

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

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STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
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.)

ORDER DENYING DEFENDANTS
LYDIA F. DUKE'S AND
ALICE H. KELLAHAN'S
MOTION FOR RECONSIDERATION

FILED
CAROLINA F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

FILED
11 DEC -1 PM 4: 29
CAROLINA F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

HEARING DATE: March 29, 2011
SPECIAL REFEREE: G. Wells Dickson, Jr., Esquire
ATTORNEY FOR PLAINTIFF: Ernest J. Jarrett, Esquire
ATTORNEY FOR DEFENDANT GARY W. CHAPMAN, JR.: Gary W. Chapman, Jr., Pro Se
ATTORNEY FOR DEFENDANT TERILYN J. MCCLARY: Terilyn J. McClary, Pro Se
ATTORNEY FOR DEFENDANT WACCAMAW HOUSING, INC.: Nate Fata, Esquire
ATTORNEY FOR DEFENDANT LYDIA F. DUKE: William M. O'Bryan, Jr., Esquire
ATTORNEY FOR DEFENDANT ALICE H. KELLAHAN: William M. O'Bryan, Jr., Esquire
ATTORNEY FOR S.C. DEPT. OF TRANSPORTATION: Barbara Wessinger, Esquire

STATEMENT OF THE CASE

THIS MATTER came before me on the Defendant's Motion to Alter or Amend the Order and Judgment of the Court closing of a Portion of Porter Street issued on October 22, 2010.

A hearing on this motion was held on March 29, 2011. Present were: Ernest J.

WD

Jarrett and M. Amanda Harrelson Shuler, attorneys for the Plaintiff, Town of Kingstree (Town); Larry G. Reddeck and William M. O'Bryan, Jr., attorneys for the Defendants, Lydia Floyd Duke and Alice H. Kellahan; and W. N. Kellahan, Jr., civil and structural engineer. The Defendants Alice H. Kellahan and Lydia F. Duke, hereinafter referred to as "Kellahan/Duke", were not present. Subsequent to the hearing, each party submitted proposed orders for the undersigned to consider in reaching a decision on the motion, and provided a copy of same to opposing counsel.

1. Kellahan/Duke have argued that they hold an express written easement which has not been abandoned; that there was never a dedication of the portion of Porter Street that the Plaintiff sought to close; that the approval of a plat is not acceptance of dedicated land.

The determination of whether property has been dedicated to the public is an action in equity. Blarcum v. City of North Myrtle Beach, 337 S.C. 446, 523 S.E.2d 486 (Ct. App. 1999) citing State v. Beach Co., 271 S.C. 425, 248 S.E.2d 115 (1978) and Mack v. Edens, 320 S.C.236, 464 S.E.2d 124 (Ct. App. 1985) The party seeking to establish a dedication must prove that the owner has expressed in a positive and unmistakable manner the intention to dedicate the property and express or implied public acceptance within a reasonable time. *Id.* citing Tupper v. Dorchester County, 326 SC 318, 487 S.E.2d 187 (1997) 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)

The proof of dedication must be strict, cogent, and convincing. *Id.* "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)

Porter Street is a publicly dedicated road which has been delineated on a number of plats since 1903. It was expressly dedicated to the public when the 1903 subdivision plat was recorded. The public later accepted that dedication by using the roadway, albeit light use. Porter Street was dedicated to the public and accepted by the public prior to the easement granted by Samuel McIntosh to Kellahan/Duke.

Michael Kirby, Community Planning and Development Director for the Town of Kingstree, testified that the Town has been responsible for maintaining the portion of Porter Street that was not paved. He also testified that it would be in the best interests of the residents of the Town that the street be closed. He explained that the closing of the street would not be detrimental to any of the property owners. (April 26, 2006 Tr. 14-17) The portion of the road sought to be closed does not touch the Kellahan/Duke property. It would not negatively impact anyone involved.

Even if the portion of the road was not dedicated and accepted by the public, there is strict, cogent and convincing evidence that Kellahan/Duke dedicated the easement to the public making it a public road. Defendants' Exhibit 11 submitted at trial is the document whereby Kellahan/Duke obtained the easement.

Contained within that grant is language that indicates a dedication by writing. The easement clearly provides "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" ... and ... "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." (D. Ex. 11) The road appears on Defendant's Exhibit #9, a plat surveyed at the request of Kellahan/Duke on August 19, 1993, which was recorded with the Clerk of Court for Williamsburg County in Book S852 Page 6B. The very portion of the road in dispute is again delineated on a plat made by W.N. Kellahan on November 14, 1996, recorded with the Clerk of Court for Williamsburg County in Book S022 Page 8A. (D. Ex. 12)

Kellahan/Duke argued that since the road has not been paved, it has not been dedicated. Pavement of the road is not a requirement. The provision contained in the easement, along with additional plats referred to hereinabove, confirm Kellahan/Duke's intent to dedicate the easement to the public. Without question, Kellahan/Duke have dedicated whatever interest they had in Porter Street for public use. The Town established that Kellahan/Duke dedicated their easement for use by the public and abandoned their private easement rights, if any, to the small undeveloped portion of Porter Street.

An owner of an easement may relinquish that easement by abandonment, express or implied. Immanuel Baptist Church of North Augusta v. Barnes, 274 S.C. 125, 264 S.E.2d 142 (1980) citing Hodge v. Manning, 241 S.C.142, 127 S.E.2d 341 (1962). In that case, the court found that if there appears to be a present intention to abandon an easement, or if there is clear evidence of a purpose inconsistent with the existence of the easement, then a case for abandonment is presented. Here,

Kellahan/Duke conveyed land that adjoins the easement for the housing development. They did not expressly retain any easement rights. In addition, they knew that the rezoning as approved was based on the closing of an unpaved portion of the road. Kellahan/Duke intended to abandon the easement and not retain any rights in the roadway.

2. Kellahan/Duke argued that the Town does not have the right to petition to close Porter Street. They also argued that the Town has not proven that the closure of the road was in the best interests of all concerned.

South Carolina Code Annotated Section 57-9-10 provides:

Any interested person, the State or any of its political subdivisions or agencies may petition a court of competent jurisdiction to abandon or close any street, road or highway whether opened or not.

Porter Street is clearly a road that may be closed pursuant to Section 57-9-10, SC Code of Laws, 1976, as amended. As discussed above, Porter Street has been dedicated to the public as early as the filing of the 1903 plat, and was subsequently accepted by the public. Section 57-3-120, SC Code of Laws, 1976, as amended, defines highway, street or road as a public way for the purpose of vehicular travel. The Town established that Porter Street was a street used for vehicular travel, and that the Town had a right to close the street.

At the time of the hearing, the adjoining land owner, next to the portion of Porter Street that the Town petitioned to close, was Ms. Terilyn McClary, who testified that "people would just drive through all the time." She stated that vehicles would use the road and had used the road since at least 1997 or 1998. (April 26, 2006 Tr. 42)

WD

The closing of the portion of Porter Street is for the safety of landowners in the area, the public, and Town property. Porter Street intersects with Ashton Avenue at the rear of the Town's 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 decreases foot and automobile traffic to the rear of the Recreation Center, and to the residential neighborhood located 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.

3. Kellahan/Duke also argued that the Town has failed to prove that the roadway is not subject to the easement of Kellahan/Duke; that they are entitled to just compensation for the taking of their easement.

In support of this argument, Kellahan/Duke cite Hoogenboom v. The City of Beaufort, 315 S.C. 306, 433 S.E.2d 875 (1992). The undersigned does not find that case persuasive. The court in that case held that "Section 57-9-20 does not grant the courts power to divest the fee simple owner of title." *Id.* at 318, 884 The Court went further to state that "nothing in Section 57-9-20 suggests . . . that the court is given the power to create or destroy a fee simple interest in property." The Town is the fee simple owner of the roadway and may close it as such.

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, stating "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. Since the land was

WD

dedicated to the public, Kellahan/Duke are not entitled to compensation as they have lost the ability to control future use of the property. Mr. McIntosh did not have an easement to grant to the Defendants. In the alternative, if he did have the ability to make such a grant, the grant was dedicated to the public for use by the public, which was accepted, and the easement was extinguished. Therefore, any claim for just compensation is lost.

4. Lastly, Kellahan/Duke argued that the Plaintiff did not allege or prove agency or estoppel that would bind Kellahan/Duke to the action by Town Council on February 2, 2004.

Generally, any affirmative defense that a party seeks to assert must be pled. However, if the affirmative defense is raised before the trial court, it is properly preserved for appeal. Estoppel was properly raised and ruled upon by the undersigned. Simply because the defense of estoppel was not entered as a defense in the reply to the counter-claim did not prohibit the undersigned from considering the equitable defense. See Adams v. B & D, Inc., 297 S.C. 416, 377 S.E.2d 315 (1989)

The pleading requirement exists so the defending party may have the opportunity to refute the claim. Kellahan/Duke were on notice as to the claim of estoppel and had the opportunity to defend the claim. Therefore, it was proper for the undersigned 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 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 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 an agreement in which Porter Road (Street) would be closed permanently from Ashton Avenue with a barricade and fence to block the roadway. The Town would put up a fence on the Town's property; the developer would put the fence on the development's property side.

Senator McGill also requested that a letter be sent by the Town to CTC requesting funds to pave the remaining unclosed portion of Porter Street. As a result of Senator McGill's actions, the rezoning was consummated and the development for senior housing was allowed. The public funds for the paving of a portion of Porter Street were then appropriated.

It is clear from the record that an agency relationship was established between Senator McGill and Kellahan/Duke. During trial, William N. Kellahan testified that he handled the property for Kellahan/Duke. Mr. Kellahan explained that he had a scheduling conflict and could not attend the meeting; therefore, he sent Senator 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. 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."

Although Senator McGill testified at the second hearing that he did not represent Kellahan/Duke, Mr. Kellahan had earlier testified that he sent Senator McGill to represent him. The intent of the principal determines whether an agency relationship exists, not the intent of the agent. Clearly, Senator McGill was an agent of these ladies.

"[T]he 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)

Senator McGill stated that he understood that a portion of Porter Street would be closed permanently to allow for the rezoning. 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 would be reasonably calculated to induce the Town to act, and it did so.

As such, Kellahan/Duke are bound by the agreement brokered by Senator McGill. The agreement required the closing of an unpaved portion of Porter Street. With that agreement in place, the property was rezoned so that the senior citizen housing could be built. As such, Kellahan/Duke were able to sell a two acre tract for sixty thousand dollars (\$60,000.00) and are estopped from now arguing that they do not want the unpaved section of Porter Street closed, or in the alternative, that they should be compensated for the extinguishment of their easement.

CONCLUSION

For the reasons stated herein, Kellahan/Duke's Motion For Reconsideration is DENIED, and the undersigned's order dated October 22, 2010, remains the order of this Special Referee;

AND IT IS SO ORDERED!

G. Wells Dickson Jr.
G. Wells Dickson, Jr.
Special Referee

December 1, 2011

Kingstree, South Carolina

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.)

ORDER FOR ABANDONMENT AND
CLOSURE OF PORTION OF PORTER
STREET

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

DEFENDANTS.)

10 OCT 22 PM 3:42
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

FILED

HEARING DATE:
SPECIAL REFEREE:
ATTORNEY FOR PLAINTIFF:
ATTORNEY FOR DEFENDANT:
GARY W. CHAPMAN, JR.
ATTORNEY FOR DEFENDANT:
TERILYN J. MCCLARY:
ATTORNEY FOR DEFENDANT:
WACCAMAW HOUSING, INC.
ATTORNEY FOR DEFENDANT:
LYDIA F. DUKE:
ATTORNEY FOR DEFENDANT:
ALICE H. KELLAHAN
ATTORNEY FOR S.C. DEPT.
OF TRANSPORTATION:

April 26, 2006 & April 16, 2007
G. Wells Dickson, Jr.
Ernest J. Jarrett, Esquire

Gary W. Chapman, Jr., Pro Se

Terilyn J. McClary, Pro Se

Nate Fata, Esquire

William M. O'Bryan, Jr., Esquire

William M. O'Bryan, Jr., Esquire

Barbara Wessinger, Esquire

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

Carolyn F. Williams

STATEMENT OF THE CASE

THIS MATTER came before me 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 me by Order of Reference with Finality by the Honorable Clifton Newman dated December 1, 2005. The Defendant, South Carolina Department of Transportation,

filed an Answer dated December 9, 2005, and the Defendant Waccamaw Housing, Inc. filed an Answer dated December 20, 2005, both 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, 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.

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 Williamsburg County 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, and 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, filed on November 14, 2005, was properly served on each of the Defendants, and the proper Proofs of Service are contained in the Court file. The Hearing Notices for April 26, 2006, were served on each of the Defendants as indicated by the Certificates of Service and Proofs of Service contained in the Court's file, and again for the April 16, 2007 hearing. All notices and pleadings are proper and this matter was ready for a trial on the merits at the time of the initial hearing.

Present on April 26, 2006, were Ernest J. Jarrett, attorney for the Plaintiff, Town of Kingstree; William M. O'Bryan, Jr., attorney for the Defendants, Lydia F. Duke and Alice H. Kellahan; Defendants Gary Wayne Chapman, Jr., Terilyn McClary, and Alice H. Kellahan; Michael Chalmers Kirby, Community Planning and Development Director for the Town of Kingstree; and W. N. Kellahan, Jr., civil and structural engineer and husband of Alice H. Kellahan. The Defendant Lydia F. Duke was not present.

Present on April 16, 2007 were Ernest J. Jarrett, attorney for the Plaintiff, Town of Kingstree; William M. O'Bryan, Jr., attorney for the Defendants, Lydia F. Duke and Alice H. Kellahan; Terilyn J. McClary, Defendant; Michael Chalmers Kirby, Town employee as noted above, and John Yancey McGill, South Carolina State Senator.

Prior to the hearing on April 26, 2006, Mr. Jarrett informed the Court that Barbara Wessinger, attorney for Defendant South Carolina Department of Transportation, had informed him that she was not going to be present for the hearing but that Defendant South Carolina Department of Transportation, as plead in its Answer, had no objection to the closure of the undeveloped portion of Porter Street. Nate Fata, the attorney for Defendant Waccamaw Housing, Inc., had informed Mr. Jarrett 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 undeveloped portion of Porter Street, as plead in its Answer.

Plats recorded by Defendants Duke and Kellahan subdivide this property and shows a proposed road from Porter Street to S. C. Highway 377. Mr. Kellahan testified that the plans for this road may change.

The Town desires to convey the portion of the subject undeveloped street to the Defendants, Terilyn J. McClary and Gary W. Chapman, Jr., with the understanding said lots are to be maintained by them and reserving a sewer easement for the Town of Kingstree to maintain and replace underlying sewer lines.

The issue of the closing of this portion of Porter Street is associated 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, Inc. to allow the construction of a senior housing project. The sellers of the portion of Tax Map No.11-39-11 to Waccamaw Housing, Inc. are Defendants Duke and Kellahan.

Based upon the exhibits, the record before me, and the testimony of Michael Chalmers Kirby, Terilyn J. McClary, Gary W. Chapman, Jr., Alice H. Kellahan, W. N. Kellahan, Senator John Yancy McGill and others, I make the following:

FINDINGS OF FACT:

1. The road now designated as Porter Street first appeared on a plat prepared for John T. Nelson by Peter G. Gourdin, pursuant to a survey in March, 1903. The survey identified twenty (20) lots that were to be sold along a road that became known as Ashton Avenue.
2. Lots 13 and 14, as identified on said plat, bordered the proposed roadway now designated as Porter Street, and were both sold in 1909. Lot 14 was sold on May 6, 1909 to H. W. Britton. (Defendants' Exhibit 3). This lot is on the west side of the proposed road as noted in the deed. Lot 13 was sold on July 10, 1909 to C. C. Brinkley (Defendants' Exhibit 4) and is on the east side of the proposed road.

3. The land to the south of the lots that were identified on the plat of 1903 became the property of Marie L. Nelson upon the death of her father, John T. Nelson, on December 12, 1938. Samuel E. McIntosh inherited a tract of land consisting of 20.97 acres from Ms. Nelson upon her death in 1981. (Defendants' Exhibit 7). This tract was sold by Mr. McIntosh to Alice H. Kellahan and Lydia F. Duke on September 7, 1993, as identified on a plat surveyed on August 19, 1993 and recorded in Plat Book S852 at page 6B. The deed is recorded in Deed Book A-311 at page 231. (Defendants' Exhibit 10).

4. The subject street is now located in the Town of Kingstree, 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 and incorporated herein by reference. The portion of the street being closed is an undeveloped section in the Town of Kingstree leading from Ashton Avenue to the Town of Kingstree Recreation Center. The remainder of Porter Street is now paved as will be addressed hereinafter.

5. The abutting property owners to the portion of the undeveloped section of Porter Street affected by the closing are Terilyn J. McClary, Gary W. Chapman, Jr., and Waccamaw Housing, Inc., a duly organized corporation pursuant to the Laws of South Carolina which transacts business in the County of Williamsburg. All of these Defendants are in favor of closing this undeveloped portion of Porter Street.

6. 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 the said undeveloped portion of Porter Street.

7. Subsequent to the hearing on April 16, 2007, the attorney for the Plaintiff determined that the two lots adjacent to the undeveloped portion of Porter Street had changed hands. The record was supplemented on September 24, 2010 with the Affidavit of Robert E. Eaton and Sharon M. Eaton as Trustees of the Eaton Living Trust, with the Trust being the present owner of the lot designated as Tax Map No. 11-038-010, which is bounded on the eastern side by the undeveloped portion of Porter Street.

8. The record was also supplemented on September 24, 2010 with the Affidavit of Hartwell Pendergrass and Hattie Pendergrass who are the present owners of the lot designated as Tax Map No. 11-038-011 which is bounded on the western side by the undeveloped portion of Porter Street.

9. In both affidavits the current property owners acknowledge that they are in favor of the Town's petition to close the undeveloped portion of Porter Street, and will accept the part of the said street which is to be merged with their respective properties.

10. The Defendants, Alice H. Kellahan and Lydia F. Duke, were named as party Defendants based upon a fifty (50) foot easement granted to them by deed of Samuel E. McIntosh in 1993. (Defendants' Exhibit 11).

11. Proper Notices have been given to all interested parties. The Intent to File Petition to Close the Road was published in *The News*, a newspaper having general circulation in the Town of Kingstree, County of Williamsburg, on October 26, 2005, November 2, 2005, and November 9, 2005. Notice was properly given to all abutting property owners whose property would be affected by the closing of the portion of the subject undeveloped street in accordance with S. C. Code §57-9-10. Notice of the hearing was properly given to all parties.

12. The first reading of Ordinance 2004-01 to rezone the property to allow for a senior housing project was held on January 26, 2004. William N. Kellahan, Jr., along with Senator John Yancey McGill and other community leaders attended this Town Council meeting to voice their support for the project because of the need for senior housing in Kingstree. Mrs. Kellahan testified on April 26, 2006, 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.

13. The Ordinance was passed by Town Council at the first reading, but the council decided that there should be a public hearing on the rezoning of the property because some citizens along Ashton Avenue expressed concern about increased pedestrian use and other traffic if the zoning was changed and the housing project constructed.

14. A public hearing was held on February 2, 2004. Mr. Kellahan had a scheduling conflict and could not attend. He testified on April 26, 2006, that he sent Senator McGill to represent his interest at the proceedings, because he handled all of the dealings with this property. Senator McGill testified on April 16, 2007, that he was encouraging the senior housing project for the benefit of his constituents because he knew of the need for senior housing in Kingstree. The Senator and several citizens from neighboring Ashton Avenue expressed concerns about the 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. The minutes of the meeting 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 was the facilitator that allowed the town council to broker an agreement with all the parties. He asked that a letter be sent by the Town to CTC to request the funds to pave Porter Road, (Street).

15. Immediately following the public hearing on February 2, 2004, 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 requirement that 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. The motion carried and the property was rezoned to accommodate the request to rezone the property and allow the Center.

16. Thereafter, CTC provided appropriate funds for the paving of Porter Street from Nelson Boulevard to the land purchased by the proposed Senior Housing Project, the approved Planned Unit Development. As a result Defendants Duke and Kellahan were able to consummate the sale to Waccamaw Housing, Inc., as evidenced by the deed dated May 3, 2004, recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-552 at page 242, for the stated consideration of Sixty Thousand dollars (\$60,000.00). (Plaintiff's Exhibit 6).

17. Thereafter, Defendants Duke and Kellahan erected a fence from what is now the undeveloped portion of Porter Street to within fifty (50) feet of Highway 377 as required under the said negotiated agreement and Ordinance 2004-01.

18. Without the approved rezoning by the Kingstree Town Council, based upon the negotiated agreement arrived at through the efforts of Senator McGill, which benefitted the interest of Defendants Duke and Kellahan, and addressed the concerns of the residents of Ashton Avenue, and the Town of Kingstree, the sale to Waccamaw Housing, Inc. would not have occurred.

19. The Town of Kingstree proceeded with its Petition to close the undeveloped portion of Porter Street as provided in the Ordinance for the construction of the housing project, and erected a fence closing off the undeveloped portion of Porter Street. This litigation resulted.

CONCLUSIONS OF LAW:

A. If there is no formal dedication of a road for public use, the Court may look to the actions of the parties to determine if 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).

B. The Town of Kingstree and Defendants Duke and Kellahan have unequivocally agreed that Porter Street would be used as a public road. Public funds were used for the paving of Porter Street and the original easement conveyed to Defendants Duke and Kellahan underscores the desire to have the street opened and used for their benefit and members of the public. (Defendants' Exhibit 11).

C. An agency relationship was established between Senator McGill and the Defendants Duke and Kellahan. Although Senator McGill testified on April 16, 2002 that he did not represent Defendants Duke and Kellahan, William N. Kellahan, Jr. testified that he sent Senator McGill to "represent him." "An agency relationship may be established by evidence of actual or apparent authority." *Fochman vs. Clanton's Auto Auction Sales*, 233 S.C. 581, 583, 106S.E.2d 272, 274-75 (1958). It is the intent of the principal that is key in any agency relationship. Mr. Kellahan handled all of the business concerning these properties for Defendants Duke and Kellahan, and he sent Senator McGill to represent him due to his scheduling conflict. "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.” *Moore vs. North Am. Van Liners*, 310 S.C. 236, 239, 423 S.E.2d 116, 118 (1992).

D. “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, Defendants Duke and Kellahan are bound by the agreement brokered by the town council with the input and encouragement of Senator McGill, which allowed them to sell a two acre tract for the housing project for Sixty Thousand Dollars (\$60,000.00).

E. The closing of the portion of the undeveloped section of Porter Street will not adversely affect the ability of emergency vehicles to access any of the property. Access is readily available by way of Nelson Boulevard along the portion of Porter Street which is now paved. There is also a proposed street from Highway 377 through the property of Defendants Duke and Kellahan to Porter Street as shown on the plat referred to herein above. Additionally, the portion of Porter Street which is to be closed was not “cut in” until the 1980's and therefore was not in use although the plat showing its existence was recorded in 1909.

F. Porter Street is owned by the Town of Kingstree as evidenced by the deeds for the purchase of the land for the recreation complex, the negotiated agreement to rezone the property to permit a housing project, and the paving of a substantial portion of Porter Street using public funds. Although there was never a public dedication of Porter Street, Porter Street has been used by the public and all of the street except the length of one lot has been paved using public CTC funds which benefitted

Defendants Duke and Kellahan. Porter Street is therefore by the agreement and the actions of the parties to this litigation a public street. When a 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 v. County of Lexington, 314 S.C. 556, 431 S.E.2d 573, (1993).

G. Further, as evidenced by the Deed of Defendants Duke and Kellahan to Waccamaw Housing, Inc., dated May 3, 2004, (Plaintiff’s Exhibit 6) there was no easement contained in the deed for access to the property evidencing the belief by these Defendants that Porter Street was indeed a public street. As a public street, such recitation of an easement would no longer be necessary.

H. The permanent closing of the undeveloped portion of Porter Street would be in the best interests of the citizens and residents of the surrounding area and of the Town of Kingstree and the County of Williamsburg, including abutting property owners and interested parties, and would not be prejudicial to abutting property owners or other interested parties.

I. The determination of the extent or scope of an easement is an action in equity. The strongest argument for denying the counterclaim of Defendants Duke and Kellahan is one based largely on equity. These Defendants purchased the easement for the express purpose of making Porter Street a public road. Based upon this Special Referee’s understanding of Blue Ridge Realty Company vs. Williamson, 247 SC 112, 145 SE2d 922 (1965); the analysis and holding in Inlet Harbour vs. S.C. Department of Parks, Recreation and Tourism, 377 SC 86, 659 SE2d 151 (SC2008); and Murrells Inlet Corporation vs. Iva Mae Ward, 378 SC 225, SE2d 452 (SC App. 2008); and the actions of the parties, this Special Referee concludes that the Counterclaim of Defendants Duke and Kellahan should be denied.

J. Pursuant to South Carolina Code §57-9-30, the Williamsburg County Clerk of Court shall record the order of this Special Referee and index the same in the Book of Deeds to Real Property.

K. Fee simple title to that portion of the subject undeveloped street as shown on said plat dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, is vested in abutting property owners in accordance with the provisions of S. C. Code §57-9-20, subject to a sewer easement to the Town of Kingstree. (Plaintiff's Exhibit 1)

L. This Special Referee's fees and cost, if any, shall be paid by the Plaintiff when the said bill is submitted under separate cover.

THEREFORE, IT IS


ORDERED, ADJUDGED, AND DECREED that the undeveloped portion of Porter Street is hereby permanently closed. IT IS FURTHER

ORDERED, ADJUDGED AND DECREED that pursuant to South Carolina Code §57-9-30, the Williamsburg County Clerk of Court shall record this Order and index the same in the Book of Deeds to Real Property. IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that fee simple title in accordance with the provisions of S. C. Code §57-9-30 to the undeveloped portion of Porter Street hereby vests as follows: Lot No.: 1 - Hartwell Pendergrass and Hattie Pendergrass, and Lot No.: 2 - Robert E. Eaton and Sharon M. Eaton, Trustees under the Eaton Living Trust, as shown on a map made by J. B. Ellis, Jr., R.L.S., dated October 4, 2005, and recorded in the office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, on October 11, 2005, saved and excepting a sewer easement in favor of the Town of Kingstree allowing maintenance/replacement of the existing sewer lines on that property.

IT IS FINALLY ORDERED, ADJUDGED, AND DECREED that the Counterclaim of Defendants Duke and Kellahan shall be dismissed, with prejudice, and that this Special Referee's fees and cost, if any, shall be paid by the Plaintiff when submitted,

AND IT IS SO ORDERED!



G. Wells Dickson, Jr.
Special Referee

Kingstree, South Carolina

October 22, 2010.

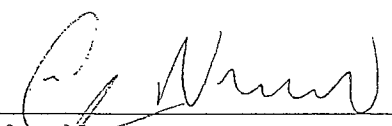
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG)	
	)	2005-CP-45-434
Town of Kingstree, a Body)	
Corporate and Politic,)	
)	
PLAINTIFF,)	
)	
VS.	)	ORDER OF REFERENCE
	)	(with finality)
Gary W. Chapman, Jr., Terilyn J.)	
McClary, Waccamaw Housing,)	
Inc., Lydia F. Duke, Alice H.)	
Kellahan and South Carolina)	
Department of Transportation,)	
)	
DEFENDANTS.)	

FILED
 05 DEC -1 PM 4:42
 CLIFTON NEWMAN
 JUDGE OF THE THIRD
 JUDICIAL CIRCUIT
 WILLIAMSBURG, S.C.

IT APPEARS to the satisfaction of the Court that this action may be properly referred to G. Wells Dickson, Jr., Esquire, as a Special Referee. Now, therefore, upon motion of the Plaintiff,

IT IS ORDERED, that the above entitled action be and the same is hereby referred to G. Wells Dickson, Jr., Esquire, as a Special Referee, with leave to enter final judgment in this action under the applicable statutes and South Carolina Rules of Civil Procedure. The ruling of the Special Referee in this matter shall be final, with any appeal directly to the Supreme Court of the State of South Carolina.

At Chambers,
 Kingstree, SC
 December 1, 2005



 Clifton Newman
 Judge of the Third Judicial Circuit

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.)

MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO RULE 59(e)
AND RULE 60, SCRPC

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

10 NOV -4 11 01:52
COUNTY OF WILLIAMSBURG
COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
WILLIAMSBURG, 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

PLEASE TAKE NOTICE that Defendants Lydia F. Duke and Alice H. Kellahan, by and through their undersigned attorneys, will move before The Honorable G. Wells Dickson, Jr., Special Referee, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, at the time and place to be scheduled by the Court, for an Order altering and amending the Order and Judgment of the Court dated October 22, 2010, filed on October 22, 2010, received by the Defendants Lydia F. Duke and Alice H. Kellahan on October 25, 2010, pursuant to Rule 59(e) and Rule 60 of the South Carolina Rules for Civil Procedure on the grounds and for the reasons as set forth herein. A copy of the Order dated October 22, 2010 is attached hereto and incorporated herein by reference.

It is respectfully submitted that the Court should reconsider the matter and the Order

of October 22, 2010 be altered and amended as follows to provide 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 and Duke on the ground that Defendants Kellahan and 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 and 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 and 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 and 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 and 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 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 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 Yancey McGill and Defendants Kellahan and 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 Yancey McGill and Defendants Kellahan and 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 and 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 easements rights of the Defendants Kellahan and 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 and 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.

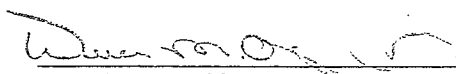
13. Alter or amend the Order of October 22, 2010 to find and hold that the Defendants Kellahan and Duke should be compensated in the amount of one hundred thousand (\$100,000.00) dollars for their retained private easement rights on the ground that those rights could not be extinguished or transferred 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.

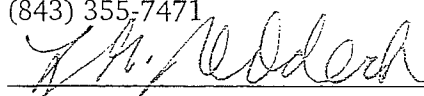
The above Motion is based upon, and incorporated herein by reference are, the applicable S.C. Rules of Civil Procedure and the Statutory and Decisional Law of this State, the pleadings in this matter, the Transcript of testimony, the proposed Order submitted to the Court by Defendants Alice H. Kellahan and Lydia F. Duke. These Defendants further request that this matter be scheduled for oral arguments at a time and place as directed by the Honorable G. Wells Dickson, Jr., as Special Referee. If, in the discretion of Court, this matter is to be decided on Memoranda submitted by the parties, the Defendants respectfully request the Court to set a schedule of submission of memoranda by the parties after all parties have responded pursuant to the South Carolina Rules of Civil Procedure.

Respectfully submitted.

Kingstree, SC

November 3, 2010


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ATTORNEYS FOR DEFENDANTS ALICE H.
KELLAHAN AND LYDIA F. DUKE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 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.)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CASE NO.: 2005-CP-45-434

ORDER FOR ABANDONMENT AND
 CLOSURE OF PORTION OF PORTER
 STREET

FILED
 10 OCT 22 PM 3:42
 CAROLYN T. WILLIAMS
 CLERK OF COURT
 KINGSTREE, S.C.

HEARING DATE:	April 26, 2006 & April 16, 2007
SPECIAL REFEREE:	G. Wells Dickson, Jr.
ATTORNEY FOR PLAINTIFF:	Ernest J. Jarrett, Esquire
ATTORNEY FOR DEFENDANT:	
GARY W. CHAPMAN, JR.	Gary W. Chapman, Jr., Pro Se
ATTORNEY FOR DEFENDANT:	
TERILYN J. MCCLARY:	Terilyn J. McClary, Pro Se
ATTORNEY FOR DEFENDANT:	
WACCAMAW HOUSING, INC.	Nate Fata, Esquire
ATTORNEY FOR DEFENDANT:	
LYDIA F. DUKE:	William M. O'Bryan, Jr., Esquire
ATTORNEY FOR DEFENDANT:	
ALICE H. KELLAHAN	William M. O'Bryan, Jr., Esquire
ATTORNEY FOR S.C. DEPT.	
OF TRANSPORTATION:	Barbara Wessinger, Esquire

FILED
 CAROLYN T. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY
Carolyn T. Williams

STATEMENT OF THE CASE

THIS MATTER came before me 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 me by Order of Reference with Finality by the Honorable Clifton Newman dated December 1, 2005. The Defendant, South Carolina Department of Transportation,

filed an Answer dated December 9, 2005, and the Defendant Waccamaw Housing, Inc. filed an Answer dated December 20, 2005, both 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, 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.

The Notice of Intention to File Petition for Abandonment and Closure of portion of Porter Street of the Town of Kingtree, 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. Furthermore, the Notice of Intention to File Petition for Abandonment and Closure of a portion of Porter Street of the Town of Kingtree, County of Williamsburg, was served on each of the Defendants by certified mail, return receipt requested, and the Proofs of Service filed with the Court.

The Summons and Petition for Closure of a Portion of Porter Street of the Town of Kingtree, County of Williamsburg, filed on November 14, 2005, was properly served on each of the Defendants, and the proper Proofs of Service are contained in the Court file. The Hearing Notices for April 26, 2006, were served on each of the Defendants as indicated by the Certificates of Service and Proofs of Service contained in the Court's file, and again for the April 16, 2007 hearing. All notices and pleadings are proper and this matter was ready for a trial on the merits at the time of the initial hearing.

Present on April 26, 2006, were Ernest J. Jarrett, attorney for the Plaintiff, Town of Kingstree; William M. O'Bryan, Jr., attorney for the Defendants, Lydia F. Duke and Alice H. Kellahan; Defendants Gary Wayne Chapman, Jr., Terilyn McClary, and Alice H. Kellahan; Michael Chalmers Kirby, Community Planning and Development Director for the Town of Kingstree; and W. N. Kellahan, Jr., civil and structural engineer and husband of Alice H. Kellahan. The Defendant Lydia F. Duke was not present.

Present on April 16, 2007 were Ernest J. Jarrett, attorney for the Plaintiff, Town of Kingstree; William M. O'Bryan, Jr., attorney for the Defendants, Lydia F. Duke and Alice H. Kellahan; Terilyn J. McClary, Defendant; Michael Chalmers Kirby, Town employee as noted above, and John Yancey McGill, South Carolina State Senator.

Prior to the hearing on April 26, 2006, Mr. Jarrett informed the Court that Barbara Wessinger, attorney for Defendant South Carolina Department of Transportation, had informed him that she was not going to be present for the hearing but that Defendant South Carolina Department of Transportation, as plead in its Answer, had no objection to the closure of the undeveloped portion of Porter Street. Nate Fata, the attorney for Defendant Waccamaw Housing, Inc., had informed Mr. Jarrett 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 undeveloped portion of Porter Street, as plead in its Answer.

Plats recorded by Defendants Duke and Kellahan subdivide this property and shows a proposed road from Porter Street to S. C. Highway 377. Mr. Kellahan testified that the plans for this road may change.

The Town desires to convey the portion of the subject undeveloped street to the Defendants, Terilyn J. McClary and Gary W. Chapman, Jr., with the understanding said lots are to be maintained by them and reserving a sewer easement for the Town of Kingstree to maintain and replace underlying sewer lines.

The issue of the closing of this portion of Porter Street is associated 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, Inc. to allow the construction of a senior housing project. The sellers of the portion of Tax Map No.11-39-11 to Waccamaw Housing, Inc. are Defendants Duke and Kellahan.

Based upon the exhibits, the record before me, and the testimony of Michael Chalmers Kirby, Terilyn J. McClary, Gary W. Chapman, Jr., Alice H. Kellahan, W. N. Kellahan, Senator John Yancy McGill and others, I make the following:

FINDINGS OF FACT:

1. The road now designated as Porter Street first appeared on a plat prepared for John T. Nelson by Peter G. Gourdin, pursuant to a survey in March, 1903. The survey identified twenty (20) lots that were to be sold along a road that became known as Ashton Avenue.
2. Lots 13 and 14, as identified on said plat, bordered the proposed roadway now designated as Porter Street, and were both sold in 1909. Lot 14 was sold on May 6, 1909 to H. W. Britton. (Defendants' Exhibit 3). This lot is on the west side of the proposed road as noted in the deed. Lot 13 was sold on July 10, 1909 to C. C. Brinkley (Defendants' Exhibit 4) and is on the east side of the proposed road.

3. The land to the south of the lots that were identified on the plat of 1903 became the property of Marie L. Nelson upon the death of her father, John T. Nelson, on December 12, 1938. Samuel E. McIntosh inherited a tract of land consisting of 20.97 acres from Ms. Nelson upon her death in 1981. (Defendants' Exhibit 7). This tract was sold by Mr. McIntosh to Alice H. Kellahan and Lydia F. Duke on September 7, 1993, as identified on a plat surveyed on August 19, 1993 and recorded in Plat Book S852 at page 6B. The deed is recorded in Deed Book A-311 at page 231. (Defendants' Exhibit 10).

4. The subject street is now located in the Town of Kingstree, 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 and incorporated herein by reference. The portion of the street being closed is an undeveloped section in the Town of Kingstree leading from Ashton Avenue to the Town of Kingstree Recreation Center. The remainder of Porter Street is now paved as will be addressed hereinafter.

5. The abutting property owners to the portion of the undeveloped section of Porter Street affected by the closing are Terilyn J. McClary, Gary W. Chapman, Jr., and Waccamaw Housing, Inc., a duly organized corporation pursuant to the Laws of South Carolina which transacts business in the County of Williamsburg. All of these Defendants are in favor of closing this undeveloped portion of Porter Street.

6. 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 the said undeveloped portion of Porter Street.

7. Subsequent to the hearing on April 16, 2007, the attorney for the Plaintiff determined that the two lots adjacent to the undeveloped portion of Porter Street had changed hands. The record was supplemented on September 24, 2010 with the Affidavit of Robert E. Eaton and Sharon M. Eaton as Trustees of the Eaton Living Trust, with the Trust being the present owner of the lot designated as Tax Map No. 11-038-010, which is bounded on the eastern side by the undeveloped portion of Porter Street.

8. The record was also supplemented on September 24, 2010 with the Affidavit of Hartwell Pendergrass and Hattie Pendergrass who are the present owners of the lot designated as Tax Map No. 11-038-011 which is bounded on the western side by the undeveloped portion of Porter Street.

9. In both affidavits the current property owners acknowledge that they are in favor of the Town's petition to close the undeveloped portion of Porter Street, and will accept the part of the said street which is to be merged with their respective properties.

10. The Defendants, Alice H. Kellahan and Lydia F. Duke, were named as party Defendants based upon a fifty (50) foot easement granted to them by deed of Samuel E. McIntosh in 1993. (Defendants' Exhibit 11).

11. Proper Notices have been given to all interested parties. The Intent to File Petition to Close the Road was published in *The News*, a newspaper having general circulation in the Town of Kingstree, County of Williamsburg, on October 26, 2005, November 2, 2005, and November 9, 2005. Notice was properly given to all abutting property owners whose property would be affected by the closing of the portion of the subject undeveloped street in accordance with S. C. Code §57-9-

10. Notice of the hearing was properly given to all parties.

12. The first reading of Ordinance 2004-01 to rezone the property to allow for a senior housing project was held on January 26, 2004. William N. Kellahan, Jr., along with Senator John Yancey McGill and other community leaders attended this Town Council meeting to voice their support for the project because of the need for senior housing in Kingstree. Mrs. Kellahan testified on April 26, 2006, 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.

13. The Ordinance was passed by Town Council at the first reading, but the council decided that there should be a public hearing on the rezoning of the property because some citizens along Ashton Avenue expressed concern about increased pedestrian use and other traffic if the zoning was changed and the housing project constructed.

14. A public hearing was held on February 2, 2004. Mr. Kellahan had a scheduling conflict and could not attend. He testified on April 26, 2006, that he sent Senator McGill to represent his interest at the proceedings, because he handled all of the dealings with this property. Senator McGill testified on April 16, 2007, that he was encouraging the senior housing project for the benefit of his constituents because he knew of the need for senior housing in Kingstree. The Senator and several citizens from neighboring Ashton Avenue expressed concerns about the 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. The minutes of the meeting 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 was the facilitator that allowed the town council to broker an agreement with all the parties. He asked that a letter be sent by the Town to CTC to request the funds to pave Porter Road, (Street).

15. Immediately following the public hearing on February 2, 2004, 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 requirement that 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. The motion carried and the property was rezoned to accommodate the request to rezone the property and allow the Center.

16. Thereafter, CTC provided appropriate funds for the paving of Porter Street from Nelson Boulevard to the land purchased by the proposed Senior Housing Project, the approved Planned Unit Development. As a result Defendants Duke and Kellahan were able to consummate the sale to Waccamaw Housing, Inc., as evidenced by the deed dated May 3, 2004, recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-552 at page 242, for the stated consideration of Sixty Thousand dollars (\$60,000.00). (Plaintiff's Exhibit 6).

17. Thereafter, Defendants Duke and Kellahan erected a fence from what is now the undeveloped portion of Porter Street to within fifty (50) feet of Highway 377 as required under the said negotiated agreement and Ordinance 2004-01.

18. Without the approved rezoning by the Kingstree Town Council, based upon the negotiated agreement arrived at through the efforts of Senator McGill, which benefitted the interest of Defendants Duke and Kellahan, and addressed the concerns of the residents of Ashton Avenue, and the Town of Kingstree, the sale to Waccamaw Housing, Inc. would not have occurred.

19. The Town of Kingstree proceeded with its Petition to close the undeveloped portion of Porter Street as provided in the Ordinance for the construction of the housing project, and erected a fence closing off the undeveloped portion of Porter Street. This litigation resulted.

CONCLUSIONS OF LAW:

A. If there is no formal dedication of a road for public use, the Court may look to the actions of the parties to determine if 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).

B. The Town of Kingstree and Defendants Duke and Kellahan have unequivocally agreed that Porter Street would be used as a public road. Public funds were used for the paving of Porter Street and the original easement conveyed to Defendants Duke and Kellahan underscores the desire to have the street opened and used for their benefit and members of the public. (Defendants’ Exhibit 11).

C. An agency relationship was established between Senator McGill and the Defendants Duke and Kellahan. Although Senator McGill testified on April 16, 2002 that he did not represent Defendants Duke and Kellahan, William N. Kellahan, Jr. testified that he sent Senator McGill to “represent him.” “An agency relationship may be established by evidence of actual or apparent authority.” *Fochman vs. Clanton’s Auto Auction Sales*, 233 S.C. 581, 583, 106S.E.2d 272, 274-75 (1958). It is the intent of the principal that is key in any agency relationship. Mr. Kellahan handled all of the business concerning these properties for Defendants Duke and Kellahan, and he sent Senator McGill to represent him due to his scheduling conflict. “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.” *Moore vs. North Am. Van Liners*, 310 S.C. 236, 239, 423 S.E.2d 116, 118 (1992).

D. “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, Defendants Duke and Kellahan are bound by the agreement brokered by the town council with the input and encouragement of Senator McGill, which allowed them to sell a two acre tract for the housing project for Sixty Thousand Dollars (\$60,000.00).

E. The closing of the portion of the undeveloped section of Porter Street will not adversely affect the ability of emergency vehicles to access any of the property. Access is readily available by way of Nelson Boulevard along the portion of Porter Street which is now paved. There is also a proposed street from Highway 377 through the property of Defendants Duke and Kellahan to Porter Street as shown on the plat referred to herein above. Additionally, the portion of Porter Street which is to be closed was not “cut in” until the 1980's and therefore was not in use although the plat showing its existence was recorded in 1909.

F. Porter Street is owned by the Town of Kingstree as evidenced by the deeds for the purchase of the land for the recreation complex, the negotiated agreement to rezone the property to permit a housing project, and the paving of a substantial portion of Porter Street using public funds. Although there was never a public dedication of Porter Street, Porter Street has been used by the public and all of the street except the length of one lot has been paved using public CTC funds which benefitted

Defendants Duke and Kellahan. Porter Street is therefore by the agreement and the actions of the parties to this litigation a public street. When a 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 v. County of Lexington*, 314 S.C. 556, 431 S.E.2d 573, (1993).

G. Further, as evidenced by the Deed of Defendants Duke and Kellahan to Waccamaw Housing, Inc., dated May 3, 2004, (Plaintiff’s Exhibit 6) there was no easement contained in the deed for access to the property evidencing the belief by these Defendants that Porter Street was indeed a public street. As a public street, such recitation of an easement would no longer be necessary.

H. The permanent closing of the undeveloped portion of Porter Street would be in the best interests of the citizens and residents of the surrounding area and of the Town of Kingstree and the County of Williamsburg, including abutting property owners and interested parties, and would not be prejudicial to abutting property owners or other interested parties.

I. The determination of the extent or scope of an easement is an action in equity. The strongest argument for denying the counterclaim of Defendants Duke and Kellahan is one based largely on equity. These Defendants purchased the easement for the express purpose of making Porter Street a public road. Based upon this Special Referee’s understanding of *Blue Ridge Realty Company vs. Williamson*, 247 SC 112, 145 SE2d 922 (1965); the analysis and holding in *Inlet Harbour vs. S.C. Department of Parks, Recreation and Tourism*, 377 SC 86, 659 SE2d 151 (SC2008); and *Murrells Inlet Corporation vs. Iva Mae Ward*, 378 SC 225, SE2d 452 (SC App. 2008); and the actions of the parties, this Special Referee concludes that the Counterclaim of Defendants Duke and Kellahan should be denied.

J. Pursuant to South Carolina Code §57-9-30, the Williamsburg County Clerk of Court shall record the order of this Special Referee and index the same in the Book of Deeds to Real Property.

K. Fee simple title to that portion of the subject undeveloped street as shown on said plat dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, is vested in abutting property owners in accordance with the provisions of S. C. Code §57-9-20, subject to a sewer easement to the Town of Kingstree. (Plaintiff's Exhibit 1)

L. This Special Referee's fees and cost, if any, shall be paid by the Plaintiff when the said bill is submitted under separate cover.

THEREFORE, IT IS

ORDERED, ADJUDGED, AND DECREED that the undeveloped portion of Porter Street is hereby permanently closed. IT IS FURTHER

ORDERED, ADJUDGED AND DECREED that pursuant to South Carolina Code §57-9-30, the Williamsburg County Clerk of Court shall record this Order and index the same in the Book of Deeds to Real Property. IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that fee simple title in accordance with the provisions of S. C. Code §57-9-30 to the undeveloped portion of Porter Street hereby vests as follows: Lot No.: 1 - Hartwell Pendergrass and Hattie Pendergrass, and Lot No.: 2 - Robert E. Eaton and Sharon M. Eaton, Trustees under the Eaton Living Trust, as shown on a map made by J. B. Ellis, Jr., R.L.S., dated October 4, 2005, and recorded in the office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, on October 11, 2005, saved and excepting a sewer easement in favor of the Town of Kingstree allowing maintenance/replacement of the existing sewer lines on that property.

IT IS FINALLY ORDERED, ADJUDGED, AND DECREED that the Counterclaim of Defendants Duke and Kellahan shall be dismissed, with prejudice, and that this Special Referee's fees and cost, if any, shall be paid by the Plaintiff when submitted,

AND IT IS SO ORDERED!

G. Wells Dickson Jr.

G. Wells Dickson, Jr.
Special Referee

Kingstree, South Carolina

October 22, 2010.

NOTICE OF INTENTION TO FILE PETITION FOR ABANDONMENT AND
CLOSURE OF A PORTION OF PORTER STREET IN THE TOWN OF
KINGSTREE, COUNTY OF WILLIAMSBURG

NOTICE IS HEREBY GIVEN that the Town of Kingstree, South Carolina, will file a petition in the Court of Common Pleas for Williamsburg County, South Carolina, following completion of the publication of this notice, seeking an Order of the Court for the abandonment and closure of a portion of the below described street located in the Town of Kingstree, Williamsburg County, South Carolina, on the grounds more fully set forth in such petition. Interested persons, entities or agencies are hereby notified to contact the undersigned for further information within Thirty (30) days after final publication of this notice, or thenceforth and thereafter be forever barred. The portion of Porter Street sought to be abandoned and closed by the Plaintiff is described as follows:

First reserving a thirty (30) foot sewer easement running through both lots extending from Ashton Avenue to Porter Street:

No. 1: All that certain piece, parcel or strip of land lying, being and situate in the Town of Kingstree, County of Williamsburg, and more fully shown and delineated as Lot No. 1 on a map made by J. B. Ellis, Jr., R.L.S., dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, on October 11, 2005 and bounded and described as follows, to-wit: On the North by Ashton Avenue of the Town of Kingstree, as shown on said map, and measuring thereon a distance of twenty four and ninety four hundredths (24.94) feet; on the East by lands of Gary W. Chapman, Jr., as shown on said map, and measuring thereon a distance of two hundred eight and seventy five hundredths (208.75) feet; on the South by the remainder of Porter Street as shown on said map, and measuring thereon a distance of twenty five and one hundredths (25.01) feet; and on the West by Lot No. 2 as shown on said map, and measuring thereon a distance of two hundred eight and sixty four hundredths (208.64) feet. Said lot is to be conveyed to Gary W. Chapman, Jr. and is being

combined with Tax Parcel No. 11-038-011 in the Tax Assessor's Records for Williamsburg County.

No. 2: All that certain piece, parcel or strip of land lying, being and situate in the Town of Kingstree, County of Williamsburg, and more fully shown and delineated as Lot No. 2 on a map made by J. B. Ellis, Jr., R.L.S., dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, on October 11, 2005 and bounded and described as follows, to-wit: On the North by Ashton Avenue of the Town of Kingstree, as shown on said map, and measuring thereon a distance of twenty four and ninety four hundredths (24.94) feet; on the East by Lot No. 1 above described, as shown on said map, and measuring thereon a distance of two hundred eight and sixty four hundredths (208.64) feet; on the South by the remainder of Porter Street as shown on said map, and measuring thereon a distance of twenty five and one hundredths (25.01) feet; and on the West by lands of Terilyn J. McClary, as shown on said map, and measuring thereon a distance of two hundred eight and fifty three hundredths (208.53) feet. Said lot is to be conveyed to Terilyn J. McClary, and is being combined with Tax Parcel No. 11-038-010 in the Tax Assessor's Records for Williamsburg County.

Kingstree, SC

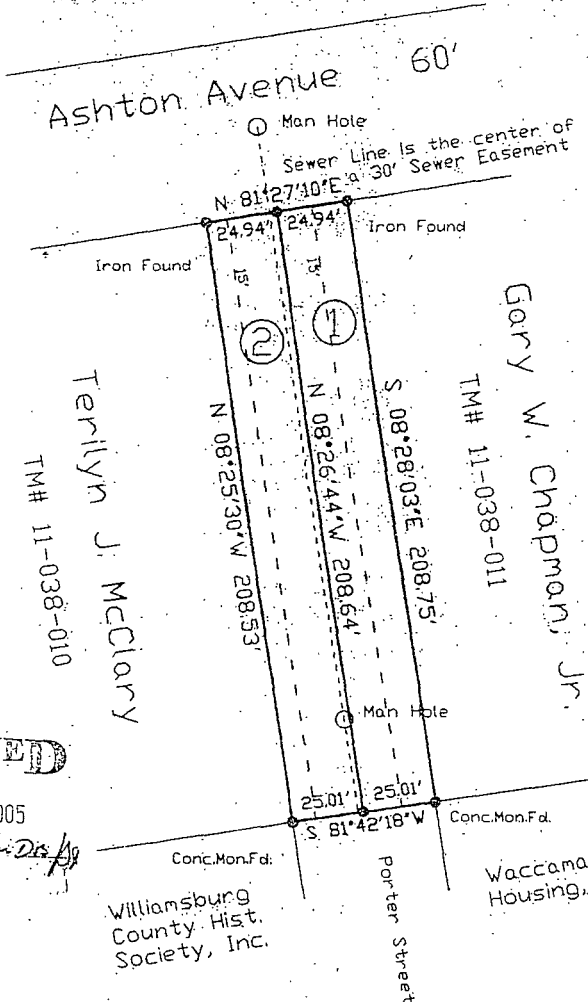
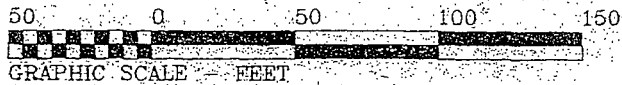
S/Ernest J. Jarrett

October 19, 2005

Ernest J. Jarrett
JENKINSON, JARRETT & KELLAHAN, P.A.
Post Office Drawer 669
Kingstree, SC 29556
Ph. (843) 355-2000
Fax (843) 355-2010
ATTORNEYS FOR THE PLAINTIFF

3tc/10/24/05/jj&k

PL #10



Parcels are 0.120 Acre Each.

THIS PROPERTY DESIGNATED AS DIST. 11 MAP 038 PARCEL 011 (Lot 1) ON WILLIAMSBURG COUNTY TAX MAPS. 010 (Lot 2) SPLIT FROM un-numbered street Jeff charge 180 10 miles WILLIAMSBURG COUNTY TAX ASSESSOR

APPROVED

OCT 11 2005
uncharl...

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 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, 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 requirements there in.

KING3647

A 3647

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG) THIRD JUDICIAL CIRCUIT

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.)

2005-CP-45-

200545434
RECORDED 11/14/2005 02:54:33PM
Bk: Pg: Pages:1
Williamsburg County, SC
Clerk of Court
Carolyn F. Williams

PETITION FOR ABANDONMENT
AND CLOSURE OF PORTION OF
PORTER STREET OF TOWN OF
KINGSTREE, COUNTY OF
WILLIAMSBURG

The Plaintiff, Town of Kingstree, would respectfully show unto the Honorable Court as follows:

1. The Plaintiff, Town of Kingstree, is a body politic and a political subdivision of the State of South Carolina.
2. The Defendants, Gary W. Chapman, Jr., Terilyn J. McClary, and Waccamaw Housing, Inc., are the abutting landowners to the portion of Porter Street that the Plaintiff is attempting to close. The Defendants, Lydia F. Duke and Alice H. Kellahan, have an easement for the use of Porter Street. The Defendants, Gary W. Chapman, Jr., Terilyn J. McClary, Lydia F. Duke and Alice H. Kellahan, are citizens and residents of the County of Williamsburg, South Carolina. The Defendant Waccamaw Housing, Inc. is a corporation organized and existing under

the laws of the State of South Carolina, with its headquarters at Myrtle Beach, South Carolina.

3. The Defendant South Carolina Department of Transportation is an agency of the State of South Carolina charged with the responsibility of maintaining roads and highways.

4. This is an action brought by the Plaintiff as a political subdivision of the State of South Carolina and an interested party pursuant to the provisions of South Carolina Code Ann., § 57-9-10, et seq., for the purpose of having closed by Order of this Court the following described street or street segment located in the Town of Kingstree, County of Williamsburg, State of South Carolina, and being more particularly shown and described on a plat prepared by J. B. Ellis, Jr., R.L.S., dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, a copy of which is attached hereto, marked "Exhibit A" and incorporated herein by reference:

First reserving a thirty (30) foot sewer easement running through both lots extending from Ashton Avenue to Porter Street:

No. 1: All that certain piece, parcel or strip of land lying, being and situate in the Town of Kingstree, County of Williamsburg, and more fully shown and delineated as Lot No. 1 on a map made by J. B. Ellis, Jr., R.L.S., dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, on October 11, 2005 and bounded and described as follows, to-wit: On the North by Ashton Avenue of the Town of Kingstree, as shown on said map, and measuring thereon a distance of twenty four and ninety four hundredths (24.94) feet; on the East by lands of Gary W. Chapman, Jr., as shown on said map, and measuring thereon a distance of two hundred eight and seventy five hundredths (208.75) feet; on the

South by the remainder of Porter Street as shown on said map, and measuring thereon a distance of twenty five and one hundredths (25.01) feet; and on the West by Lot No. 2 as shown on said map, and measuring thereon a distance of two hundred eight and sixty four hundredths (208.64) feet. Said lot is to be conveyed to Gary W. Chapman, Jr. and is being combined with Tax Parcel No. 11-038-011 in the Tax Assessor's Records for Williamsburg County.

No. 2: All that certain piece, parcel or strip of land lying, being and situate in the Town of Kingstree, County of Williamsburg, and more fully shown and delineated as Lot No. 2 on a map made by J. B. Ellis, Jr., R.L.S., dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, on October 11, 2005 and bounded and described as follows, to-wit: On the North by Ashton Avenue of the Town of Kingstree, as shown on said map, and measuring thereon a distance of twenty four and ninety four hundredths (24.94) feet; on the East by Lot No. 1 above described, as shown on said map, and measuring thereon a distance of two hundred eight and sixty four hundredths (208.64) feet; on the South by the remainder of Porter Street as shown on said map, and measuring thereon a distance of twenty five and one hundredths (25.01) feet; and on the West by lands of Terilyn J. McClary, as shown on said map, and measuring thereon a distance of two hundred eight and fifty three hundredths (208.53) feet. Said lot is to be conveyed to Terilyn J. McClary, and is being combined with Tax Parcel No. 11-038-010 in the Tax Assessor's Records for Williamsburg County.

5. Upon information and belief, the above-described street or street segment (hereinafter referred to as the "Subject Street") is a street and is no longer needed for public purposes. Specifically, the residents along Ashton Avenue have requested the closure of this "through street" to block traffic from the nearby Waccamaw Housing units and the Kingstree Recreation Facility.

6. Upon information and belief, this would be in the best interests of the citizens and residents of the surrounding area and of the Town of Kingstree and

Williamsburg County and its citizens, including abutting property owners and interested parties, and would not be prejudicial in any way to abutting property owners or other interested parties, for a portion of the Subject Street to be permanently closed.

7. The Plaintiff has caused a Notice of Intention to file Petition seeking the closure of a portion of the Subject Street to be published in *The News*, a newspaper of general circulation in Williamsburg County, in which county the Subject Street is situated, pursuant to the provisions of South Carolina Code Ann. § 57-9-10, et. Seq.

8. That the Plaintiff Town of Kingstree is entitled to Fee Simple title to the Subject Street to be abandoned in accordance with the provisions of § 57-9-20, of the South Carolina Code Ann. The Plaintiff seeks to have a determination of the parties that may have an interest in the street to be closed and confirmation that the Plaintiff, Town of Kingstree, is the owner and has the title to said street.

9. The Plaintiff Town of Kingstree verily believes that should the portion of Porter Street be closed by the Court, Lot No. 1 should be granted unto the Defendant, Gary W. Chapman, Jr., a fee simple title and said lot to be maintained by him, and Lot No. 2 unto Terilyn J. McClary, a fee simple title, and said lot to be maintained by him, first reserving access to both Lot No. 1 and Lot No. 2 unto the Town of Kingstree a sewer easement as shown on said plat.

10. Upon information and belief, the Plaintiff and the Defendants are the only owners of property abutting the Subject Street.

11. The Plaintiff seeks a full hearing on this Petition after due publication of the Notice required by the provisions of South Carolina Code Ann., § 57-9-10, and after copies of the Summons, Petition and Notice have been duly given by certified mail requiring a return receipt to the last known address of all abutting property owners whose property would be affected by the abandonment and closure of a portion of the Subject Street.

WHEREFORE, the Plaintiff prays:

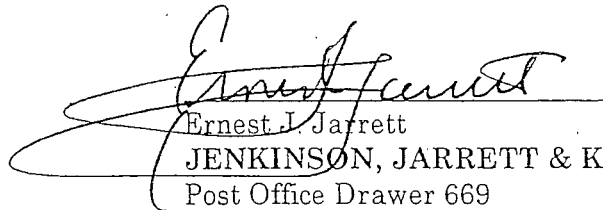
1. The Court conducts a hearing and take such testimony and evidence as it deems necessary or appropriate;
2. The Court orders that the portion of the Subject Street be permanently closed;
3. The Court orders that the rights and interests of the parties to this action, the public in general in and to the Subject Street be permanently terminated;
4. The Court confirms title to said Subject Street is vested in Plaintiff Town of Kingstree and further that the Court Order that the portion of the Subject Street be declared closed permanently; and
5. The Court authorize the Town of Kingstree to convey Lot No. 1 unto the Defendant Gary W. Chapman, Jr., a fee simple title to be maintained by him,

and Lot No. 2 unto Terilyn J. McClary, a fee simple title to be maintained by him,
but Lot No. 1 and Lot No. 2 subject to the sewer easement as shown on said plat.

5. For such other and further relief as the Court deems just and proper.

Kingstree, SC

October 19, 2005



Ernest J. Jarrett

JENKINSON, JARRETT & KELLAHAN, P.A.

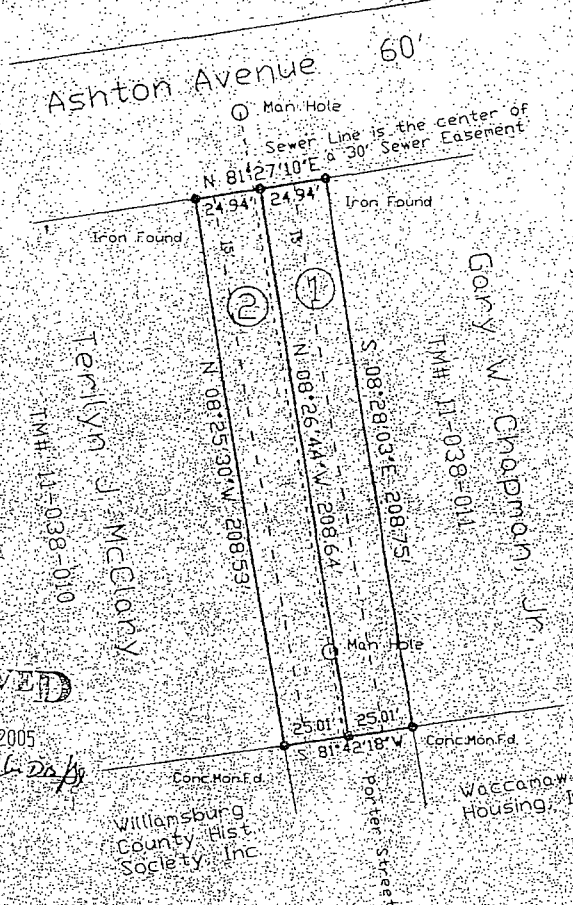
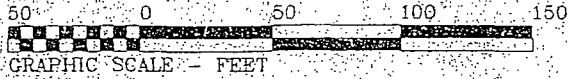
Post Office Drawer 669

Kingstree, SC 29556

Ph. (843) 355-2000

Fax (843) 355-2010

ATTORNEYS FOR THE PLAINTIFF



Parcels are 0.120 Acre Each

APPROVED
OCT 11 2005
Michael Duff

THIS PROPERTY DESIGNATED AS
MAP 038 PARCEL 011 (EST.)
ON WILLIAMSBURG COUNTY TAX MAPS 070 (EST.)
SPLIT FROM Waccamaw Housing, Inc.
Heidi Williams
WILLIAMSBURG 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
PK:00047 Ps:00140 Page:11
Williamsburg County, SC
Clerk of Court
Carolyn E. 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 requirements there in.

X1113647

A 3647

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

~~THIRD JUDICIAL CIRCUIT~~

2005-CP-45-434

Town of Kingstree, a body
corporate and politic,

Plaintiff.

v.

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

Defendants.

SUMMONS, NOTICE OF INTENTION
TO FILE PETITION FOR ABANDON-
MENT AND CLOSURE OF A PORTION
OF PORTER STREET, PETITION
~~FOR ABANDONMENT AND CLOSURE~~
OF PORTION OF PORTER STREET,
NOTICE OF MOTION AND MOTION
FOR THE APPOINTMENT OF A
SPECIAL REFEREE, AND NOTICE OF
HEARING

LAW OFFICES

JENKINSON, JARRETT &

KELLAHAN, P.A.

120 W. MAIN STREET

KINGSTREE, SOUTH CAROLINA

29556

NOTICE OF INTENTION TO FILE PETITION FOR ABANDONMENT AND
CLOSURE OF A PORTION OF PORTER STREET IN THE TOWN OF
KINGSTREE, COUNTY OF WILLIAMSBURG

NOTICE IS HEREBY GIVEN that the Town of Kingstree, South Carolina, will file a petition in the Court of Common Pleas for Williamsburg County, South Carolina, following completion of the publication of this notice, seeking an Order of the Court for the abandonment and closure of a portion of the below described street located in the Town of Kingstree, Williamsburg County, South Carolina, on the grounds more fully set forth in such petition. Interested persons, entities or agencies are hereby notified to contact the undersigned for further information within Thirty (30) days after final publication of this notice, or thenceforth and thereafter be forever barred. The portion of Porter Street sought to be abandoned and closed by the Plaintiff is described as follows:

First reserving a thirty (30) foot sewer easement running through both lots extending from Ashton Avenue to Porter Street:

No. 1: All that certain piece, parcel or strip of land lying, being and situate in the Town of Kingstree, County of Williamsburg, and more fully shown and delineated as Lot No. 1 on a map made by J. B. Ellis, Jr., R.L.S., dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, on October 11, 2005 and bounded and described as follows, to-wit: On the North by Ashton Avenue of the Town of Kingstree, as shown on said map, and measuring thereon a distance of twenty four and ninety four hundredths (24.94) feet; on the East by lands of Gary W. Chapman, Jr., as shown on said map, and measuring thereon a distance of two hundred eight and seventy five hundredths (208.75) feet; on the South by the remainder of Porter Street as shown on said map, and measuring thereon a distance of twenty five and one hundredths (25.01) feet; and on the West by Lot No. 2 as shown on said map, and measuring thereon a distance of two hundred eight and sixty four hundredths (208.64) feet. Said lot is to be conveyed to Gary W. Chapman, Jr. and is being

combined with Tax Parcel No. 11-038-011 in the Tax Assessor's Records for Williamsburg County.

No. 2: All that certain piece, parcel or strip of land lying, being and situate in the Town of Kingstree, County of Williamsburg, and more fully shown and delineated as Lot No. 2 on a map made by J. B. Ellis, Jr., R.L.S., dated October 4, 2005, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 47 at page 140, on October 11, 2005 and bounded and described as follows, to-wit: On the North by Ashton Avenue of the Town of Kingstree, as shown on said map, and measuring thereon a distance of twenty four and ninety four hundredths (24.94) feet; on the East by Lot No. 1 above described, as shown on said map, and measuring thereon a distance of two hundred eight and sixty four hundredths (208.64) feet; on the South by the remainder of Porter Street as shown on said map, and measuring thereon a distance of twenty five and one hundredths (25.01) feet; and on the West by lands of Terilyn J. McClary, as shown on said map, and measuring thereon a distance of two hundred eight and fifty three hundredths (208.53) feet. Said lot is to be conveyed to Terilyn J. McClary, and is being combined with Tax Parcel No. 11-038-010 in the Tax Assessor's Records for Williamsburg County.

Kingstree, SC

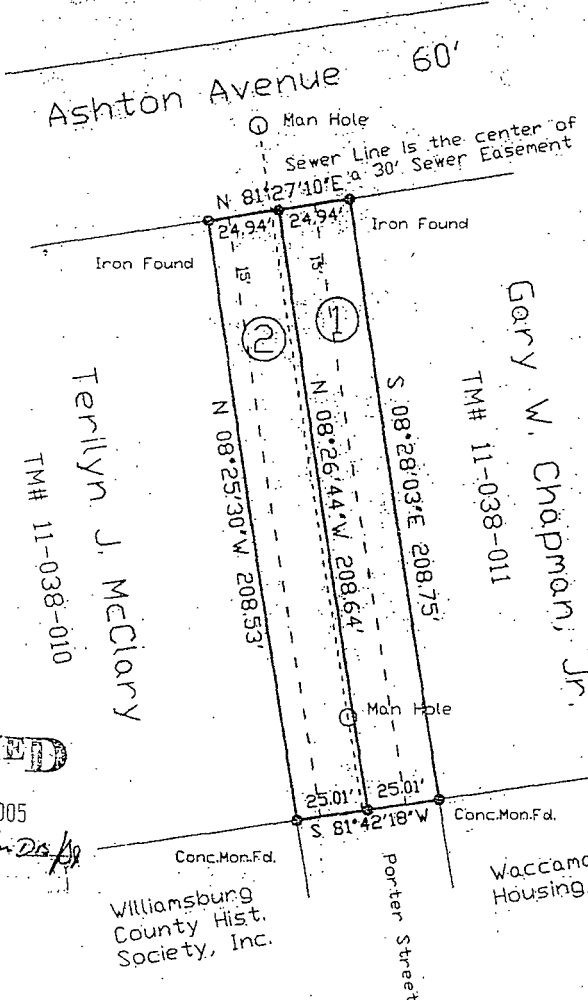
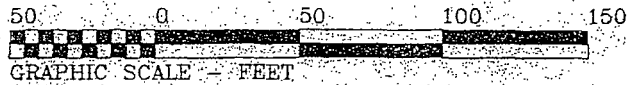
S/Ernest J. Jarrett

October 19, 2005

Ernest J. Jarrett
JENKINSON, JARRETT & KELLAHAN, P.A.
Post Office Drawer 669
Kingstree, SC 29556
Ph. (843) 355-2000
Fax (843) 355-2010
ATTORNEYS FOR THE PLAINTIFF

3tc/10/24/05/jj&k

PL #10



Parcels are 0.120 Acre Each.

THIS PROPERTY DESIGNATED AS DIST 11 MAP 038 PARCEL 011 (lot 1) ON WILLIAMSBURG COUNTY TAX MAPS. 010 (lot 2) SPLIT FROM un-numbered street. *Beoff charge \$30.00* WILLIAMSBURG COUNTY TAX ASSESSOR

APPROVED

OCT 11 2005

un-chandler

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 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, 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 requirements there in.

A 3647

KING3647

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF WILLIAMSBURG) C/A NO. 2005-CP-45-434

Town of Kingstree, a Body Corporate and Politic,)

vs.) Plaintiff,)

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

Defendants.)

SOUTH CAROLINA
DEPARTMENT OF
TRANSPORTATION'S
ANSWER AND RETURN

PORTER STREET

05 DEC 12 PM 2:55
RECEIVED
CLERK OF COURT
WILLIAMSBURG, S.C.

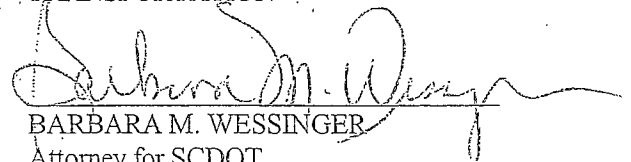
The South Carolina Department of Transportation ("SCDOT"), for its Answer and Return to the Plaintiff's Complaint, would respond as follows:

1. Each and every allegation of Plaintiff's Complaint which is not hereinafter specifically admitted, modified or explained is denied and strict proof is demanded thereof.
2. SCDOT admits the allegations contained in Paragraph No. 1 of Plaintiff's Complaint.
3. SCDOT lacks sufficient information or knowledge to form a belief concerning the allegations contained in Paragraph No. 2 of Plaintiff's Complaint and, therefore, would deny the same and demand strict proof thereof.
4. SCDOT admits the allegations contained in Paragraph No. 3 of Plaintiff's Complaint.
5. Paragraph No. 4 of Plaintiff's Complaint requires no response.
6. SCDOT lacks sufficient information or knowledge to form a belief concerning the allegations contained in Paragraph No. 5 of Plaintiff's Complaint and, therefore, would deny the same and demand strict proof thereof.

7. SCDOT lacks sufficient information or knowledge to form a belief concerning the allegations contained in Paragraph No. 6 of Plaintiff's Complaint and, therefore, would deny the same and demand strict proof thereof.
8. SCDOT lacks sufficient information or knowledge to form a belief concerning the allegations contained in Paragraph Nos. 7, 8, 9, 10 and 11 of Plaintiff's Complaint and, therefore, would deny the same and demand strict proof thereof. However, SCDOT asserts that Porter Street in the Town of Kingstree, County of Williamsburg, is not shown as part of the State Highway System. SCDOT records do not find any file or documents for this section of road. Therefore, SCDOT does not have any objections to closing Porter Street, as indicated in the attached memoranda from Oscar Rucker, dated December 6, 2005, and Dennis L. Townsend, dated December 9, 2005, which memoranda are incorporated herein.

WHEREFORE, having fully answered the Complaint of Plaintiff herein, the Defendant, SCDOT, does not object to a Court Order closing and vesting of title as requested by Plaintiff.

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION



BARBARA M. WESSINGER
Attorney for SCDOT
Post Office Box 191
Columbia, South Carolina 29202
(803) 737-1347

Columbia, South Carolina

December 9, 2005



South Carolina
Department of Transportation

MEMORANDUM

TO: Barbara M. Wessinger, Assistant Chief Counsel

FROM: Oscar K. Rucker, Director, Rights of Way *OKR*

RE: Proposed Closing of a Portion of Porter Street
Town of Kingtree – Williamsburg County

DATE: December 6, 2005

Porter Street in the Town of Kingtree, County of Williamsburg is not being shown as part of the State Highway System. In researching of our records, we do not find any file or documents for this section of road. We do not have any objections to closing Porter Street and defer to the Town of Kingtree and Williamsburg County for the decisions made regarding Porter Street.

OKR/est

RECEIVED
DEC 08 2005
LEGAL DIVISION
SCDOT





Darlington County
Dillon County
Florence County
Georgetown County
Horry County
Marion County
Marlboro County
Williamsburg County

MEMORANDUM

TO: Barbara M. Wessinger, Assistant Chief Counsel
FROM: Dennis L. Townsend, District Engineering Administrator
DATE: December 9, 2005
RE: Proposed Closing of Porter Street
Town of Kingstree
Williamsburg County

We have reviewed this petition and determined that this closing would not affect the State Highway system. We would offer no objection to the closing of Porter Street.

DLT:rjb

File: D5/DLT

506.45.00

District Five Engineering
Post Office Box 1911
Florence, South Carolina 29503



Phone: (843) 661-4710
Fax: (843) 661-4704

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A No. 2005-CP-45-434

Town of Kingstree, a Body)
Corporate and Politic,)
Plaintiff,)

vs.)

ANSWER

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

05 DEC 21 PM 2:41
CLERK OF COURT
KINGSTREE, S.C.

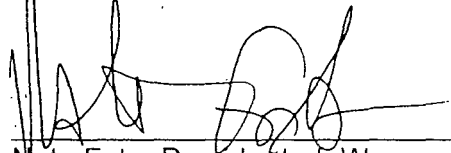
FILED

TO: PLAINTIFF AND ITS ATTORNEYS, ERNEST J. JARRETT, ESQUIRE:

Nate Fata, on behalf of Defendant Waccamaw Housing, Inc., hereby responds to the Petition as follows:

1. In response to the allegations of the Petition, the Defendant, Waccamaw Housing, Inc., has no objection to the abandonment and closure of that portion of Porter Street referenced in the Petition in the Town of Kingstree, as the same does not affect the current access, egress or ingress in any way, of individuals, utilities, and services to the Waccamaw Housing property, which is situated adjacent to the subject property which is to be closed.

RESPECTFULLY SUBMITTED,



Nate Fata, President of Waccamaw Housing, Inc.

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.

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

DEFENDANTS)

CERTIFIED TRUE COPY
Date:01/18/2006
Clerk of Court
Carolyn F. Williams
Williamsburg County, SC

ANSWER & COUNTER CLAIM OF
THE DEFENDANTS ALICE H.
KELLAHAN & LYDIA F. DUKE

The Defendants Alice H. Kellahan and Lydia F. Duke, answering the Petition of the Plaintiffs herein respectfully alleges that:

FOR A FIRST DEFENSE

1. The defendants admit the allegation of Paragraph One of the Petition
2. That the defendants admit so much of the allegations of Paragraph Two as allege the defendants, Alice H. Kellahan and Lydia F. Duke, are citizens and residents of the County of Williamsburg and have an easement for the use of Porter Street but do not have sufficient information or knowledge of the remaining allegations contained in Paragraph Two of the Petition to form a belief therefore denies the same and demands strict proof thereof.
3. The defendants admit the allegation of Paragraph Three of the Petition.
4. The defendants do not have sufficient information or knowledge as to the allegations contained in Paragraphs Four of the Petition to form a belief and denies the same and demands

strict proof thereof

5. The defendant, Alice H. Kellahan and Lydia F. Duke, deny the allegation of Paragraph Five as to the allegation that the subject street is no longer need for public purposes but do not have sufficient information or knowledge of the remaining allegations contained in Paragraph Five of the Petition to form a belief therefore denies the same and demands strict proof thereof
6. That the defendants deny the allegation of Paragraph Six and affirmatively assert it would be prejudicial and detrimental to defendant's interest in adjoining property for the subject street to be closed.
7. That the defendants do not have sufficient information or knowledge as to the allegations contained in Paragraph Seven of the Petition to form a belief and therefore denies the same and demands strict proof thereof.
8. That the defendants deny the allegations contained in Paragraph Eight of the Petition
9. That the defendants deny the allegations contained in Paragraph Nine of the Petition.
10. That the defendants do not have sufficient information or knowledge as to the allegations contained in Paragraph Ten of the Petition to form a belief and therefore denies the same and demands strict proof thereof.
11. That the defendants request a full hearing on the matter as requested in Paragraph Eleven after all statutory requirements have been met and proper notice to all parties.

FOR A SECOND DEFENSE

Further answering the Petition herein and as a second defense thereto the defendants, Alice H. Kellahan and Lydia F. Duke, reiterate all of allegations contained in the First Defense above as fully as if repeated herein.

12. That the property acquired by the defendants, Alice H. Kellahan and Lydia F. Duke and adjoining acreage was owned by John T. Nelson as shown on a plat prepared 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 and later owned by Marie L. Nelson
13. That under the Last Will & Testament of Marie L. Nelson dated January 15, 1980, Marie L. Nelson after specific bequest and devises, devised the residue of her estate to her Executor which would include any property interest in the unopened roadway designated as Porter Street.
 14. That Contemporaneous with the acquisition of the Twenty and Ninety seven Hundredths acres property from Samuel E. McIntosh on September 7, 1993, the defendants acquired an easement from Samuel E. McIntosh as Executor and Trustee of the Estate of Marie L. Nelson for a fifty (50) foot easement adjoining said tract acquired extending from Ashton Avenue to Nelson Blvd as shown a plat prepared by William N. Kellahan, Jr. dated August 19, 1993 and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S852 at page 613.
 15. That said easement is recorded in the Office of the Clerk of Court for Williamsburg County on September 8, 1993 in Deed Book A311 at page 235.
 16. That this easement constitute a private property right in the defendants and is not subject to termination pursuant to the provisions of Section 57-9-10 et seq. South Carolina Code of Laws 1976 as amended.

FOR A THIRD DEFENSE

Further answering the Petition herein and as a third defense thereto, the defendants, Alice H. Kellahan and Lydia F. Duke, reiterate all of allegations contained in the First and Second Defense above as fully as if repeated herein.

17. That Porter Street has been laid out as a roadway for many years as depicted on a plat prepared 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 and by plat of J. D. Brockington, RLS dated June 18, 1964.

18. That at the time of purchase of Twenty and Ninety seven Hundredths acres from Samuel E. McIntosh on September 7, 1993 the Defendants had a plat prepared by William N. Kellahan, Jr. dated August 19, 1993 and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S852 at page 613 which reflects Porter Street as being the Western boundary of said tract and access to the tract acquired via Porter Street.
19. That your defendants purchased said tract upon reliance that Porter Street would be a means of access to said tract.

FOR A FOURTH DEFENSE

Further answering the Petition herein and as a fourth defense thereto the defendants, Alice H. Kellahan and Lydia F. Duke, reiterate all of allegations contained in the First, Second and Third Defense above as fully as if repeated herein.

20. That your defendants have subdivided the tract for commercial development with reliance on access to portions of the property via Porter Street.
21. That your Defendants will incur additional expense in the redesign and resurvey of said commercial development if access is not available via Porter Street and addition thereto a reduction in value of Defendant's remaining property in said development.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTER CLAIM

Further answering the Petition herein and as a Fifth defense thereto the defendants, Alice H. Kellahan and Lydia F. Duke, reiterate all of allegations contained in the First, Second, Third and Fourth Defense above as fully as if repeated herein

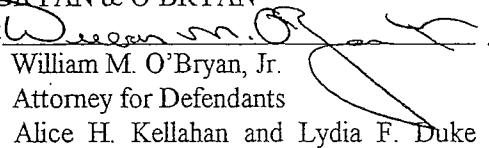
22. The Defendants, Alice H. Kellahan and Lydia F. Duke, acquired said property for investment puposes in reliance that the property would have access and frontage along Porter Street.

23. That if a section of Porter Street is closed, it will impede access to portions of Defendants' property causing a reduction or diminution in value to portions of Defendants' remaining property and constitute a taking of defendants' property.
24. That if such a taking occurs, Defendants are entitled to just compensation pursuant to statutory and case law.
25. That if the portion of the roadway as requested by Plaintiff is closed, Defendants be compensated for the reduction in value of Defendants' remaining property.

WHEREFORE, the Defendants having fully answered the Petition prays as follows:

1. That the Petition of the Plaintiff be dismissed with cost.
2. That if the Court should order closing of the portion of the road as requested by Plaintiff that the Defendants receive just compensation for the reduction in their property value.
3. For such other relief as the Court may deem just and proper..

O'BRYAN & O'BRYAN

By: 
William M. O'Bryan, Jr.
Attorney for Defendants
Alice H. Kellahan and Lydia F. Duke
P. O. Box 1105
Kingstree, SC 29556
843-355-7471

Kingstree, South Carolina

January 18, 2006

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.	)	2005-318 REPLY TO ANSWER AND
	)	COUNTERCLAIM
Gary W. Chapman, Jr., Terilyn J.)	
McClary, Waccamaw Housing,)	
Inc., Lydia F. Duke, Alice H.)	
Kellahan and South Carolina)	
Department of Transportation,)	
)	
DEFENDANTS.)	
)	

The Plaintiff above named, replying to the Answer and Counterclaim of the Defendants, Alice H. Kellahan and Lydia F. Duke, above named would show unto the Honorable Court as follows:

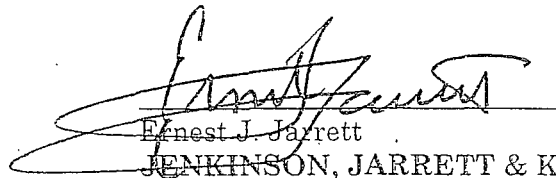
1. Each and every allegation of the Answer and Counterclaim not hereinafter admitted, explained, or otherwise answered is hereby denied and strict proof demanded thereof.
2. As to the allegations contained in paragraph 22, the Plaintiff is without information and belief with which to respond to said allegation.
3. That the Plaintiff denies the allegations contained in paragraphs 23, 24, and 25, and demands strict proof thereof.

WHEREFORE, having fully responded the Answer and Counterclaim of the Defendants, Alice H. Kellahan and Lydia F. Duke, the Plaintiff prays for an Order of the Court:

1. Dismissing those items in the Defendants, Alice H. Kellahan and Lydia F. Duke's Counterclaim not admitted by the Plaintiff;
2. Granting those items in the Defendants, Alice H. Kellahan and Lydia F. Duke's Counterclaim admitted by the Plaintiff;
3. Dismissing the Answer and Counterclaim of the Defendants, Alice H. Kellahan and Lydia F. Duke; and
4. For such other and further relief as the Court deems just and proper.

Kingstree, SC

February 7, 2006



Ernest J. Jarrett

JENKINSON, JARRETT & KELLAHAN, P.A.

Post Office Drawer 669

Kingstree, SC 29556

Ph. (843) 355-2000

Fax (843) 355-2010

ATTORNEYS FOR THE PLAINTIFF

1 value, and we always put in there for such other and
2 further relief. The Town of Kingstree Replied to
3 that, and denied the allegations in the Answer and
4 Counterclaim of Mrs. Kellahan and Mrs. Duke. I am
5 straight on the issues.

6 Mr. O'Bryan Yes, sir.

7 Deed into John Nelson dated November 10, 1880
8 received and marked Defendant's Exhibit #1.

9 Map dated March, 1903 received and marked
10 Defendant's Exhibit #2.

11 Deed from John Nelson to H. W. Britton received
12 and marked Defendant's Exhibit #3.

13 Deed from John T. Nelson to C. C. Brinkley
14 received and marked Defendant's Exhibit #4.

15 Petition for Letters of Administration received and
16 marked Defendant's Exhibit #5.

17 Warrant of Appraisement received and marked
18 Defendant's Exhibit #6.

19 Last Will and Testament of Marie L. Nelson
20 received and marked Defendant's Exhibit #7.

21 Inventory and Appraisement received and marked
22 Defendant's Exhibit #8.

23 Plat prepared by William N. Kellahan, Jr., received
24 and marked Defendant's Exhibit #9.

25 Deed from Samuel E. McIntosh to Alice H.

1 Kellahan, received and marked Defendant's Exhibit #10.

2 Easement from Samuel E. McIntosh, received and
3 marked Defendant's Exhibit #11.

4 Plat prepared by William N. Kellahan received and
5 marked Defendant's Exhibit #12.

6 Deed from Gary W. Chapman, Jr. to Gary W.
7 Chapman and Misty L. Whitley received and marked Defendant's
8 Exhibit #13.

9 Deed from Misty L. Whitley to Gary W. Chapman
10 received and marked Defendant's Exhibit #14.

11 Deed from Steven D. Grady to Terilyn J. McClary
12 received and marked Defendant's Exhibit #15.

13 Subdivision plat received and marked Defendant's
14 Exhibit #16.

15 Referee Those are admitted without objection. Mr. Jarrett,
16 you may proceed.

17 Mr. Jarrett Let the record reflect also that Mr. Gary Chapman
18 and his wife are present, and they are Defendants.
19 They have not answered but they are present. Ms.
20 Terilyn McClary is also present, and seated behind
21 me. She did not answer but she is here. Waccamaw
22 Housing I have been contacted by Nate Fata for
23 them, and he has indicated that he was not going to
24 come to this hearing but he was aware of it.

25 Referee They haven't answered have they.

1 Mr. Jarrett They have not answered. Ms. Barbara Wessinger
2 from the Department of Transportation has
3 answered, and she has indicated that she is not going
4 to be present as well. Therefore, your Honor, we are
5 ready to proceed.

6 Referee Certainly.

7 Mr. Jarrett We call Mr. Mike Kirby to the stand.

8 MIKE KIRBY, having been duly sworn, testified as
9 follows:

10 DIRECT EXAMINATION BY MR. JARRETT:

11 Q State your full name for the record.

12 A Michael Chalmers Kirby.

13 Q Mr. Kirby, where are you employed?

14 A Town of Kingstree.

15 Q And what is your position there?

16 A I am the Community Planning and Development
17 Director.

18 Q And give the court an idea of what that job
19 encompasses?

20 A Grant writing, handling actual implementation of
21 grants, building inspections, a little bit of
22 everything, code enforcement.

23 Q Are you the person in charge of special projects as
24 well?

25 A Sometimes most of them.

- 1 Referee If there's a problem, do they call him.
- 2 Q He's the one. Are you in charge of planning and
3 zoning and those committees.
- 4 A Right.
- 5 Q Are you familiar with the small portion of Porter
6 Street that the town is attempting to close?
- 7 A Yes, sir.
- 8 Q I show you this survey of Jim Ellis, is that a true and
9 accurate representation of the actual portion of
10 Porter Street that we are attempting to close?
- 11 A It is.
- 12 Q I would ask that that be marked as Plaintiff's Exhibit
13 #1.
14 SURVEY OF JIM ELLIS RECEIVED and marked
15 Plaintiff's Exhibit #1.
- 16 Referee Without objection.
- 17 Q I have the Mylar from the Williamsburg County
18 Assessor's office. This is tax map sheet number 39,
19 and it shows Nelson Boulevard here, and this is
20 Porter Street going all the way through the property,
21 and the little piece at the end of the property line
22 here until Ashton Avenue, that's the piece that we
23 are attempting to close?
- 24 A That's right.
- 25 Q This is just a bigger view of what is on Plaintiff's

1 Exhibit #1.

2 A That's right.

3 Q I would ask that the mylar be marked as Plaintiff's

4 Exhibit #2.

5 Referee Objection?

6 Mr. O'Bryan No objection.

7 MAP RECEIVED AND MARKED Plaintiff's

8 Exhibit #2.

9 Referee Without objection.

10 Q Mr. Kirby are you aware of the public input that was

11 necessary when the land immediately adjacent to

12 Porter Street was requested to be rezoned?

13 A I am.

14 Q Tell the Court who requested that rezoning?

15 A Nehemiah Corporation who actually through

16 Waccamaw Counsel on Aging I believe developed

17 Porter Place Apartments that are there at the end of

18 Porter Street. In order to build the apartments that

19 particular piece of property had to be rezoned, and

20 the rezoning was done as a planned unit

21 development. They requested that rezoning for that

22 specific project.

23 Q And Nehemiah Corporation had an option on the

24 property, is that correct?

25 A I think so. They were in the process of buying the

- 1 property and trying to get it rezoned and approval
2 for the project. I'm not sure exactly of the dates and
3 times.
- 4 Referee How do you spell Nehemiah.
- 5 A Just like in the Bible.
- 6 Referee That helps.
- 7 A I think he's N-e-h-a-m-i-a-h.
- 8 Q At the time of the request by the Nehemiah
9 Corporation to rezone this piece of property right
10 here, at the time it was zoned what?
- 11 A It was originally zoned highway commercial. It was
12 rezoned as a planned unit development for that
13 project.
- 14 Q And at the time that the application was made by
15 Nehemiah Corporation did Mrs. Kellahan and Mrs.
16 Duke own this property?
- 17 A I believe so, yes, sir.
- 18 Q And the recreation center is over here, is that
19 correct?
- 20 A Yes, sir.
- 21 Q And your planning commission met, and made a
22 recommendation to Town Council, is that correct?
- 23 A That's correct.
- 24 Q And the recommendation from the Planning
25 Commission was to approve the rezoning, is that

1 correct?

2 A That's correct.

3 Q And the first time it came up at a council meeting
4 was January 26, is that correct?

5 A That's right.

6 Q And they actually had first reading on it at that time,
7 is that correct?

8 A That's right.

9 Q And those are the official minutes of the January 26,
10 2004 Town Council meeting.

11 A Yes, sir.

12 Q And who all was present at that meeting in addition
13 to the council members and the officials.

14 A Under the also present is Senator Yancey McGill,
15 Don Mashall, Judy Elder, Arthur Tisdale, Nicky
16 Kellahan, Murray Chesham, Gary Tremal, Dwight
17 Abshire, and Charles Hanna.

18 Q And when it was discussed at Town Council you
19 were there as well, is that correct?

20 A That's correct.

21 Q And I think Mr. Chesham handed out the proposals
22 for the project, is that correct?

23 A Yes, sir.

24 Q And did Council in fact have a first reading of that
25 ordinance to actually rezone it from highway

- 1 commercial to planned unit development?
- 2 A Yes, sir, they had the first reading that night, and it
3 was carried by unanimous vote.
- 4 Q And at that point was there some discussion from
5 the Ashton Avenue residents, and they decided that
6 they needed a public hearing and public input before
7 the second reading?
- 8 A Yes, sir, I believe so. I'm not sure but one of the
9 council members said that they had received some
10 calls regarding the issue, so I believe they decided to
11 explore it further.
- 12 Q And we would ask that be marked as Plaintiff's
13 Exhibit #3.
- 14 Referee Any objection.
- 15 Mr. O'Bryan No, sir.
- 16 MINUTES OF MEETING received and marked
17 Plaintiff's Exhibit #3.
- 18 Q Mr. Kirby, was the public hearing scheduled for
19 February 2, 2004?
- 20 A Yes, sir.
- 21 Q And are those the official public minutes of the
22 public hearing of February 2, 2004.
- 23 A Yes, sir.
- 24 Q And who all was present in addition to the town
25 officials and council members?

1 A Senator Yancey McGill, Thomas Faulkner, Mary E.
2 Chinnes, Angela Unick, Rev. Curtis Boston, Judy
3 Elder and J. W. Campbell.

4 Q And what was the concern expressed by the citizens,
5 kind of summarize that for this project.

6 A I think the main concern by the citizens in that area
7 was vehicle traffic and foot traffic that would be
8 coming through their property to get over to Ashton
9 Avenue. That was the primary concern.

10 Q And were the residents in favor of allowing the
11 development there or were they opposed to it?

12 A I think initially they were opposed and then some
13 special considerations were made, and they were
14 okay with it then.

15 Q And what were the special considerations made?

16 A The recreation department had a fence that ran to the
17 point of Porter Street, so it was approved under the
18 condition that the fence would be extended through
19 and on over to Highway 377 within I think it was 50
20 feet, maybe 75 feet, of highway 377. When it ran
21 across Porter Street that that be gated, and locked
22 and the street be closed, that access be closed.

23 Q And there was talk about temporary versus
24 permanent closing, is that correct?

25 A That's right.

- 1 Q And the recommendation was made that it was to be
2 permanently closed.
- 3 A That's correct.
- 4 Q Are those true and accurate official town minutes for
5 the public hearing on February 2, 2004?
- 6 A Yes, sir.
- 7 Q I would ask that those be marked as Plaintiff's
8 Exhibit #4.
9 MINUTES OF MEETING received and marked
10 Plaintiff's Exhibit #4.
- 11 Mr. O'Bryan No objection.
- 12 Referee Without objection.
- 13 Q Mr. Kirby, immediately following the public hearing
14 council had a special called meeting, is that correct?
- 15 A That's correct.
- 16 Q And the big item for the special called meeting was
17 discussion, second reading of the ordinance 2001 to
18 rezone 1139-11 from highway commercial to
19 planned unit development, is that correct?
- 20 A That is correct.
- 21 Q And the motion I think was made by Council
22 member Kelly, is that correct?
- 23 A That's correct.
- 24 Q To approve the rezoning with the understanding that
25 Porter Street was to be blocked on the Ashton

1 Avenue side, and a fence was to be erected on the
2 Kingstree Recreation Department property line up to
3 Porter Street, and the developer was to fence his
4 property line as well as Mr. Kellahan to fence his
5 property line within 50 feet of Highway 377, and
6 that the CTC would appropriate funds for
7 resurfacing of Porter Street from Nelson Boulevard,
8 is that correct.

9 A That's right.

10 Q And it carried by a vote of 6 to 1?

11 A That's correct.

12 Q And is the document in your hand a true and
13 accurate record of the official minutes from the
14 February 2, 2004 town council meeting?

15 A It is.

16 Q We would ask that that be marked as Plaintiff's
17 Exhibit #5.

18 MINUTES OF MEETING received and marked
19 Plaintiff's Exhibit #5.

20 Mr. O'Bryan No objection.

21 Referee Without objection.

22 Q So Mr. Kirby, as a result of that action in February,
23 the property was actually rezoned in order to allow
24 the developer to put the planned unit development
25 there, which is kind of a senior center, is that

1 correct.

2 A The planned unit development is an actual type of
3 zoning, but it was rezoned to a planned unit
4 development to allow for that particular building
5 project, yes, sir.

6 Q And as a result of that, Mrs. Kellahan and Mrs.
7 Duke were able to close on the property to
8 Waccamaw Housing, Inc. on May 3, 2004?

9 A That's correct.

10 Q And is that a copy of the deed from the Clerk's
11 Office in Williamsburg County showing the
12 property?

13 A It is.

14 Q And it was a 2.1 acre tract that they were conveying
15 for the purpose of this senior housing area, is that
16 correct?

17 A Right.

18 Q And the purchase price was \$60,000.00?

19 A That's right.

20 Q I would ask that this be marked as Plaintiff's Exhibit
21 #6.

22 Mr. O'Bryan No objection.

23 Referee Without objection.

24 DEED RECEIVED and marked Plaintiff's Exhibit
25 #6.

- 1 Q Mr. Kirby, is the purpose of today's hearing in
2 furtherance of the agreement that was made with the
3 Ashton Avenue residents to actually close that little
4 portion of Porter Street from the end of the
5 recreation center to Ashton Avenue, is that correct?
- 6 A That's correct.
- 7 Q And is that in compliance with the agreement that
8 was struck by Senator McGill?
- 9 A Yes, sir.
- 10 Q With the residents and with Council?
- 11 A Yes, sir.
- 12 Q I think members from Vital Aging and the senior
13 community came to the meetings as well, is that
14 correct?
- 15 A Yes, sir.
- 16 Q And there was a great concern that we needed senior
17 housing in Kingstree, and that this project needed to
18 go through to further that purpose, is that correct?
- 19 A That's correct.
- 20 Q And as a way to further provide housing for seniors
21 the deal was struck to close the road, is that correct?
- 22 A That's correct.
- 23 Q And is it your recommendation that the city's
24 position that the road should be closed permanently
25 at this time?

- 1 A Yes, sir, that would be the city's position.
- 2 Q And is that the feeling that it would be to the best
3 interest of the citizens of Kingstree for the road to be
4 closed?
- 5 A Yes, sir, that's what the agreement was with the
6 citizens. That is what they expect.
- 7 Q And you have discussed with Mr. Chapman and his
8 wife that are immediate residents, you have had
9 discussions with them.
- 10 A I have had discussions with them. I'm pretty sure
11 they are in favor of it being closed.
- 12 Q As well as Mrs. McClary, who lives on the other
13 side?
- 14 A That's correct.
- 15 Q And the plan is actually to divide the property in
16 half, and each adjoining home owner would have
17 that half, and be responsible for maintaining it and
18 so forth?
- 19 A That's right.
- 20 Q At this time the town is actually responsible for
21 maintaining that little piece, is that correct?
- 22 A That's right.
- 23 Q And there is also a sewer line through there, is that
24 correct?
- 25 A That's correct.

- 1 Q And we are requesting the maintenance of an
2 easement to actually access the sewer line and be
3 able to go on the property if any necessary repairs
4 are needed to the sewer line?
- 5 A That's correct.
- 6 Q Is that the sewer line that actually services the senior
7 homes right there?
- 8 A The water and sewer if I'm not mistaken comes from
9 Ashton Avenue to Porter Place right down through
10 that right of way, so we would need a service
11 easement.
- 12 Q The Porter Street has since been paved all the way
13 from Nelson Boulevard up to the point that we are
14 requesting that the road be closed, is that correct?
- 15 A That's correct.
- 16 Q And do you know who was responsible for getting
17 that paved or who did that?
- 18 A I believe that was CTC funds that were obtained by
19 Senator McGill to have it paved.
- 20 Q And that further enhanced or was part of the deal for
21 the senior homes so they would have access to a
22 paved road?
- 23 A That's right.
- 24 Q Did the paving further benefit the other property
25 owners up through the senior citizen homes, and I

1 think Mrs. Duke and Mrs. Kellahan own this middle
2 property in here.

3 A Right.

4 Q Did that paving further enhance those properties?

5 A I would think it would because it would give paved
6 access on that side to those properties. I would
7 think that they would certainly enhance any of that
8 other property.

9 Q Can you think of anyway that the closing of the road
10 and the paving of the road, went to the detriment of
11 any of the property owners in that vicinity?

12 A I can't.

13 Q I am going to show you Defendant's Exhibit #2, Mr.
14 Kirby, and this would be Main Street right here, and
15 this is Ashton Avenue with the numbered properties
16 on this plat from 1903. Does that show these little
17 breaks in here, Porter Street, Gordon Street, four
18 different streets in there?

19 A It does.

20 Q And the one over to your farthest right is Porter
21 Street, is that correct?

22 A Yes, I believe that's between lots 17 and 18.

23 Q Lots 17 and 18, and so back as far as 1903 it was
24 shown as not a lot or a numbered piece of property
25 in that subdivision, is that correct?

- 1 A That's right.
- 2 Q And Defendant's Exhibit #9 is a plat surveyed at the
3 request of Mrs. Kellahan and Mrs. Duke from
4 August 19, 1993, is that correct.
- 5 A Correct.
- 6 Q And that also shows on the border the proposed
7 Porter Street, is that correct?
- 8 A Correct.
- 9 Q 50 feet wide?
- 10 A That's right.
- 11 Q And that has been recorded in the Clerk's Office as
12 well, is that correct?
- 13 A That's correct.
- 14 Referee I know all of these are going into evidence without
15 objection. I think there are 16 Defendant's Exhibits.
- 16 Q That's correct.
- 17 Referee We need to go ahead and identify them in evidence
18 without objection.
- 19 Q The numbering is incorrect.
- 20 Referee I know, 14, 15, and 16.
- 21 Q Mr. Kirby, answer any questions that Mr. O'Bryan
22 has please sir.
- 23 CROSS EXAMINATION BY MR. O'BRYAN:
- 24 Q If it please the court your Honor.
- 25 Referee Yes, sir.

- 1 Q Mr. Kirby you testified that your title is Community
2 Planning and Development Director?
- 3 A That's correct.
- 4 Q How long have you held that position?
- 5 A A little over three years.
- 6 Q What did you do prior to that time?
- 7 A Law enforcement.
- 8 Q With whom?
- 9 A Kingstree Police Department and Williamsburg
10 County Sheriff's Department.
- 11 Q For how long a period?
- 12 A For 15 or 16 years.
- 13 Q So you are well acquainted with this section of
14 town, is that a fair statement?
- 15 A Yes, sir.
- 16 Q And in your capacity as Community Planning and
17 Development Director, you testified that you
18 handled the paperwork for the town regarding
19 zoning issues, and special projects and those types
20 of things?
- 21 A That's correct.
- 22 Q Can you show me a deed to the Town of Kingstree
23 for Porter Street?
- 24 A Can I show you a deed?
- 25 Q Yes, sir.

- 1 A No, sir.
- 2 Q Can you show me a written dedication to Porter
3 Street?
- 4 A No, sir.
- 5 Q Mr. Jarrett in his pleadings claimed that the town
6 owns absolute ownership of the paperwork, and you
7 are telling me to the best of your knowledge there is
8 no deed or there is on written dedication, is that fair?
- 9 A I do not have it. Unless Mr. Jarrett has it, I don't
10 have it.
- 11 Q On what basis then would you claim an implied
12 dedication? Has Mr. Kellahan ever told you that
13 they wanted to dedicate the street for public use?
- 14 A No, sir, he has not.
- 15 Q How about Mrs. Kellahan or Mrs. Lydia Duke?
- 16 A No, sir.
- 17 Q Sammy McIntosh who was the personal
18 representative of the Marie Nelson Estate?
- 19 A Nobody has. It has been on the map as a Porter
20 Street easement as long as I can remember seeing
21 the map.
- 22 Q During the time as Development Director and as a
23 police officer, you would patrol Kingstree from time
24 to time?
- 25 A Yes, sir.

- 1 Q And has there ever been vehicular traffic on that
2 road?
- 3 A It has never really been a road until now.
- 4 Q When you say now.
- 5 A Until this project was done, it was never developed
6 as a road.
- 7 Q So although it has been shown on the maps, it has
8 never been opened as a road?
- 9 A That's correct.
- 10 Q And the portion that has been paved does not extend
11 all the way through, does it?
- 12 A That's correct, it stops at the back of the other
13 property off of Ashton.
- 14 Q I am going to offer you for identification a
15 photograph, is that a fair representation of the
16 entrance to Porter Street facing from Ashton
17 Avenue?
- 18 A Yes, sir.
- 19 Q What is the surface on that street, Mr. Kirby, do you
20 know. I think you testified a moment ago it wasn't
21 paved?
- 22 A That's correct, it's dirt.
- 23 Q It has never been developed?
- 24 A Not that portion, no, sir.
- 25 Q Your Honor, I would move to have that admitted as

1 Defendant's Exhibit #17.
2 PHOTOGRAPH received and marked Defendant's
3 Exhibit #17.

4 Mr. Jarrett No objection.

5 Referee Without objection.

6 Q You testified a moment ago that in your opinion it
7 would be in the best interest of the community for
8 this roadway to be closed?

9 A Yes, sir.

10 Q Can you elaborate on that a little bit for me?

11 A Well, first and foremost that is what the initial deal
12 was to have this rezoned that the fence would be put
13 up, and that roadway would be closed because of the
14 concerns of the residents in that area or in that
15 neighborhood. Their concerns were vehicle traffic
16 and foot traffic coming through there. My first
17 impression would be that is what we needed to do.
18 That is what they were promised to make this go
19 through.

20 Q If the Town gets what they are asking for, then the
21 roadway is closed, and the adjoining property
22 owners would likely receive half and half of the
23 road, is that correct?

24 A I think that's the plan if it's closed that it would be
25 split between the adjoining property owners.

- 1 Q How does that benefit anyone other than the
2 property owners?
- 3 A It benefits the rest of the people in the neighborhood
4 that did not want the foot traffic and the vehicle
5 traffic through there. I don't know if it would
6 benefit them at all, but from what they wanted and
7 what they expressed at the council meetings, and
8 they had objections to, that is what would benefit
9 them.
- 10 Q Is there any other access off of Nelson Boulevard
11 before you get to the intersection of 377 for example
12 for emergency vehicles. They frequently have
13 events at the recreation center, is there anyway for
14 an emergency vehicle for example to get through if
15 that street is closed?
- 16 A There are three entrances to the rec. Are you talking
17 about on Porter Street or into the recreation
18 complex.
- 19 Q I am saying that you have events at the recreation
20 center, and you have a lot of traffic, and if you have
21 emergency vehicles on Nelson Boulevard, is there
22 anyway for them to get out of the traffic to get to the
23 hospital?
- 24 A No, I don't think so.
- 25 Q For example when they had the Pig Pickin' Festival

1 last year, and I think it has been held for the last two
2 consecutive years at the rec center, is that correct?

3 A That's right.

4 Q Can you describe for the court the volume of traffic
5 that normally occurs when they have that?

6 A As the mayor says we have a traffic jam in
7 Kingstree. It is backed up from the recreation
8 department sometimes up around the curve over the
9 overpass, and the other way from the recreation
10 department back to the light at the new Markette.

11 Q So that would be a serious problem if you had an
12 emergency vehicle, an ambulance or fire truck if you
13 were caught in that?

14 A Right.

15 Q The zoning change that you had discussed, the
16 property was previously zoned as highway
17 commercial, is that correct.

18 A That's correct.

19 Q Isn't that the most liberal zoning in Kingstree?

20 A That's correct.

21 Q What could be allowed under highway commercial.
22 What is the most notorious or offensive uses that fall
23 under highway commercial?

24 A Pretty much anything that is legal, and about the
25 only thing that would have any extra restrictions on

1 it would be some type of adult business. It would
2 have to meet some other restrictions, but pretty
3 much any legal business that would not go into the
4 category of being industrial.

5 Q Gas stations, fast food chains.

6 A Yes.

7 Q A drug store, any of that would be under highway
8 commercial, is that correct?

9 A That's correct.

10 Q And the concern by the residents I think you
11 testified was the traffic?

12 A Correct.

13 Q Isn't taking it to the PUD classification considerably
14 cutting it down as to what would be allowed in that?
15 Isn't that a far more restrictive use?

16 A It's not just restrictive, it is specific. That planned
17 unit development is zoned for that specific project,
18 and nothing else. It is just for that project, and for
19 that use.

20 Q So the only thing they could put in there would be a
21 housing project?

22 A That's correct.

23 Q And specifically with this housing project I
24 understand this is for people who have disabilities?

25 A It is elderly and disabled, yes, sir.

- 1 Q And it is fair to say that most of those people don't
2 drive?
- 3 A There is not a high rate of cars over there. I have
4 been over there at times when there are no cars
5 there.
- 6 Q And there is probably not a lot of foot traffic for
7 those people either.
- 8 A Not from those specific people, no, sir.
- 9 Q How many units are in that complex, do you know?
- 10 A There are 12, and the initial zoning and approval
11 was for 12 with room for an additional 8 I believe.
12 As a matter of fact they are in the process of getting
13 that straight now but there are 12 units there now.
- 14 Q And do you know the limitations on the number of
15 people each unit can have?
- 16 A I believe most of the units are 1 person units, and
17 there may be 1 or 2 of the units that are elderly
18 couples. Most of them are 1 person units I believe.
- 19 Q So you are saying right now that if you assume that
20 there was a couple in every unit. you're talking
21 about a maximum of 24 people.
- 22 A That's correct.
- 23 Q And most of whom either do not or cannot drive?
- 24 A That's correct.
- 25 Q And so there is far less traffic there now than it

- 1 would have been if for example it had stayed
2 highway commercial and someone developed it and
3 put a gas station or fast food chain there?
- 4 A I would agree with that, yes.
- 5 Q And you had testified a moment ago that you did not
6 see there was any diminution in value for the
7 Kellahan/Duke property with the roadway if it is
8 closed, is that correct?
- 9 A That's correct.
- 10 Q Have you had any formal training in appraisal?
- 11 A No, sir.
- 12 Q No certification and you have never been to any
13 classes?
- 14 A No, sir.
- 15 Q As a practical matter if you had roadway on two
16 entrances, doesn't it follow reason that the property
17 would be more valuable if it was accessible in more
18 than one area?
- 19 A I would have to agree with that, yes, sir.
- 20 Q And if you close off this other roadway that is going
21 to impact the value of the property?
- 22 A I would have to agree, but I don't know how much it
23 would impact it.
- 24 Q I'm not asking you to value it.
- 25 A Right.

1 Q I just want your general opinion.

2 A Yes, sir.

3 Q Mr. Jarrett had introduced a series of minutes for
4 various council meetings from late 2004 through
5 about February, 2005. Were you present at all those
6 meetings?

7 A Yes, sir.

8 Q Do you remember what meetings Mr. Kellahan was
9 present for? I believe the minutes are Plaintiff's
10 Exhibits 3, 4, and 5.

11 A I believe he was present at the first meeting on
12 January 26. Then the second meeting was on
13 February 2 does not indicate that he was present.

14 Q Is there anything in the minutes from the January 26,
15 2004 meeting indicating that the Porter Street
16 closing was on the table?

17 A No, sir, I don't see anything.

18 Q And in fact it just indicates that was just the first
19 reading of the ordinance to approve changing the
20 zoning, is that correct?

21 A That's correct.

22 Q And you also testified a moment ago about a public
23 opinion on that, is that correct?

24 A I testified about public opinion.

25 Q You said there was a discussion to hold a public

- 1 hearing?
- 2 A Yes, sir.
- 3 Q And does that appear in these minutes?
- 4 A The fact that there would be a public hearing.
- 5 Q Or recommendation or discussion that a public
6 hearing would be necessary.
- 7 A Yes, sir. I believe Mayor Kirby stated that he
8 wanted to hold a public hearing and there is also
9 discussion in there where the town manager advised
10 council that the actual hearing would be heavily
11 advertised, and that we would do door hangers and it
12 would be advertised in the newspaper so that the
13 citizens could express their concerns.
- 14 Q When the actual vote on the special meeting was
15 held on February 2, do the minutes reflect that Mr.
16 Kellahan was present for either one of those
17 meetings?
- 18 A No, sir, they don't.
- 19 Q You testified a moment ago that Senator McGill had
20 apparently offered the suggestion for the street
21 closing as a compromise, is that correct?
- 22 A I don't know if he offered the compromise or not.
23 He did offer to try and find funds to have the street
24 paved. I'm not sure whether he came up with the
25 idea of closing the street or not. I'm not sure on

1 that.

2 Q Was there anything to indicate or did you have any
3 written authorization that he was acting on Mr.
4 Kellahan or Mrs. Kellahan's or Mrs. Duke's behalf
5 in attending that meeting?

6 A No, sir.

7 Q I don't have any questions of Mr. Kirby at this time.

8 Referee Mr. Jarrett, anything further.

9 REDIRECT EXAMINATION BY MR. JARRETT:

10 Q Mr. Kirby, at that January 26, 2004 meeting that Mr.
11 Kellahan was there the actual date and time for the
12 public hearing and when the next meeting would be
13 for the second reading, is that correct?

14 A That's correct. Mayor Kirby said that he was in
15 favor of holding a public hearing, and the next
16 meeting would be Monday, February 2 at 6:30.

17 Q And the reason for having the public hearing was I
18 think Mr. Bartelle and some other council members
19 had gotten a lot of calls from the residents on
20 Ashton Avenue who had some concern about the
21 project going forward, is that correct?

22 A That's correct.

23 Q And Mr. Bartelle was actually late to that January 26
24 meeting because he was actually on the phone with
25 some of the citizens, is that correct?

1 A That's correct. Mr. Bartelle was the one who
2 reported that he had numerous phone calls with
3 concerns about the project.

4 Q And so it was publically disclosed that the public
5 hearing was to express those concerns and then the
6 meeting after it would be to have second reading, is
7 that correct?

8 A That's correct.

9 Q And was there some pressure that the Nehemiah
10 Corporation said that they needed to go forward
11 because they were in danger of losing some of their
12 grant funding for this project, and so it needed to be
13 handled quickly?

14 A Yes.

15 Referee Who owns the Nehemiah corporation. Do you have
16 any evidence of that?

17 Q I think it is the developer that actually did the
18 project and obtained all the funding and so forth.

19 A There was a time constraint. Nehemiah was applying
20 for a grant, and I'm not sure whether it was state or
21 federal, for the project on behalf of Waccamaw
22 Council on Aging, and there were some time
23 constraints. They needed to have a yes or a no on
24 the project because they were in danger of losing the
25 eligibility for some funds that were there.

1 Q And in that public hearing it was discussed about the
2 traffic and that there were going one or two
3 residence units, is that correct?

4 A That's correct.

5 Q Was there a concern about visitors to those people,
6 and that the visitors would be having cars and
7 coming and going?

8 A There was concern about the project, and what type
9 of project it would be, the amount of foot traffic, the
10 pedestrian traffic, and the vehicle traffic, the visitors
11 coming, or any traffic coming through there at all.

12 Q And from Mr. O'Bryan's questions to you about
13 there as no public dedication to the road, can you tell
14 the judge, if Porter Street a public road, would the
15 highway commercial nature of Mrs. Kellahan and
16 Mrs. Duke's property be able to be developed in the
17 way that it is by cutting that piece off, there would
18 be no access would it?

19 A If...

20 Q If Porter Street were not a public road, then the
21 access would have to be from the front portion on
22 highway 377.

23 A If I understand you correctly, if that road was not in
24 existence, those back lots would be basically land
25 locked.

- 1 Q And they would have to have access from the front
2 lots that face what highway is that?
- 3 A Highway 377.
- 4 Q Highway 377.
- 5 A Right.
- 6 Q And that whole piece was highway commercial, is
7 that correct?
- 8 A That's correct.
- 9 Q Can you place a residential apartment complex like
10 this on highway commercial?
- 11 A No, sir.
- 12 Q So this project would not be allowed there unless it
13 was actually rezoned?
- 14 A That's correct.
- 15 Q If Porter Street were not a public street, would the
16 rezoning have gone forward?
- 17 A Probably not.
- 18 Q If it didn't have access from a public road, is there a
19 way that you would approve a PUD with no public
20 access?
- 21 A No, because that would be part of the unit
22 development, or the plan to start with, would be
23 your access. If Porter Street did not exist and those
24 properties were land locked, something would have
25 to be presented to show access whether it be from

1 377. They would have to have some type of access
2 to get there.

3 Q And if the developer, say Mrs. Kellahan and Mrs.
4 Duke had an easement for the use of what is known
5 as Porter Street when they sold the property to
6 Waccamaw if it was not a public street, they would
7 have to grant Waccamaw a specific easement to get
8 in and use that road, isn't that correct if it wasn't
9 public.

10 A That's correct.

11 Q I believe you previously identified the deed into
12 Waccamaw, and it's already an exhibit, but is there
13 any type of easement there specifically referred to?

14 That is Exhibit #6.

15 A It does not grant any specific easement, no, sir.

16 Q Do you know whether or not the State of South
17 Carolina would be allowed to pave a private road or
18 a private easement?

19 A No, sir, we would not be allowed to. CTC funds
20 could not be used to do that.

21 Q Those are all the questions I have. Thank you.

22 Referee Anything further.

23 RE CROSS EXAMINATION BY MR. O'BRYAN:

24 Q Mr. Kirby, can you tell me whose district this
25 property falls into?

- 1 A Mr. Murdaugh's I believe. I'm not sure but I think
2 it's his.
- 3 Q So it's not Mr. Bartelle's district?
- 4 A I don't think so. I think it's Mr. Murdaugh's.
- 5 Q And are you aware that the South Carolina
6 Department of Transportation claims no interest in
7 this property?
- 8 A That's correct.
- 9 Q As far as they are concerned it's not a public road.
- 10 A Yes, sir.
- 11 Q And going back to what Mr. Jarrett said a moment
12 ago about traffic, would there likely be less traffic
13 with a PUD than if it would be highway
14 commercial?
- 15 A I would agree with that, yes, sir.
- 16 Q Particularly with this use, the planned unit
17 development. This is not like a housing project, this
18 is a special needs type project.
- 19 A Yes, sir.
- 20 Q And the property that Mrs. Kellahan and Mrs. Duke
21 own is actually bounded on two sides by a highway,
22 is that correct?
- 23 A I'm not sure now because several pieces have been
24 sold. I know part of it is bound by highway 377.
- 25 Q If I could call your attention to Defendant's Exhibit

1 #16. The property is bounded on one side by Nelson
2 Boulevard and the other side by 377?
3 A That's correct.
4 Q And the survey shows the private right-of-way
5 extending along the other side, is that correct?
6 A Yes, sir.
7 Q I will hand you what has been previously entered as
8 Defendant's Exhibit #11, an easement. Would you
9 describe that for me please sir.
10 A It appears to be an easement to Mrs. Alice Kellahan
11 and Lydia Duke for a little over 20 acres, and it
12 states that it is bounded by a proposed 50 foot street
13 or road know as Porter Street, and apparently left in
14 a Last Will by Marie L. Nelson.
15 Q So from your review this is an easement for Porter
16 Street?
17 A I'm on attorney, but that is what it means to me.
18 Q No other questions your Honor.
19 Referee Mr. Jarrett.
20 Mr. Jarrett No further questions.
21 Referee Before Mr. Kirby steps down, let me ask a question.
22 Ya'll get me the sequence of events right to make
23 sure I'm not missing something. The commercial
24 property, the property was zoned commercial, a
25 portion of which later became especially rezoned,

- 1 which was part of a larger tract.
- 2 Mr. Jarriett Yes, sir.
- 3 Mr. O'Bryan That's correct.
- 4 Referee And is bounded on 377 to the east, right.
- 5 Mr. O'Bryan Yes, ir.
- 6 Referee And the northern boundary where would that be?
- 7 Mr. O'Bryan Ashton Avenue or lots on Ashton Avenue.
- 8 Referee That would be the northern boundary.
- 9 Mr. O'Bryan Yes, sir.
- 10 Mr. Jarrett It's this big square.
- 11 Referee And on that square ultimately they built the nursing
- 12 home.
- 13 Mr. Jarrett Right.
- 14 Referee And the construction of the nursing facility, the 50
- 15 foot right-of-way designed as Porter Street was not
- 16 paved, is that correct?
- 17 Mr. O'Bryan That's correct your Honor.
- 18 Referee What was the condition of it at that time? Was it a
- 19 field road or something like that.
- 20 Mr. Jarrett You could go down it. It was a dirt path, but it
- 21 wasn't paved.
- 22 A Right.
- 23 Referee And where did the path stop?
- 24 Mr. Jarrett I don't know how far, but I remember it going at
- 25 least past the nursing home.

- 1 Referee Ya'll can put this in evidence later. I am just trying
2 to get it straight in my mind.
- 3 Mr. Jarrett I can't say it went all the way down, because I
4 remember riding down it and talking to Mr. Carlisle
5 one day at the ditch, but I didn't go all the way down
6 it.
- 7 Referee When you say Nelson Boulevard, you go north, it
8 might have gotten to the CP&L right-of-way?
- 9 A I think it crossed the CP&L right-of-way. I do not
10 remember if before any of that development was
11 there whether that actually went through to Ashton
12 Avenue or not, but I'm pretty sure it crossed the
13 CP&L right-of-way.
- 14 Referee I am familiar with the area on the Ashton Avenue
15 side. Frankly, I'm not familiar with any activity
16 there as far as it ever being used as a roadway, and I
17 don't live on that side of town. Do we have any
18 evidence of whether it was ever used as a roadway?
19 I am just trying to get my mind straight while I'm
20 hearing these facts so I will know how to put them
21 into the picture.
- 22 Q Mr. Kirby, was it used as a roadway for entry and
23 exit of the Pig Pickin' priori to it being paved, is that
24 correct?
- 25 A Yes, sir. What I'm talking about is years ago before

1 the development of the rec center or the nursing
2 home or anything else. There were actually two dirt
3 lanes that went in. There is a telephone substation
4 that was sitting in the middle of the field, and one of
5 them was used to access it, and didn't go any
6 further. I believe both of them crossed that center
7 line where the CP&L right-of-way is. I don't
8 remember whether they went out on Ashton Avenue
9 on that side or not. Once the area was developed,
10 you're right, I believe the first year we had Pig
11 Pickin' we used that as a exit. Then because of the
12 citizen complaints I believe the next year we did not
13 use it. We shut it down, and would not let them exit
14 out that way.

15 Q You said the Pig Pickin' has been at the recreation
16 center for the last 2 years, but it has been there
17 actually 5 years, hasn't it?

18 A 3 years.

19 Q 3 years?

20 A Yes, sir, because the first year we used it as an exit
21 and the second year, we didn't, and the third year
22 that portion of Porter was paved and it was gated,
23 and we didn't have to concern yourself with it.

24 Referee Mr. Kirby, was there any objection to the paving of
25 Porter Street once the deal was consummated as far

- 1 as the town was concerned and the people who lived
2 there?
- 3 A No, sir.
- 4 Referee Did anybody enter an objection after the paving of
5 Porter Street as it is paved today?
- 6 A No, sir, this issue here is the first objection I have
7 heard about the actual paving and closing.
- 8 Referee I have no other questions.
- 9 Mr. Jarrett We would call Ms. McClary to the stand.
10 TERILYN McCLARY, Having been duly sworn,
11 testified as follows:
12 DIRECT EXAMINATION BY MR. JARRETT:
- 13 Q State your full name for the record.
- 14 A Terilyn Janice McClary.
- 15 Q Mrs. McClary, where do you reside?
- 16 A 312 Ashton.
- 17 Q How long have you lived at that residence?
- 18 A Since 1997 or '98.
- 19 Q And are you a life time resident of Kingstree or how
20 long have you lived here?
- 21 A I live in Nesmith. Kingstree on and off I have
22 relatives that live here, so I have always lived
23 around the city somewhere.
- 24 Q And you have the property which abuts the portion
25 of Porter Street that we are attempting to close, is

1 that correct?

2 A Correct.

3 Q And were you one of the citizens on Ashton Avenue
4 that was concerned about the rezoning of this piece
5 of property for the senior and disabled center.

6 A Correct.

7 Q Tell the court what your concerns were?

8 A My concern was mainly the traffic coming through
9 the property from both sides. After having a
10 conversation with the director at Waccamaw, he
11 basically said that they were going to shut the street
12 down and close it, and there would be no traffic
13 coming through my property. That was the only
14 objection I had was the traffic.

15 Q And once they agreed to close the street and put up a
16 fence, did you withdraw any objection to the project
17 at that time.

18 A I didn't have any objection.

19 Q And if the street remained open you were going to
20 object, is that correct?

21 A Definitely.

22 Q And you were in the process of objecting?

23 A Exactly.

24 Q Prior to the fence being put up was the street used
25 regularly?

- 1 A All the time. There are people coming through there
2 all times of the night. I have people walking
3 through my yard still today because they jump the
4 fence. They walk through the back of my house,
5 and they walk on the side, and they figure out ways
6 to jump the fence and come onto your property.
7 Before the road it was a dirt road, and there were
8 little pine trees back there, and people would just
9 drive through all the time.
- 10 Q So it was actually used for vehicular traffic.
- 11 A Yes.
- 12 Q You were there in 1997 or 1998.
- 13 A Yes.
- 14 Q And from that time was vehicular traffic using the
15 road at that time?
- 16 A All the time.
- 17 Q From the time you moved in.
- 18 A From the time I moved in, and actually the road was
19 closed and people would go up to the fence and turn
20 around in my garage to go out because there was no
21 sign. I called the city, and said could you please put
22 up a sign that says road closed so people don't pull
23 up into the street to turn around.
- 24 Q So every since you have lived at that property,
25 vehicular as well as foot traffic has used Porter

- 1 Street.
- 2 A Correct and bicycle traffic.
- 3 Q Do you have any knowledge of prior to when you
4 bought your home as to whether or not people were
5 using that road?
- 6 A Yes, they were still using it because the previous
7 owners told me that they were using it all the time.
- 8 Q Do you know how long people have been using that
9 road.
- 10 A It's a cut through. It was easy for them to take this
11 street to cut through to get to Nelson Boulevard.
12 Some of the people the foot traffic was coming from
13 the housing development back where the medical
14 center is. They were walking from in that area, and
15 they were walking from where the Citgo is, so it
16 would be a short cut for them to walk straight
17 across. People that were driving, I have no idea why
18 they were just driving through to get to the other
19 side.
- 20 Q Are you in favor of permanently closing the road?
- 21 A Definitely.
- 22 Q Do you think that would be in your best interest?
- 23 A It would be in the safety interest of my family
24 definitely, and my neighbor's family.
- 25 Q Answer any questions that Mr. O'Bryan may have

1 for you.

2 CROSS EXAMINATION BY MR. O'BRYAN:

3 Q Mrs. McClary, you own lot 13 fronting on Ashton
4 Avenue, is that correct?

5 A Correct.

6 Q I am going to show you a deed that has been marked
7 as Defendant's Exhibit #15. Is that the deed to you
8 for your property?

9 A Correct.

10 Q And here in the property description on the first
11 page, can you read for me starting on the end of the
12 fourth line where it says on the east.

13 A On the east by a 50 foot alley measuring 208.75 feet;
14 and on the south by land of Marie Nelson Estate,
15 measuring 105; and on the west by a lot of Vera
16 McBrown Estate, measuring 208.75 feet.

17 Q Thank you. When you bought this property there
18 was no expectation of ownership of Porter Street,
19 because your description clearly describes your
20 eastern boundary as being a 50 foot alley that we are
21 talking about, is that correct?

22 A Correct.

23 Q So you're not claiming that this alley was ever part
24 of your property, that you knew when you bought
25 your property that a street ran through there.

1 A Right. I'm just claiming that there was no street
2 there, and I didn't expect cars to be driving through
3 or people walking through. It was all forest behind
4 there when I bought it.

5 Q And this photograph is of Ashton Avenue looking
6 down Porter Street, Exhibit #17.

7 A Yes.

8 Q Is that an accurate photograph?

9 A Correct.

10 Q Is that how the property looks today?

11 A Yes.

12 Q There is no paving or anything, it's just dirt, is that
13 right.

14 A It's just dirt that I had the city haul in because it was
15 all mud.

16 Q So that part of it has not been used for a roadway
17 other than you said some people drive back and
18 forth.

19 A It was used for the Pig Pickin' for the first year, and
20 for all the traffic prior to that basically.

21 Q Are you aware of any way an emergency vehicle
22 could get to the hospital if they had an event like Pig
23 Pickin'.

24 A When they had the Pig Pickin' all the cars were
25 parked up against the fence anyway so they

1 wouldn't have been able to get out period. I would
2 assume they would have to come up Nelson
3 Boulevard to go out and come in because the way
4 that the cars were parked, if an emergency vehicle
5 needed to get in to go through Porter Street, they
6 wouldn't have been able to get in because there was
7 no access.

8 Q Can you describe for the court, if you know, what
9 the traffic was on Nelson Boulevard during the time
10 they were having the festival?

11 A I thought the traffic wasn't bad at all. It moved
12 fairly fast. I actually started coming down to my
13 house every Pig Pickin' because it was so awful for
14 the first year with people driving into my garage and
15 parking their car on my lawn and everything. I
16 started coming down. The second year they closed
17 the street, and they closed the fence, and the traffic
18 actually moved pretty fast. People were out quickly
19 when it was over. They just all went down the three
20 access roads that are there, which one is Porter
21 Street which goes from Nelson one way and the
22 other two streets that go on the recreation side. I
23 thought the traffic moved fairly quickly.

24 Q We're talking about traffic on Nelson Boulevard?

25 A Yes.

1 Q And if the town gets what they have asked for in
2 their Petition, you would receive one half of the
3 property that was basically closed, is that correct?

4 A Correct.

5 Q The Court's indulgence.

6 Referee Yes, sir.

7 Q How is traffic on Ashton Avenue, Mrs. McClary. Is
8 there a lot of traffic?

9 A People somehow seem to go down Ashton Avenue
10 quite a bit. There is a mechanic shop at the end of
11 the street, and for some reason they like coming
12 down that street to cut through. A lot of people go
13 to the Chinese restaurant so they turn on Ashton
14 Avenue to go Gordon to go to the restaurant.
15 There's quite a bit of traffic on that street. I have
16 seen a lot more traffic on the street than when I first
17 moved there.

18 Q You had heard the testimony a few moments ago
19 that prior to the housing project being built there, the
20 area was wide open for about any kind of
21 development which could theoretically have led to a
22 lot more traffic. Isn't the change beneficial to you
23 the way it was changed, and you have a lot less
24 traffic.

25 A Not necessarily.

1 Q Let me rephrase it.

2 A The only traffic I don't have is car traffic, which
3 actually when they have the Pig Pickin' if they
4 decide to open the fence, then I'm right back to
5 where I started. We still have a lot of foot traffic,
6 because you can tell by the way that the fence is
7 bent. The fence that was installed is now sagged in
8 the middle because people are still jumping the
9 fence and coming through our property.

10 Q Do you think there is anything that this court might
11 do to change that?

12 A If the property belongs to me and my neighbor for
13 one thing, we can take care of the trees that the city
14 doesn't seem to want to take care of, and are falling
15 down all over the place. The street we can take care
16 of a little better. I have to call in a lot when the rains
17 a lot because the street sits up high and all of the
18 water comes down into the street and covers the
19 manhole with the leaves, and we get water on the
20 street. When I come to town I'm always cleaning
21 the sewer line, so I think we would be able to take
22 care of the street a lot better because it would belong
23 to us.

24 Q The town has not really maintained the street.

25 A Correct.

- 1 Q Thank you. Nothing else of this witness.
- 2 Referee May she be excused.
- 3 Mr. Jarrett Yes, sir.
- 4 Referee Thank you.
- 5 GARY W. CHAPMAN, having been duly sworn,
- 6 testified as follows:
- 7 DIRECT EXAMINATION BY MR. JARRETT:
- 8 Q State your full name for the record.
- 9 A Gary Wayne Chapman, Jr.
- 10 Q Mr. Chapman, where do you reside?
- 11 A 400 Ashton Avenue.
- 12 Q And you live on the other side of the portion of
- 13 Porter Street that we are attempting to close, is that
- 14 correct?
- 15 A Yes, sir.
- 16 Q Did you have concerns back when there was a
- 17 request by the Nehemiah Corporation to rezone that
- 18 property immediately behind your house?
- 19 A Yes, of course, because of incoming traffic and foot
- 20 traffic and car traffic.
- 21 Q Were you a part of any of the discussions about
- 22 closing off Porter Street permanently with a
- 23 permanent fence?
- 24 A No, because I was not notified that there was going
- 25 to be a discussion.

- 1 Q So you did not attend the council meeting.
- 2 A Correct.
- 3 Q Did you contact any of your council members about
4 that?
- 5 A I wouldn't know who to contact.
- 6 Q You are not sure who your council member is?
- 7 A Right.
- 8 Q And describe for the court the problem when the
9 street was open that you experienced.
- 10 A When the street was open there was non stop traffic,
11 and we have four kids always playing in the back
12 yard. It was to the point that we didn't want the kids
13 playing in the back yard.
- 14 Q How long have you been living on Ashton Avenue?
- 15 A Since 1995.
- 16 Q Since 1995, and you have four children that play.
17 When you say traffic, was it vehicular traffic using
18 the property.
- 19 A Vehicular and foot traffic.
- 20 Q And was vehicular traffic using the property since
21 1995?
- 22 A Yes.
- 23 Q Even though the road was not paved and was
24 unimproved, the vehicular traffic used it the entire
25 time that you have been there?

- 1 A Yes, they still went through there.
- 2 Q And it is a safety concern for your four children?
- 3 A Yes.
- 4 Q And are you in favor of the permanent closing of a
5 portion of Porter Street.
- 6 A Absolutely.
- 7 Q And you are willing to receive a portion of that
8 property and pay taxes on it, and maintain it?
- 9 A Yes, sir.
- 10 Q And do you think that would be in your and your
11 family's best interest?
- 12 A Yes, I do.
- 13 Q Do you think it would be in the best interest of all of
14 the citizens on Ashton Avenue?
- 15 A Absolutely.
- 16 Q Answer any questions that Mr. O'Bryan may have
17 for you.
- 18 CROSS EXAMINATION BY MR. O'BRYAN:
- 19 Q Mr. Chapman, I am going to hand you a copy of a
20 deed which has previously been introduced into
21 evidence, which is Defendant's #13. Is that a deed
22 to you for your property?
- 23 A Yes.
- 24 Q Can you describe the western boundary for the
25 property as it appears in the description.

- 1 A The western boundary...
- 2 Q I'm sorry, I believe it just refers to the map. That is
3 the deed for your property, is that correct?
- 4 A Yes.
- 5 Q I show you a subsequent deed identified as
6 Defendant's #14, which is a deed from Misty L.
7 Whitley to yourself, is that also for your property?
- 8 A Yes.
- 9 Q And when you purchased the property you were
10 aware that you had Porter Street on your western
11 boundary, is that correct?
- 12 A Yes.
- 13 Q And this map that has been identified as Exhibit
14 #12, does that show Porter Street?
- 15 A Yes, sir.
- 16 Q And was that a map that was prepared for you?
- 17 A Yes, sir.
- 18 Q And when you purchased the property you were
19 aware that you had the street on your Western
20 boundary, is that fair.
- 21 A I was aware that I had the street.
- 22 Q There was a street on your western boundary?
- 23 A There was a lot, and I didn't know it was called a
24 street until I actually tried to purchase it from the
25 city.

- 1 Q You tried to purchase it from whom?
- 2 A From the city. I went to the courthouse and tried to
3 purchase it, because there was so much traffic going
4 through there. I was told that it was not being used
5 so I tried to purchase it.
- 6 Q This is a plat that you had prepared in 1996 that
7 clearly shows this as an unimproved street.
- 8 A An unimproved street, yes.
- 9 Q And you were aware that when you purchased the
10 property that you were basically living on a corner,
11 if you will.
- 12 A Yes.
- 13 Q And that your risk as with any property owner,
14 would be having a street on two sides?
- 15 A It didn't look like a street, but yes.
- 16 Q And if the town receives the relief they have
17 requested, then a portion of this property would be
18 set off to you, is that correct?
- 19 A Yes and actually that street was used as my
20 driveway when I purchased the house because I
21 didn't have a driveway.
- 22 Q The court's indulgence please.
- 23 Referee Sure.
- 24 Q No further questions.
- 25 Referee Mr. Chapman, you may be excused.

1 Mr. Jarrett Your Honor, that's our case, and we rest.
2 Referee Mr. O'Bryan,
3 Mr. O'Bryan I call Mrs. Alice H. Kellahan.
4 ALICE H. KELLAHAN, having been duly sworn,
5 testified as follows:
6 DIRECT EXAMINATION BY MR. O'BRYAN:
7 Q Mrs. Kellahan, you and Lydia Duke are owners of
8 20.97 acre tract of land that was purchased from
9 Samuel E. McIntosh, is that correct
10 A That's correct.
11 Q And we have previously introduced a plat as Exhibit
12 #9, is that the property that you purchased?
13 A Yes, it is.
14 Q And at the time that you purchased the property you
15 also acquired an easement from Sammy McIntosh as
16 executor and trustee?
17 A That's correct.
18 Q With respect to your property, you have a person or
19 an agent who handles the acquisition and
20 development, management and sale of your
21 property?
22 A I do.
23 Q And who is that?
24 A My husband, Nicky Kellahan.
25 Q Does he handle everything that is related to the

- 1 property?
- 2 A He does.
- 3 Q As you are aware we are here today because the
4 town has requested the closing of Porter Street. Did
5 you consent to the closing of Porter Street or
6 authorize Mr. Kellahan or any other person to do
7 that on your behalf?
- 8 A No, I did not.
- 9 Q Have you discussed the matter with Mrs. Duke?
- 10 A I have.
- 11 Q Do either one of you want to have the road closed?
- 12 A No, we are in agreement.
- 13 Q You are not in agreement to close the road?
- 14 A Right.
- 15 Q No other questions at this time.
- 16 CROSS EXAMINATION BY MR. JARRETT:
- 17 Q Mrs. Kellahan, is it your position and Mrs. Duke's
18 position that Porter Street is a public road?
- 19 A Mr. Jarrett, I am going to have to refer all these
20 questions to my husband if you don't mind.
- 21 Q You don't have a position on that?
- 22 A I want that road to be open.
- 23 Q But as far as it being a public versus a private road,
24 you don't have a position on that?
- 25 A I would say it must be a public road from the

- 1 discussion that I have heard.
- 2 Mr. O'Bryan Your Honor, Mrs. Kellahan has already testified that
- 3 Mr. Kellahan handles all aspects of the property.
- 4 Referee If your objection is that Mr. Jarrett seems to be
- 5 browbeating the witness, I think she is handling
- 6 herself very well. I guess...
- 7 Mr. O'Bryan I believe what the testimony was, other than being
- 8 the landowner...
- 9 Referee And he's on cross. In South Carolina cross is open.
- 10 Q So from what I understand you are saying it must be
- 11 a public road.
- 12 A Just from the discussion that I have heard here
- 13 today.
- 14 Q You and Mrs. Duke certainly did not pay for it to be
- 15 paved, did you?
- 16 A I guess not.
- 17 Q As far as you know you didn't realize it was paved.
- 18 A Not as far as I'm concerned, no.
- 19 Q And you did not pay for it to be paved?
- 20 A No.
- 21 Q Were you in favor of the property being rezoned to
- 22 the PUD so that Waccamaw could purchase it from
- 23 you?
- 24 A Yes.
- 25 Q And you were aware that they actually had to have it

- 1 rezoned before the...
- 2 A Actually, I will have to tell you no, I was not. As I
- 3 have said my husband handles all of this, and
- 4 honestly the property is in mine and Lydia's name.
- 5 Q You actually signed the option with Nehemiah
- 6 Corporation for them to actually purchase the
- 7 property, is that correct?
- 8 A If you say so. Honestly I don't know.
- 9 Q You cannot recall whether you signed an extension
- 10 of the option?
- 11 A Honestly I cannot. I apologize but I am very
- 12 trusting of my husband and that's the way it's been.
- 13 Q I think those are all the questions I have. Thank
- 14 you.
- 15 Referee Mr. O'Bryan.
- 16 REDIRECT EXAMINATION BY MR. O'BRYAN:
- 17 Q Just one question. Just to reiterate, Mrs. Kellahn,
- 18 Mr. Nicky Kellahan basically handles all of the
- 19 development.
- 20 A Everything.
- 21 Q And you are the record holder, but you basically
- 22 have no involvement.
- 23 A Precisely.
- 24 Q And any legal instrument Mr. Kellahan reviews and
- 25 offers it to you for signature?

1 A Absolutely.

2 Q Thank you.

3 Referee I have no questions. May she be excused.

4 Mr. Jarrett Yes.

5 Referee She's a party, she can stay.

6 Mr. O'Bryan Your honor, may we have a brief sidebar.

7 Referee Certainly.

8 (5 minute discussion)

9 W. N. KELLAHAN, JR., having been duly sworn,

10 testified as follows:

11 DIRECT EXAMINATION BY MR. O'BRYAN:

12 Q Mr. Kellahan, would you tell us about your

13 occupation?

14 A I am a civil and structural engineer. I am registered

15 in three states, North Carolina, South Carolina and

16 Georgia for engineering and surveying.

17 Q Your Honor, pursuant to our sidebar conference,

18 there is a stipulation that I would like to qualify Mr.

19 Kellahan as an expert in the field of surveying and

20 engineering.

21 Referee I think Mr. Jarrett, you said there was no objection.

22 Mr. Jarrett No objection.

23 Referee We will put on the record that I know from my own

24 experience that he has testified in circuit court on

25 several occasion as an expert.

1 Q Mr. Kellahan, this property that we are discussing
2 today is owned by your wife, Alice Kellahan and
3 Lydia Duke, is that correct.

4 A That's correct.

5 Q Do you handle all aspects of the property?

6 A I do.

7 Q And that would include the acquisition,
8 development, sale and the whole thing.

9 A I handle everything up to signing the deeds and the
10 options.

11 Q The property that your wife has identified as 20.97
12 acres, did you handle all negotiations in the
13 purchase of that property?

14 A I did.

15 Q And can you describe the circumstances of that
16 property, and what was your motivation in buying it.

17 A We bought this property really as a trade with
18 Sammy McIntosh who at the time was the executor
19 of the Estate of Mrs. Marie Nelson. We trade him a
20 piece of property plus a hundred thousand dollars
21 for this piece of property. We bought this piece of
22 property with the understanding that we had the
23 right-of-way from Nelson Boulevard to Ashton
24 Avenue, and we insisted when we bought this
25 property that not only did we have the road that is

1 shown there on the old plats that Sammy had done,
2 but we required a 50 foot easement from the Nelson
3 Estate. He indicated that the road had not been
4 dedicated to the town or to the county, and we
5 wanted to be sure that we had access from both
6 directions. We required a 50 foot easement, and we
7 did have that easement recorded.

8 Q And when you bought the property, you bought it
9 from subdivision and commercial development, is
10 that correct?

11 A That's correct.

12 Q And can you describe the condition of the property
13 when you bought it, and what state the land was in.

14 A It was grown up in basically weeds, dog ...and
15 broom straw. It didn't have a lot of trees on it, and
16 was mostly just brush. We were able to cut it with a
17 bush hog and clean it up.

18 Q From your personal knowledge the land had been
19 used primarily for agricultural purposes up until a
20 few years prior to your purchase, had it not.

21 A That's correct.

22 Q We have been here all afternoon talking about Porter
23 Street, and Mr. Jarrett has commented on the fact
24 that this was laid out in a 1903 map. Do you know
25 when those roads were actually laid in there?

1 A I don't know the exact date, but I moved to
2 Kingstree from Charlotte in 1973 and those roads
3 were put in very shortly after that. If I'm not
4 mistaken, Harry McKenzie cut those roads in for
5 Mrs. Marie Nelson. All four of them were cut in,
6 and there is actually a pipe under the one at Porter
7 Street where the ditch goes through there. There is a
8 pipe that was put in when it was cut. There is a pipe
9 under each one of those streets, and that was put in
10 sometime around 1975.

11 Q All of the roads were cut at that time, but they were
12 never used.

13 A They were never dedicated to my knowledge, and
14 they have no record of them being dedicated when
15 we did the title search on those. before we bought it
16 we couldn't find any dedication, and that is why we
17 insisted on the 50 foot right-of-way.

18 Q You testified there are actually four roads leading
19 from Ashton Avenue.

20 A I think that is shown on the old plat that was done
21 by...I can't remember who actually did it, but it was
22 done in 1903.

23 Q Was that the one by Mr. Gourdine that was admitted
24 into evidence.

25 A It's the map that ya'll have been referring to. It is

1 the division on Ashton Avenue when those lots were
2 cut. It shows the division of those lots and shows
3 four access roads to the remainder of the Nelson
4 property.

5 Q You have already testified that during your
6 negotiations with Mr. McIntosh to purchase the
7 20.97 acres, that your research revealed that there
8 was no dedication of Porter Street to the Town of
9 Kingstree or any other authority, so you requested a
10 written easement, is that correct?

11 A That's correct.

12 Q And I show you what has been marked as
13 Defendant's Exhibit #11, is that the easement that
14 you acquired?

15 A It is.

16 Q And how wide is that easement?

17 A It's 50 feet.

18 Q Is that easement also shown on the plat that you
19 previously reviewed?

20 A It is.

21 Q And that was a condition of you purchasing the
22 property, is that correct?

23 A That's correct. I showed it as a proposed 50 foot
24 road to be known as Porter Street. That was part o
25 the negotiation also. Sammy could name the roads,

1 and he wanted that one named Porter.

2 Q Where did the easement begin and end?

3 A It began on Ashton Avenue and ended on Nelson
4 Boulevard.

5 Q So it runs all the way through?

6 A That's correct.

7 Q And I think you have already answered this, but was
8 access along Porter Street a consideration in the
9 purchase of the property and the price you paid for
10 it?

11 A It was, yes, very much so.

12 Q Are you aware of any deed or any written instrument
13 granting the town ownership or even a dedication of
14 Porter Street?

15 A I'm not aware of it, and it was not found when we
16 had the title search done when we purchased the
17 property.

18 Q Has anyone approached you since that time asking
19 you for a written easement or a deed or any type of
20 written dedication for Porter Street?

21 A No.

22 Q You had heard testimony regarding the town council
23 meetings when they were discussing this rezoning
24 change. You were present at the January meeting, is
25 that correct.

- 1 A That's what the record shows. I do remember being
2 at one meeting, but I can't tell you which one it was.
- 3 Q And there was no discussion of closing the road
4 when you were present, either permanently or
5 temporarily?
- 6 A Not to my knowledge.
- 7 Q Did you authorize Senator McGill to offer to close
8 the road on your behalf?
- 9 A I did not authorize him to offer to close the road. He
10 did come to the meeting for me because I was going
11 to be out of town, but we had no discussion about
12 closing the road and I didn't know anything about
13 until after it was done.
- 14 Q And when you did find out that the gate had been
15 put up, what was your understanding. Was that
16 temporary or permanent?
- 17 A I understood that it was temporary.
- 18 Q And with respect to this property you have had a
19 survey made showing a division of these lots, is that
20 correct?
- 21 A That was done right after we purchased the property,
22 yes.
- 23 Q What has been marked as Defendant's Exhibit #16,
24 is that essentially the last division of the property
25 that was made?

- 1 A It is.
- 2 Q And you have subdivided that, and sold that for
3 commercial development.
- 4 A Portions of it, yes, sir.
- 5 Q And you still retain parts of it?
- 6 A I still retain parts of it, yes.
- 7 Q What lots do you still own or what lots do Mrs.
8 Kellahan and Mrs. Duke own?
- 9 A They are not numbered on here. How do you want
10 me to describe them.
- 11 Q Mr. Kellahan, I am going to offer you a map that has
12 not yet been admitted into evidence. Is that a
13 subsequent amendment of the map that you were
14 first reviewing save and except the lot numbers?
- 15 A It's the same map. It was prepared May, 1999 and
16 both of them say that. It's the same plat, and it was
17 revised May 17, 2002 to show lot numbers.
- 18 Q So the only difference in the two maps, the map that
19 I just handed you has the lot numbers, is that correct.
- 20 A The initial map dated May, 1999 shows future site of
21 nursing home, and the revised map dated May 17,
22 2002 shows the nursing home, because the nursing
23 home had purchased that property after the initial
24 map was made.
- 25 Q Could I get that marked.

1 PLAT RECEIVED and marked Defendant's Exhibit
2 #18.
3 Q I would like to introduce that as an exhibit.
4 Referee Any objection.
5 Mr. Jarrett No objection.
6 Referee In evidence without objection.
7 Q Looking at the map that has just been introduced
8 into evidence with lot numbers, can you identify for
9 me which parcels are still retained.
10 A We will retain the southern one half of lot #1, lot #4,
11 5, 6, 7,8, 9, 10, 12, 13, 15 and 16.
12 Q How would that affect your subdivision if the access
13 to Ashton Avenue was cut off?
14 A In my opinion it reduces the value of the property
15 because you don't have the two accesses that we
16 thought we had when we purchased the property. In
17 my opinion it's a nightmare getting in and out of this
18 during any problem out there or when they are
19 having a function at the recreation department.
20 From a safety aspect I can't believe that the Town of
21 Kingstree wants to close the road to start with
22 because they would be highly liable if somebody is
23 out there and you can't get them out because of the
24 traffic on Nelson Boulevard.
25 Q Would the marketability of these parcels be

- 1 impacted, do you think.
- 2 A I think it would, yes, sir.
- 3 Q You have bought and sold numerous parcels of land.
- 4 A That's correct.
- 5 Q Do you have an idea on the value that you would
- 6 lose if this access is cut off?
- 7 A This would adversely affect the southern half of lot
- 8 #1, lots number 4, 5, and 6. I would say that it could
- 9 affect the value of those lots probably at least 50%,
- 10 which would be four lots, and we're probably
- 11 talking about a hundred thousand dollars total
- 12 decrease in value for those four lots.
- 13 Q And as a surveyor and engineer, do you think it
- 14 prudent to close off this street if this is the only
- 15 access off Nelson Boulevard?
- 16 A I do not think it is prudent to close this street.
- 17 Q To your knowledge, is Nelson Boulevard the
- 18 primary route to the hospital for emergency
- 19 vehicles?
- 20 A It is.
- 21 Q And as both a resident of Kingstree and an engineer,
- 22 have you seen an increase in traffic on Nelson
- 23 Boulevard since the recreational center has been
- 24 located out there?
- 25 A I have.

1 Q Is there any other way that an emergency vehicle,
2 ambulance or fire truck entering onto Nelson
3 Boulevard, could get off to get to the hospital or get
4 to a fire if they got caught in traffic?

5 A If they were on the recreation site, or on one of my
6 sites, or at the apartments, and a Pig Pickin' was
7 going on or a baseball tournament was going on, and
8 traffic was getting out at that time, it would be hard
9 for them to get out of there. Whereas if they had the
10 exit to Ashton Avenue, they could get out.

11 Q Are there any other factors or considerations that
12 you would like the Court to consider in this matter.

13 A Yes, sir, I would like for the Court to consider when
14 we had this property zoned as highway commercial
15 there were numerous I guess you would say clients
16 that came to us to purchase some of that property.
17 They could have put some things in there that we did
18 not want to go into that property, because I thought
19 it would decrease the value of my additional
20 property. We had some people that would have put
21 up some things we didn't want. At the time we first
22 purchased this property there were some video poker
23 people that wanted to put up a metal building and
24 have video poker, and we declined to sell it to them
25 because of the decrease in value that it would cause

1 to the rest of our property. We feel like putting
2 these apartments back there was a much cleaner and
3 much better environment for the residents of Ashton
4 Avenue than what we could have put there. If we
5 had put anything in there that was detrimental to
6 Ashton Avenue, then it would have also been
7 detrimental to us.

8 Q You have testified that you had bought the 20.97
9 acres from Sammy McIntosh, and that was
10 individually, is that correct? Or do you remember?

11 A I'm not sure, but I can look at the deed. Yes, I
12 bought it from him individually. He owned it
13 individually.

14 Q And that was through Mrs. Marie Nelson's estate.

15 A That's correct.

16 Q And Mrs. Nelson's estate owned all of the adjoining
17 property and that's why you got the deed from him
18 individually and as executor and as trustee for the
19 easement?

20 A For the easement, that's correct. The Nelson estate
21 owned the property across Nelson Boulevard which
22 the Town of Kingstree now owns.

23 Q Your Honor, I can offer testimony as to the
24 instruments that are already in the record regarding
25 the Nelson Estate if your Honor or Mr. Jarrett feels

1 that it is necessary. I believe that the records will
2 speak for themselves as delineating the chain of title
3 and the authority of the various people to execute
4 these deeds and agreements.

5 Referee I am perfectly comfortable with reading the
6 documents. What is the exhibit number that Mr.
7 Kellahan was referring to that says the plat showing
8 the easement at the time it was purchased by Mrs.
9 Kellahan?

10 Q That would be Exhibit #9.

11 Referee Number 9, thank you.

12 Q I don't have any other questions of Mr. Kellahan.

13 Referee Mr. Jarrett.

14 CROSS EXAMINATION BY MR. JARRETT:

15 Q May it please the Court your Honor.

16 Referee Yes, sir.

17 Q Mr. Kellahan, you said you attended the first
18 meeting in January, is that correct?

19 A That's correct.

20 Q And you heard Mr. Bartelle indicate that he was late
21 because he had some citizens calling about objection
22 to the proposed rezoning of the property owned by
23 your wife and Mrs. Duke?

24 A That's correct.

25 Q And you were aware that they had first reading and

1 they felt like the public needed to be more aware and
2 they needed public input?

3 A That's correct.

4 Q And are you aware of the date and time of the public
5 hearing for the second reading, is that correct.

6 A I have no recollection of that.

7 Q You were present for the entire meeting, is that
8 correct?

9 A I'm not sure whether I was or not. I can't remember
10 that far back as to whether I was here for a meeting
11 or not, because I think it was a regular town council
12 meeting. When a certain portion of it was over I left.

13 Q You certainly would have stayed for the entire
14 portion discussing your issue, is that correct?

15 A Yes, sir.

16 Q And you say that you had a conflict but you were
17 aware of the date of the second meeting, but you had
18 a conflict and sent Mr. McGill?

19 A Was it the second meeting or the public hearing, I'm
20 not sure which.

21 Q The public hearing was right before the second
22 meeting, so I guess both of them.

23 A On the same day?

24 Q Yes, sir.

25 A Okay.

- 1 Q The public hearing was right before the meeting, is
2 that correct?
- 3 A I'm not sure, I don't know.
- 4 Q On February 2, and you sent Senator McGill I guess
5 to represent your interest, is that correct?
- 6 A Yes.
- 7 Q And you have seen the minutes of the public hearing
8 and the second meeting, is that correct?
- 9 A That's correct.
- 10 Q And you have seen where Senator McGill brokered
11 the deal to permanently close the road.
- 12 A I haven't seen that, no, sir.
- 13 Q Plaintiff's Exhibits #4 and #5, have you ever seen
14 those documents?
- 15 A Yes, sir.
- 16 Q And is it true those minutes reflect that Senator
17 McGill brokered the deal to permanently close off
18 that portion of Porter Street?
- 19 A Yes, sir.
- 20 Q And when did you become aware that the deal had
21 been struck that the street was going to be
22 permanently closed off?
- 23 A I don't know the exact date and time, but it was
24 sometime after these meetings when I was notified
25 that I needed to put a fence up.

- 1 Q And you put the fence up?
- 2 A I did.
- 3 Q And was it necessary to actually get the property
4 rezoned in order to be able to sell the property to
5 Waccamaw Housing?
- 6 A I assume so. I don't know that first hand, but I
7 assume it was since that's what they wanted.
- 8 Q They wouldn't actually close until it was rezoned, is
9 that correct?
- 10 A That's correct.
- 11 Q And they had to actually get an extension on their
12 option with your wife and Mrs. Duke because the
13 town had not acted on the request as quickly as they
14 wanted, is that correct?
- 15 A I'm not sure about the date and times, but basically I
16 assume so, yes.
- 17 Q How long do you give an option usually?
- 18 A I don't have a usual time.
- 19 Q Thirty, sixty, ninety, six months.
- 20 A It varies with each piece of property.
- 21 Q Do you know how long you gave them the option
22 this property?
- 23 A I do not.
- 24 Q The property was rezoned after the second reading
25 to PUD allowing for the planned unit development,

1 is that your understanding.

2 A That is my understanding.

3 Q And how many acres was it?

4 A You're asking me.

5 Q Yes, sir.

6 A I don't know without looking at the plat.

7 Q Was it 2.15 acres, does that sound right.

8 A I would have to look at the plat.

9 Q I show you the deed, does that say 2.15 acres?

10 A Yes, sir.

11 Q Did you sell them on Exhibit #18, lots number 2, 3,
12 and that northern portion of lot #1?

13 A That's correct.

14 Q And so the record is clear, you sold them.
15 2 and 3 and this half.

16 Q So 1 and 2 are only about an acre, so the other came
17 in back here, is that correct?

18 A That's correct.

19 Q And you still own the southern portion?

20 A Yes.

21 Q Your wife and Mrs. Duke still own the southern
22 portion?

23 A Yes.

24 Q Exhibit #18 shows a proposed 50 foot road that goes
25 directly behind the nursing home, is that correct?

- 1 A That's correct.
- 2 Q And wouldn't any emergency access vehicles from
3 the hospital right here, have access to Porter Street
4 not going on Nelson Boulevard, but using that
5 proposed road and going in.
- 6 A If that road was in there, but that road isn't in there.
- 7 Q But it is proposed to be put in there, correct.
- 8 A It is proposed, yes.
- 9 Q And if it's not cut in there, you don't have access to
10 your lots 7, 8, 9, and 10, is that correct?
- 11 A That's correct.
- 12 Q So is there any plan to ditch that road?
- 13 A I could sell 12, 13, 7, 8, 9, and 10 as one parcel. It
14 depends on how wants it, and what I do with it. I
15 have no plans and no direct link as to how I am
16 going to sell it right now. I could sell 12, 13, 7, 8, 9
17 and 10 as one parcel.
- 18 Q How are you taxed on these. Are they already cut
19 like your plat in the assessor's office
- 20 A They are.
- 21 Q They are?
- 22 A Yes, sir.
- 23 Q So at this point in time you're not even paying taxes
24 on that proposed 50 foot road, is that correct?
- 25 A You will have to talk to the tax assessor about that, I

- 1 don't know.
- 2 Q Do you get a separate tax notice for that road?
- 3 A I get about 200 tax notices and I can't tell you what I
4 get.
- 5 Q But you are an expert in surveying and engineering,
6 and you handle all of the business dealings, but you
7 don't know whether or not you're taxed for
8 proposed roads that are put on plats in the assessor's
9 office.
- 10 A No, what I told you was I don't know whether I get a
11 tax notice for that 50 foot proposed road.
- 12 Q Do you know in general once these have been cut
13 off in the tax assessor's office...
- 14 Mr. O'Bryan Your Honor, he has been asked and answered.
15 Referee .But this is cross, Mr. O'Bryan. He can beat up on
16 him a little bit. You can't do it on direct.
- 17 Q Do you as an expert as we have said, do you know
18 once these are recorded, if each individual lot has a
19 separate tax map number and whether you are
20 currently taxed on that propose 50 foot road at this
21 time.
- 22 A I am going to answer it one more time. I have on
23 idea and if you want to know from me, I can't tell
24 you. You will have to ask the tax assessor.
- 25 Q And you don't know as a surveyor once these are

- 1 recorded, whether or not they have separate tax map
2 notices?
- 3 A I do not.
- 4 Q In all of your surveying you go to the tax assessor's
5 office quite often, don't you.
- 6 A I do.
- 7 Q And how many tax map numbers have you run
8 across that are actually roads or proposed roads.
- 9 A I don' look at roads, Ernie.
- 10 Q And your position as to Porter Street is it is a public
11 road or a private road.
- 12 A Private road.
- 13 Q And who owns it?
- 14 A I don't know who owns it, whoever paved it I
15 reckon. I didn't give anybody permission to pave it.
- 16 Q Did you object to the paving?
- 17 A No, sir. Would you object to a paving. I wouldn't
18 object to somebody paving y road.
- 19 Q Judge, I would request that the witness be instructed
20 that he's not allowed to ask questions.
- 21 Referee Alright sir.
- 22 Q Did you object to the paving of the road.
- 23 A I'm sorry.
- 24 Q Did you object to the paving of the road?
- 25 A No, sir, I did not.

- 1 Q The paving of the road certainly benefitted your wife
2 and Mrs. Duke, is that correct.
- 3 A That's correct, and that's why I didn't object to it.
- 4 Q To your knowledge can the state come in and pave a
5 private road?
- 6 A It's my understanding that the state has notified you
7 and my attorney that they have non interest in that
8 road.
- 9 Q That wasn't my question. My question was, to your
10 knowledge, can the state come in and pave a private
11 road?
- 12 A I can give you several examples of where they have
13 done that in Williamsburg County.
- 14 Q But that's still not the answer to my question. To
15 your knowledge are they supposed to pave a private
16 road.
- 17 A To my knowledge are they supposed to pave a
18 private road.
- 19 Q That's correct.
- 20 A No, sir.
- 21 Q Thank you. And you're not the owner of the road, is
22 that correct?
- 23 A I don't know. If it's a private road, I have a right of
24 way to it, so I guess I do own it.
- 25 Q You have a right-of-way, but you're not the owner,

- 1 correct. Ownership and having a right-of-way are
2 not the same thing, is that correct.
- 3 A I would have to read the deed to see where the deed
4 goes.
- 5 Q Assuming that it is a private road as you are now
6 saying, would it be to grant specific access to
7 Waccamaw Housing in the deed to Waccamaw
8 Housing or else you have sold them a land locked
9 piece of property?
- 10 A I think that is probably their attorney's problem, not
11 mine.
- 12 Q You are the stipulated expert, and you buy and sell
13 and you don't know whether or not you have to
14 provide access when you sell property.
- 15 A You are supposed to, yes, sir.
- 16 Q You would have a problem if this was in deed a
17 private road?
- 18 A No, sir.
- 19 Q You wouldn't have a problem by selling this piece
20 of property with no access?
- 21 A I have access from Ashton Avenue.
- 22 Q I thought you said it was a private road.
- 23 A The portion from Ashton Avenue is on a plat that
24 has been recorded.
- 25 Q So the portion that we are attempting to close is a

- 1 public road?
- 2 A It has been open to the public since 1903.
- 3 Q As a public road, is that your testimony?
- 4 A Yes but I have a right-of-way across it.
- 5 Q And actually if Porter Street were closed and a
6 private road where you say, your selling lots
7 numbers 2 and 3 would actually not give them
8 access. You would have to go onto the private road
9 in order to access. They are just touching at that
10 point, aren't they?
- 11 A That's correct.
- 12 Q So they really don't have access, do they?
- 13 A They may not.
- 14 Q They wouldn't, would they, they just touch so they
15 couldn't go on the private road without getting on
16 somebody else's property if that was private road.
- 17 A That's correct.
- 18 Q And you don't think that's a problem for the seller's,
19 your wife, and Mrs. Duke?
- 20 A No, sir.
- 21 Q That they sold this property with no access?
- 22 A No, sir.
- 23 Q Why wasn't an easement included in their deed?
- 24 A I didn't prepare the deed.
- 25 Q Who prepared the deed?

- 1 A I can't answer that either. You will have to look at
2 the deed.
- 3 Q But you review the deed before your wife signs it, is
4 that correct?
- 5 A That's correct.
- 6 Q And why didn't you make sure the easement was on
7 there?
- 8 A I guess I overlooked that.
- 9 Q And you were telling me earlier that by something
10 being recorded since 1903, a plat, your
11 understanding of surveying would make that a
12 public road?
- 13 A It is shown on that plat is what I said. It was shown
14 on that plat as a proposed road.
- 15 Q And you said that made it a public road, since it had
16 been there since 1903, didn't you.
- 17 A I'm not sure exactly what I said, but I can tell you
18 that the road has been used since 1975 or '76 when
19 it was put in there.
- 20 Q And do you have an opinion as an expert on
21 surveying whether or not that makes it a public road
22 or a private road since it has been on a plat since
23 1903?
- 24 A Repeat the question please sir.
- 25 Q As an expert in surveying if a proposed road is on a

- 1 plat and recorded and shown on every plat since
2 1903, would that make it a public road?
- 3 A If the public has been using it since 1903 it makes it
4 a public road in my opinion, yes, sir.
- 5 Q And you do not object to the gate being across the
6 road as long as it's not permanent, is that correct.
- 7 A As long as I have access through the gate, and if at
8 some point I need to open that gate for development
9 of some of this other property and somebody wants
10 access, for the time being I have no objection.
- 11 Q So you were in favor of a temporary closing of the
12 road, but not a permanent closing, is that correct?
- 13 A I wasn't in favor of any closing to my knowledge.
- 14 Q You were certainly in favor of getting the property
15 rezoned so that you could sell it, is that correct.
- 16 A That's correct.
- 17 Q And your deed from Mr. McIntosh certainly refers to
18 the western boundary as Porter Street, is that
19 correct?
- 20 A I would have to read the deed. I'm sorry, I don't
21 remember.
- 22 Q On the west by the proposed 50 foot street.
- 23 A On the west by proposed 50 foot road known as
24 Porter Street, yes, sir.
- 25 Q And at the time you bought it, you were certainly

1 aware that was a proposed 50 foot road at that time,
2 is that correct?

3 A That's correct.

4 Q I don't think I have any further questions. Thank
5 you sir.

6 Referee Mr. O'Bryan, anything further.

7 REDIRECT EXAMINATION BY MR. O'BRYAN:

8 Q Mr. Kellahan, let me see if I can clarify something.
9 It is not disputed that the road had been cut some
10 years previous, and that's your testimony. When
11 you bought the property you investigated whether
12 there had been any dedication to the town, county or
13 other party, did you not?

14 A I did, yes, sir.

15 Q Was there any dedication of the road that you could
16 determine at that time?

17 A No, sir.

18 Q And in reliance on that, you got the easement, did
19 you not?

20 A I did.

21 Q Because you wanted to be certain that you had
22 access to this property for that proposed road?

23 A That's correct.

24 Q Have you done anything, or has Mr. Kellahan or
25 Mrs. Duke done anything since that time in terms of

- 1 giving any written dedication to the town, county or
2 state for Porter Street.
- 3 A Not to my knowledge.
- 4 Q To your knowledge has the Nelson Estate done
5 anything?
- 6 A Not to my knowledge.
- 7 Q So from your point of view even though the public
8 may have been using the street somewhat, it has
9 never been dedicated for public use?
- 10 A That's correct.
- 11 Q So that is the basis for your statement that this is a
12 private road, because there is no written instrument
13 dedicating the roadway to public use, is that your
14 understanding.
- 15 A That is my understanding.
- 16 Q With respect to the town meeting that they had, at
17 the meeting that you attended there was no
18 discussion about closing Porter Street, was there?
- 19 Referee He said he didn't recall. I wrote that down.
- 20 A That's correct. I don't recall any discussion.
- 21 Referee He didn't say there wasn't any discussion. He said
22 he didn't recall.
- 23 Q You don't recall any discussion?
- 24 A No, and the minutes don't reflect any.
- 25 Q And did you ever authorize Senator McGill to offer

1 to close the road on your behalf?

2 A No, sir.

3 Q And Mr. Jarrett had asked you about the road being
4 shown on the plat, whether that constituted a public
5 road. Isn't that more of a legal question than a
6 surveying issue?

7 A It is a legal question, yes, sir. Surveyors are not
8 allowed to make legal decisions. We only show it
9 on the plat, and we have no authority whatsoever to
10 make a legal decision.

11 Q So your answer to that is basically I don't know, is
12 that correct?

13 A Correct.

14 Q Nothing else.

15 RE-CROSS EXAMINATION BY MR. JARRETT:

16 Q One followup question. On Defendant's Exhibit
17 #11 which is the easement, can you read me the
18 highlighted portion of that easement.

19 A It's the fourth paragraph, the last paragraph on the
20 first page, it says, whereas the parties have agreed
21 that affect should be made to have said street opened
22 and used for their benefit, and members of the public
23 who may need to use the same.

24 Q And that is the easement that actually gave it to your
25 wife and Mrs. Duke from Mr. McIntosh, right.

- 1 A That's correct.
- 2 Q In that easement it said that efforts should be made
3 to have the street opened and used for their benefit
4 and members of the public who may need to use the
5 same, is that correct.
- 6 A That's what it says but nobody has ever signed an
7 easement to anybody or to a dedication of anyone
8 for that property.
- 9 Q So your position that it is a private road for your
10 benefit is in direct contradiction to the easement that
11 your wife and Mrs. Duke were given.
- 12 A It's a contradiction, but we are willing to dedicate
13 that street. Nobody has ever asked for it. In fact we
14 tried to dedicate it to the town, but they wouldn't
15 take it at one time.
- 16 Q Thank you. I have no further questions.
- 17 Referee Before Mr. Kellahan steps down, would you clarify
18 a couple of facts for me just in case I need them.
19 Give me the description of the easement. I haven't
20 seen a document with it on there.
- 21 Mr. Jarrett Exhibit #11.
- 22 Referee Where does it end. I have a tax map and I have a
23 plat, Plaintiff's Exhibit #1.
- 24 Mr. Jarrett All the way to Ashton from Nelson Boulevard.
- 25 Referee And it says that on this easement.

1 Mr. Jarrett It does.

2 Referee That is what I was trying to understand. Could I see

3 Defendant's Exhibit #18. When you record a plat of

4 a development, and you show on that plat a

5 proposed roadway, it seems like to me there was

6 some law around that says that you have a

7 responsibility as a developer to put that roadway in,

8 unless all of the people that purchase in there say

9 they don't need it. Does anybody have any law on

10 that.

11 Mr. O'Bryan Your Honor, I think what happens is the owners of

12 any lot that purchase pursuant to a roadway shown

13 on a plat, have access that roadway I think is what

14 your Honor may be eluding to. That in and of itself

15 does not constitute a public dedication for public

16 use. It just means that the owners of those

17 properties have access to that roadway.

18 Referee But the owner of the property, and where I'm going

19 is the owner of the property is a developer that backs

20 onto the fence on the back side of Ashton Avenue.

21 If you are worried about access to the hospital, they

22 have an expectation of a 50 foot right-of-way to 377

23 is what I understand. Am I wrong on that? I'm not

24 trying to browbeat anybody. I am just trying to

25 understand it, because this is the first time I have

1 seen it.

2 A I think you're correct.

3 Mr. Jarrett That has always been my understanding. Once it is

4 shown as a street it's hard to get it back.

5 Referee When I practiced in Columbia I litigated some of

6 those things, but that has been 15 or more years ago.

7 I'm not trying to say that I remember all of that.

8 Mr. O'Bryan I don't know that the lots have been sold along

9 there, but if the lots that rely on the proposed road

10 for access have not been shown, I don't think there

11 is any injury to any party if it is subsequently

12 changed.

13 A If I might.

14 Referee Yes, sir.

15 A I testified that lots 6, 7, 8, 9, 10, 12 and 13 still

16 belong to Mrs. Kellahan.

17 Referee Right.

18 A And Mrs. Duke.

19 Referee Right.

20 A And if and when any one of those lots is sold, other

21 than 14, I would be obligated to put that road in.

22 there but I can leave that as a proposed road until

23 one of those lots is sold and somebody needs access.

24 Referee The difference is whether or not it is going to be a

25 road or a proposed road. The term proposed is the

- 1 issue.
- 2 Mr. O'Bryan Yes, sir, I think so. First of all there is a Statute on
3 point that says according to plat does not create a
4 dedication.
- 5 Referee I'm not worried about dedication. That's not my
6 question.
- 7 Mr. O'Bryan As to this property, if any of those lots are sold,
8 depending on the roadway for access, then you have
9 created a right-of-way in that person.
- 10 Referee You have an elderly development back here with as
11 many as possibly as 24 people living there. You
12 don't have to have many cars, and you have to have
13 some public access and will probably need
14 healthcare, which is one of the arguments for why
15 you don't want to close the road from the corner of
16 that to Ashton Avenue.
- 17 Mr. O'Bryan That's correct.
- 18 Referee Because the only way you can get to the hospital if
19 you close that was Nelson Boulevard if I understand
20 correctly.
- 21 Mr. O'Bryan That's correct.
- 22 Referee I am looking at a plat, and I purchased 3 acres back
23 there with a specific agreement that I could put in a
24 retirement home or a nursing home facility or
25 whatever with a plat that shows a 50 foot proposed

1 road out to 377 that does not touch Nelson
2 Boulevard, it seems like to me I have an argument
3 saying that road needs to go in. I'm not saying that
4 anybody has done that. That's my question.

5 Mr. O'Bryan And I don't know the answer to that.

6 Referee I don't either, and that's why I'm asking. My point
7 being that until I know the answer to that, I'm not
8 going to be clear in my mind that the only way you
9 have access for emergency vehicles is to Nelson
10 Boulevard. Do you see?

11 Mr. O'Bryan Yes, sir, I do.

12 Referee I know we have more to do on this. For the people
13 that are here, and I know everybody is interested, we
14 had a meeting ahead of time so they could educate
15 me on what is going on, and what the issues and
16 what the fight is about. I have had to learn this
17 today, something that ya'll have experienced for
18 how many years now, Mr. Kellahan.

19 A Two or three.

20 Referee At least since you purchased the property. What I
21 think we are going to have to do, I wanted to take all
22 the testimony and get all the documents in and give
23 me a chance to then read them. At that point we
24 talked about either just the parties getting back
25 together or having the lawyers and me get together

1 and ya'll tell me what your positions are, and answer
2 questions like I am asking right now. Obviously I
3 need the help. It is going to take a while before we
4 can reach an ultimate decision on this, because I
5 can't rush to say one way or the other because I also
6 have a deed that talks about an easement that goes
7 all the way to Ashton Avenue. You're not making it
8 easy. I have one clarification, and I am going to tell
9 you what the question is, and if you have an
10 objection, I will decide whether I should ask it or
11 not. He said that he had Senator McGill attend the
12 meeting for him because he couldn't make it. Am I
13 correct on that?

14 A Yes, sir.

15 Referee I don't have any other questions.

16 Mr. O'Bryan I don't have anything further.

17 Mr. Jarrett Nothing further.

18 Referee Any other testimony.

19 Mr. O'Bryan None from the defense your Honor.

20 Referee Mr. Jarrett.

21 Mr. Jarrett None.

22 Referee Let's do this, instead of actually closing the record,
23 let's give us a chance to regroup and keep the record
24 open. If we need to have any more testimony after
25 we have had a chance to talk about it, I will be

1 happy to do that. Mrs. Kelly may I take all the
2 exhibits.

3 Mrs. Kelly Yes, you may.

4 Referee Thank you.

5 Mr. Jarrett Are you saying that we will get back together, and
6 would you like us to prepare you some type of
7 written memorandum.

8 Referee I would like a chance to read it, and then let's do an
9 informal meeting. We can do it at Monte's office or
10 my office or your office, and we can decide what
11 needs to be answered or what I need to have
12 answered.

13 Mr. Jarrett We will just look to hear from you.

14 Referee Give me about seven days.

15 Mr. Jarrett Yes, sir.

16 Mr. O'Bryan Would it be beneficial your Honor, for me to hand
17 up cases on Statutory case law which we are relying
18 on.

19 Referee I would love a copy of it. You can just drop it by
20 the office

21 Mr. O'Bryan I have it here your Honor.

22 Referee Do you have copies for everybody.

23 Mr. O'Bryan Yes, sir, I have a copy for yourself and a copy for
24 Mr. Jarrett.

25 Referee Yes, sir, that's fine. If you need to give me

- 1 anything, Mr. O'Bryan or Mr. Jarrett, please do.
- 2 Mr. Jarrett Yes, sir. Thank you your Honor.
- 3 Mr. O'Bryan Thank you your Honor.

- 1 Judge Dickson Are we ready to begin?
- 2 Mr. O'Bryan Yes, sir, may it please the court Your Honor.
- 3 Judge Dickson Yes, sir.
- 4 Mr. O'Bryan Your Honor, this is a continuation of a hearing held
5 in April, 2006 regarding a Petition to close Porter
6 Street filed by the Town of Kingtree. At this time I
7 would like to resume the hearing and call Senator
8 John Yancey McGill to the stand.
- 9 JOHN YANCEY MCGILL, HAVING BEEN duly
10 sworn, testified as follows:
- 11 DIRECT EXAMINATION BY MR. O'BRYAN:
- 12 Q Senator McGill, would you please state your name
13 and your address please sir.
- 14 A John Yancey McGill, 309 Mingo Road, Kingtree,
15 South Carolina.
- 16 Q Senator McGill, are you familiar with the
17 circumstances concerning Porter Street as they relate
18 to this particular lawsuit?
- 19 A I am not familiar with the lawsuit, but I am familiar
20 with the discussion that went on at the council
21 meeting concerning Porter Street.
- 22 Q Did you attend the public hearing and the town
23 council meetings where the closing of Porter Street
24 was discussed?
- 25 A I did attend. I don't know the date, but the record

1 will stand for itself.

2 Q I believe the record reflect that you attended the
3 January 26, 2004 meeting, February 2, 2004 public
4 hearing and February 2, 2004 town meeting.

5 A Alright sir.

6 Q What was your purpose in attending those meetings?

7 A My purpose in attending those meetings was I was
8 very much interested in seeing senior citizen
9 housing come to Kingstree, Williamsburg County.
10 Also I was asked the question I think by Mayor
11 Kirby or maybe the city manager if Porter Road
12 could be paved, and I told him that I would need to
13 check with the Williamsburg County CTC but I
14 certainly would be in favor certainly especially
15 when it would be tax base and jobs.

16 Q As you are aware Mr. Kellahan has an easement for
17 Porter Street that runs through the Nelson property.
18 Did Mr. or Mrs. Kellahan or Mrs. Dukes authorize
19 you to take any action on their behalf at any of these
20 meetings?

21 A They did not.

22 Q To your knowledge did Mr. Kellahan have any
23 advance knowledge that Porter Street was to be
24 closed permanently?

25 A Not from me he would not have had the knowledge,

1 but I don't know if he would or not.

2 Q The minutes reflect that apparently you brokered the
3 deal to do permanent closing of Porter Street at the
4 February, 2004 meeting. Is that something that you
5 were doing on Mr. Kellahan's behalf or was that
6 something that you did on your own?

7 A Let me qualify one thing. City Council brokered the
8 deal for the Porter Street opportunity. I can tell you
9 this that I myself was very interested and I
10 recommended highly to city council that they go
11 ahead and move forward whether it was the first
12 reading or the second reading or the third reading,
13 and I don't know, but I recommended that they
14 would move forward. I personally knew the need of
15 housing in Kingstree, especially senior housing.

16 Q In other words you were doing this for your
17 constituents and not Mr. Kellahan?

18 A That is correct, and we probably need 200 more
19 senior citizen houses in Kingstree today.

20 Q Thank you sir. I don't have anything else.

21 CROSS EXAMINATION BY MR. JARRETT:

22 Q Senator McGill, were you aware when the deal was
23 struck that the road was to be closed off
24 permanently?

25 A Attorney it was my understanding that the Ashton

1 Avenue residents, who were very cooperative and
2 who were very sensitive to housing, and very
3 sensitive to their own needs in the neighborhood,
4 and they wanted to work with the potential housing
5 project, but they wanted to protect the privacy of
6 that neighborhood. The only way that council
7 would move forward, and I don't know whether it
8 was one of the council members mentioned a fence
9 or a gate would be put up, and I know it was a fence
10 but I'm not sure about the gate, but before that could
11 occur as satisfying the residents of Ashton Avenue a
12 fence would have to be put up.

13 Q I believe the town minutes reflect, and I will show
14 you Plaintiff's Exhibit #4, at one point in the
15 meeting they did discuss temporarily closing the
16 road, is that right?

17 A I don't remember. Whatever the record show, that's
18 correct. I just remember at one point if there was a
19 festival that the potential was there if a gate was
20 there that it would be open for the festival only, but
21 there was concern about that as well.

22 Q I guess I just showed you the public hearing portion,
23 and it says Senator McGill made recommendations
24 to council for second reading of the ordinance with
25 the understanding that Porter Street would be closed

1 off permanently from Ashton Avenue, a barricade
2 would be put there and a fence put up. He asked
3 that a letter be sent from the Town to the CTC
4 requesting the funds to pave Porter Road.

5 A That is correct. I think this is a formal statement that
6 I made, and as I stated a while ago as far as a
7 reading I encouraged that they would move forward
8 if it was second reading. I think it was formally
9 discussed in the meeting that a barricade would be
10 put up and that was also an agreement between the
11 city and also the residents of Ashton Avenue.

12 Q I think they talked about temporarily closing, but the
13 ultimate recommendation from the public hearing
14 was to permanently close the road, is that your
15 understanding?

16 A I don't know that. Whatever the record says,
17 whatever the minutes state.

18 Q And the minutes clearly reflect permanently, is that
19 correct?

20 A I know there was discussion at one time about the
21 potential of a festival and opening it, but not on a
22 regular basis but when they had the barbecue
23 festival.

24 Q Based on your knowledge of being a legislator is
25 there a way to temporarily close a public road where

1 you can open and close it legally.

2 A I think the local government can make pretty much
3 the decision that they want to make. If they want to
4 use it, it can be an understanding that the local
5 government can have with the local community.

6 Q So your understanding is that legally you can
7 temporarily close a public road?

8 A I believe that you can close a road, and you can put a
9 fence there, and I think the city if it's in the best
10 interest of the citizens of Kingstree that you can put
11 a gate there and you can open it if it is so desired by
12 the mayor and council.

13 Q And who was to put the fence up from the canal all
14 the way to Porter Street, do you remember?

15 A I know there was a certain responsibility that the city
16 would have and a certain responsibility that Mr.
17 Kellahan would have, and that was in the discussion.

18 Q And Mr. Kellahan was to fence all the way from his
19 property to the highway, but it didn't have to go all
20 the way to 377, is that right.

21 A It was my understanding that is what council and
22 Ashton Avenue residents discussed, correct.

23 Q Did you convey that back to Mr. Kellahan, that he
24 would need to fence that, or how did that get
25 conveyed back?

- 1 A I think that the city conveyed it back to him. I may
2 have talked back with him at some point and said
3 that discussion came up, but I want to make it
4 perfectly clear I was not representing Mr. Kellahan
5 at that hearing or at those public forums. He is very
6 capable of speaking for himself, and I think anybody
7 that knows Mr. Kellahan knows that.
- 8 Q Right, but were you aware that he actually had a
9 conflict and couldn't attend the meetings that night?
- 10 A He was either out of state or out of the country, I
11 can't remember.
- 12 Q And previously in his sworn testimony he testified
13 that he sent you actually to represent his interest?
- 14 A That is not correct.
- 15 Q Were you aware that he actually testified to that?
- 16 A No, not before today.
- 17 Q And the matter came up did it not because the
18 property actually had to be rezoned in order for that
19 senior citizen center to go there?
- 20 A That is correct.
- 21 Q So if council had not rezoned the property for Mr.
22 Kellahan, I guess he would have lost the deal as far
23 as selling that property?
- 24 A That is correct.
- 25 Q And he sold that property to Waccamaw for

1 \$60,000.00?

2 A I don't know that.

3 Q I don't believe I have any further questions.

4 Mr. O'Bryan I would like to redirect your Honor.

5 Judge Dickson Yes, sir.

6 REDIRECT EXAMINATION BY MR. O'BRYAN:

7 Q Senator McGill, let me see if I can clarify something
8 Mr. Jarrett had asked you. You and Mr. Kellahan
9 are friends and business associates, is that correct?

10 A Correct.

11 Q And you were aware that for one of these meetings
12 he had to go out of town. As Mr. Jarrett eluded to
13 he testified that he sent you. Were you attending the
14 meeting just as a friend of Mr. Kellahan to report
15 back to him what went on or were you attending as
16 agent to make decisions for him.

17 A I was attending the meeting strictly on behalf as a
18 state official and as having been a former city
19 official and in the interest of bringing senior citizen
20 housing to Kingstree and Williamsburg County, and
21 it had been talked about the potential for paving that
22 road, and I was there to assure council that I would
23 do all that I could to help in getting that road paved,
24 and it was done.

25 Q Thank you sir.

1 Judge Dickson Mr. Jarrett.

2 Mr. Jarrett Nothing further.

3 Mr. O'Bryan I would ask that Senator McGill be excused as he
4 has another engagement.

5 Senator McGill Thank you Judge, I appreciate it.

6 Judge Dickson Do we have any other witnesses?

7 Mr. O'Bryan I don't have any other witnesses or evidence but I
8 would like to make a statement to the court about
9 our position.

10 Judge Dickson Is that alright with you, Mr. Jarrett.

11 Mr. Jarrett I do have some additional evidence I would like to
12 put in.

13 Judge Dickson Alright sir.

14 Mr. Jarrett These will be Plaintiff's Exhibit #7, which are the
15 deeds into the Town, and are the public record from
16 all of the heirs for this piece of property that show
17 that boundary. I think was a question in the
18 previous hearing, and these deeds will clear that up.

19 Mr. O'Bryan Your Honor, I am going to object. The Plaintiff has
20 already rested their case. I think it would be
21 improper to put these in at this juncture.

22 Mr. Jarrett But my response to that is the Defendant has rested
23 too, we both rested, and what you did was ask us to
24 come back if additional evidence was necessary to
25 clear up and that is why we accommodated Senator

1 McGill.

2 Judge Dickson Right, and I knew we reopened the hearing for
3 Senator McGill and I presume once you do that all
4 the evidence can go in, but I will note that it is going
5 on over our objection. How many deeds are there?

6 Mr. Jarrett There are seven deeds.

7 Mr. O'Bryan And those are the deeds from various residuary
8 beneficiaries.

9 Mr. Jarrett Yes, sir.
10 DEEDS received and marked Plaintiff's Exhibit #7.

11 Mr. Jarrett That's all we have.

12 Judge Dickson Mr. O'Bryan, do you have anything else you want to
13 put in.

14 Mr. O'Bryan I have some information that I would like to put on
15 the record, but I don't have any other documentary
16 evidence.

17 Judge Dickson We talked before we started that ya'll need to
18 provide me a proposed Order. You can E-mail it so
19 that I can work for the E-mail if you would. If you
20 determine when you are preparing that Order that
21 you think some other evidence needs to go in call
22 me so we can discuss it.

23 Mr. O'Bryan Yes, sir.

24 Judge Dickson Mr. Jarrett, do you want to close first.

25 Mr. Jarrett I will be glad to. Your Honor, it is the Town of

1 Kingstree's position as well as all of the residents on
2 Ashton Avenue that have participated that the
3 portion of Porter Road, the very end portion that is
4 unpaved, be permanently closed and deeded to the
5 appropriate property owners as requested. We
6 complied with the Statue, and we have let everyone
7 know, and everyone who is connected with this is in
8 favor of the closure except for Mrs. Kellahan and
9 Mrs. Duke who have been represented by Mr.
10 Kellahan throughout this proceeding. It was argued
11 that there was never an open road, it was a private
12 road and we had never gotten a deed from the Marie
13 Nelson Estate. The deeds actually reflect that when
14 we brought the property from the Historical Society
15 and the six residual beneficiaries that the boarder
16 was actually the Kellahan and Duke property, so our
17 deed actually encompasses the road. There is a
18 recorded easement into Duke and Kellahan which is
19 the subject of this, and we are asking that that
20 easement be extinguished for that little portion at the
21 end. One of the considerations for the rezoning of
22 the property was that the road would be permanently
23 closed off or else council would never have rezoned
24 it. The citizens of Ashton Avenue were very upset
25 about this housing going on back there, and they

1 were upset about the increased traffic, and they had
2 a number of concerns. They had first reading, and
3 Councilman Bartelle was actually late for the
4 meeting because he was getting so many calls from
5 citizens that live on Ashton Avenue. He brought
6 that up, and said that we needed to publicize it, and
7 we had a public hearing which several citizens
8 attended as well as a second reading which several
9 citizens attended. The rezoning would not have
10 been done without the deal. Unfortunately Mr.
11 Kellahan could not be present for the hearing and
12 the second meeting, however, he testified on page
13 72 at the first hearing on February 2, you sent
14 Senator McGill to represent your interest, is that
15 correct? His answer was yes, and up until today it
16 has been my understanding that he could not be
17 present, and he sent Senator McGill to look after his
18 interest and get the job done and get it rezoned so he
19 could put the sixty thousand in his pocket and go
20 through with the deal. The deal was done so that he
21 could sell his property, and he knew about the deal,
22 and he actually constructed the fence which was part
23 of the deal. He constructed the fence all the way
24 down on his portion of the property. There is
25 absolutely no way to close off a public street

1 temporarily where you can open and shut it. It has
2 to be closed permanently if it is a true public street.
3 There is no way to have a gate that you can close at
4 some time and open at some time. It has to be
5 permanently cut off or it has to be opened back up.
6 It's kind of like being pregnant, either you are or
7 you aren't. So if it's a public street, it's got to be
8 open or permanently closed. You can't put a gate up
9 and open and close it like you want to. There are
10 also concerns that the homes in that area are very
11 close to the street, and the concern was that there are
12 children in those homes and it would be a safety
13 hazed. The two residents who have the homes that
14 abut the street testified about the danger to their
15 children and nieces of nephews. For those reasons
16 we think it is manifestly in the best interest of the
17 Town of Kingstree and all of its citizens that this
18 road be closed off permanently as the road was
19 originally brokered and made. Thank you your
20 Honor.

21 Judge Dickson Thank you. Mr. O'Bryan.

22 Mr. O'Bryan Your Honor, the Town has brought this proceeding
23 pursuant to Section 57-9-10 of the South Carolina
24 Code of Laws. That particular statutory section
25 addresses the mechanism for closing any street, road

1 of highway. It does not address an easement. As the
2 record will reflect Mrs. Kellahan and Mrs. Duke
3 received an easement from the Estate of Marie
4 Nelson, and that easement was given prior to any
5 deeds out from the Town or residuary beneficiaries.
6 The easement is a private property right to Mrs.
7 Kellahan and Mrs. Duke. It is not a public road. I
8 think testimony indicates that. The section of the
9 roadway that Mr. Jarrett is attempting to close has
10 never really been opened, it has never really been
11 paved. The Town also interestingly enough is
12 asking that Mrs. Kellahan's easement be closed, but
13 they want to retain their own easement for water and
14 sewer services. That is part of their pleadings. Your
15 Honor, further this easement was given in writing
16 and I think the Statute of Frauds would dictate any
17 relinquishing or abandonment of that easement
18 would also have to be in writing, and of course, that
19 has not been done. The Town has not shown any
20 dedication of the roadway. Our case law reflects that
21 any dedication if it's not written, it must be strict,
22 cognate and convincing. You don't have that here.
23 The South Carolina Law also specifically in Blue
24 Ridge Realty versus Williamson 247 SC 112 refers
25 to a private easement survives the vacation,

1 abandonment or closing of a road or highway. This
2 particular case talks about lots, and I believe it also
3 applies in this case. Additionally, your Honor, the
4 pleadings are asking for the Town to vest title in the
5 adjoining property owners. My understanding of
6 our South Carolina law is that the court has no
7 authority to vest property in the other property
8 owners or convey title, but merely to declare in who
9 the title is already owned. Again Mrs. Kellahan and
10 Mrs. Duke have a written easement to this property.
11 I think even any interest that the town has in the
12 roadway is abandoned that prior easement survives.
13 There was testimony by Mr. Kellahan that the
14 property was acquired for commercial use and
15 development and that they bought property
16 predicated on having access both to Ashton Avenue
17 and to Nelson Boulevard. Mr. Kellahan has testified
18 as to diminution in value should the Ashton Avenue
19 entrance be closed off. There has been no testimony
20 introduced to contradict what he said as to the
21 diminution in value. We would ask the court that
22 should it decide to close the road to consider the
23 issue of damages and the reduction in the market
24 value of the property of Mrs. Kellahan and Mrs.
25 Duke. Your Honor, Code section 57-9-20 South

1 Carolina Code of Laws also requires that prior to a
2 roadway being closed that the court conclude that it
3 is in the best interest of all parties concerned that the
4 roadway be closed. As we have already indicated
5 we feel that it would impact the economic value of
6 Mrs. Kellahan and Mrs. Duke's remaining property,
7 and as the testimony will reflect this would cut off
8 one of the only remaining accesses from Nelson
9 Boulevard to any side street that would have the Pig
10 Pickin' Festival or baseball tournament or any other
11 event at the complex, there is no way for emergency
12 vehicles to get through or for anyone to get off or on
13 the road when you have that much traffic on the
14 road. Lastly, your Honor, I would like to address
15 the issue of estoppel. It has not been pled, but
16 certainly it has been raised. My understanding is if
17 the equitable estoppel is in the nature of an
18 affirmative defense it must be pled, or it's waived.
19 It certainly has not been pled in this case. The
20 testimony from Senator McGill is that he was not
21 acting as their agent, and that he had no authority to
22 bind Alice Kellahan or Lydia Duke to the agreement
23 of closing the road or Nicky Kellahan as their agent.
24 I think the evidence also reflects that Mr. Kellahan
25 thought this was a temporary measure and did go

1 ahead and erect the fence as he was requested to do.
2 In the nature of the ownership of an easement
3 putting up a fence or a gate as a temporary measure
4 is not inconsistent with the ownership of a private
5 easement. For estoppel to apply your Honor, an
6 injury claim must be actual, material or substantial.
7 In this case the situation reflects that the residents of
8 Ashton Avenue were concerned with the increased
9 traffic. The testimony was that the PUD
10 development would probably be substantially less
11 traffic than it would if there were some general
12 commercial enterprise there. The function of
13 estoppel is to prevent fraud and injustice and if there
14 is no loss or injury, then there is on estoppel. If you
15 look at the testimony as a whole, there is going to be
16 less traffic there, so you have no injury, and we
17 would ask your Honor to take that into
18 consideration. If you consider the estoppel to be a
19 valid claim, that you consider there is no actual or
20 material injury to the adjoining property owners or
21 to the public as a whole.

22 Judge Dickson

Mr. Jarrett, anything further.

23 Mr. Jarrett

Just briefly to respond. I believe that we do have the
24 power to close the public road under the specific
25 statues quoted, and the Town properly pled and

1 notified all adjoining property owners and also
2 notified them as the easement owners and
3 specifically pled that they were the easement owner.
4 As far as the agency argument your Honor, it's my
5 understanding of law it's what the principal gives to
6 the agent. It's the principal's intent. If the principal
7 intends to give power to an agent to come represent
8 him, it ends there. If the person comes and does it,
9 it ends there, and it doesn't matter that the agent
10 somehow didn't understand or the agent wasn't clear
11 on whether they had the power. The statutes and the
12 case law all deal with what is the principal's thought
13 process or what was their intent. Here clearly Mr.
14 Kellahan has indicated at the previous hearing that
15 he sent Senator McGill to represent his interest and
16 Senator McGill did that. Mr. Kellahan complied
17 with what was requested of him, he put up the fence,
18 and he did all of this so that he could get the sixty
19 thousand in his pocket, and now two years later is
20 complaining about it, and not wanting it to be
21 permanent. We think estoppel does apply, and we
22 think we have complied completely in the Statutes
23 and we think it is manifestly in the best interest of
24 everybody concerned that we follow through with
25 what was done two years ago, and close this road

1 permanently. Thank you your Honor.

2 Judge Dickson You're welcome. Anything else.

3 Mr. O'Bryan Can I be heard with one brief follow-up.

4 Judge Dickson I think that would be reasonable. I want everybody
5 to put in everything they can, I don't want to miss
6 anything.

7 Mr. O'Bryan On the agency theory your Honor, the record is clear
8 Mr. Kellahan was not present at the time the Porter
9 Street closing was discussed. Even if you assume
10 that Senator McGill went at his request, Mr.
11 Kellahan had no way of knowing that was on the
12 table, and that would have been beyond what his
13 state of mind might have been about what would
14 have gone on at the hearing. Senator McGill's
15 testimony was that he was acting on behalf of the
16 public to get this road paved and get this housing
17 development built. It doesn't indicate that he had
18 any instructions from Mr. Kellahan or that they had
19 any conversation regarding the closing of the road.
20 If you Honor will review the transcript, you will see
21 that Mr. Kellahan thought it was a temporary closing
22 of the road, and as such he complied with the
23 request that he erect a fence.

24 Judge Dickson Let me ask a couple of questions. There are two
25 meetings that are important. There is a January 26,

- 1 2004 meeting and February 2, 2004 meeting, am I
2 correct on that?
- 3 Mr. O'Bryan Yes, sir.
- 4 Judge Dickson I've got the transcripts of those two meetings. Who
5 prepared the transcripts.
- 6 Mr. Jarrett The minutes.
- 7 Judge Dickson The minutes.
- 8 Mr. Jarrett The town clerk does.
- 9 Judge Dickson How soon after the meetings does the town clerk get
10 to prepare the minutes?
- 11 Mr. Jarrett Usually within 2 to 3 weeks. She starts immediately
12 afterwards, but they are not actually published to the
13 council members until the week prior to the next
14 meeting so that they can review them, but she does
15 them right away, and she does them from the tapes.
- 16 Judge Dickson For the record, the town meetings occur how
17 frequently, once a month.
- 18 Mr. Jarrett Once a month on the third Monday of each month.
- 19 Judge Dickson So by the first part of March, 2004 we had the
20 minutes of both meetings transcribed.
- 21 Mr. Jarrett That's correct.
- 22 Judge Dickson Can anybody come in and look at them?
- 23 Mr. Jarrett Yes, sir, these are all public records.
- 24 Judge Dickson For public review.
- 25 Mr. Jarrett Yes, sir.

- 1 Judge Dickson How soon after February 2, 2004 meeting did the
2 paving of the portion of Porter Road that goes out to
3 Nelson Boulevard start. Are we talking six months,
4 three months, a year and a half. Mr. O'Bryan, if you
5 disagree, please correct me.
- 6 Mr. Jarrett Mr. Kirby indicates that the paving was done right
7 prior to the completion of the construction and it
8 took about a year to get the construction done.
- 9 Judge Dickson So the construction on the homes began when.
- 10 Mr. Jarrett Immediately after...
- 11 Judge Dickson Immediately after the February 2 approval.
- 12 Mr. Jarrett Right, or within sixty days.
- 13 Judge Dickson But sometime after that, and the roadway was paved
14 within the year?
- 15 Mr. Jarrett Yes, sir.
- 16 Judge Dickson Thank you. I don't have any other questions.
- 17 Mr. Jarrett When do you want the proposed orders to you.
- 18 Judge Dickson Do you want two weeks or ten days.
- 19 Mr. Jarrett Ten days will be fine.
- 20 Mr. O'Bryan Let me go with two weeks, your Honor. I am short
21 staffed right now.
- 22 Judge Dickson Certainly, two weeks is fine. That would be roughly
23 the end of the month. Let's just say April 30.
- 24 Mr. Jarrett That's fine.
- 25 Judge Dickson Thank you.

1 Referee Good morning. Maybe I can do it this way if you
2 don't mind. Every time I pick this up I feel like
3 I'm having to relearn everything.

4 Mr. Reddeck Yes, sir.

5 Referee In an attempt to try to get my Order correct, which
6 is what I would like to have because I'm pretty
7 sure no matter what I sign, somebody in
8 Columbia is going to look it over or at least I
9 anticipate that. What I would like to do if you
10 will work with me, is I want to start making notes
11 on all the moving parts in this. For example there
12 is no question that the Defendants, Duke and
13 Kellahan had an easement, right.

14 Mr. Reddeck Your Honor, that's what I thought. The allegation
15 in the Complaint, the Petition, stated that. I think
16 on page 11 and 18, the arguments in that second
17 hearing, Mr. Jarrett said that they were the
18 easement owners. In the Reply Memorandum I
19 got some indication that there was now a claim
20 that there was a prior dedication, and the
21 easement was no longer there. I'm just kind of
22 amazed at that.

23 Referee Let me do it this way. Let's talk about the first
24 issue, the dedication of Porter Street then. Can
25 we say that, whether Porter Street was ever

1 dedicated or not? Is that an issue?
2 Mr. Reddeck I think that's an issue.
3 Referee Okay, that's an issue. If y'all will work with me
4 on this, since we've been through this I don't
5 know how many times, was Porter Street
6 dedicated. The next issue then is going to be the
7 Duke and Kellahan easement, period. If we have
8 to, we'll just deal with it. I don't think I'm
9 oversimplifying it but correct me if I'm wrong.
10 There is on question the focus is on the unpaid
11 portion of what is called Porter Street, right.
12 That's what the whole suit is about.

13 Mr. Reddeck Yes, sir.

14 Referee Okay. Then there is the issue of equitable
15 estoppel. If I'm missing something stop me. This
16 is what I'm just thinking about. I'm hoping that
17 y'all will help me with my list because on every
18 page of this note pad, I'm putting a different issue
19 so I can accumulate our arguments under these
20 particular issues. In all seriousness y'all have
21 done a wonderful job of Briefing it. and now I
22 need a good job of helping me focus on the
23 moving parts.

24 Mr. Reddeck Your Honor, may it please the court.

25 Referee Yes, sir, and I don't mind if we do it informally.

- 1 We all know each other well, and let's just say it.
- 2 Mr. Reddeck That will be fine. It seems to me that in all of
3 these there are some burden of proof issues that
4 need to be reviewed. I think there are some issues
5 when you get into the actual Petition itself, and
6 the closure of this road or of this area. We can
7 call it a road.
- 8 Referee Adequacy of Petition.
- 9 Mr. Reddeck It's whether or not this was ever a road that could
10 be closed under that Petition. In other words
11 denial by the Defendant, it seems to when you
12 look at the Statutory definition for that Title 57,
13 the question of whether or not there was ever a
14 road that could be closed. Also we have the
15 compensation, inverse condemnation question
16 that has been raised by the Defendants, Duke and
17 Kellahan. I think there is a question of agency,
18 and I think with the estoppel to me as I read
19 everything and I'm kind of the debutante in this
20 deal.
- 21 Referee It never hurts to have another look.
- 22 Mr. Reddeck I didn't want to say, but I know all of us
23 appreciate your willingness to listen to this one
24 more time, and I realize you could have said send
25 me a memorandum or don't send me anything. I

1 appreciate it, and my clients do too. I know Ernie
2 does too.

3 Referee Some other issues may come up as we go through
4 this.

5 Mr. Reddeck I guess the only thing I wanted to say was the
6 question about agency and estoppel and how they
7 are related.

8 Referee Let's get a time line. Let's agree on what dates
9 for certain things if you don't mind. I guess we
10 should start off with Mrs. Kellahan and Mrs.
11 Duke purchasing the twenty point whatever acres.
12 Would that be soon enough to start, or do we need
13 to start before that as far as a time line is
14 concerned. We know about the plats, we have
15 1903, 1909, and what the plat shows is what the
16 plat shows. It seems to me that if we start with
17 the deed from Sammy to Mrs. Duke and Mrs.
18 Kellahan, what was the date?

19 Mr. Reddeck That was 1993 your Honor. It was September 17,
20 1993, and the easement was the same time.

21 Referee Okay. I know that a lot of this is already in the
22 Order, but I'm just talking about for purposes of
23 our thinking today. We have the easement as you
24 said. What is the next significant date? Is it when
25 were trying to work out the senior citizens

1 housing. We have some deeds before then when
2 the Town of Kingstree picked up the - - -
3 Mr. Reddeck They purchased those in 1998 I believe.
4 Referee And that was prior to - - -
5 Mr. Reddeck In 1998 I believe, is that right Ernie.
6 Mr. Jarrett Right.
7 Referee So in 1998 the Town purchases the property for
8 the recreation center, right?
9 Mr. Reddeck That's when the town purchased that other part of
10 the Nelson property and also the road bed or this
11 area in question.
12 Referee And in the purchase of the property that was for
13 the recreation center.
14 Mr. Reddeck I believe so your Honor. I believe most of those
15 deeds, Tract 5 is where that was, and there were
16 several deeds, like four deeds. I believe that was
17 Defendant's Exhibit 7, the deeds that were
18 introduced in that second hearing.
19 Referee Alright. In that purchase they purchased the road
20 bed for what is now Porter Street, or what has
21 been paved?
22 MR. Reddeck Yes, sir.
23 Mr. Jarrett Actually the unpaved portion was.
24 Mr. Reddeck The unpaved portion was a separate tract on each
25 one, wasn't it?

1 Mr. Jarrett Right, the unpaved portion is what they
2 purchased, and they purchased all of Porter Street.
3 Referee So the town purchased the property for the rec
4 center, which included what is now the unpaved
5 portion of Porter Street.
6 Mr. Jarrett The unpaved portion and the paved portion.
7 Referee Okay.
8 Mr. Reddeck Your Honor when the town purchased it, on each
9 of these deeds, I believe there was a tract 5 which
10 was just that area that is in question there.
11 Referee Okay.
12 Mr. Jarrett And then as a part of the big tract that
13 encompassed the rest, the paved portion of Porter
14 Street.
15 Referee Okay.
16 Mr. Reddeck Your Honor, I don't know how clear this was, but
17 I believe that the paving went up to the Senior
18 Citizens Center, but it didn't go all the way to that
19 property line, is that correct.
20 Mr. Jarrett I thought it went all the way to the property line,
21 but I'm not sure.
22 Mr. Reddeck So you don't know.
23 Referee In my mind the paved portion goes to where the
24 fences were put up. Is that not true?
25 Mrs. Shuler It doesn't go all the way up to the fence.

- 1 Referee Okay, it stops at the Senior Citizens Center.
- 2 Mr. Jarrett Probably where they turn into the Senior Citizens.
- 3 Mr. Kellahan It stops at the driveway for the Senior Citizens
4 Center.
- 5 Referee Okay. Let me go back and make a note of that.
6 Would somebody give me an estimate of what the
7 distance is between the end of the paving and the
8 fence that was put up?
- 9 Mr. Jarrett Mr. Kellahan could probably give us an idea.
- 10 Mr. Kellahan Seventy five feet plus or minus.
- 11 Referee Seventy five feet. Are the next significant dates
12 the 2003-2004 when town was having the
13 meeting to rezone?
- 14 Mr. Reddeck As far as I know. January 26, was that the first
15 reading and then February 2, was the public
16 hearing and the second reading.
- 17 Referee January 26, 2004 was the first reading.
- 18 Mr. Jarrett January 26, 2004 and then February 2, 2004.
- 19 Mr. Reddeck The public hearing and the meeting on February
20 2, 2004
- 21 Referee And out of that February 2, 2004 meeting that's
22 where we had the town ordinance. What
23 happened after the meeting, you had the
24 ordinance read. Was the Ordinance approved?
- 25 Mr. Jarrett Yes, sir, first reading.

- 1 Referee Public hearing, ordinance approved.
- 2 Mr. Reddeck The first reading was on January 26, 2004. Were
3 just two readings required.
- 4 Mr. Jarrett Right.
- 5 Referee And what happens when the ordinance is
6 approved. Is it made a public record?
- 7 Mr. Jarrett Yes, sir.
- 8 Referee It becomes a public record at that time?
- 9 Mr. Jarrett Yes, sir, and it's not effective until the second
10 reading.
- 11 Referee If I wanted to go read it in the records of the
12 Town of Kingstree, would it be available over at
13 Town Hall?
- 14 Mr. Jarrett Yes, sir, there's an Ordinance book. Then the
15 ordinances are codified into a specific code. A
16 publishing company prints them, and there's a
17 book of ordinances. This would be like one of the
18 special ordinances that deal with property or
19 purchases in the back of the book.
- 20 Referee Is that ever published in a local newspaper?
- 21 Mr. Jarrett No, sir, not in the newspaper.
- 22 Referee Public notice of the Ordinances that have been
23 approved, not just this one, what is required by
24 State law?
- 25 Mr. Jarrett We have to place them on the agenda, and the

- 1 agenda is posted on the bulletin board and sent
2 out to all public newspapers and media list. They
3 send it out before the meeting, and it has to be on
4 the agenda, for two different readings and then
5 they have the two public readings before it's
6 passed.
- 7 Referee So there is no issue that there was public notice of
8 the first reading, and public notice of the public
9 hearing when the Ordinance was ultimately
10 approved?
- 11 Mr. Jarrett Correct.
- 12 Referee And the approval of the Ordinance was not done
13 in executive session but in open session.
- 14 Mr. Jarrett Correct.
- 15 Referee What is the next significant date? Do you have an
16 idea when the section of Porter Street that is
17 paved was actually paved?
- 18 Mr. Jarrett I don't know. Mr. Kellahan may know. I know it
19 was shortly afterwards, it wasn't a long time.
- 20 Mr. Kellahan It was paved during the construction of the
21 housing project but I can't tell you the date.
- 22 Referee And the note I made that Mrs. Kellahan and Mrs.
23 Duke's sale was closed for the housing project on
24 May 3, 2004. Is that correct? I believe that's a
25 correct date. The suit that was filed on November

1 14, 2005, by the Petition for Abandonment and
2 Closure of Porter Street was filed with the court.
3 Has anything happened between May 3, 2004.
4 Was the housing project started immediately, and
5 I mean by immediately, shortly after the closing?
6 Mr. Kellahan Yes sir.
7 Mr. Reddeck I didn't know if you wanted to mention that, but I
8 believe the Ellis plat was done prior to - - - it was
9 attached to the pleadings so it was done prior to
10 that time. I don't know if that makes any
11 difference or not.
12 Referee It could, I just don't know.
13 Mr. Reddeck It was October, 2005 that the plat was prepared?
14 Referee Alright sir.
15 Mr. Reddeck October 4, 2005.
16 Mr. Jarrett Your Honor, I don't know if we have a time line
17 for when this fence was erected. Mr. Kellahan
18 may could tell us how soon after the February 2,
19 2004 meeting the fence was erected.
20 Referee I am taking it that everybody is stipulating as a
21 fact what Mr. Kellahan is telling me. If there is a
22 disagreement, I want to hear it after he says it.
23 Mr. Jarrett Right, I haven't disagreed.
24 Referee I agree that Mr. Kellahan should know and he's
25 with us today.

- 1 Mr. Kellahan You're asking about the fence?
- 2 Referee Yes, sir, when do you think it was erected.
- 3 Mr. Kellahan It was erected shortly after the closing of the
4 property, but I can't tell you when. I don't know
5 the exact time, but it was erected before the
6 housing project was started, before they started
7 construction. The town put their portion of the
8 fence up first, and I didn't know anything about
9 that I was supposed to put up a fence until later.
- 10 Referee When you saw the town putting up one?
- 11 Mr. Kellahan I think they told me I was supposed to put one up.
12 I didn't know because I wasn't at the meeting, and
13 I wasn't aware of all that went on. When I found
14 out I had to put it up, I put it up, and I think
15 construction had already started. There was some
16 question about why I hadn't put it up but I can't
17 recall the date.
- 18 Referee But sometime between the closing or the sale and
19 the Ellis plat being prepared, if we want to use
20 that date, the housing project construction had
21 begun, the fence was put up as required by law,
22 and the portion of Porter Street was paved during
23 the construction of the housing project?
- 24 Mr. Kellahan That is correct.
- 25 Referee And the Ellis plat is dated when?

1 Mr. Reddeck October 4, 2005.

2 Referee October 4, 2005.

3 Mr. Reddeck That is Plaintiff's Exhibit 1 I believe.

4 Referee And then everybody agrees November 14, 2005

5 the Petition to Close was filed.

6 Mr. Reddeck Yes, sir.

7 Referee Okay. And all pleadings were done appropriately.

8 Thank you for giving me that. What would be the

9 easiest way to start on these issues, y'all tell me.

10 Larry?

11 Mr. Reddeck Whatever you want.

12 Referee Let's talk about the dedication of Porter Street,

13 because it seems like to me that everything kind

14 of hangs on whether or not there was a dedication.

15 Of course, I think I found in my Order that

16 because public funds were used, and because of

17 the Town ordinance and all of the activity of the

18 parties, including reading the deed for the

19 easement, everybody wanted a public street there.

20 At least the portion that was paved was dedicated.

21 Is there any issue with that?

22 Mr. Reddeck Can I do one thing before I forget.

23 Referee Yes, sir.

24 Mr. Reddeck I had wanted to put these originals in as a part of

25 the record today, rather than me going through all

1 the facts and everything.

2 Referee You mean your Memorandum?

3 Mr. Reddeck Yes, sir.

4 Referee Mr. Jarrett, did yo bring one to put in, and if you

5 didn't, you can supplement.

6 Mr. Jarrett It's been filed, and it should be in the court file.

7 Referee Well, it hasn't gotten to the court file. It should

8 eventually be in the court file, and we all agree.

9 Mr. Reddeck The reason I wanted to do that rather than going

10 through all the facts and everything, with this in

11 the record, I just though that would work.

12 Referee That would be fine. Do you want to go ahead and

13 mark these.

14 Mr. Reddeck Y'all can put a copy in today would be fine. I

15 don't mind, or supplement it later.

16 Mr. Jarrett It will be in the record. Do you want to put it in as

17 an exhibit

18 Referee Did you file yours Larry, or did you just send it to

19 me.

20 Mr. Reddeck I sent them to you all and I said I was going to

21 bring them to file.

22 Referee So you brought the originals?

23 Mr. Reddeck The originals. You can put a copy in if you want

24 to. Later it won't matter. Your Honor, I will

25 stipulate to the court that what has bee filed with

1 the Clerk's Office will be a part of this hearing.
2 Mr. Jarrett I've just got one copy.
3 Mr. Reddeck That's fine. That's not a problem.
4 Referee I think the last Defendant's Exhibit is 18, is that
5 right. Y'all looked at these the other day, didn't
6 you.
7 Mr. Reddeck I looked the other day but - - -
8 Referee That is 17 and the one in the back is 18.
9 Reporter I just want to start with the correct number. So
10 these two are 19 and 20.
11 MEMORANDUM IN SUPPORT OF MOTION
12 TO ALTER OR AMEND JUDGMENT RECEIVED AND MARKED
13 DEFENDANT'S EXHIBIT #19.
14 REPLY MEMORANDUM IN SUPPORT OF
15 DEFENDANT'S LYDIA F. DUKE AND ALICE H. KELLAHAN'S
16 MOTION FOR RECONSIDERATION RECEIVED AND MARKED
17 DEFENDANT'S EXHIBIT #20.
18 Referee And Ernie, yours has already been filed so if it
19 were going to be an exhibit, it would be Plaintiff's
20 Exhibit 7.
21 MEMORANDUM NOT RECEIVED BUT
22 EXHIBIT #7 IS RESERVED FOR PLAINTIFF'S EXHIBIT #7.
23 Mr. Jarrett We will be glad to get a copy so she can mark that
24 one too.
25 Referee We can do housekeeping anytime we want to.

- 1 Mr. Reddeck I just didn't want to forget that your Honor.
- 2 Referee That's fine. I understand. I have kind of taken
3 over how I want this to go today, instead of
4 saying your turn and your turn.
- 5 Mr. Reddeck You tell us what you want, judge.
- 6 Referee Under the issue of whether or not Porter Street
7 has been dedicated, I just want to clarify a few
8 things. Is there any issue that the paved portion
9 of Porter Street has been dedicated?
- 10 Mr. Reddeck I don't think so your Honor.
- 11 Referee There is no question of that, right.
- 12 Mr. Jarrett No question.
- 13 Referee What about the portion that we just talked about
14 that I was really aware of before. The unpaved
15 portion from the driveway at the senior citizen
16 housing project at least to the existing fence line,
17 that is seventy five feet.
- 18 Mr. Jarrett Plus or minus.
- 19 Referee Seventy five feet plus or minus. Has that also
20 been dedicated.
- 21 Mr. Reddeck I think if it hasn't been paved, it hasn't been
22 dedicated is our position.
- 23 Mr. Jarrett Our position is if it is dedicated, the whole thing
24 was dedicated all the way to Ashton Avenue.
- 25 Referee Right. That's the difference. I was just trying to

1 eat this elephant one bite at a time so to speak.
2 The defense, anything unpaved has not been
3 dedicated, right?
4 Mr. Reddeck Yes, sir.
5 Referee The entire length of Porter Street is dedicated. Is
6 there any question about the terminology about
7 the Duke/Kellahan easement. It is what it is, and
8 the document reads for itself, correct. You quoted
9 it pretty well in your Reply Memorandum.
10 Mr. Reddeck I think the real issue about it is was that a
11 dedication at that time or was it something that
12 would be done in the future, giving them the right
13 do it in the future. Basically our position is that it
14 was a document that first provided for the access
15 for the grantor and the grantee both to use that
16 area on the first page, and then the subsequent
17 paragraphs that have been cited indicated that the
18 grantees had the right to actually dedicate it at a
19 later time.
20 Referee Right.
21 Mr. Reddeck Normally an easement does not give somebody a
22 right to dedicate an area, and I think that's our
23 take on it.
24 Referee Alright.
25 Mr. Reddeck I know what their position was.

- 1 Referee That there was a dedication at the time saying that
2 everybody was going to move forward to get the
3 road paved, and make it a public road as
4 expeditiously as possible.
- 5 Mr. Jarrett Right.
- 6 Referee Okay.
- 7 Mr. Jarrett Our position is your Honor, that the easement is
8 recorded in the courthouse and they've got a
9 document that it's an easement, and we
10 acknowledge that it was recorded. That's why we
11 named them as Defendants in the closing of the
12 road. However, we don't think the easement was
13 really necessary because the document in and of
14 itself indicated the intent to dedicate the road
15 publically kind of akin to the town including in its
16 pieces of property all these little - - - our
17 description from the deeds from the residual
18 beneficiaries in the Historical Society, included
19 all these little pieces of road that cut into the road,
20 although it's our position that those were public
21 as well based on the 1903 plat. Out of an
22 abundance of caution they were included in the
23 property description for the deeds to make sure
24 that the Town did have good title to it.
- 25 Referee These were the 1998 deeds?

1 Mr. Jarrett

Yes, sir. Our position that was unnecessary just like their easement was unnecessary because it was going to be a public road. It is of record, and we acknowledge it was of record, and it has been recorded.

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6 Mr. Reddeck

Your Honor, I guess I'm not clear as to whether or not based on the pleadings it stated the Defendants Kellahan and Duke have an easement, and the record on page 11, says there is a recorded easement to Duke and Kellahan which is the subject of this. We are asking that the easement be extinguished for a little portion at the end, and then on page 18 I think it is. Mr. Jarrett is again talking about the town's property, pled and notified all adjoining property owners and also notified them talking about Duke and Kellahan. The easement owners have specifically pled that they were easement owners, and when I read their Reply, the Opposition memorandum, I got there was a question whether or not it was a valid easement. There was some argument there, and it's kind of hard for me to see - - -

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Since we are talking about the easement, let's just go ahead and focus on it. We need to do all this anyway. I hate to use this term, because every

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1 time I've seen a lawyer come in the courtroom
2 and say there is a line of cases that says, but
3 doesn't show up with the cases, I'm always a little
4 suspect about that interpretation. Like Judge Blatt
5 used to tell Lionel Lofton, my dear friend, Mr.
6 Lofton, is this some law I can read in a book or is
7 this the law according to Lofton. I have read
8 some easement cases in this case and some others,
9 and that's why I'm asking this question. There
10 are some cases and it had to do with intersections
11 and whatever, where a business had an easement,
12 so they could get in, ingress and egress to their
13 property. It was paved, and part of the easement
14 was impassable because of the paving. The court
15 held, the Court of Appeals or the Supreme Court,
16 I can't remember which one, said that the
17 easement was substantially still there and they
18 benefitted from the pavement, so, therefore, there
19 is no claim for compensation for the closed
20 portion of the unusable portion of the easement.
21 Tell me if I have misread that or just
22 disremembered it, or nobody has ever read that
23 before except me. Y'all do a lot more of this than
24 I do on a daily or weekly basis.

25 Mr. Reddeck

I am going to have to admit I have not read that

1 case but in this case, what we are talking about,
2 the area in question is not going to be paved. It's
3 going to be shut off.

4 Referee Exactly. With the issue with the easement, is
5 access to my property.

6 Mr. Reddeck Yes, sir.

7 Referee And the smart thing was done in 1993 to buy it. I
8 think there is no question that was the smart thing
9 to do, and protect yourself. Then we come along
10 and we have a senior citizens housing project, and
11 the community wants it, and it goes in. Then we
12 have an issue whether or do we close the other
13 portion of the road, and whether or not there is
14 still an easement for that portion. If there's still
15 an easement for that portion, and was not
16 dedicated, and cannot be closed, then the question
17 is should it be closed, and if so, is it inverse
18 condemnation. That's the way I see it, and maybe
19 I'm wrong on that. Y'all correct me, and I think
20 that's your argument.

21 Mr. Reddeck Yes, sir, I think it is. Let me just say a couple of
22 things if I could which relate to the easement.

23 Referee Yes, sir.

24 Mr. Reddeck When you look at this Exhibit 2 I believe it was.
25 Referee Plaintiff's Exhibit 2.

1 Mr. Reddeck This was Defendant's Exhibit 2 I believe.
2 Referee Okay.
3 Mr. Reddeck This is a 1903 plat, and there are some arguments
4 that by that plat there was a dedication. I think
5 when you look at this there is no road designation
6 on this. Ashton Avenue is not even designated. I
7 don't think there is any question that the Nelson's
8 property back here needed access. Whether or not
9 it was for a street or a street in the future or
10 whatever, I don't think this plat in and of itself is
11 the dedication. I think there's a statute 629-11-70
12 that says just because a plat is put on record it's
13 not a dedication. When you look at the plat that
14 Mr. Ellis did, Plaintiff's Exhibit 1, and also
15 Defendant's Exhibit 9, these plats don't indicate
16 that area in question is a street, and talking about
17 the easement, the easement itself I think is a
18 strong indication that there was no dedication and
19 these parties didn't think there was any dedication
20 at that time because they reserved all of this.
21 They put in there in the future that it could be
22 dedicated. The paving is obviously a strong
23 indication, and without question admittedly there
24 was dedication when there was paving. There is
25 no indication that anybody has Porter Street in

1 their system from what I could understand from
2 the record. I may be wrong, but I don't think
3 there is dedication where it was paved. I think that
4 easement since we are talking about it, is a real
5 strong indication that the grantor and the people
6 receiving it had no indication there was any kind
7 of dedication based on the situation at the time. I
8 understand that the future is going forward, but I
9 guess that's the crux of this matter like your
10 Honor said. Was there dedication, and if it was,
11 when was it, and without question where it's
12 paved was dedicated. I hope I have kind of
13 responded about the easement.

14 Referee Ernie, do you have anything on that.

15 Mr. Jarrett Your Honor, my question is if clearly all the plats
16 have referenced that they are now acknowledging
17 - - - there was a two day hearing the argument was
18 that Porter Street was never public the whole
19 time. Now I think they are acknowledging at least
20 up to the point that it's paved.

21 Referee You know I determined in my Order that the
22 paving of it was a dedication.

23 Mr. Jarrett Right.

24 Referee And using public funds was a dedication.
25 Otherwise we would have a lot more problems.

1 Mr. Jarrett It doesn't make sense that all the plats at least go
2 to the line where the gate went, so it doesn't make
3 sense that just that seventy five feet is not public
4 as well, or that it retains private or an easement
5 because all the plats reference up to that line, and
6 then they show the little unimproved portion of
7 Porter Street.

8 Referee Which is Tract 5 as you have stated in the deeds.

9 Mr. Jarrett Correct. My question is if you follow their
10 argument just for purposes that Porter Street is
11 public up to the point that it turns into Waccamaw
12 Housing, the rest is private, so they still have their
13 private easement through there, so it's not a
14 public road but it's still subject to the private
15 easement through there. In the future how is that
16 going to work. Are you going to open the gate
17 back up, but the public is not going to be able to
18 use it. If they win, they are basically saying it's
19 not public, but it's subject to a private easement
20 so you are opening the gate back up as it is now,
21 but the public can't use it, just Kellahan and
22 Duke. Then my understanding that ties into just
23 compensation and how the property was
24 devalued, the future lots. If it's actually a private
25 easement, and it's necessary that we compensate

1 them under just compensation, because it
2 diminished the value of those lots in the back,
3 why wouldn't they give Waccamaw Housing an
4 easement to that portion so that they could come
5 back and forth too.

6 Referee If necessary.

7 Mr. Jarrett And if it's never going to be paved, never going
8 to be a public road I don't think the ambulance, or
9 the whole argument about it needs to be open for
10 the ambulance and emergency services, and for
11 those abutting property owners that they are going
12 to sell to, they need to have additional access, it's
13 just going to be a private easement unpaved. I'm
14 just not following the whole argument. Assuming
15 they win, where are we at the end of the case if
16 they win. We have a public road up until
17 Waccamaw Housing, and then a private easement
18 from Waccamaw Housing to Ashton Avenue, not
19 public. Is that what you intend?

20 Mr. Reddeck Let me see if I can shed some light, and I'm not
21 meaning this to be meaningless because I think it
22 has some meaning. I think the position is this,
23 where it has been paved, there has been a
24 dedication. In other words there has been an
25 action by the people involved that it become a

1 public road. The fact that the public entities have
2 not taken it into the public system, I think is
3 significant, but I don't know that that affects the
4 actual dedication. If they were to take it into the
5 public system, and take all of it into the public
6 system, I don't see where that's a problem. They
7 just haven't done that.

8 Referee When you say take all of it, are you talking about
9 the unpaved section to the fence? .

10 Mr. Reddeck Well, to the fence or all the way, but if they want
11 to take it, I think these people need to be
12 compensated because the part from the paving to
13 the fence and onto Ashton Avenue has never been
14 dedicated. I think if it hasn't been dedicated, the
15 significance of it is they are not entitled to close
16 it. I don't think it's a roadway that they are
17 entitled to close.

18 Referee It wasn't clear to me reading everything and
19 listening to the testimony, that the paving of a
20 section of Porter Street was not going to go all the
21 way up to the boundary of Tract 5. When I say
22 Tract 5 I'm talking about the fifty feet.

23 Mr. Reddeck I understand.

24 Referee And in my mind, and I didn't go out there,
25 because I'm not supposed to go out and look at

1 the scene without everybody saying I should. As
2 I ride by I just glance down there, and there's no
3 way you can tell from Nelson Boulevard how far
4 it actually goes, so I have always had the
5 impression and I say this for the record for about
6 the fifth time, that it was paved all the way to
7 where the fences were put up, or the fence that
8 Mrs. Kellahan and Mrs. Duke put up. The town
9 would be tying into that, and there was a gate put
10 there as a compromise, but that was done when.
11 When was the gate put there, when the fences
12 went in.

13 Mr. Jarrett

Yes, sir.

14 Referee

15 Let's back off on that one for just a minute. I'm
16 not saying we not going to talk about it again. I'm
17 just trying to get my mind straight. This issue of
18 equitable estoppel has bothered me since I got
19 involved with the case. I know it was discussed
20 at the hearing, and in fact Mr. O'Bryan made an
21 issue of that and said that it needed to be pled as
22 affirmative defense or it was waived. I think as
23 far as that goes that is the law of South Carolina.
24 My understanding if you don't plead an
25 affirmative defense, you do waive it. The question
then becomes and this is me talking, you have an

1 ordinance that includes part of the deal for getting
2 the paving done, and putting in the housing
3 project and without that part of the deal there
4 would never have been a rezoning. The evidence
5 is uncontroverted as to that, and there would
6 never have been a sale for Mrs. Duke and Mrs.
7 Kellahan for the senior housing project. I had
8 never even heard of this problem until I was
9 selected as Special Referee, so I came into it cold
10 which is the way I think you are supposed to
11 anyway, but as a reality that's the way it is.
12 You've got a situation where the town is
13 obviously and everybody is operating in good
14 faith, and I'm saying that. You've got Senator
15 McGill who says I'm here to try to help
16 everybody. I don't necessarily think of myself as
17 representing Mrs. Kellahan and Mrs. Duke or
18 being Mr. Kellahan's agent. There is no question
19 that has been testified to that way. There is on
20 question Mr. Kellahan testified that Senator
21 McGill was there on his behalf, Mr. Kellahan's
22 behalf, however you want to interpret that. Then
23 you come up with a public hearing, and I thought
24 more people at the public hearing, and correct me
25 I'm wrong, but it's my impression that several

1 citizens of the Town of Kingstree that live on
2 Ashton Avenue showed up at the public hearing
3 and expressed concern for the senior housing
4 project going in, and all the traffic on Tract 5, that
5 fifty foot section. I realize the only two people
6 that testified in this matter were the adjoining
7 property owners, the two that were going to be
8 directly affected, and would have to say that they
9 were willing to take their half of the fifty foot
10 section.

11 Mr. Jarrett That's correct.

12 Referee But the Town of Kingstree, who the Town
13 Council decided and the major, that the only way
14 they could change the deal, the zoning so that the
15 senior housing project could go in, was to close
16 that section of Porter Street. What has bothered
17 me since then, and I recognize that Mr. Kellahan
18 wasn't at the meeting, and I understand that, but
19 Mrs. Kellahan and Mrs. Duke benefitted
20 substantially from this ordinance. I don't know
21 how you get away from that as far as the special
22 referee and not weighing that as part of what I
23 have to decide. I don't know whether that is
24 equitable estoppel or not. I don't know whether
25 now compensating Mrs. Duke and Mrs. Kellahan

1 for closing the fifty feet would be unjust
2 enrichment because they wouldn't have gotten
3 anything if it hadn't been paved. That's the
4 difficulty I'm having with changing my opinion.
5 I'm not saying anybody did anything wrong. I'm
6 not suggesting that, and I'm not suggesting
7 anybody is doing anything in bad faith. I'm not
8 suggesting anybody is trying to get something
9 they shouldn't. I want the record clear on that,
10 but that's my problem, and I don't know what you
11 can say to support my position or my thoughts
12 about it, or to make me reconsider. That's
13 basically why I ended up with the decision that I
14 did. I know it would have been easier for me if
15 equitable estoppel had been pled, but then I
16 started looking at well, a deal's a deal. I don't
17 know whether that's equitable estoppel or not.
18 Y'all correct me if it is.

19 Mr. Reddeck

Your Honor.

20 Referee

I was looking at you, Larry.

21 Mr. Reddeck

Yes, sir.

22 Referee

I'll stop my rambling and it's your turn.

23 Mr. Jarrett

If you were looking at me, I would have said that
24 was brilliantly argued.

25 Referee

Thank you, Mr. Jarrett.

1 Mr. Reddeck Your Honor, I think the situation is that estoppel,
2 and I cited the case Collins versus White, which
3 they cited, and it's in the Brief.

4 Referee It is. I have read these, and I read the first two,
5 the Memorandum in Support and the
6 Memorandum in Opposition Sunday afternoon,
7 and read the Reply yesterday when I got it.

8 Mr. Reddeck I think one of the main things that needs to be
9 looked at is equitable estoppel cannot be used as
10 an offensive tool. I think if it's applied here, it's
11 being used as an offensive tool by the town. The
12 Collins case talks about bootstrapping and I
13 understand that the question of agency was gone
14 into at the hearing. Equitable estoppel I don't
15 think was actually litigated. I think when it came
16 up- - -

17 Referee I'm going to tell you I didn't say equitable
18 estoppel anywhere in my Order.

19 Mr. Reddeck I understand that.

20 Referee So I didn't really deal with that. I went as far as
21 the pleadings, and what you referred to in your
22 Reply Memorandum, but then I went and in all
23 seriousness my thought process was you've got
24 the January 26, 2004 first reading of the
25 ordinance, at which time everybody there, and I

1 didn't hear any dissent, and I'm not aware of any
2 dissent at that point, that the senior citizens
3 housing project was important for the community.
4 Senator McGill testified to that, and Mr. Kellahan
5 stated that. Everybody at the hearing wanted it.
6 At the public hearing Mr. Kellahan is not present,
7 but Senator McGill is present, and I can
8 understand how Senator McGill was able to, and I
9 took it as brokering an agreement or brokering a
10 deal that everybody could live with. At least I
11 can't get into his mind, but that is basically what
12 he testified to. I was there looking after
13 everybody. I wanted the senior citizens housing
14 project, the town needed it, and we needed the
15 road closed, and he said I've got CTC funds for
16 that, and I can get that and I will. Everybody
17 leaves that meeting with approval of the
18 ordinance with all of these conditions in it that we
19 are now litigating. It seems to me that you have an
20 apparent agreement. I understand the technicality
21 of whether or not Mr. Kellahan was ever on
22 notice about these other conditions until he had to
23 put up the fence. I know that was prior but that
24 was sometime in 2004, maybe a year prior to the
25 Petition to Close Order had been done, and

1 you've already got the benefit that cannot be
2 reversed with that paving of Porter Street, and the
3 sale of the property. Is it right, and that's what
4 I'm asking. Tell me it's right or tell me it's
5 wrong.

6 Mr. Reddeck Let me drop back and say this as far as estoppel,
7 and we have cited, unless there is some loss injury
8 or damage or prejudice to a party, you can't have
9 estoppel. While you might assume some loss or
10 damage, but that was not submitted in the court. I
11 understand that maybe the Order did not call it
12 estoppel, but it seems to me if it's got web feet,
13 and quacks, and water runs off it's back, it's a
14 duck, even though you dress it up like a chicken. I
15 think that's what was done. I think the agency
16 situation, the question of the agency, there was no
17 evidence in the record that Senator McGill was
18 holding himself out as an agent of Kellahan or
19 Duke. There was no evidence in the record that
20 Duke or Kellahan or W. N. Kellahan, and I
21 include him with them too, acted in anyway to tell
22 anyone that this person has the right to broker this
23 deal. Mr. Kellahan's testimony was he thought
24 the fence was temporary, and I think again when
25 you look at the Collins case, having the estoppel

1 that then mean the Town has the burden of
2 making sure Mr. Kellahan is looked after. I don't
3 think so, Mr. Reddeck. You can see my problem
4 with it.

5 Mr. Reddeck I understand your Honor.

6 Referee Tell me where I'm wrong.

7 Mr. Reddeck I think that the difference in the situation here and
8 the normal situation is if this were a public road to
9 begin with - - -

10 Referee We wouldn't even be here.

11 Mr. Reddeck Right, and I think that makes all the difference in
12 the world. The easement that they had just
13 because the road is going to be closed doesn't
14 mean you can't use your easement. In other
15 words I don't think that naturally follows. I think
16 from a legal standpoint I think the easement is
17 still there. I just think that if they wanted to close
18 something, they could agree to close something
19 and do certain things, but to take that easement
20 away - - -

21 Referee Without compensation.

22 Mr. Reddeck Yes, sir.

23 Referee I'm hearing you say if they want to close it,
24 they've got to pay for it.

25 Mr. Reddeck Let me say this. I'm not suggesting ulterior, but

1 when you stop and look at this, if the town owned
2 this property, and they had an easement. If they
3 really wanted to close it up and do this, then it is a
4 classic inverse condemnation situation. I'm not
5 saying that's the way the Town set out to do it,
6 but when you look at it and you look at the
7 equities of it, here is somebody that owned the
8 property and somebody who had an easement and
9 they want to close it down. Is this road closing
10 Statute the proper way to do that. I think that's a
11 real question that I'm posing and I'm asking that
12 kind of presupposes all this other or goes in front
13 of that.

14 Referee

Okay.

15 Mr. Jarrett

Are you ready for me.

16 Referee

Yes, sir, please.

17 Mr. Jarrett

18 Your Honor, the minutes from the public hearing
19 and the minutes from the second reading, indicate
20 definitely there was discussion about permanently
21 closing off the road or temporarily closing off the
22 road, and temporarily was not acceptable to the
23 residents. Actually Councilman Josey asked if the
24 developer there was willing to close off Porter
25 Street on the Ashton Avenue side, making it
accessible only from the other side where the

1 nursing home is, and put a fence up, and wouldn't
2 that solve all the problems as far as you are
3 concerned about the location of the senior citizens
4 center. Then it was agree yes, and that's when
5 Senator McGill recommended that council
6 approve an ordinance closing it of permanently.

7 Referee That's Exhibit what?

8 Mr. Jarrett Plaintiff's Exhibit 5. Actually in the public
9 hearing it was actually discussed permanent
10 versus temporary, and that kind of thing, and I
11 think it's interesting to note it was closed att he
12 request of the developer to get it rezoned so that
13 Kellahan and Duke could sell the two acres for
14 sixty thousand dollars. Then they indicate they
15 didn't really know there were conditions to it, and
16 they never checked back.

17 Referee Who was the developer as far as the minutes were
18 concerned?

19 Mr. Jarrett It just says developer. I do know that someone
20 from the Waccamaw Housing was there.

21 Referee Did Waccamaw Housing purchase all the acreage
22 up to the fence line?

23 Mr. Jarrett Yes, sir, their two acres abuts the fence, and they
24 were to put the fence up and then Mr. Kellahan
25 was to put his fence up on the remainder.

- 1 Referee So the seventy five feet or so that is unpaved from
2 the driveway of the senior citizens housing
3 project to the fence line where the fifty foot
4 closing onto Ashton Avenue occurred, actually
5 abuts property that is now owned by the senior
6 citizens housing development?
- 7 Mr. Jarrett Correct.
- 8 Referee Mr. O'Bryan is that correct.
- 9 Mr. O'Bryan One second.
- 10 Referee If you don't mind I need to know that.
- 11 Mr. Reddeck Can we look at a plat.
- 12 Referee Yes, sir. Do we have it in evidence?
- 13 Mr. Reddeck This is plat #16.
- 14 Referee While he's doing that, I'm looking at Defendant's
15 Exhibit 18, which is the plat that was done by
16 them. These four lots, is that what was purchased
17 by the senior citizens housing?
- 18 Mr. Reddeck I think it was these two in the back.
- 19 Mr. O'Bryan I believe it's 2 and 3 and part of number 1, half
20 of number 1.
- 21 Referee Okay.
- 22 Mr. Reddeck May I ask this, in your deed that you got from all
23 those people - - -
- 24 Mr. Jarrett It goes all the way through.
- 25 Mr. Reddeck Did you buy the street too?

1 Mr. Jarrett Right.

2 Mr. Reddeck You bought the street from them, right, not just
3 the right-of-way, but y'all bought the street?

4 Mr. Jarrett Right.

5 Mr. Reddeck So this part is one tract.

6 Mr. Jarrett The property line in our deed is there.

7 Mr. Reddeck Right.

8 Mr. Kellahan This is what I sold, whatever that lot number is,
9 and half of this, and it goes up to the back of that
10 property. It was paved up to within fifty to
11 seventy five feet. I don't know exactly what it is.
12 There's a little strip right in there that Waccamaw
13 Housing bought.

14 Referee Okay. I am going to let you have that back.

15 Mr. Reddeck I don't think there is any question when it was
16 bought, it was bought subject to that easement,
17 wasn't it Ernie?

18 Mr. Jarrett Yes.

19 Referee I guess that's why I had in my mind that it was
20 paved all the way up to the fence line because
21 when I was looking at the plats and everything as
22 y'all just reminded me, and part of the ordinance
23 was as you said, Ernie, that the senior citizens
24 housing developer was going to put up their
25 portion of the fence which abutted their property.

1 Mr. Jarrett Correct.

2 Referee And behind the property owners on the back yard
3 of the property owners that face Ashton Avenue.

4 Mr. Jarrett Correct, and then Mr. Kellahan was going to
5 fence his part.

6 Referee And Mr. Kellahan did it all the way from there to
7 377.

8 Mr. Jarrett Correct.

9 Referee And the town carried it all the way down their
10 property line, that backed on the property owners
11 on Ashton Avenue.

12 Mr. Jarrett Correct.

13 Referee And there was a compromise at that point for the
14 gate. I'm not clear on why the gate was put up if
15 you already had an ordinance that said it was
16 going to be closed.

17 Mr. Jarrett Because we had not done the closure yet.

18 Referee Okay, the closure hadn't taken place.

19 Mr. Jarrett Yes, sir.

20 Referee So this chicken that I've got is an equitable
21 estoppel.

22 Mr. Reddeck Your Honor, could I make one statement.

23 Referee Yes, sir, go ahead.

24 Mr. Reddeck Plaintiff's Exhibit 5 was the meeting of the Town
25 Council. In what was introduced I don't think it

1 indicates that there was going to be a permanent
2 closing. There may have been some discussion in
3 the public hearing.

4 Referee Are you talking about the notice for the public
5 hearing.

6 Mr. Reddeck No, sir, the actual minutes of the hearing.

7 Referee What are you looking at, Mr. Jarrett?

8 Mr. Jarrett The minutes of the public hearing indicate that
9 they discussed at length the difference between
10 temporarily closing it off and permanently closing
11 it off.

12 Referee And that's a Plaintiff's exhibit.

13 Mr. Jarrett Exhibit #5.

14 Referee Exhibit 5, and yours is Exhibit 5.

15 Mr. Reddeck Is that 5 or 4.

16 Mr. Jarrett 5.

17 Mr. Reddeck What were the minutes.

18 Mr. Jarrett Of the meeting.

19 Mr. Reddeck Of the meeting itself. Do I have them backwards
20 or were they together?

21 Mr. Jarrett I'm not sure.

22 Mr. Reddeck The meeting is what I'm talking about. It does
23 not say permanently closed. The Town Council
24 when they passed the ordinance does not say
25 permanently closed.

1 Referee I guess I had better look at that.

2 Mr. Reddeck I'm sorry if I've got the numbers mixed up.

3 Referee That's alright, we're getting it straight.

4 Mr. Jarrett That is before. I'm sorry, my numbers are wrong

5 Mr. Reddeck I believe what I was saying was correct, Exhibit 4

6 is the public hearing and Exhibit 5 is the meeting.

7 Referee Okay, we're straight. I'm looking at public

8 hearing February 2, 2004 at 6:30 p.m. the first

9 page, second paragraph that says there was a

10 lengthy discussion about volume of pedestrian

11 traffic, and over occupancy of units. The

12 temporary closing of Porter Street was also

13 discussed. Then on page two, Council member

14 Josey asked if the developer is willing to close off

15 Porter Street on the Ashton Avenue side to make

16 it accessible only from the other side where the

17 nursing home is, and put a fence up. Would this

18 solve your problem as far as your concerns about

19 location of the senior citizens housing center. Mr.

20 Campbell said it will stop vehicle traffic but not

21 pedestrian traffic. Senator McGill made the

22 recommendation to Council for a second reading

23 of the ordinance with the understanding that

24 Porter Street will be closed off permanently. My

25 notes on Exhibit 4 this indicates it all occurred at

1 the public hearing.

2 Mr. Reddeck Yes, sir but at the meeting itself Town Council - -

3 Referee Let me get to the regular meeting. I was looking

4 at the public hearing.

5 Mr. Reddeck I'm sorry.

6 Referee That it be closed off permanently from Ashton

7 Avenue and a barricade would be put there, and

8 put a fence up, and a letter be sent requesting

9 CTC funds. Now Exhibit 5, and maybe we are

10 reading the same thing, and I'm reading it

11 differently. Porter Street to be, and I'm reading

12 from Exhibit 5, the Ordinance, Porter Street to be

13 blocked on the Ashton Avenue side. Reading that

14 in conjunction with Exhibit 4 I take it to be

15 blocked, permanently closed. I found it so, and I

16 understand the argument, but I'm reading the two

17 together.

18 Mr. Jarrett Any opposition that it's a public road then you

19 couldn't put a barricade up and temporarily block

20 a public road without closing the road.

21 Referee And that's why the gate was put up?

22 Mr. Jarrett Right, it had to be. It's kind of like being

23 pregnant, you can't temporarily block off a public

24 road. You've got to do something, you can't just

25 put a gate up at a public road.

- 1 Referee Okay.
- 2 Mr. Reddeck Your Honor, I don't want to belabor this, but we
3 have a question whether or not that's a public
4 road. Number one it's not a public road all the
5 way through, and number two, I think where it's
6 been paved there has been an actual dedication. I
7 don't think the public has actually taken that road
8 in.
- 9 Mr. Jarrett Your Honor, there was some argument in Mr.
10 Reddeck's brief that it hadn't been used or
11 nobody used it. Mrs. McClary actually testified
12 that vehicular as well as pedestrian traffic used
13 that road between her property, and it came in
14 there all the time at least from the time that she
15 owned it from the late eighties.
- 16 Referee There was also testimony that when you had the
17 Pig Pickin' it was a big deal, and people would
18 even climb across the fence.
- 19 Mr. Jarrett Correct, and just to clear up a point. Mr. Reddeck
20 said that there had never been a plat recorded that
21 mentioned Porter Street on that little unpaved
22 portion, but Exhibit #12 is actually Mr.
23 Chapman's plat that was prepared by Mr.
24 Kellahan.
- 25 Referee Is that Plaintiff or Defendant?

1 Mr. Jarrett

I think that's Defendant's 12. I might have the numbers wrong. That was actually prepared by Mr. Kellahan, and it shows Porter Street as an unimproved fifty foot right-of-way. He did that for Mr. Chapman when he purchased that property in 1996.

7 Referee

Where we are as I'm hearing it is, I'm saying I'm relying upon the public hearing and the ordinance that was passed saying that everybody had agreed or at least the proposal was put out and Town Council agreed that they would change the zoning so there could be public housing, if that fifty foot section of Porter Street was blocked off, and that was done. The ordinance passed with that condition. The question then becomes is the landowner bound by that deal. The land owner being Mrs. Duke and the owner of the easement. That's where we have been the whole time, isn't it.

20 Mr. Jarrett

Even if you find equitable estoppel wasn't pled, which obviously it wasn't or wasn't tried as a defense, enforcement of easements is always inequity so I think the trier of this fact has to look at the equity of the situation in totality. It would be unfair to take advance of the rezoning and get

1 a sixty thousand dollar benefit for two acres, and
2 not be bound by the deal brokered by Senator
3 McGill and then be allowed to retain your full
4 easement right after you benefitted from the sixty
5 thousand two acre sale.

6 Mr. Reddeck Your Honor, if I could briefly say a couple of
7 things. First and foremost, they brought an action
8 under a Statute to close a road. Of course, we
9 question whether or not it was a road. Just
10 because there's a plat and there's a plat that has
11 some name on it, and this goes back to the
12 argument of the 1903 plat. Just because there is a
13 way that the people use, they might acquire some
14 prescriptive easement but there needs to be some
15 acceptance by that entity that this is a roadway. I
16 think there's where their burden of proof has
17 faltered when I read the record. I don't believe
18 that the Town could actually prove that there was
19 any dedication and acceptance of that roadway
20 until the part was paved. I understand that and
21 I'm not questioning that part.

22 Referee Yes, sir.

23 Mr. Reddeck But the remaining part, they have brought this
24 action under this Statute and without a pleading
25 of some estoppel again I don't think you can

1 bootstrap back to this statute. When you have a
2 different situation here, not just public in general
3 having a notice of a public hearing to close the
4 road. I think the public is by those notices and I
5 think that's correct, but there was nothing to
6 indicate that the right of use of that property
7 which was something very special that Kellahan
8 and Duke had, and would be eliminated too. I
9 understand what they are talking about blocking
10 off and all that sort of thing, but to get to that
11 point I think you have to look at whether or not
12 the equitable estoppel was pled. I think that's the
13 only way you block them from saying we had this
14 right. Since it was not pled and actually again as I
15 indicated I could find nothing in the record to
16 show that the Town could claim some injury. In
17 other words it may not be what somebody agreed
18 to, but to actually show some injury, then I think
19 that's what the law says about estoppel.

20 Furthermore, the cases do say and the Collins case
21 says, you can't use estoppel. There's another case
22 too your Honor.

23 Referee You cited it, didn't you.

24 Mr. Reddeck Yes, sir, but you can't use estoppel as a weapon

25 Referee Sure.

1 Mr. Reddeck As an offense, and I'm not saying a weapon and I
2 don't mean - - -

3 Referee I understand.

4 Mr. Reddeck I don't mean anything sinister, I'm just saying you
5 can't use it to take something. That's our
6 position.

7 Referee This is just maybe an esoteric discussion, but I
8 don't see where estoppel even if it's being used
9 was used to take something. It's used to block the
10 argument that you can't close the road, which is a
11 taking and I understand that. It dove tails into
12 Plaintiff's Exhibits 4 and 5, which was the public
13 hearing and what was determined at the public
14 hearing that had to be done to pass the ordinance.
15 I was looking back in the Order for Abandonment
16 and Closure and I did rely a great deal upon the
17 agency issue in there. There is no question about,
18 and I had to refresh my memory on that even from
19 last week. Is there anything else I need to year
20 today, anything I haven't explored or anything we
21 haven't focused on.

22 Mr. Jarrett Your Honor, we would just go back to the initial
23 argument that there was a public dedication by
24 virtue of the document that actually deeded the
25 property to Kellahan and Duke, evidenced a clear

1 intent to dedicate the road to public use, and
2 we've got plats on the little unimproved portion,
3 recorded back in 1903 and 1909 that clearly show
4 those as cut in roads to get access through Ashton
5 into a piece of property. We think that the whole
6 Porter Street in and of itself rises and falls
7 together. It's hard to say some was public and
8 some was private. We think it was public way
9 before it was paved. We just think that there was
10 a clear intent to dedicate it, and the second part is
11 the acceptance, and by the use and maintenance of
12 it by the Town and the Town's citizens we have
13 shown both dedication and acceptance. We think
14 it has been a public road and it has always been a
15 public road, and we followed the Statute that we
16 needed to close it which was the brokered deal by
17 Senator McGill to get this thing rezoned, which
18 they clearly benefitted from. We also have the
19 sewer down the middle of it, and we clearly use
20 the road.

21 Referee The sewer goes all the way to Ashton Avenue?

22 Mr. Jarrett Yes, sir.

23 Referee And it goes down the middle of what has now
24 been paved and the unpaved portion?

25 Mr. Jarrett I'm not sure it goes all the way through, but I

1 know it comes all the way down Ashton. There is
2 a manhole actually in the middle of this unpaved
3 portion.

4 Referee When you say the unpaved portion, that would be
5 the portion from the gate - - -

6 Mr. Jarrett Back to Ashton.

7 Referee Back to Ashton.

8 Mr. Jarrett I think even if we conveyed the property out to
9 the adjoining landowners it is subject to that
10 easement to maintain the sewer.

11 Referee Right.

12 Mr. Reddeck Your Honor, I would just ask the court to look
13 back in the record. I saw very little that the town
14 was doing to maintain that road. I think the
15 evidence was that when Mr. Kellahan and those
16 got it, it was broom straw grown up and that sort
17 of thing. Just because people use a roadway, or
18 use a passage, does not make it a public road. It
19 does not indicate that acceptance. I think the
20 sewer line was put in for the senior citizens
21 housing, is that correct. I don't believe it was
22 there before.

23 Mr. Jarrett I don't know when.

24 Referee But it was put in.

25 Mr. Reddeck It was put in, but it was put in for the senior

1 citizens housing.

2 Referee Who paid for that?

3 Mr. Kellahan The senior citizens housing put it in.

4 Referee The sewage line?

5 Mr. Kellahan Yes, sir.

6 Referee Mr. Kellahan, does the line tie into the Town

7 sewage which is on the Ashton Avenue side.

8 Mr. Kellahan That's correct.

9 Mr. Reddeck But I think it stops at the senior citizens housing.

10 Referee It doesn't go all the way to Nelson Boulevard.

11 Mr. Kellahan No, sir.

12 Referee I wouldn't think so if the senior citizens people

13 paid for it. Your argument Mr. Reddeck is that

14 everything remained, the easement continue in

15 Mrs. Duke and Mrs. Kellahan from where the

16 paving stopped to Ashton Avenue, correct?

17 Mr. Reddeck Correct.

18 Referee And Mr. Jarrett, your argument is that when the

19 road was dedicated, it was dedicated from Nelson

20 Boulevard to Ashton Avenue?

21 Mr. Jarrett Yes, sir.

22 Referee And just because only a portion of it was paved,

23 that doesn't mean that the rest of it wasn't

24 dedicated at the same time?

25 Mr. Jarrett Correct.

1 Referee You can't dedicate only a portion of a road.

2 Mr. Jarrett Yes, sir, dedication was prior to the paving of the
3 road.

4 Referee But if it only occurred at the public hearing with
5 the public funds coming in, that at least by that
6 time it was dedicated and the Town sees it as a
7 dedication from Nelson Boulevard to Ashton
8 Avenue.

9 Mr. Jarrett Yes, sir.

10 Mr. Reddeck If I could, my understanding and let me ask
11 everybody, was the notice that was published
12 about the public hearing, that was published in the
13 newspaper.

14 Mr. Jarrett Correct.

15 Mr. Reddeck Is that part of the record?

16 Mr. Jarrett I thought you meant the hearing to close the road.

17 Mr. Reddeck The public hearing is part of the record, but was
18 there a notice of the public hearing published?

19 Mr. Jarrett I don't think there is.

20 Mr. Reddeck There was no publication. I thought your Honor
21 asked and was told there was.

22 Referee I said it was not published in the local newspaper.

23 Mr. Jarrett I think when we had the public hearing, what we
24 did was post the notice on the bulleting board and
25 then send it to all the news outlets/

1 Referee And they either print it as a news article or not.

2 Mr. Jarrett I can check, but I don't think that we actually

3 published notice of the public hearing.

4 Referee Why don't we find that out.

5 Mr. Reddeck My question is was there any notice of that public

6 hearing that a road was going to be closed.

7 Referee You mean at the hearing or before the hearing.

8 Mr. Reddeck At the notice that was sent out, did the notice say

9 closure of a road was going to be discussed.

10 Referee Guessing is a dangerous thing to do, but my

11 guessing is it wasn't. I don't know.

12 Mr. Jarrett Whether the notice would have said the issue as

13 to rezoning and actually the rezoning before the

14 Planning Commission would have been published

15 in the paper before it went to the Planning

16 Commission, because then the Planning

17 Commission makes a recommendation and then it

18 comes before Council. It had already had the

19 notices in the newspaper.

20 Mr. Reddeck Your Honor, going back to this easement and one

21 more time, that's where we started. - - - for that

22 area to come through there for the benefit of the

23 grantor and the grantee, that's in the third

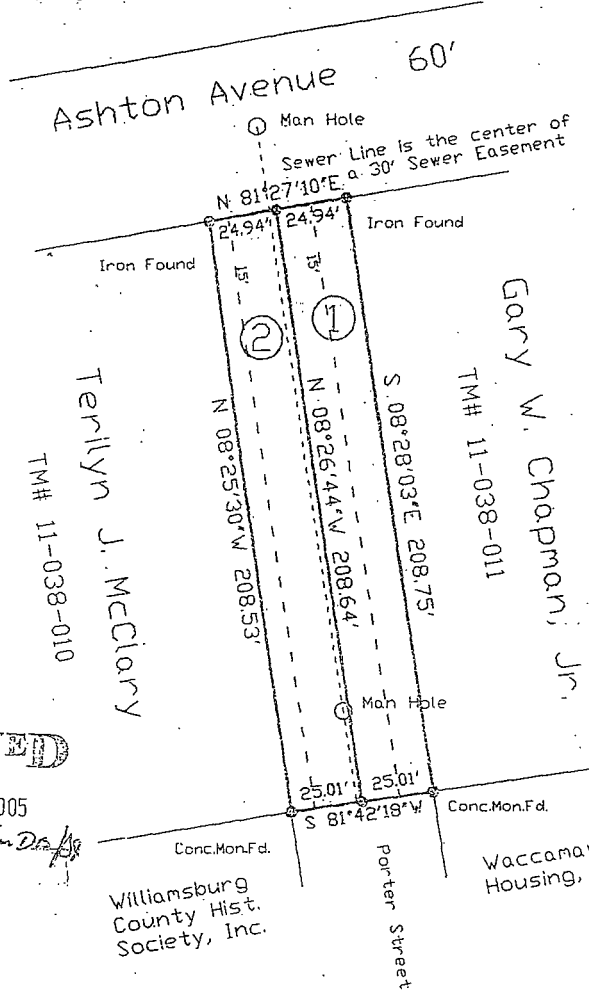
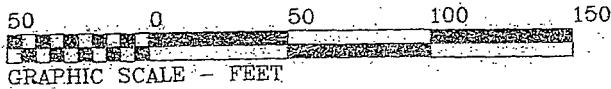
24 paragraph on the first page. That is separate an

25 apart from any dedication or proposed dedication,

1 and that's why we feel like what part it could be
2 dedicated and paved, is one thing, but to say that
3 the easement says we're going to dedicate it all,
4 and once you do it, it's all or nothing. I think the
5 easement says current use and also that is future
6 use, but the part about the opening up or making
7 it public, that was future use. I think it
8 contemplates both.

9 Referee Yes, sir. Can we do this, if we have exhausted
10 ourselves today, can we get a transcript, and let
11 everybody have a chance to look at it, and if
12 everybody wants to give me any other
13 information, please do so. I don't think I am
14 going to ask anybody to go to the trouble of
15 drafting an order at this point. I would like to
16 mull it over as one of the older lawyers in
17 Columbia used to say. He said we don't do
18 enough mulling it over, so I am going to try to
19 rectify that, I'm going to mull it over. Thank
20 you all for coming.

21 There being no further questions this hearing was
22 concluded.



Parcels are
0.120 Acre Each.

THIS PROPERTY DESIGNATED AS
DIST: 11 MAP 038 PARCEL Q11 (Est-1)
ON WILLIAMSBURG COUNTY TAX MAPS. 010 (Est-2)
SPLIT FROM ~~un-numbered street~~
Beoffel Lane 180 in 11/11/05
WILLIAMSBURG COUNTY TAX ASSESSOR

APPROVED
OCT 11 2005
W. Chandler Duff

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 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, 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



PL(3)

REGULAR MEETING OF TOWN COUNCIL
JANUARY 26, 2004
TOWN HALL MEETING ROOM
FRANK H. MCGILL MUNICIPAL COMPLEX

COUNCIL Mayor James W. Kirby
PRESENT Wallace M. Bartelle Ricky Burrows
Richard B. Josey Andrea R. Kelly
Luester McCullough Winfred O. Murdaugh

OFFICIALS Bradley K. Smith, Town Manager
PRESENT Cornelia G. Bell, Assistant Town Manager
Michael C. Kirby, CPDD
Michael Graham, Asst. Police Chief
Daniel McFaddin, Recreation Director
James B. Snipes, Water Superintendent
Ernest J. Jarrett, Town Attorney

ALSO Senator Yancey McGill, Don Marshall, Judy Elder, Arthur Tisdale, Nickey
PRESENT Kellahan, Murray Chessom, Gary Tremmel, Dwight Abshire, Charles Hanna

INVOCATION James B. Snipes

APPROVAL OF MINUTES OF REGULAR MEETING OF DECEMBER 15, 2003

Council Member McCullough motioned to approve the minutes of Regular Meeting of December 15, 2003 with the necessary corrections should there be any. It was seconded by Mayor Pro Tem Murdaugh. The motion was carried and passed.

PRESENTATION BY CHARLES HANNA WITH THE BLACK RIVER HORSEMEN'S ASSOCIATION

Dwight Abshire with the Black River Horsemen's Association explained that that they wants to hold Pro Sanctional Rodeo at the Kingstree Recreation Facility. He said that Kingstree matches up great with demographics, and will bring approximately \$80,000 to \$100,000 to the Town. He asked the Mayor and Council for permission to have this event at the Kingstree Recreation Facility.

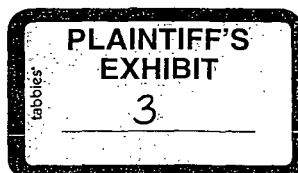
Mayor Kirby asked Mr. Hanna to discuss this with the Kingstree Recreation Commission, and they will make their recommendation to Council.

SWEARING IN CEREMONY

Town Attorney swore in the Mayor, Council Members Bartelle, Kelly and McCullough.

Mayor Kirby made recommendation that Council Member Murdaugh continue to serve as Mayor Pro Tem.

Council Member Kelly motioned to appoint Council Member Murdaugh to serve as Mayor Pro Tem. It was seconded by Council Member Josey. The motion was unanimously carried and passed.



EMPLOYEE RECOGNITION

Steven T. Boston was not present at meeting.

DISCUSSION AND FIRST READING OF ORDINANCE 2004-01 AN ORDINANCE TO REZONE A PORTION OF TAX MAP PROPERTY 11-039-011 FROM HIGHWAY COMMERCIAL TO PLANNED UNIT DEVELOPMENT

Mayor Kirby replied, there is a need for senior citizen housing in Kingstree. He said he visited an individual last week, living in a house with windows duct taped and paying \$150 per month for rent.

Mr. Nicky Kellahan explained that there is a definite need for this type of housing.

Mr. Murray Chessam, CEO of Waccamaw Center, also representing Waccamaw Housing, said he would like to bring it to your awareness. He said funding has been received and ready to proceed.

Mrs. Judy Elder expressed the need for senior housing. There are so many seniors in substandard housing.

Senator McGill said he appreciates all work by the department heads, and all employees for what they have done for the citizens during this ice storm. So many seniors were affected by this. He said this is a golden opportunity to get housing for disabled and senior citizens. He asked has the planning commission made recommendation? He said any decision made will be in the best interest of the whole town. He said the citizens elect them to represent the Town, and to make decision that will be best. He said \$150,000 was spent out of town limits. He commends you all and thank you in advance. He thanked Town Manager for all his hard work.

Mayor Kirby replied, yes, they recommended approval. He thanked Senator McGill for all he does.

Council Member Bartelle said he was late because of the calls he received regarding this issue on the housing project. He thanked the Senator for all he does for the Town. He said there was a public hearing, but only a few persons attended. He is concerned about the crime in this area. He would like to revisit, and go back to the citizens in this area.

Mr. Chessam handed out photos of the proposed housing project.

Senator McGill said he wants to make sure that the Town sends requests for funds to pave Porter Road to the Delegation. He said give the citizens an opportunity to express their opinions. He wants Council to pass the first reading tonight, and discuss it between meetings.

Mayor Kirby said he would be in favor holding a public hearing. He said the next meeting will be Monday, February 02, 2004 at 6:30 p.m.

Council Member Bartelle asked the Town Manager to advertise. He does not want the citizens to say they were not aware of this.

Town Manager said it would be heavily advertised (i.e. newspaper, door hangers) to get the

REGULAR MEETING OF TOWN COUNCIL
JANUARY 26, 2004
PAGE 3 OF 7

citizens involved, so that they can express their concerns.

Mr. Chessam said he will contact the Nehemiah Corporation to see if a representative will be able to attend this meeting, and let Town Manager know in the morning

Mayor Pro Tem Murdaugh said as Chairman of Vital Aging, he must support this for the senior citizens unless there is a great conflict. He said he has heard that citizens had been calling them. He said he represents Ashton Avenue, and no one called him. He feels this is an ideal place for this.

Council Member Kelly motioned to pass first reading of Ordinance 2004-01 An Ordinance To Rezone A Portion Of Tax Map Property 11-039-011 From Highway Commercial To Planned Unit Development. It was seconded by Mayor Pro Tem Murdaugh. It was unanimously carried with a show of hands. No one opposed.

Senator McGill said he would like to have something for employees and the Legislative Delegation would love to help.

Mayor Kirby thanked the Senator for the Rescue Boat.

APPROVAL OF RESOLUTION 2004-01 A RESOLUTION HONORING COACH JOHN MCKISSICK

Council Member Burrows motioned to accept Resolution 2004-01 Honoring Coach John McKissick. It was seconded by Council Member Kelly. The motion was unanimously carried and passed.

TOWN OF KINGSTREE COMMITTEE APPOINTMENTS

Beautification Committee

Mayor Kirby nominated Matt P. Burgess to the Beautification Committee.

Mayor Pro Tem Murdaugh nominated Bernice McClary.

Council Member Burrows nominated Virginia Headley.

Council Member Kelly motioned to appoint Matt P. Burgess, Virginia Headley and Bernice McClary to serve on the Beautification Committee for a term of three years. It was seconded by Council Member Josey. The motion was unanimously carried and passed.

Kingstree Development Corporation

Mayor Kirby agreed to serve on the Kingstree Development Corporation.

Mayor Pro Tem Murdaugh motioned to appoint Mayor Kirby to serve on the Kingstree Development Corporation for a term of four years.. It was seconded by Council Member Kelly. The motion was unanimously carried and passed.

Planning Commission

Mayor Kirby made recommendation to reappoint Jessie Dale McCollough, Doug Purcell and Peggy Hamby to serve on the Planning Commission.

Council Member Kelly motioned to appoint Jessie Dale McCollough, Doug Purcell and Peggy Hamby to serve on the Planning Commission for a term of three years. It was seconded by Council Member McCullough. The motion was unanimously carried and passed.

Recreation Commission

Mayor Kirby made recommendation to reappoint Chris Kellahan to the Recreation Commission.

Council Member Burrows nominated William Dean Brown to serve on the Recreation Commission, replacing James Cunningham, Jr.

Council Member Kelly motioned to reappoint Chris Kellahan, and appoint William Dean Brown to the Recreation Commission for a four year term. It was seconded by Council Member Bartelle. The motion was unanimously carried and passed.

Zoning Board of Appeals

Mayor Kirby made recommendation to reappoint Lawson George and D.W. Richardson to the Zoning Board of Appeals.

Council Member Kelly motioned to reappoint Lawson George and D.W. Richardson to serve on the Zoning Board of Appeals for a three year term. It was seconded by Council Member Bartelle. The motion was unanimously carried and passed.

COMMENTS

Mayor

- Ice Storm - He thanked employees for their hard work cleaning up the town.
- Town Attorney said a shelter has been set up at the Kingstree Methodist Church.
- Progress Energy - Was waiting on a call from progress energy. It will possibly be tomorrow before lights are restored.

Council Member Burrows said he talked to a Progress Energy worker and he said the problem in Kingstree is that you can only trim but so much off of a tree.

- CPDD said there a town ordinance in place with a restriction on tree trimming.
- Ashton Avenue (Junked/Abandoned Cars) - Would like Council to ride through this area and observe. He would like Town Attorney to see what can be done without Council revisiting this entire issue. After a lengthy discussion, he asked Town Attorney to revisit ordinance to put more "teeth" into it.
- Drexel Property - A group is interested, and they have made an offer to the Town.

REGULAR MEETING OF TOWN COUNCIL
JANUARY 26, 2004
PAGE 5 OF 7

Mayor Kirby appointed Council Members, Bartelle, Burrows, Town Manager, to serve on a committee with him, to meet with and negotiate with these individuals.

Mayor Pro Tem motioned to allow Council Members Bartelle, Burrows, Town Manager, to serve on a committee with him, to meet and negotiate with these individuals. It was seconded by Council Member Kelly. The motion was unanimously carried and passed.

- **Jennyville Waterline Project** - Has been extended further out on Hwy. 527 to Whitney Lane.

Water Superintendent said he received a fax today, and a pressure test for Santee Coop is holding up this project. He said pressure test is to be done regardless of the weather at Santee Coop's expense.

Mayor Kirby made a recommendation to give property owners within the extended area 30 days to pay reduced tap fee of \$240.

- **Coker's Building Supply** - He met with County Councilman Fulmore and Harry Askins. There are about 50-60 customers in this area that can be tapped onto the Town system, which will produce additional revenue for the Town. These residents have some real problem with water.
- **Debris pick-up** - Has received many calls. How long will it be before it is removed?

Town Manager replied, he is waiting to hear from FEMA. He said right now if the citizens will put the debris out, the street crew will pick it up. He said pictures are being taken of debris before it is removed, and cost estimates are being compiled. Employees working tonight can eat at Ernest Prosser's restaurant, and the Town will pick up the tab.

- **Progress Energy talked with Time Warner this afternoon** - About when cable will be restored? He said it just depends on where you are, and the extent of the damage.
- **Relay For Life Meeting** - The Town's first meeting, and 19 employees were in attendance. Next meeting is scheduled for February 11th, and a bake sale on the 13th, along with assistance from Council. Council Members Bartelle and McCullough has volunteered to assist with selling baked goods out front at Town Hall.

Council Member Burrows

- **Street Department** - Is doing good job cleaning debris from storm.
- **Water Department** - Is doing a good job on the Sumter Highway.
- **Progressive Energy** - Would like for them to try and get lights to the elder.
- **Horsemen Association** - Needs to look at two parcels at recreation dept. We need to negotiate a good price.
- **Visit Lake City** - Needs to schedule a date to look for a quality restaurant to bring to Kingstree.

Council Member Kelly

- **Downtown Parking** - She was issued a parking ticket for being parked on Main Street for three hours, while in Attorney Sabb's office working. She said there were no parking spaces available in the courthouse parking space.

REGULAR MEETING OF TOWN COUNCIL
JANUARY 26, 2004
PAGE 6 OF 7

Council Member Bartelle said he is going to ask why can't county court officials park in the rear parking lot.

Council Member Bartelle

- Madison Avenue - Asked CPDD to visit resident in blue two-story house with trash piled up.
- Peddler - There was one selling generators at Piggly Wiggly.

CPDD said anyone selling generators will have to have a business license.

Council Member McCullough

- Child Care on Thorne Avenue - Is there an ordinance in place having it located so near a ABC Store.
- Thorne Avenue - Burned house there since last year.

CPDD said property owner does not have the money to have property clean up.

- Main Street - What is status on green building?

CPDD replied, he met with property owner Friday. He has agreed to repaint the building, but he is waiting on the contractor who is in the hospital.

Council Member Josey

- H&R Block Building - What is the status?

Town Manager said building has not been appraised yet. He asked CPDD to get tax value and have building appraised.

- Senior Housing - He appreciates Council working with developers of this project. He would like to make certain that all residents are notified.

Town Manager replied, he will have letters and door hangers hand delivered to each resident. A sign will also be displayed on the property.

Mayor Pro Tem Murdaugh

No comments.

CPDD

- Building on Main Street - They have been torn down. The alley way is open. He is trying to come up with funding to repair the wall and repair building.

Town Manager

- Ice Storm - Department heads are working top ten (electrical) priority list. Beware of "black ice."
- Thanked - Water, Police and Fire Departments for their hard work.
- Rock Town Tank - Repairs are complete.
- Pepsi Tank - Has been painted.

REGULAR MEETING OF TOWN COUNCIL
JANUARY 26, 2004
PAGE 7 OF 7

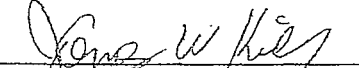
ADJOURNMENT

Mayor Pro Tem Murdaugh motioned to adjourn the meeting. It was seconded by Council Member Kelly. The motion was unanimously carried and passed.

The Minutes of January 26, 2004 Regular Meeting are correct to the best of my knowledge.

Done in this meeting assembled on the 16th day of February 2004.


Patricia A. Graham, Town Clerk


James W. Kirby, Mayor

Handwritten initials and a circled number '4' in the top left corner.

**PUBLIC HEARING
FEBRUARY 02, 2004 - 6:30 P.M.
TOWN HALL MEETING ROOM
FRANK H. MCGILL MUNICIPAL COMPLEX**

COUNCIL Mayor James W. Kirby
PRESENT Wallace M. Bartelle Ricky Burrows
Richard B. Josey Andrea R. Kelly
Luester McCullough Winfred O. Murdaugh

OFFICIALS Bradley K. Smith, Town Manager
PRESENT Cornelia G. Bell, Assistant Town Manager
Patricia A. Graham, Town Clerk
Michael C. Kirby, CPDD
Michael Graham, Asst. Police Chief
Ernest J. Jarrett, Town Attorney

ALSO Senator Yancey McGill, Thomas Faulkner, Mary E. Chinnes, Angela Eunic
PRESENT Rev. Curtis Boston, Judy Elder, J.W. Campbell

INVOCATION Senator Yancey McGill

**TO DISCUSS REZONING REQUEST OF TAX MAP PROPERTY 11-039-011
FROM HIGHWAY COMMERCIAL TO PLANNED UNIT DEVELOPMENT
FOR THE PURPOSE OF BUILDING SENIOR CITIZEN HOUSING, NOT LOW-
INCOME OR MULTI-FAMILY HOUSING**

Mr. Faulkner explained that these are one-bedroom unit, one-story. He said these units look like basic single family units. They have done a survey of this kind of development, and there is no more than .4 cars per unit on an average. He further explained that these units cannot be over occupied. He said management will be onsite. He feels this development would be an asset to the community.

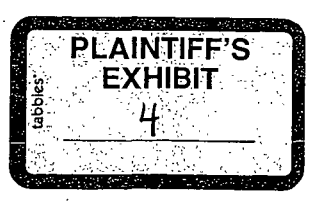
There was a lengthy discussion about volume of pedestrian traffic, and over occupancy of units. Temporarily closing Porter Road was also discussed.

Council Member Bartelle said he cannot support something in this neighborhood, when the residents doesn't want it. Council needs to be considerate of the residents who are not in favor of this.

Residents voiced their concerns about police department not responding to drug problem. Will a traffic light be installed to control traffic.

Mrs. Judy Elder named some good seniors that live in Kingstree, who are interested in being neighbors to these residents. There are many seniors on a waiting list to be put in single family housing units.

Town Manager said since he's been in town, this is the first time that he has received a complaint.



**PUBLIC HEARING OF TOWN COUNCIL
FEBRUARY 02, 2004
PAGE 2 OF 2**

Council Member Josey asked if the developer is willing to close off Porter Street on the Ashton Avenue side to make it accessible only from the other side where the nursing home is, and put a fence up, would this solve your problems as far as your concerns about location of the senior center.

Mr. Campbell said it will stop vehicle traffic, but not pedestrian traffic.

Senator McGill made recommendation to Council for second reading of ordinance with the understanding that Porter Road will be closed off permanently from Ashton Avenue, a barricade will be put there, and put a fence up. He asked that a letter be sent from the Town to the CTC requesting funds to pave Porter Road.

Mayor Kirby said the Town will fence their side, and the Mr. Faulkner will be responsible for fencing his side.

PL (5)

SPECIAL MEETING OF TOWN COUNCIL
FEBRUARY 02, 2004
TOWN HALL MEETING ROOM
FRANK H. MCGILL MUNICIPAL COMPLEX

COUNCIL Mayor James W. Kirby
PRESENT Wallace M. Bartelle Ricky Burrows
Richard B. Josey Andrea R. Kelly
Luester McCullough Winfred O. Murdaugh

OFFICIALS Bradley K. Smith, Town Manager
PRESENT Cornelia G. Bell, Assistant Town Manager
Patricia A. Graham, Town Clerk
Michael C. Kirby, CPDD
Michael Graham, Asst. Police Chief
Ernest J. Jarrett, Town Attorney

ALSO Senator Yancey McGill, Thomas Faulkner, Mary E. Chinnes, Angela Eunice
PRESENT Rev. Curtis Boston, Judy Elder, J.W. Campbell

INVOCATION Senator Yancey McGill

SECOND AND FINAL READING OF ORDINANCE 2004-01 AN ORDINANCE TO
REZONE A PORTION OF TAX MAP PROPERTY 11-039-011 FROM HIGHWAY
COMMERCIAL TO PLANNED UNIT DEVELOPMENT

Council Member Kelly motioned to approve Ordinance 2004-01 An Ordinance To Rezone A
Portion Of Tax Map Property 11-039-011 From Highway Commercial To Planned Unit
Development with the following amendments: Porter Street to be blocked on the Ashton
Avenue side, a fence to be created on the King Street Recreation Department property line up
to Porter Street. The developer is to fence his property line, as well as Mr. Kalkstein will
fence his property line to within 50 feet of Highway 377, the CTC will appropriate funds for
the surfacing of Porter Road from Nelson Blvd. to the Planned Unit Development, to be
complete in 12-18 months. It was seconded by Council Member Bartelle. It was carried
and passed, by a show of hands, 6-1. Council Member Josey abstained.

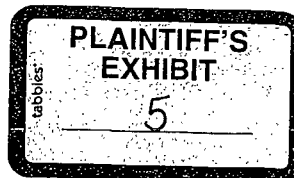
DISCUSSION OF FIRST READING OF ORDINANCE 2004-02 AN ORDINANCE TO
AMEND CODES SECTION DEALING WITH JUNKED CARS, OVERGROWN LOTS
AND DILAPIDATED BUILDING

Mayor Kirby read current Ordinance, and would like it enforced.

Council Member Bartelle said there is a problem with junked cars on Ashton and Madison
Avenues.

Mayor Pro Tem Murdaugh said there junked cars on Charles Avenue.

Mayor Kirby commended all employees for the outstanding job and Progress Energy for keeping
him informed during, and after the ice storm.



DISCUSSION AND APPROVAL OF COMPUTER SOFTWARE BIDS

No action taken.

COMMENTS

Mayor Kirby

- Ice Storm - Commended all employees for the outstanding job and Progress Energy for keeping him informed during, and after the ice storm.

CPDD explained that FEMA representatives came in to do an initial assessment with the Town on expenses. From the assessment, FEMA estimated \$1.3 million of debris clean up. There was approximately \$30,000 in overtime pay, and materials. Once a disaster is declared, then FEMA will send out workers. If the Town is declared a disaster, they would be reimbursed for actual expenditures, not projected. It will be several days before we know if the Town is declared a disaster. He said as soon as a disaster is declared, the Town will contract out to cleanup debris.

Senator McGill thanked town employees for assistance in preparing for dinner honoring Coach John McKissick. He said several days ago, Kingstree was not on the disaster list, but we immediately go put on the list thanks to Mr. Victor Rowell and others.

- Inmate Fee- He asked Council to take to County Council and the Supervisor. He does not feel that the Town should pay to house prisoners. This was not budgeted.

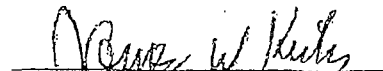
ADJOURNMENT

Mayor Pro Tem Mordaugh motioned to adjourn the meeting. It was seconded by Council Member Josey. The motion was unanimously carried and passed.

The Minutes of February 02, 2004 Regular Meeting are correct to the best of my knowledge.

Done in this meeting assembled on the 16th day of February 2004.


Patricia A. Graham, Town Clerk


James W. Kirby, Mayor

THE STATE OF SOUTH CAROLINA,

COUNTY OF WILLIAMSBURG

KNOW ALL MEN BY THESE PRESENTS,

That We, ALICE H. KELLAHAN AND LYDIA F. DUKE, of the County of Williamsburg, State of South Carolina, in consideration of the sum of Sixty Thousand (\$60,000.00) Dollars, paid us by Waccamaw Housing, Inc., the receipt whereof is hereby acknowledged, HAVE granted, bargained, sold and released, and by these Presents, DO grant, bargain, sell and release unto WACCAMAW HOUSING, INC., ITS SUCCESSORS AND ASSIGNS:

All that certain piece, parcel or lot of land lying, being or situate in the Town of Kingstree, County of Williamsburg, State of South Carolina, containing Two and Fifteen Hundredths (2.15) acres, more or less, as shown on that certain map prepared by William N. Kellahan, Jr., R.L.S., dated March 2, 2004, recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book S1090 at page 1A. Said lot of land being described as follows: On the North by lands of Gary W. Chapman, Drucilla Fulton, Bessie R. Floyd, and James W. Campbell as shown on said map; on the East by Budget Housing Center, Inc., as shown on said map; on the South by other lands of the grantors; and on the West by a Fifty (50) foot right-of-way shown as Porter Street on said map.

The above lot of land being a portion of that certain tract of land conveyed to Alice H. Kellahan and Lydia F. Duke by deed of Samary McIntosh recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book A-311 at page 231.

Split from 11-039-011

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

000001727 SKA0552 PG00242



TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Waccamaw Housing, Inc., its Successors and Assigns forever.

And We do hereby bind ourselves, our Heirs and Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Waccamaw Housing, Inc., Its Successors and Assigns, against us and our Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, WE, the said Alice H. Kellahan and Lydia F. Duke, have hereunto set our Hands and Seals this 24th day of May, 2004, and in the Two Hundred and Twenty-eighth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the presence of:

Mollie E. Ruxton
William S. Sullivan

Alice H. Kellahan
Alice H. Kellahan Jr
Attorney in Fact

Alice H. Kellahan

Lydia F. Duke
Lydia F. Duke

THE STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

PROBATE

PERSONALLY APPEARED before me the undersigned witness and made oath that (s)he saw the within named Alice H. Kellahan and Lydia F. Duke sign, seal, and as their act and deed deliver the within-written Deed; and that deponent with the other witness whose name is subscribed above, witnessed the execution thereof.

SWORN TO before me this 24th day of May, 2004.

William S. Sullivan Mollie E. Ruxton
Notary Public for South Carolina
My Commission expires: 7/14, 2004

GRANTER'S ADDRESS:

Waccamaw Housing, Inc.
P.O. Box 3922
Myrtle Beach, SC 29578

000001727 BR000000 000000

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 at _____ Township, bearing Williamsburg County Tax Map Number Split from 11: 039-011 was transferred by Alice H. Kallahan and Lydia F. Duke to Waccamaw Housing, Inc. on May 7, 2004.
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) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 60,000.00
 - (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: \$50,000.00
 - (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: \$ 60,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$222.00.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: 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
7th day of May, 2004

Alice H. Kallahan
Lydia F. Duke
Attorney in Fact
Alice H. Kallahan

Hollie E. Proctor
NOTARY PUBLIC FOR THE STATE OF
SOUTH CAROLINA. 4/27/04
My commission expires: _____

Lydia F. Duke
Lydia F. Duke

RECORDED 5-19-04
SALLY M. MOUZON
ALERTOR
WILLIAMSBURG CO., S. C.

000001727
RECORDED 05/17/2004 05:01:20PM
BK140352 Pt00242 Page#3
Fee#110.00 State#156.00
County#66.00
Williamsburg County, SC
Clerk of Court
Carolyn F. Williams

000001727 BK140352 PG00244

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM WILLIAMSBURG COUNTY JUL 12 2012
Court of Common Pleas

G. Wells Dickson, Jr., Special Referee **SC Court of Appeals**

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

PROOF OF SERVICE

I certify that I have served one copy of the **BRIEF OF APPELLANTS**, one copy of the **REPLY BRIEF OF APPELLANTS**, and one copy of the **RECORD ON APPEAL (VOLUME I & II)** on opposing counsel by depositing a copy of it in the United States Mail, postage prepaid on July 9, 2012 as follows:

Ernest J. Jarrett, Esquire
M. Amanda Shuler, Esquire
Jenkinson, Jarrett and Kellahan, P.A.
PO Box 669
Kingstree, SC 29556.



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

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

Town of Kingstree, a Body Corporate and Politic, Respondent

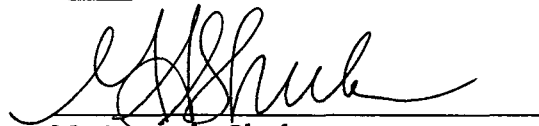
v.

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

ACKNOWLEDGMENT OF RECEIPT AND
SERVICE RECORD ON APPEAL

The undersigned, M. Amanda Shuler, as Attorney for Respondent Town of Kingstree, hereby acknowledges receipt and service of one copy of the Record on Appeal in the above-captioned matter this 26th day of June, 2012.



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

RECEIVED

JUN 28 2012

C Court of Appeals