closing are the owners of the property on Ashton Avenue that will receive an additional twenty-five (25') feet of property. The only Town of Kingstree citizens who testified, Defendants Gary W. Chapman, Jr. and Terilyn J. McClary, no longer own Lots 13

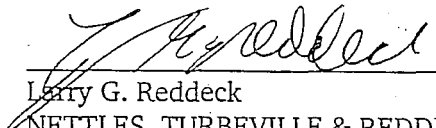
or 14. The need for emergency vehicles to have an alternative exit from Nelson Boulevard and the recreational center will benefit the people of the Town of Kingstree by having that area open, closing that access would be to the detriment of many more people than those who could claim an injury. The close proximity of the hospital and other medical providers on Hwy. 377 and Nelson Blvd. makes the closure detrimental to the citizens of the town and county.

CONCLUSION

Based upon the foregoing and the memorandum originally provided by Defendants Duke and Kellahan which is incorporated herein by reference, the Defendants respectfully requests the Court to reconsider its Order and grant the relief as requested in these Defendants' Motion.

Lake City, S.C.

March 28, 2011


Larry G. Reddeck

NETTLES, TURBEVILLE & REDDECK

Post Office Box 699

Lake City, S.C. 29560

(843) 374-8511

Attorneys for the Defendants

William M. O'Bryan, Jr.

O'BRYAN & O'BRYAN

Post Office Box 1105

Kingstree, SC 29556

(843)-355-7471

Attorney for the Defendants

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas
G. Wells Dickson, Jr., Special Referee

Case No: 2005-CP-45-434

RECEIVED

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SC Court of Appeals

Town of Kingstree, a Body Corporate and Politic, ... Respondent

v.

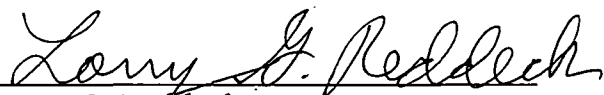
Gary W. Chapman, Jr., Terilyn J. McClary, Waccamaw
Housing, Inc., Lydia F. Duke, Alice H. Kellahan and
South Carolina Department of Transportation Defendants

of whom, Lydia F. Duke and Alice H. Kellahan are Appellants

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.

June 26, 2012



Larry G. Reddeck
NETTLES, TURBEVILLE & REDDECK
Post Office Box 699
Lake City, SC 29560
(843) 374-8511 (phone)
(843) 374-3211 (fax)
William M. O'Bryan, Jr.
O'BRYAN & O'BRYAN
PO Box 1105
Kingstree, SC 29556
(843) 355-7471
Attorneys for the Appellants

LAW OFFICES

NETTLES, TURBEVILLE & REDDECK

P. O. BOX 699
261 KELLEY STREET
LAKE CITY, SOUTH CAROLINA 29560

E. LEROY NETTLES
ELBERT K. TURBEVILLE
LARRY G. REDDECK
MARIAN D. NETTLES

843-374-8511
843-493-2221
FAX: 843-374-3211

June 27, 2012

The Honorable Tanya Gee
Clerk, Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RE: Town of Kingstree vs. Gary W. Chapman, Jr., et al.
Case No. 2005-CP-45-434

Dear Ms. Gee:

Please find enclosed the Acceptance of Service of one copy of the Record on Appeal executed by M. Amanda Shuler, as attorney for Respondent.

Please indicate the time of filing on the enclosed copies and return them to me in the enclosed self-addressed envelope.

With my best regards, I am

Yours very truly,

NETTLES, TURBEVILLE & REDDECK



Larry G. Reddeck

LGR/jpa
Enclosures

cc:
M. Amanda Shuler, Esquire
Ernest J. Jarrett, Esquire

RECEIVED
JUN 28 2012
SC Court of Appeals