

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM FLORENCE COUNTY

Thomas Russo, Circuit Court Judge

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SC Court of Appeals

Appeal Number 2017-002519

County of Florence and Thomas J. Hewitt, Respondents,

vs.

Carol Eagerton, Appellant.

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF FLORENCE) CASE NO.: 2013-CP-21-03192
3
4

5 January 11, 2017 DAY 1 OF 2

6 BEFORE: The Honorable Thomas Russo

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8 COUNTY OF FLORENCE and THOMAS J. HEWITT,
9 Plaintiffs,

10 vs.

11 CAROL EAGERTON,

12 Defendant.
13
14

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JUN 20 2019

SC Court of Appeals

ORIGINAL

15 APPEARANCES:

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18 Attorneys for the Plaintiffs.

19 Rose Mary Parham, Esq.
20 Attorneys for the Defendant.

21 Official Court Reporter
22 Natalie Dahl, RPR
23
24
25

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(Plaintiffs' Exhibits 1 - 9 marked.)

THE COURT: Is there anything we needed to take up?

MR. McEACHIN: They asked if our witnesses be sequestered, and they are out of the courtroom. I ask if she has any in the courtroom that they likewise be suppressed.

MS. PARHAM: I have taken care of that.

THE COURT: Anything else?

MR. McEACHIN: No, sir.

THE COURT: For the record, this is Case No. 2013-CP-21-3192, County of Florence and Thomas J. Hewitt versus Carol Eagerton, E-A-G-E-R-T-O-N. It is a non-jury trial, and so, folks, if you all -- I'm a little bit more -- maybe a little more informal as far as procedurally. If you would like to make an opening statement, I would be happy to hear from you, or if you would just like to get into the testimony.

MR. McEACHIN: I explained what is going on in the pretrial brief, unless you would like to hear more, we're ready.

THE COURT: Rose Mary, if you would like to make any opening remark, you are welcome to, or proceed with the testimony.

VIRGINIA WILCOX - DIRECT EXAMINATION

1 MS. PARHAM: We can proceed.

2 THE COURT: Call your first witness.

3 (VIRGINIA WILCOX, having been duly sworn,
4 testified as follows:)

5 THE CLERK: State your name for the record.

6 THE WITNESS: Virginia Wilcox.

7 MS. PARHAM: My client is having a hard time
8 hearing, don't know what we can do other than speak
9 more loudly.

10 THE COURT: I'll make the suggestion, but you may
11 want her next to you. She's welcome to sit over here
12 if that will help her to hear the witness.

13 DIRECT-EXAMINATION

14 BY MR. McEACHIN:

15 Q Ms. Wilcox, what is your occupation?

16 A I'm a title abstracter.

17 Q How long have you a title abstracter?

18 A About 32 years.

19 Q What is an abstracter? What does that job means?

20 A I search real estate land titles.

21 Q Where do you do that?

22 A Whatever county the land is located, mainly in
23 Florence County.

24 Q Which repository or office do you go to find
25 these records.

VIRGINIA WILCOX - DIRECT EXAMINATION

1 A Clerk of court's office in Florence.

2 Q At my request, did you search the records in
3 Florence County Clerk of Court's Office for plats and
4 deeds involving Hewitt Cemetery Road in Florence
5 County?

6 A You did.

7 Q Have you ever testified in court before?

8 A Once or twice.

9 MR. McEACHIN: I don't know that she needs to be
10 qualified as an expert, but I'll offer her as a
11 witness to authenticate these documents from the clerk
12 of court's office.

13 THE COURT: I think she can do that -- if she
14 gathered them, she can authenticate they were from the
15 clerk's office.

16 Q (MR. McEACHIN) Let me show you a document that
17 is marked as Plaintiffs' Exhibit 8 and ask you if that
18 is a document that is recorded in Florence County
19 Clerk of Court's Office?

20 A Yes, it is.

21 Q And the back page, is that the same document as
22 the page that has the Plaintiffs' exhibit on it, just a
23 clearer picture?

24 A Yes, it is.

25 MS. PARHAM: No objection.

VIRGINIA WILCOX - DIRECT EXAMINATION

1 (Plaintiffs' Exhibit 8 admitted.)

2 Q (MR. McEACHIN) I'll show you what is previously
3 marked as Plaintiffs' 9 and ask you if that is a plat
4 that was -- that is recorded in the office of the
5 clerk of court of Florence County?

6 A Yes, it is.

7 MS. PARHAM: No objection.

8 THE COURT: What number is that? 9.

9 MS. PARHAM: No objection.

10 (Plaintiffs' Exhibit 9 admitted.)

11 Q (MR. McEACHIN) This shows a two-acre parcel of
12 land; is that correct?

13 A That is correct.

14 Q It is bounded on one side by a road?

15 A County maintained road, yes, sir.

16 Q And the other side?

17 A County maintained road.

18 MR. McEACHIN: Move that in.

19 THE COURT: In evidence without objection.

20 (Plaintiffs' Exhibit 9 admitted.)

21 Q (MR. McEACHIN) This is Plaintiffs' 10.

22 (Plaintiffs' Exhibit 10 marked.)

23 Q (MR. McEACHIN) Could you identify that, please?

24 A Yes. It is a plat that has been recorded in the
25 clerk of court's office here.

VIRGINIA WILCOX - DIRECT EXAMINATION

1 Q And does it show a -- more than one road?

2 A Yes, it does.

3 Q Which roads did does it show?

4 A State Road S21-1107 and also shows Hewitt
5 Cemetery Road.

6 MS. PARHAM: No objection.

7 THE COURT: Plaintiffs' 10.

8 (Plaintiffs' Exhibit 10 admitted.)

9 (Plaintiffs' Exhibit 11 marked.)

10 Q (MR. McEACHIN) Ms. Wilcox, I'll show you what is
11 marked as Plaintiffs' 11 and ask if you can identify
12 that.

13 A Yes. It is a plat that has been recorded in the
14 clerk of court's office with Florence County.

15 Q Does it show any roads on that plat?

16 A Yes, it does. There are two roads, one is
17 identified as Branch Road, county maintained, and the
18 other is Hewitt Cemetery Road, 40-foot right-of-way
19 county maintained.

20 Q Does it show the property owner at the corner of
21 Hewitt Cemetery Road and Branch Road on the plat?

22 A The plat is entitled Eugene A. and Ann C. Branch.

23 Q But on the lot itself does it have a designated
24 owner?

25 A Yes. Michael Wood.

VIRGINIA WILCOX - DIRECT EXAMINATION

1 Q Thank you.

2 MS. PARHAM: No objection.

3 THE COURT: Plaintiffs' 11 without objection.

4 (Plaintiffs' Exhibit 11 admitted.)

5 (Plaintiffs' Exhibit 12 marked.)

6 Q (MR. McEACHIN) Ms. Wilcox, I'll show you

7 Plaintiffs' 12. Can you identify that document?

8 A Yes, that is a plat that has been recorded in the
9 clerk of court's office for Florence County.

10 Q And does that plat show any roads on it?

11 A It does.

12 Q Which ones?

13 A Branch Road 40-foot right-of-way, county
14 maintained, and Hewitt Cemetery Road, 40-foot
15 right-of-way, county maintained.

16 Q Thank you, ma'am.

17 MS. PARHAM: No objection.

18 THE COURT: Plaintiffs' 12 without objection.

19 (Plaintiffs' Exhibit 12 admitted.)

20 (Plaintiffs' Exhibit 13 marked.)

21 Q (MR. McEACHIN) Can you identify that Plaintiffs'
22 13?

23 A It is a plat recorded in the clerk of court's
24 office in Florence County.

25 Q Any roads shown on that plat?

VIRGINIA WILCOX - DIRECT EXAMINATION

1 A There are South Carolina Highway S21-1107 and
2 Hewitt Cemetery Road.

3 Q Thank you.

4 MS. PARHAM: No objection.

5 THE COURT: Plaintiffs' 13 without objection.

6 (Plaintiffs' Exhibit 13 admitted.)

7 (Plaintiffs' Exhibit 14 marked.)

8 Q (MR. McEACHIN) I'll show you Plaintiffs' 14 and
9 ask if you can identify that.

10 A It is a plat recorded in clerk of court's office
11 for Florence county.

12 Q (MR. McEACHIN) Does this plat show Hewitt
13 Cemetery at any point on the plat?

14 A It shows a cemetery, yes, it does.

15 Q Where is that? Point out for the Court.

16 A Northern part of the plat.

17 MS. PARHAM: No objection. Do you have a clearer
18 one where you can read the dates?

19 MR. McEACHIN: Oh.

20 (A brief pause in the proceedings.)

21 MR. McEACHIN: 14, the document behind the
22 numbered exhibit is the same, just a little clearer
23 and has a date.

24 THE COURT: Okay. Without objection?

25 MS. PARHAM: No objection.

VIRGINIA WILCOX - DIRECT EXAMINATION

1 THE COURT: Without objection.

2 (Plaintiffs' Exhibit 14 admitted.)

3 (Plaintiffs' Exhibit 15 marked.)

4 Q (MR. McEACHIN) I'll show you Plaintiffs' 15, do
5 you recognize that document?

6 A This is a deed that has been recorded in the
7 clerk's office.

8 Q Attached to the deed is another plat, I think --
9 yes.

10 A Yes.

11 Q In looking at the legal description and the body
12 of the deed, the plat attached to the deed, is that the
13 same plat that is referred to in the legal description on
14 the deed?

15 A Yes, it is.

16 MS. PARHAM: No objection.

17 THE COURT: Okay. 15 without objection.

18 (Plaintiffs' Exhibit 15 admitted.)

19 Q (MR. McEACHIN) The legal description describes
20 the property in the deed in Plaintiffs' 15, to whom is
21 the grantee of the deed?

22 A This is a deed into Carol K. Eagerton and Nathan
23 M. Fowler.

24 Q And the plat attached to that deed, does it show
25 a road bordering on any point on that -- I think that

VIRGINIA WILCOX - DIRECT EXAMINATION

1 is a 40-acre plat of land?

2 A Yes. There is several roads, yes.

3 Q Do you recognize the configuration of the road
4 that is outlined on that plat from the earlier plats
5 you've already examined?

6 A The dirt road?

7 Q Yes.

8 A Yes.

9 Q Which road is that?

10 A That is Hewitt Cemetery Road.

11 Q Thank you. I'll show you an exhibit marked
12 Plaintiffs' 16 and ask if you can identify that.

13 (Plaintiffs' Exhibit 16 marked.)

14 A Yes. This is a deed recorded in the clerk of
15 Court's office for Florence County.

16 Q Does it reference a plat?

17 A It is made by Irvin Engineering that was recorded
18 simultaneously herewith, it says.

19 Q Is that plat attached to the deed or to the
20 Exhibit 16? The first one didn't copy well.

21 A Yes. November 1981, yes, it is attached.

22 Q This deed is for what acreage land?

23 A It is for 20.90 acres.

24 Q And the plat attached to the deed, does it show
25 on the eastern boundary of the property?

VIRGINIA WILCOX - DIRECT EXAMINATION

1 A Correct.

2 Q And from your review of the earlier plats, do you
3 recognize that road?

4 A Hewitt Cemetery Road.

5 MS. PARHAM: No objection.

6 THE COURT: Okay. Plaintiffs' 16 without
7 objection.

8 (Plaintiffs' Exhibit 16 admitted.)

9 (Plaintiffs' Exhibit 17 marked.)

10 Q (MR. McEACHIN) I may have asked you, in
11 Plaintiffs' 16, who was the grantee?

12 A Grantee is Carol K. Eagerton.

13 Q This is Plaintiffs' 17, do you recognize that?

14 A It is a deed into Carol K. Eagerton, recorded in
15 the clerk's office for Florence County.

16 Q Does that deed reference a plat?

17 A Yes, it does.

18 Q Is that attached to Plaintiffs' 17?

19 A Yes, it does.

20 Q And does that plat show the road on the northern
21 boundary of the 12.51 acres?

22 A Yes.

23 Q Is that road named?

24 A Hewitt Cemetery Road.

25 Q Is there any other notation by the surveyor,

VIRGINIA WILCOX - DIRECT EXAMINATION

1 Irvin Engineering Company?

2 A That it is county maintained.

3 Q And the grantee in this deed is whom?

4 A Carol K. Eagerton.

5 MS. PARHAM: No objection.

6 MR. McEACHIN: I move 17.

7 THE COURT: All right. 17 without objection.

8 (Plaintiffs' Exhibit 17 admitted.)

9 (Plaintiffs' Exhibit 18 marked.)

10 Q (MR. McEACHIN) And finally --

11 MR. McEACHIN: I may need to borrow that.

12 THE COURT: Sure.

13 Q (MR. McEACHIN) This is Plaintiffs' 18, do you
14 recognize that document?

15 A Yes, it is a deed recorded in the clerk's office
16 of Florence County.

17 Q What is the real property that is conveyed by
18 that deed?

19 A 12.51 acres.

20 Q Who is the grantee in that deed?

21 A Nathan M. Fowler.

22 Q In Plaintiffs' 17, who is the grantor?

23 A Nathan M. Fowler.

24 Q Is the 12.51 acres in Plaintiffs' 18 the same

25 legal description of the 12.51 acres in Plaintiffs' 17?

VIRGINIA WILCOX- CROSS-EXAMINATION

1 A Yes, it is.

2 MR. McEACHIN: Your Honor, I would move
3 Plaintiffs' 17 evidence.

4 MS. PARHAM: No objection.

5 THE COURT: Without objection.

6 (Plaintiffs' Exhibit 18 admitted.)

7 MR. McEACHIN: That's all I have.

8 THE COURT: Ms. Parham.

9 MS. PARHAM: Thank you, Your Honor. May I hold
10 the exhibits?

11 THE COURT: Yes, sir. It is in reverse order.

12 MS. PARHAM: May I approach the witness?

13 THE COURT: Yes.

14 CROSS-EXAMINATION

15 BY MS. PARHAM

16 Q Let me direct you to Plaintiffs' 8. That is the
17 1954; is that correct?

18 A Yes, 1954.

19 Q On anywhere in that map, do you see the words
20 Hewitt Cemetery Road?

21 A I do not.

22 Q Now, the line in question that we are speaking
23 about, whether it is Hewitt Cemetery Road or not, based
24 on your testimony for all the other maps, is this
25 curved line on Plaintiffs' 8 that goes by the words

VIRGINIA WILCOX- CROSS-EXAMINATION

1 Number 364.6 acres?

2 A Yes.

3 Q There is a square box to the left of the crook in
4 the line and another line below that, is that also
5 another road of some sort, based on this map?

6 A It appears it could be.

7 Q And, in fact, it has the same dotted two-sided
8 line as the one that is in debate; is that right?

9 A Yes, it does.

10 Q And it is going perpendicular to the left of the
11 curved line in question, correct?

12 A That is correct.

13 Q And it also doesn't have a name?

14 A It does not.

15 Q And below this crooked line in question, there is
16 another -- looks like a road called Plantation Road,
17 kind of in the middle of the map, and it says
18 Plantation Road?

19 A Correct.

20 Q And so you are here testifying what is on these
21 maps, but you don't know whether these roads are still
22 in existence today or not, do you?

23 A Well, part of my search is to look at current
24 maps.

25 Q Do you know if Plantation is still in existence

VIRGINIA WILCOX- CROSS-EXAMINATION

1 today?

2 A I do not.

3 Q Hewitt Cemetery Road is not mentioned on this
4 particular map?

5 A Not on this particular map, no.

6 Q I'll get you to hold on to that Plaintiffs' 8.
7 This Plaintiffs' Exhibit 9 that was filed, it talks
8 about 2 acres, and it looks like the southern boundary
9 is what is now Branch Road, and the left boundary is
10 county maintained Hewitt Cemetery Road, that would
11 either not be on this map or on the southern-most
12 portion of this map, correct?

13 A I believe this is on this map as the southern
14 portion.

15 Q On the dotted line?

16 A Yes.

17 Q So that is the southern portion of this map?
18 That is not the bend in the road that we were
19 discussing earlier?

20 A No.

21 Q If you will continue to hang on to Exhibit 8.
22 With regard to Plaintiffs' 10, are you aware that Road
23 S21-1107 is another name for Cato Road, do you know
24 that?

25 A I believe that is correct.

VIRGINIA WILCOX- CROSS-EXAMINATION

1 Q So where Hewitt Cemetery Road comes into that,
2 that is at the northern-most portion of the map, that
3 is physically where Hewitt Cemetery is located?

4 A Yes.

5 Q And that would not be this bend in the road that
6 we're talking about?

7 A That is correct.

8 Q It would be the northern-most portion of the map.
9 And it is dated 1992; is that correct?

10 A That is correct.

11 Q In Plaintiffs' 11, I believe is another view of
12 that same 2 acres we discussed previously with regard
13 to Plaintiffs' 9. That is the track at the
14 southern-most portion of this map, that is where Branch
15 Road meets Hewitt Cemetery Road?

16 A Correct.

17 Q And, again, Plaintiffs' 12 is similar, same piece
18 of property. So, basically, Plaintiffs' 12 and 11 and
19 9 all reference the same piece of property, it appears?

20 A I don't have 9.

21 Q Oh, I'm sorry, I gave him 9.

22 A Yes, that is correct.

23 Q So 9, 10 and 11 represent the same piece of
24 property, and that is at the southern-most piece of the
25 map in question of Plaintiffs' 8?

VIRGINIA WILCOX- CROSS-EXAMINATION

1 A Correct.

2 Q Plaintiffs' 13 references the same piece of
3 property in Plaintiffs' 10?

4 A That is correct.

5 Q At the northern piece of the map?

6 A That is correct.

7 Q This is not the bend in the road that we're
8 talking about?

9 A Correct.

10 Q Plaintiffs' 14 is another view of the parcel in
11 Plaintiffs' 8. It shows the bend in the road that we
12 discussed. Do you see the name Hewitt Cemetery
13 anywhere on this map?

14 A Not on this map.

15 Q Again, it looks like it denotes other dotted
16 lines that seem to look the same as the one with the
17 bend that are also roads on these properties, but not
18 named?

19 A That is correct.

20 Q Plaintiffs Exhibit 15, this is the deed that
21 we're talking about, and it is dated 1988. On the map
22 attached to the deed with the 40.7-acre parcel, do you
23 see the words "Hewitt Cemetery Road" anywhere on that
24 map?

25 A Not on this map.

VIRGINIA WILCOX- CROSS-EXAMINATION

1 Q So when Mr. McEachin asked you what that road
2 was, and you said Hewitt Cemetery Road, that is because
3 later maps after this date referenced that road as
4 Hewitt Cemetery?

5 A That is correct.

6 Q It is not on the map as Hewitt Cemetery Road, it
7 is merely a dotted line?

8 A Yes. And I recognize that as Hewitt Cemetery
9 Road.

10 Q And you base that upon new maps that call it
11 Hewitt Cemetery Road, or more recent maps, I should
12 say?

13 A Right.

14 Q And the same is true with Plaintiffs' 16, is
15 there any reference to Hewitt Cemetery on that exhibit?

16 A There is not.

17 Q On Plaintiffs' Exhibit 16, does this map actually
18 give the name on the dotted line that you and I looked
19 at it earlier that goes off to the left that appeared
20 to be another road, it looks like it names it Old Road
21 or something?

22 A I can make out the "old" but can't tell if that
23 is "road," cannot determine the....

24 Q But it denotes another road?

25 A Yes. Yes.

VIRGINIA WILCOX - REDIRECT EXAMINATION

1 Q Plaintiffs' 17 and 18, as Mr. McEachin mentioned,
2 references the same piece of property, and that would
3 be what is called Hewitt Cemetery Road meets Plantation
4 Road?

5 A According to this plat, yes.

6 MS. PARHAM: That is all I have.

7 THE COURT: Redirect?

8 REDIRECT-EXAMINATION

9 BY MR. McEACHIN:

10 Q Plaintiffs' 17 is a deed from Nathan Fowler to
11 Carol Eagerton for 12.51 acres, is that in the
12 neighborhood of where this curve in the road is that
13 Ms. Parham is questioning you about?

14 A I believe it is, yes.

15 Q And does that plat show the name of the road on
16 the northern boundary of Ms. Eagerton's property?

17 A It does.

18 Q And what is the name?

19 A Hewitt Cemetery Road.

20 Q Does that plat indicate who maintains that road?

21 A States "county maintained."

22 Q Would that plat have been delivered to
23 Ms. Eagerton with the deed?

24 A Yes.

25 Q And was it filed in the clerk's office at the

VIRGINIA WILCOX - RECROSS-EXAMINATION

1 same time the deed was filed?

2 A Yes, it was.

3 MS. PARHAM: Just for clarification. Could I
4 have this marked as Defense 1?

5 (Defendant's Exhibit 1 marked.)

6 RECROSS-EXAMINATION

7 BY MS. PARHAM:

8 Q I know this is not precise, but if you would take
9 this pink highlighter on Defense Exhibit 1, mark the
10 portion on Defense Exhibit 1 that would be --

11 A Of this road?

12 Q No, of this piece of property, the 12.51 acres.

13 A Is here.

14 Q Could you shade it in? So the part named Hewitt
15 Cemetery Road on Plaintiffs' Exhibit 17 and dated.....

16 A It is 2000.

17 Q 2000?

18 A Uh-huh.

19 Q So in 2000, Plaintiffs' Exhibit 17 denotes Hewitt
20 Cemetery Road where the pink line is on Defendant's
21 Exhibit 1?

22 A Yes.

23 Q And that is in the year 2000?

24 A Yes.

25 MR. MCEACHIN: No objection.

VIRGINIA WILCOX - REDIRECT EXAMINATION

1 THE COURT: Defense 1 is without objection.

2 (Defendant's Exhibit 1 admitted.)

3 REDIRECT-EXAMINATION

4 BY MR. McEACHIN:

5 Q You were asked about the curve in the road, and
6 I'll show you the plat attached to Plaintiffs' 15,
7 which is the plat of 40.7 acres. This designation at
8 the -- I guess that is the northeast that -- what is
9 the designation of that?

10 A State Road S21-1224.

11 Q Do you know which road that is?

12 A That is the Hewitt Cemetery Road.

13 Q What is the designation, from your experience,
14 searching titles, what does the designation of S, dash,
15 21, dash, 1224 mean?

16 A The number given by the State to identify that
17 road as a state road.

18 Q Thank you.

19 MR. McEACHIN: That is all I have.

20 (Defendant's Exhibit 2 marked.)

21 RECROSS-EXAMINATION

22 BY MS. PARHAM:

23 Q In Defendant's 2, does it show the state road Mr.
24 McEachin was just speaking of?

25 A Yes, it does.

VIRGINIA WILCOX - RECROSS-EXAMINATION

1 Q And that runs actually right next to Hewitt
2 Cemetery?

3 A That is correct.

4 Q And it shows that state road coming to an end,
5 end of state maintenance, correct?

6 A It shows it ending there, but I do not see "end
7 of maintenance."

8 Q But it shows the state road coming to an end
9 there?

10 A Yes. Yes.

11 Q It doesn't mark a county road, it marks a state
12 road and shows it comes to an end there?

13 A That is correct.

14 Q And that is where the cemetery is?

15 A That is correct.

16 MR. McEACHIN: No objection.

17 THE COURT: Without objection, Defendant's 2.

18 (Defendant's Exhibit 2 was admitted.)

19 REDIRECT-EXAMINATION

20 BY MR. McEACHIN:

21 Q In Defendant's 2, you were asked where the state
22 road ends, does it end past the cemetery on that plat?

23 A In this -- for clarification, this is the
24 cemetery. It does end beyond the cemetery.

25 Q Thank you.

REGINALD SANDERS - DIRECT EXAMINATION

1 MR. McEACHIN: That is all I have.

2 THE COURT: Anything further?

3 MS. PARHAM: No, Your Honor.

4 MR. McEACHIN: May she be excused?

5 THE COURT: Any objection?

6 MS. PARHAM: No, Your Honor.

7 THE COURT: You are free to go.

8 MR. McEACHIN: I'm going to have this witness
9 identify aerial photos. Where would you like this?

10 THE COURT: If it is facing out, I think the
11 witness can see it and then everyone can see it, or
12 you can angle it towards the middle of the courtroom,
13 if you want.

14 MR. McEACHIN: This way?

15 THE COURT: Yeah. As long as you and the
16 witness.....

17 (REGINALD SANDERS, having been duly sworn,
18 testified as follows:)

19 THE CLERK: State your name for the record.

20 THE WITNESS: Reginald Sanders the Second.

21 DIRECT-EXAMINATION

22 BY MR. McEACHIN:

23 Q Mr. Sanders, where are you currently employed?

24 A In planning.

25 Q When this lawsuit began in 2014, where were you

REGINALD SANDERS - DIRECT EXAMINATION

1 employed?

2 A I was in the assessor's office.

3 Q In connection with your duties of both places,
4 are you familiar with the aerial photographs of
5 property in Florence County that is taken as part of
6 the tax assessor's office or GIS planning?

7 A Yes sir.

8 Q Have you -- what is your education?

9 A I've only been at the county, so high school
10 wise.

11 Q What is your education? Where did you go to
12 school?

13 A Mayo Magnet School.

14 Q Do you have any training in connection with your
15 duties at county planning or county GIS?

16 A Yes, sir, just through the county is how I've
17 done my job.

18 Q You have to speak up?

19 A I apologize. Just through the county is how I
20 have been familiarized with the aerial photography and
21 everything, just working with it. Because I've been
22 with the county for years, so all my education and
23 things that have to do with maps and things has been
24 through the county.

25 Q How long have you been with the county?

REGINALD SANDERS - DIRECT EXAMINATION

1 A 17 years.

2 Q 17?

3 A Yes, sir.

4 Q In connection with that, is part of your duties
5 keeping these records of aerial photos?

6 A Yes, sir.

7 Q I'll show you Plaintiffs' Exhibit 1, you
8 recognize that?

9 A Yes.

10 Q What is Plaintiffs' 1?

11 A That is an aerial photograph for the -- 1965
12 aerial photograph.

13 Q And if you could, do you see Hewitt Cemetery Road
14 on this aerial photograph?

15 A It is hard to see from here.

16 Q You can come over here. Come down.

17 A Right here, these, the two main roads, and that
18 is where it runs. I think that is the original way,
19 tract of land.

20 Q Do you know which road this is up here?

21 A No, sir.

22 MS. PARHAM: What did he identify, I'm sorry, I
23 missed that?

24 MR. McEACHIN: From here down to there.

25 THE COURT: Folks, let's keep the voices up so

REGINALD SANDERS - VOIR DIRE

1 the court reporter can hear you.

2 MR. McEACHIN: He said these were the two main
3 roads (indicates).

4 Q (MR. McEACHIN) Is that correct, Mr. Sanders?

5 A Yes, sir.

6 MR. McEACHIN: I move this in.

7 MS. PARHAM: Well, I would just ask some -- I
8 object -- well, I would like to clarify a few things,
9 if I may?

10 THE COURT: You want her -- I mean, we're not on
11 cross, but can she ask questions?

12 MR. McEACHIN: If she wants to voir dire.

13 MS. PARHAM: I do.

14 VOIR DIRE

15 BY MS. PARHAM:

16 Q It looks like these white lines are superimposed
17 on a photograph?

18 A No, ma'am. Actually, what is going on, the
19 original maps, when they would keep records, they would
20 draw on them, and the white lines are the way the
21 photograph was taken.

22 Q There is red and white lines?

23 A Well, yeah, because all of these lines here are
24 drawn in. These here are the actual roads. When they
25 took the photos -- like even the major roads here,

REGINALD SANDERS - VOIR DIRE

1 those are the way the photo came out, because the
2 actual --

3 Q Do you have the original photo before the red
4 lines were put on?

5 A The original? No. The original paper map that
6 is there has these drawn on them, so they were
7 physically written.

8 Q Without the red lines, do you have photos without
9 red lines?

10 A No. There is no photos without it, because the
11 actual map was drawn on, but the red lines there were
12 done by like where the map itself was marked on.

13 Q I understand. Do you -- you don't have a picture
14 of the map without the red lines?

15 A No, ma'am.

16 Q Florence County doesn't have that anywhere?

17 A No, ma'am, because the map itself, when they
18 originally had the maps, they physically drew on it.

19 Q Drew on them and didn't keep a copy without
20 the --

21 A No, ma'am.

22 MR. McEACHIN: I may be able to help.

23 THE COURT: In other words, they take a photo,
24 aerial photo, it is developed, and then these lines
25 are drawn in?

REGINALD SANDERS - VOIR DIRE

1 THE WITNESS: Originally. Like I said, this was
2 before even the assessor's office, as what we know in
3 the assessor's office of what existed. So what they
4 did, when they took these -- like these numbers, a lot
5 of those are tract numbers and things like that. They
6 took deed and plat information and just put it on the
7 map itself. After that, the maps -- we have Mylar we
8 overlay on top of the aerial photos.

9 THE COURT: Back then, they did it on the actual
10 photo?

11 A They wrote it on there. But it is still the
12 photo, but the lines and the tract and the deed
13 information they drew on.

14 Q (MS. PARHAM) It is an enhanced photo with
15 writings and red lines?

16 A When you say "enhanced".....

17 Q That is not the way it looks when you take a
18 picture from the sky?

19 A No.

20 Q When is the first photo you have in Florence
21 County from the way it looks like from the sky without
22 enhancements?

23 MR. McEACHIN: I object. He testified that the
24 roads were as they were photographed, so that is not
25 his testimony in terms of enhancing the road. All he

REGINALD SANDERS - VOIR DIRE

1 testified about is they put the red lines in and made
2 these notations in red, but if I understand his
3 testimony, they haven't gone and done anything with
4 the image --

5 THE COURT: Haven't altered the image, they wrote
6 on it.

7 MS. PARHAM: But if you look here, you can see a
8 white line superimposed on a tree line. In other
9 words, that white line has to be superimposed, because
10 if you look, it is on top of tree lines.

11 THE WITNESS: Another thing, this is a copy of a
12 map that was scanned in. A lot of this is going to be
13 bleed-over from the printer. There is going to be --
14 this is not the original, original here, but the
15 original itself is going to have color disparity with
16 it, because this was a print versus original.

17 Q (MS. PARHAM) Where is the original?

18 A In the assessor's office, I think they still have
19 it housed -- either that or third floor.

20 Q Is this the copy kept in the records that public
21 has access to?

22 MR. McEACHIN: Yes.

23 Q And the original is in the assessor's office?

24 A I haven't been there for a few years now, but I
25 know if it is not in the office, it's in storage. I

REGINALD SANDERS - VOIR DIRE

1 have a digital copy of it too, because we scan them
2 because they were old, we scanned them. A lot of these
3 over time, they are ripped and things, so we stored
4 them to keep a copy.

5 Q (MS. PARHAM) I see a white line going across the
6 tops of trees, how would that happen?

7 A Once again, when this is a copy of -- there is
8 stuff on the maps. I mean, the maps themselves, all
9 these rips and things, that could be this rip that
10 followed up this way. The map is in bad shape, but if
11 you see the map itself, you can see how this runs.
12 Even if you look at the other ones, you still see where
13 even with --

14 Q But your testimony earlier was that --

15 MR. McEACHIN: I haven't finished examining my
16 witness. She's going into cross-examination.

17 MS. PARHAM: I object to -- well, I object to a
18 representation that it is an aerial photograph of how
19 it looks from the sky in 1960 whatever -- I mean '65.
20 It appears that there is white and red lines
21 superimposed on top of the trees. If you took an
22 aerial photograph, I don't believe it would be
23 depicted in that way.

24 MR. McEACHIN: She's making an argument
25 without --

REGINALD SANDERS - VOIR DIRE

1 THE COURT: We're just dealing with the
2 admissibility. I realize we don't have a jury, so.

3 MR. McEACHIN: He can explain the shadows.

4 THE COURT: Let me do this. Let me let you
5 examine the witness and I'll give Ms. Parham an
6 opportunity to cross. We'll deal with the issue of
7 the admissibility of it at the conclusion.

8 DIRECT-EXAMINATION (CONT.)

9 BY MR. McEACHIN:

10 Q It has a tab, Plaintiffs' Exhibit 1?

11 A Yes, sir.

12 Q And is the document from which Plaintiffs'
13 Exhibit 1 copied, is it kept digitally, or how is it
14 kept?

15 A There is a physical copy, and we also have a
16 scanned-in copy.

17 Q And the scanned-in copy, is that kept in the
18 regular course of business at the Florence County Tax
19 Assessor's Office?

20 A Scanned-in copy, we scan to keep records of our
21 own because these were in such bad shape.

22 Q If a member of the public wanted to come to the
23 tax assessor's office to get a copy of Map 213 made in
24 1965, would they get it from the scanned-in document
25 that you had in the tax assessor's office?

REGINALD SANDERS - VOIR DIRE

1 A It would be the scanned-in copy, or if they
2 absolutely wanted a fresh one, I'm pretty sure one
3 could be done.

4 Q But in the normal course of business, someone
5 comes in the tax assessor's office and wants
6 Plaintiffs' 1?

7 A We print it from the scanned-in copy.

8 Q There are areas -- for instance, let's look on
9 Plaintiffs' Exhibit 1 between number five circled in
10 red and number seven circled in red, you can see some
11 -- looks like darkened areas over the white road, what
12 caused that darkened area?

13 A That is a shadow. When they took the actual
14 picture, when the plane flies over, depending on the
15 time of year, there is shadows that overlap.

16 Q Would the angle or camera of the plane affect
17 whether or not there was -- camera lens would be
18 shooting through the tree?

19 A It would have been. I mean, it is 1965, so.

20 Q Back in 1965, the record of the document that the
21 tax assessor had would be an actual print; in other
22 words, not a negative?

23 MS. PARHAM: I object. I don't know how we know
24 1965 what they did.

25 MR. MCEACHIN: He has seen the document. I'll

REGINALD SANDERS - VOIR DIRE

1 withdraw the question.

2 Q (MR. McEACHIN) Have you seen the original,
3 Plaintiffs' 1?

4 A I have.

5 Q Have you seen many of the aerial photos take in
6 1965 for Florence County?

7 A I have.

8 Q What is the type of paper that Plaintiffs'
9 Exhibit 1 was on?

10 A It is not Mylar. It is kind of like a thick --
11 it is thicker than paper, not quite cardboard, but it
12 is also like a cardboard styled paper.

13 Q And are you familiar with what a print is?

14 A Where the original print is?

15 Q No. If I take a picture with my phone and go to
16 CVS and get them to make me a picture, that's a print?

17 A Yes.

18 Q What is Plaintiffs' -- using that, what is
19 Plaintiffs' Exhibit No. 1, the original one?

20 A It is a print --

21 THE COURT: Like photo paper?

22 Q (MR. McEACHIN) Print paper, right?

23 A Yes, sir. I don't know the actual -- what the
24 paper is, but, yeah, it is printed --

25 THE COURT: Heavier stock?

REGINALD SANDERS - VOIR DIRE

1 THE WITNESS: Yes, sir. It has like a map
2 finish.

3 THE COURT: I refer to it as photo paper, I think
4 that is what he is talking about.

5 THE WITNESS: The only reason they didn't
6 specifically call it photo paper is because it is not
7 like you can see -- it's about that thick.

8 Q (MR. McEACHIN) Fair to say it looks like photo?

9 A Yes, sir, it does look like a photo.

10 Q Now, the later -- does the county have any aerial
11 photos made of property in Florence County since 1965?

12 A Yes, sir.

13 Q And the later photos, are they reproduced on the
14 print type of paper, or more like a negative?

15 A Mylar looks more like a negative, so we can run
16 it on a blue Mylar machine.

17 MR. McEACHIN: We have a whole series of maps, do
18 you want me to go through them, or have Mary Ann --
19 that is my questions on the first one.

20 THE COURT: Do you want to question him regarding
21 that?

22 MS. PARHAM: We can move on to the other ones. I
23 will reserve an objection to the --

24 MR. McEACHIN: I would like to move it before I
25 forget.

REGINALD SANDERS - VOIR DIRE

1 MS. PARHAM: I don't object. I just object to
2 the representation that it is a true aerial photograph
3 from 1965.

4 THE COURT: I'm going to let it in as Plaintiffs'
5 Exhibit 1. I certainly -- you know, this is a
6 non-jury trial, and I understand your objection and
7 certainly will consider it depending on the additional
8 testimony coming in.

9 (Plaintiffs' Exhibit 1 admitted.)

10 Q (MR. McEACHIN) Let me show you Plaintiffs' 2,
11 can you identify that?

12 A The 1977 map.

13 Q What area of the county does it show?

14 A Same area.

15 Q Can you show Hewitt Cemetery Road?

16 A (Indicates.)

17 Q Two major roads, this road and this road, and
18 Hewitt Cemetery Road runs in between them?

19 A Yes, sir.

20 Q Are you familiar whether that is the cemetery
21 right there?

22 MS. PARHAM: What was the date?

23 MR. McEACHIN: 1977. I move that into evidence,
24 Your Honor.

25 MS. PARHAM: No objection.

REGINALD SANDERS - VOIR DIRE

1 (Plaintiffs' Exhibit 2 admitted.)

2 Q I'll show you Plaintiffs' 3 and ask you if you
3 recognize Hewitt Cemetery Road on Plaintiffs' 3?

4 A Yes, sir.

5 Q Is that a document kept in the regular course of
6 business and in the office of the tax assessor for
7 Florence County?

8 A Yes, sir.

9 Q What is shown on -- where is Hewitt Cemetery
10 Road?

11 A (Indicates.)

12 Q Where are the two roads that it connects?

13 A Here and here (indicates).

14 Q Again, is the cemetery shown on that?

15 A Right here.

16 Q And the date?

17 A 1989.

18 MR. McEACHIN: Move No. 3.

19 MS. PARHAM: No objection.

20 (Plaintiffs' Exhibit 3 admitted.)

21 Q (THE COURT) Is the photograph No. 2, Plaintiffs'
22 2, is that kept in the regular course of business in
23 the tax assessor's office for Florence County?

24 A Yes, sir.

25 Q This is Plaintiffs' 4, do you recognize that?

REGINALD SANDERS - VOIR DIRE

1 A Yes, sir.

2 Q Can you show me Hewitt Cemetery Road?

3 A (Indicates.)

4 Q Can you show me the two roads it connects?

5 A (Indicates.)

6 Q And the date of this was?

7 A '98.

8 MR. McEACHIN: We move No. 4 in.

9 MS. PARHAM: Did you put these words on, or were
10 they already on here?

11 THE WITNESS: No, that was -- this is a digital
12 copy, so those were put on.

13 MS. PARHAM: Later?

14 THE WITNESS: Yes. Because when we print those
15 maps, these are actually printed, because when -- from
16 after '89 we started getting digital photography.

17 MS. PARHAM: And so when were the words put on?
18 Just in preparation for this trial, or what?

19 THE WITNESS: If a map or anything -- if someone
20 wants to label roads, it is whenever this was printed
21 we put them on there.

22 MS. PARHAM: You put the words on when you print
23 it for the person you make it for?

24 THE WITNESS: Yes. Yes.

25 MS. PARHAM: I have no objection with that

REGINALD SANDERS - VOIR DIRE

1 testimony, but --

2 THE COURT: Your objection is how someone labeled
3 that area?

4 MS. PARHAM: Correct.

5 THE COURT: But the photo shows what it shows,
6 but you have an objection to the labeling?

7 MS. PARHAM: Right. Right. Right.

8 MR. McEACHIN: Can I follow up?

9 THE COURT: Yeah.

10 Q When did GIS mapping come into play in Florence
11 County?

12 A The original, when we started, was -- I think our
13 original data was 2005 maybe, but we already started
14 getting digital photography. The only thing we used
15 before that was mylars. The aerials here were earlier,
16 but it came after where they started getting it in
17 Florence, so we started doing digital planning.

18 Q Did the designation of the roads on Plaintiffs' 4
19 have anything to do with preparation for 911
20 designation of roads in Florence County?

21 A Yes, sir. Anybody who came in to get roads -- we
22 have a different layer that would display and things
23 like that. So anything that is driven by a road or
24 anything like that, it is shown that way, so it is not
25 individual.

REGINALD SANDERS - VOIR DIRE

1 THE COURT: So you are labeling -- the labels
2 that appear on this exhibit are labels taken from the
3 county's 911 information?

4 THE WITNESS: Uh-huh. It is based on the road
5 layer. The road layer that we get -- GIS maintain, I
6 think our road layer is maintained by Public Works
7 maybe.

8 THE COURT: So someone can order this photo
9 either without the labeling, or with the labeling?

10 THE WITNESS: Yes, sir.

11 THE COURT: But if they want the labeling, it is
12 that 911 information?

13 THE WITNESS: Yes, sir.

14 THE COURT: It is not just someone saying label
15 this road as Hewitt Cemetery?

16 THE WITNESS: Yes, sir. Yes, sir.

17 MS. PARHAM: When did the GIS mapping labeling
18 technology start in Florence County?

19 THE WITNESS: It would have been -- I can't say
20 for sure when the road file that we had came into
21 play.

22 THE COURT: Can you ballpark it?

23 THE WITNESS: It would have been -- that goes
24 into a whole different thing, because road layer
25 information is always -- the files were created back

REGINALD SANDERS - VOIR DIRE

1 in the '90s, so the State always had a road layer,
2 which we would have gotten a lot of that from, but
3 over time, the departments would have cleaned it up
4 and fit how Florence County actually looks. When --
5 as far as wherever we got it, because I initially
6 wasn't in the GIS department, I was in the assessor's,
7 and our main focus was assessor data, so I can't say
8 for sure.

9 THE COURT: When you first went to GIS, they were
10 doing this.

11 THE WITNESS: Yes, sir.

12 THE COURT: Already in play?

13 THE WITNESS: Yes, sir. And even when we were
14 doing parcels and things we had the file, but I'm not
15 familiar where initially the data came from, but it
16 would have been from one of the accounting agencies
17 dealing with that.

18 MR. McEACHIN: Can I follow up?

19 THE COURT: Yes, sir.

20 Q When you started with the tax assessor's office,
21 was this GIS available in the tax assessor's office,
22 911 roads?

23 A When GIS was created?

24 Q When you started at tax assessor's office, was it
25 there?

REGINALD SANDERS - VOIR DIRE

1 A When I started -- the E-911 stuff?

2 Q Was the E-911 stuff there?

3 A Yes, sir.

4 Q And how long have you worked for the tax
5 assessor's office?

6 A 17 years.

7 Q So that puts us back to '99, 2000?

8 A Uh-huh.

9 MS. PARHAM: So somewhere around that time when
10 E-911 started to go into all these county areas, is
11 when these roads got a designation from the over-layer
12 that was put on the maps?

13 THE WITNESS: The roads themselves -- I guess I
14 would say, yeah, but whenever the roads were created
15 for E-911 purposes and however -- whatever
16 organization purposes, they were there, so.

17 THE COURT: All right. I'll allow it with that.

18 (Plaintiffs' Exhibit 4 admitted.)

19 Q I'll show you Plaintiffs' 5, do you recognize
20 that?

21 A Yes, sir.

22 Q What is it? Aerial photo?

23 A Yes, sir.

24 Q Is this kept in the regular course of business of
25 the Florence County Tax Assessor's Office?

REGINALD SANDERS - VOIR DIRE

1 A Yes, sir.

2 Q Does it show Hewitt Cemetery Road?

3 A It does (indicates).

4 Q And two connecting roads?

5 A Here and here (indicates).

6 Q And the cemetery?

7 A Yes, sir (indicates).

8 THE COURT: What year is this?

9 MR. MCEACHIN: 2008.

10 MS. PARHAM: No objection. This is after E-911?

11 THE WITNESS: Yes, sir -- I mean ma'am, I
12 apologize.

13 Q (MR. MCEACHIN) I'll show you Plaintiffs' 6, do
14 you recognize that?

15 A 2011 aerial.

16 Q Aerial photograph?

17 A Yes, sir.

18 Q And Cato Road is on that?

19 A It is.

20 Q Show me where it is.

21 A (Indicates.)

22 Q And Hewitt Cemetery Road?

23 A Right here (indicates).

24 Q And what is the connecting road?

25 A Poor Farm and Branch.

REGINALD SANDERS - VOIR DIRE

1 MR. McEACHIN: I move Plaintiffs' 6 into
2 evidence.

3 MS. PARHAM: No objection.

4 (Plaintiffs' Exhibit 6 admitted.)

5 Q (MR. McEACHIN) And I'll show you Plaintiffs' 7.
6 What is Plaintiffs' 7?

7 A 2015 aerial.

8 Q Where is Cato Road?

9 A (Indicates.)

10 Q And where is Poor Farm and Branch Road?

11 A Poor Farm and Branch (indicates).

12 Q Where is Hewitt Cemetery Road?

13 A Right here (indicates).

14 Q Is the cemetery shown?

15 A Here.

16 MR. McEACHIN: I move Plaintiffs' 7.

17 MS. PARHAM: No objection.

18 (Plaintiffs' Exhibit 7 admitted.)

19 MR. McEACHIN: That is all I have, Your Honor.

20 THE COURT: Ms. Parham.

21 CROSS-EXAMINATION

22 BY MS. PARHAM:

23 Q When you were talking to Mr. McEachin regarding
24 Plaintiffs' Exhibit 1, 2, 3, before the E-911 mapping,
25 he asked you to identify Hewitt Cemetery Road, and you

REGINALD SANDERS - VOIR DIRE

1 identified that curve as Hewitt Cemetery Road, that is
2 what is now known as Hewitt Cemetery Road, but you
3 don't know what it was called back then in the 1960s,
4 or anything like that?

5 A I can't say for sure without looking at
6 documentation.

7 Q Right. So it could have been called Farm Road,
8 Old Road, whatever, but when you answer his question
9 that that is Hewitt Cemetery Road, you are talking
10 about what it is called now?

11 A According to what our layer shows, that is what
12 it is called.

13 Q And that layering as far as Hewitt Cemetery came
14 out when E-911 went out into the county?

15 A I cannot say that. I can only speak from what
16 I've done. Like E-911, I don't have any involvement
17 with that other than how I bring in the --

18 Q Okay. My client's address was route and box
19 number before 911, she has no address on Hewitt
20 Cemetery Road, so can you tell me how that came into
21 play?

22 A I cannot.

23 Q Can you tell me at what time Florence County
24 decided to call State Road, that runs to Hewitt
25 Cemetery, decided to name that Hewitt Cemetery?

REGINALD SANDERS - VOIR DIRE

1 A Without looking at documentation, I cannot.

2 Q On these maps -- and it might be clearer on early
3 maps, but Hewitt Cemetery Road actually extends south
4 of Poor Farm, slash, Branch Road?

5 A Can't say without the information on there, but
6 roads change at that particular point, so.

7 Q It actually extends from Cato Road, and this
8 portion just past the cemetery is state maintained, and
9 at some point Florence County names it Hewitt Cemetery
10 Road, up to that point it is state maintained, are you
11 aware of that?

12 A Can't say for sure.

13 Q And then this is Poor Farm, slash, Branch Road,
14 it changes at that intersection, and Hewitt Cemetery
15 extends south of that road?

16 A I can't say for sure. I mean, it looks like it
17 goes away from there, but without actually knowing or
18 seeing my information, I can't tell.

19 Q You are not able to testify as to what any of
20 these roads were called before mapping came into being
21 and named them, are you?

22 A No. Without looking at documentation or anything
23 like that, I only go by that.

24 Q You don't know if they were farm roads with
25 tractors and horses, or grass or asphalt; you don't

THOMAS HEWITT - DIRECT EXAMINATION

1 know any of that?

2 A No.

3 MS. PARHAM: That is all I have.

4 MR. McEACHIN: I don't have anything.

5 THE COURT: You may step down. Any objection to
6 him being excused?

7 MS. PARHAM: No, Your Honor.

8 MR. McEACHIN: Thomas Jay Hewitt.

9 (THOMAS J. HEWITT, having been duly sworn,
10 testified as follows:)

11 DIRECT-EXAMINATION

12 BY MR. McEACHIN:

13 Q How old are you, Mr. Hewitt?

14 A 80 years old.

15 Q Where do you live, your address?

16 A 2837 Willow Creek Road.

17 Q Is that in any -- I'll ask you to look at
18 Plaintiffs' 7. Is your home or residence on this
19 aerial photo? And I'll tell you, this is Cato Road,
20 this is Poor Farm Road that turns into Branch, and
21 there is Hewitt Cemetery Road?

22 A Yes, sir.

23 Q Can you show me where you live? You can step
24 down.

25 A Give me a second. This is the farm behind my

THOMAS HEWITT - DIRECT EXAMINATION

1 house, this is Willow Creek Road, that is my house.

2 Q If you could, put -- if you could put "TJH" where
3 your house is. How long have you lived there?

4 A 1967.

5 Q Prior to that, where did you live?

6 A I was in Ohio for six years, but prior to that, I
7 lived back here in that house (indicates).

8 Q Let's put a "TJH2."

9 A (Witness complied.)

10 Q And put a "1" by your current residence.

11 A (Witness complied.)

12 Q How long did you live at the site "TJH2"?

13 A Well, from the time I was born in '36 up to the
14 '50s when I went in the Service, and then I moved back
15 and got married in Ohio and moved back home in '67, so
16 my current residence.

17 Q Are you familiar with Hewitt Cemetery Road?

18 A Yes, sir, very familiar.

19 Q Have you ever used that road?

20 A Yes, sir.

21 Q When did you start using it?

22 A Well, my dad used to farm all of that land that
23 the lady owns now, and we used it back then to go back
24 and forth to the cemetery, normal use, you know.

25 Q And the cemetery, can you show me where the

THOMAS HEWITT - DIRECT EXAMINATION

1 cemetery is on Plaintiffs' 7?

2 A It would be right here.

3 Q Do you have any people buried there?

4 A All my family, granddaddy, grandpa, aunts,
5 uncles.

6 Q Do you go to the cemetery from your house?

7 A Yes, sir.

8 Q How do you get there?

9 A Down way down there around this way.

10 Q When you say "around this way" --

11 A I go down to Poor Farm Road, Branch Road and over
12 to it.

13 Q When you say over to it, what road do you take
14 going to it?

15 A Hewitt Cemetery Road.

16 Q How often do you go to the cemetery?

17 A Not a lot, but I would say at least once a month
18 I go through there.

19 Q Do you see other vehicles on Hewitt Cemetery
20 Road?

21 A Yes, sir.

22 Q Have you ever seen the county doing maintenance
23 work on Hewitt Cemetery?

24 A My son runs a road plow, he used to plow it.

25 Q How long did he plow it for the county?

THOMAS HEWITT - DIRECT EXAMINATION

1 A I think until such time they rocked it.

2 Q Do you know when your son started plowing the
3 road, what year?

4 A I don't know exactly what it was, but in two
5 years he can retire from the county.

6 Q How old is your son now?

7 A 52.

8 Q How old was he when he started working the road
9 plow?

10 A I don't want to lie.

11 Q Best estimate?

12 A Running at least 20 years.

13 Q During the time that you observed or been on
14 Hewitt Cemetery Road, can you give me an estimate of
15 the volume of traffic that you see on the road?

16 A It is mainly used for -- mainly in the morning
17 people going to work or coming home.

18 Q Your first recollection as a child, was that road
19 in existence?

20 A Yes, sir.

21 Q Is Cato Road shown on the northwest part of
22 Plaintiffs' 7, is that a public way?

23 A Yes, sir. Paved road.

24 Q And Poor Farm Road, that is at the southern part
25 of Exhibit 7, is that a public road?

THOMAS HEWITT - DIRECT EXAMINATION

- 1 A Yes, sir. Partially dirt and partially rock.
- 2 Q And Branch Road, is that a public road?
- 3 A Yes, sir.
- 4 Q I think you mentioned earlier your son plowed
- 5 Hewitt Cemetery until something happened, what happens
- 6 when he stopped plowing the road?
- 7 A I can't say for sure, but he quit plowing
- 8 whenever he got ready to rock it.
- 9 Q Who did that?
- 10 A The county.
- 11 Q Do you know how long ago that was?
- 12 A I don't exactly.
- 13 Q Has it been in the last year or so?
- 14 A No, sir, a lot longer than that.
- 15 Q Anyone ever stop you from using Hewitt Cemetery
- 16 Road?
- 17 A I say no, but at one point they had gates up at
- 18 each end and you couldn't go through.
- 19 Q Who put those up?
- 20 A The lady that has this thing going.
- 21 Q Ms. Eagerton?
- 22 A Yes.
- 23 Q Have they since been taken down when this lawsuit
- 24 began?
- 25 A Yes, sir. We had to call the sheriff's

THOMAS HEWITT - CROSS-EXAMINATION

1 department and have her open them up, and I think she
2 did it again. My understanding is they told her she --
3 if she put it up again, they would lock her up.

4 Q Yes, sir. Are you using the road now?

5 A Yes.

6 Q What is your desire about Hewitt Cemetery Road,
7 you want it opened or closed?

8 A Can I tell you in the very beginning?

9 Q Yeah.

10 A I was in my yard working. Ms. Eagerton came over
11 and told me that my neighbor, Ted Trump, she talked to
12 him and he agreed to close the road. She wanted to
13 know my feelings. I told her, Ms. Eagerton, I can tell
14 you straight up, I do not want the road closed. She
15 leaves my house and goes to Mr. Trump's and said I
16 wanted it closed. But, anyway, this went back, I would
17 say, probably somewhere around 2010 to '09, somewhere
18 in that area. I don't know exactly.

19 Q Do you want Hewitt Cemetery Road to remain open
20 or closed?

21 A Open.

22 CROSS-EXAMINATION

23 BY MS. PARHAM:

24 Q Your father used to plow this field that is now
25 Ms. Eagerton's property?

THOMAS HEWITT - CROSS-EXAMINATION

1 A That is true.

2 Q And that is what it was, a tractor path?

3 A No, not a tractor path.

4 Q Let me show you photos -- after she bought it.

5 I'll show you photos.

6 (Defendant's Exhibits 3, 4 and 5 marked.)

7 Q I'll show you Defense 3 and 4, is that similar to
8 the way it looked before it was paved by the county?

9 A Basically, yes. It wasn't a tractor path, it was
10 for regular traffic. Anyone can take a horse and buggy
11 and take a picture and say that is what it is, but that
12 is not what it was.

13 Q These were taken long before this litigation.
14 Are you aware that Ms. Eagerton has a horse farm?

15 A Yes.

16 Q And she bought all of this acreage and she had at
17 one time 25 to 30 horses that enjoyed this pasture; are
18 you aware of that?

19 A I don't know how many horses she had. I used to
20 haul the dirt when she needed it.

21 Q Did you know she had horses out there?

22 A Yes.

23 Q And did you see a good many horses out there?

24 A I can't say I did or didn't, I don't remember.

25 Q Did you know that she had horseback riding

THOMAS HEWITT - CROSS-EXAMINATION

1 lessons, boarded other people's horses out there?

2 A That may be, but let me ask you a question. What
3 does that have to do with closing a road?

4 Q The use of it might. These are just -- that is
5 up to the judge to determine. This is getting the
6 facts out, and the judge makes those decisions, not you
7 and me.

8 A Okay.

9 Q So at any rate, are you aware that she had
10 horseback riding lessons and boarded horses out there?

11 A I guess. I can't say for sure.

12 Q Are you aware that she had rescued horses from
13 the humane society out there?

14 A No.

15 Q You are aware though at different times -- well,
16 let me back up. She had a gate at the top of her
17 property and the bottom?

18 A Certainly am, because I was there and couldn't go
19 through, it was blocked.

20 Q She had a gate at the top and bottom of the
21 property because she used it for her livestock?

22 A It was just a gate, but no fence up anywhere.
23 The gate was to stop anyone going through.

24 Q Because she kept her horses in those pastures?

25 A No.

THOMAS HEWITT - CROSS-EXAMINATION

1 Q You are not aware of that?

2 A It didn't happen.

3 Q The horses are to the left, and the hay field on
4 the right of the road?

5 A That's right. Okay. I agree with that.

6 Q So when is the first time you remember -- I mean,
7 she would shut those gates periodically to keep cars
8 off of that road?

9 A Well, I don't know about periodically, but when
10 she put it up there and locks, that wasn't
11 periodically, it was permanent until we took the locks
12 off.

13 Q Do you remember the earliest time you remember
14 her doing that?

15 A I guess it was a couple years ago. I don't know
16 the date or nothing.

17 Q Did you notice a change in the traffic on that
18 road before it was paved and after it was paved?

19 A After she put the gates up, people backed off in
20 using it because we didn't know if it would be open or
21 not, which is unfair to the public, because it is a
22 public and county road.

23 Q The county says it is.

24 A Right.

25 Q That is why we're here.

THOMAS HEWITT - CROSS-EXAMINATION

1 A Right.

2 Q Do you remember when this road was rocked?

3 A Three, four years ago, but I don't know exactly
4 when.

5 Q Could it have been 2004?

6 A I can't say that for sure. I don't remember. It
7 wasn't 2004, it was after that.

8 Q The county records would speak for themselves?

9 A Right.

10 Q Let me ask you this. This road that goes from
11 Branch Road stops here and then goes to the Pamplico
12 Highway. I rode down that road the other way and it is
13 red clay pretty much, big two-lane smooth clay road.
14 Do you recall a point in time when the county came to
15 pave that and you and another gentleman kept them from
16 paving that road?

17 A Yeah.

18 Q Tell me about that.

19 A They wanted to rock it. They weren't going to
20 pave it, rock it.

21 Q This is what they did to her road, rocked it?

22 A Yes. And we just didn't want it rocked, so we
23 expressed our opinion. We couldn't stop them from
24 doing it.

25 Q You did stop them from doing it, obviously. How

THOMAS HEWITT - CROSS-EXAMINATION

1 did you manage that?

2 A I just told them I didn't want it rocked.

3 Q They came with the rockers, equipment?

4 A No. No. No.

5 Q Tell me how that happened.

6 A As well as I recollect, they requested that they
7 rock it.

8 Q You don't remember the equipment coming out there
9 and you and Shannon Eddy stopped them from rocking it?

10 A No, I do not.

11 Q Was Shannon Eddy with you?

12 A Not when this happened.

13 Q Did he oppose it being rocked?

14 A He opposed it at the same time.

15 Q So you and Mr. Eddy opposed this county road
16 being rocked, and ultimately got the county not to rock
17 it?

18 A That was my request, and they evidently honored
19 it.

20 Q Are you aware that Ms. Eagerton blocked them with
21 her golf cart and tried to keep them from rocking her
22 road?

23 A Didn't know nothing about that.

24 Q And you don't recall these two incidents being at
25 the same time?

THOMAS HEWITT - CROSS-EXAMINATION

- 1 A No, I do not.
- 2 Q But you remember that event, you kept them from
3 rocking your road?
- 4 A Yeah.
- 5 Q Why didn't you want that rocked?
- 6 A You want the truth? My wife didn't want it
7 rocked.
- 8 Q That is a good reason.
- 9 A You asked, so I'm telling you.
- 10 Q She didn't want it rocked?
- 11 A She walks, and she likes to walk a dirt road, so
12 she didn't want it rocked. They asked me, and I said,
13 no, I don't want it rocked.
- 14 Q But you agree that rocking a road generally
15 increases traffic?
- 16 A I don't think it would increase that one any.
- 17 Q What is the name of that?
- 18 A Cato Road -- I mean Branch Road.
- 19 Q And so Branch is paved and --
- 20 A It is not paved, it is rock that way.
- 21 Q I keep saying paved, but you are correct. This
22 is rocked, and then you turn this curve and it is red
23 clay to Pamplico Highway?
- 24 A Right.
- 25 Q You don't know how often your son plowed this

THOMAS HEWITT - CROSS-EXAMINATION

1 road when it was dirt? The county records would speak
2 for that?

3 A Right. Normally they plow on a weekly basis as a
4 general rule.

5 Q But the county records --

6 A Right.

7 Q Are you aware of any crime that has happened
8 through here since the road was rocked?

9 A They used to come down to the cemetery and park
10 behind it and throw out beer cans and all, so I put up
11 a fence and chain across it and stopped that.

12 Q Across what?

13 A The entrance to the cemetery.

14 Q Oh, right here. Do you have any knowledge of any
15 other problems that Ms. Eagerton has had with crime?

16 A People throwing out trash, probably the same one
17 I have.

18 Q This portion here, even before this was rocked,
19 was a state maintained rocked road?

20 A Right, paved down past the cemetery.

21 Q And then there was a sign past the cemetery that
22 said "end of state entrance"?

23 A Right.

24 Q And so Ms. Eagerton has a gate at the top of the
25 property right where it says "end of state maintenance"

THOMAS HEWITT - CROSS-EXAMINATION

1 past the cemetery.

2 A That is true.

3 Q And then a gate at the bottom at the ditch?

4 A At the ditch.

5 Q On some of the old maps, there appears to be a
6 road north of Branch Road called -- like Old Plantation
7 Road; do you remember that road?

8 A Which one now?

9 Q I'll show you what is introduced into evidence as
10 Plaintiffs' 8, and I'll let you get your bearings here.
11 Do you need glasses?

12 A It's okay, go ahead.

13 Q The cemetery.

14 A Yes.

15 Q And that appears to be the state road?

16 A Right.

17 Q Somewhere in here I imagine that would be what
18 became Branch Road, and then it says it is an old road,
19 Plantation Road; do you remember that?

20 A This is?

21 Q What is now -- they are saying it is Hewitt
22 Cemetery Road right here.

23 A This road -- do that -- is this Cato Road -- I
24 mean Branch here? Or is this Branch?

25 Q Let me get a more recent map to double check

THOMAS HEWITT - CROSS-EXAMINATION

1 that. Plaintiffs' Exhibit 7 puts that more in
2 perspective. So this parcel of land that has as a
3 crooked top would be right here, see right there where
4 it says -- that piece of land, see the shape of that,
5 that is the same as that, and this is what is on this
6 map as Hewitt Cemetery Road on Plaintiffs' 17.

7 A I see it here, yeah.

8 Q And then this says "to Branch Road," so I think
9 this dotted line is what later became Branch Road, and
10 see that dotted line, it says Plantation Road?

11 A Oh, yeah. Yeah. I got you.

12 Q Do you remember that being there?

13 A Yeah, I do.

14 Q What was that?

15 A That was just where you could go across the farm.
16 That was my uncle's farm. They went back and forth
17 from this area over here, which he owned, to those two
18 fields and stuff there, that was just.....

19 Q So it was another kind of farm-to-market road
20 that was dirt?

21 A It wasn't hardly dirt, because you didn't drive
22 on it, just back in those days you had mules and
23 wagons.

24 Q And what about this here to the left on
25 Plaintiffs' Exhibit 8?

THOMAS HEWITT - CROSS-EXAMINATION

1 A That went over to the property that belonged to
2 Mr. McLaughlin at the time, and Mr. Knight presently
3 owns that property now.

4 Q And what happened to that Plantation Road and the
5 other road you are talking about?

6 A This one just grew up with weeds. Like I said,
7 they did -- back in those days is drive the mule and
8 wagon through. Now, that road, I don't know how that
9 got closed because it went all the way over and came
10 out, and came down and back out to Poor Farm Road.

11 Q Are you aware that Ms. Eagerton opposed to the
12 county rocking here road?

13 A That wasn't my understanding, but I didn't know
14 she opposed it.

15 Q Are you aware she started a petition to close the
16 road?

17 A Very much so.

18 Q And close the fences at the top and bottom of the
19 property to try to prevent people from using it?

20 A Yeah, she put up a fence, but since has taken
21 them down. She also had a mailbox at the end of the
22 road down by the cemetery, which she also moved back.

23 Q Do you recall when the green sign went up that
24 said Hewitt Cemetery Road?

25 A No, I don't know when it went up. I know Ted

THOMAS HEWITT - REDIRECT EXAMINATION

1 Trump did all of the -- he did all the roads in the
2 county and named them as he went through, but exactly
3 when they did it, I don't know.

4 Q That is for the E-911 mapping?

5 A 911, yeah.

6 Q So Ted Trump named the roads?

7 A Right. I know he was in control of doing it now.
8 It is probably in conjunction with the county at the
9 same time. Like I said, I don't.....

10 MS. PARHAM: That's all I have. I offer Defense
11 3 and 4.

12 MR. McEACHIN: No objection.

13 MS. PARHAM: I'll hold off on 5.

14 THE COURT: Defense 3 and 4 is in evidence
15 without objection.

16 (Defendant's Exhibit 3 and 4 admitted.)

17 REDIRECT-EXAMINATION

18 BY MR. McEACHIN:

19 Q You were questioned when Ms. Eagerton put the
20 gate up to block Hewitt Cemetery Road?

21 A Yes.

22 Q When it was -- the gate was put up, can you show
23 me about where the gate was put up on Plaintiffs' 8?

24 A Yes, sir, just west of the cemetery right in
25 there, and then down here I believe there is a niche

DAVID HEWITT - DIRECT EXAMINATION

1 that runs around here somewhere before you get to Cato
2 Road.

3 Q Ms. Eagerton owns property on both sides of the
4 road?

5 A That's correct.

6 Q On the -- I guess it is the east side --
7 northeast side area of Cato, did she have that fenced
8 in?

9 A No.

10 Q Would the gate have controlled livestock leaving
11 or coming onto her property?

12 A That was strictly to keep traffic from going down
13 the road.

14 Q Was any fence attached to the gate post?

15 A No, sir.

16 Q On either end?

17 A No, sir.

18 Q Anything further?

19 A No, sir.

20 MR. McEACHIN: That's all I have. Since he
21 already testified, could he remain in the courtroom?

22 THE COURT: Yes, sir.

23 (DAVID HEWITT, having been duly sworn,
24 testified as follows:)

25 DIRECT-EXAMINATION

DAVID HEWITT - DIRECT EXAMINATION

1 BY MR. McEACHIN:

2 Q What is your age, Mr. Hewitt?

3 A 69, soon to be 70.

4 Q Where do you live?

5 A 3904 Pamplico Highway.

6 Q I don't know if it is on Plaintiffs' 7 or not.

7 Is that this road right here?

8 A Last house before you get to Cato Road.

9 Q Coming towards Florence?

10 A Leaving Florence.

11 Q So this is Cato Road, and that is Pamplico?

12 A Right here.

13 Q So you're right off the map?

14 A Uh-huh.

15 Q How long have you lived at your current address?

16 A Entire life, except when I was away in the
17 Service.

18 Q When were you away in the Service?

19 A '68 and '69.

20 Q Where were you serving?

21 A Air force in Texas and Mississippi.

22 Q All over?

23 A All over.

24 Q Other than that span --

25 A I lived a few months on Saley (phonetic) when we

DAVID HEWITT - DIRECT EXAMINATION

1 first got married, then we built a house on Pamplico
2 Highway.

3 Q What is your occupation?

4 A Retired. I was in the apparel business for 37
5 years.

6 Q Do you know where Hewitt Cemetery is?

7 A Yes, sir. It is our family cemetery, been there
8 for a long, long time.

9 Q How long has it been there?

10 A A lot older than me. All my relatives is buried
11 in there, and some have been dead for years. The land
12 we have, my granddaddy bought in 1897, and I know he's
13 buried there and his brother and things, so at least a
14 hundred years probably.

15 Q Do you go to the cemetery?

16 A Yes, sir. Relatives are buried there, so we mow
17 the grass and make sure everything is in order.

18 Q How do you get there?

19 A Depends which side. I usually go down Cato, left
20 on Hewitt Cemetery and go there. If I'm coming from
21 301, I come in the other way --

22 Q Off of Poor Farm Road?

23 A Yes, sir.

24 Q Have you seen other traffic on the road besides
25 your vehicle?

DAVID HEWITT - DIRECT EXAMINATION

1 A Not a whole lot. I don't know when is the last
2 time I met traffic on that road, but.

3 Q Have you seen traffic on that road other than
4 yourself?

5 A Oh, yes, sir.

6 Q Was there a time when the northern portion of
7 Hewitt Cemetery Road had a washout?

8 A Over the years. Depending on the weather, it
9 would be rough and smooth. When the county scraped it,
10 it would be nice. When I was little and all farming,
11 my daddy's farm -- the quickest way to get from my
12 daddy's farm to Heyward Hewitt's farm or Douglas
13 Hewitt's farm was to go down Hewitt Cemetery Road, that
14 way rather than going Pamlico Highway and come back.
15 But, yeah, sometimes the road -- if it rains a lot, it
16 gets water on it.

17 Q Is there a branch that comes beneath Hewitt
18 Cemetery Road north of the cemetery, or is that south
19 of the cemetery?

20 A There is one that would be, I don't know, on the
21 way to the cemetery from Cato.

22 Q That would be north of the cemetery.

23 A There is a branch that was there forever. There
24 is a bridge there.

25 Q This looks like -- if you don't mind stepping

DAVID HEWITT - DIRECT EXAMINATION

1 down. Is this area the area which you speak?

2 A It goes on here and back here, and we used to
3 catch catfish when I was little.

4 Q If something happened to that bridge or the
5 bridge needed to be repaired, how would you access the
6 cemetery, in other words?

7 A You would use the road that comes from the other
8 side.

9 Q The side that comes from Poor Farm Road?

10 A Yes, sir. I think it is called Branch Road. It
11 didn't have a name, that I knew of.

12 Q Have you seen the county do work on Hewitt
13 Cemetery Road?

14 A I haven't personally seen them do the work, but
15 I've been on the road after they scrape it or whatever
16 it is they do to it as opposed to when it has not been
17 done in awhile.

18 Q Have you ever participated in maintaining Hewitt
19 Cemetery Road?

20 A Not the road, per se, unless it is where the
21 driveways would go into the cemetery. We would cut
22 bushes and haul and that thing, but not repair the
23 road.

24 Q Have you ever seen the evidence of patching of
25 the rock portion of the road?

DAVID HEWITT - CROSS-EXAMINATION

1 A Yes, sir.

2 Q Do you know who does that?

3 A County, I figure, because sometimes there is a
4 lot of patching that has been done.

5 Q Do you want Hewitt Cemetery to remain open or
6 closed?

7 A Continuing -- should remain open. It was opened
8 ever since I was born, and we use it a lot. That is
9 where I learned to drive, and it is just a road, you
10 know, been there forever.

11 MR. McEACHIN: That is all I have.

12 CROSS-EXAMINATION

13 BY MS. PARHAM:

14 Q Do you recall when Hewitt Cemetery was rocked?

15 A No, ma'am.

16 Q Does 2004 sound about right?

17 A 2004?

18 Q Yes.

19 A Yeah, I guess so.

20 Q Has that bridge ever washed out on the northern
21 portion of Hewitt Cemetery Road?

22 A I think the bridge was worked on over the years,
23 because it used to be at one time an old wooden bridge
24 and I think now it has paving or something over it.

25 Q But it's always been passible?

DAVID HEWITT - CROSS-EXAMINATION

1 A Oh, yes.

2 Q So in all your life, you don't know a time when
3 this bridge was impassible?

4 A I don't remember any, no, ma'am.

5 Q So this part -- and you live up here on Cato, and
6 the cemetery is right here?

7 A Yes, ma'am.

8 Q In the middle of this Plaintiffs' Exhibit 7. So
9 this road north of the cemetery, that is now Hewitt
10 Cemetery Road, that up to Ms. Eagerton's property line
11 is state maintained; are you aware of that?

12 A State or county, I don't know who. I knew
13 someone maintained it.

14 Q Do you remember that portion being paved or
15 rocked long before this southern portion?

16 A Right. The southern portion was never paved, I
17 don't think.

18 Q Just rocked? How often do you use this southern
19 portion?

20 A Not a great deal. Maybe 8, 10, 12 times a year,
21 depends on what I'm doing.

22 Q Since this southern portion was rocked, have you
23 observed an increase in traffic?

24 A No, ma'am.

25 Q Have you observed an increase in crime?

DAVID HEWITT - CROSS-EXAMINATION

1 A I have not. I don't know that. I know my house
2 on Pamplico Highway was broken into five times. I
3 don't know what the road has to do with crime, because
4 I'm on the main drag, as they say.

5 Q Are you related to Thomas Hewitt?

6 A We're distant cousins. His father and my father
7 were cousins.

8 MS. PARHAM: That is all I have.

9 Q (MS. PARHAM) Since your house has been broken
10 into five times on Pamplico Highway, have you ever
11 asked for Pamplico Highway to be closed?

12 A No, I would like for it to be closed because the
13 widening project has made it almost impossible to get
14 in and out of my own driveway. We have four driveways
15 to our property, and on any given day you have to find
16 one to get into because mud or equipment, not to
17 mention broken water lines. I would like to see the
18 whole damn thing closed.

19 THE COURT: Any objection to Mr. Hewitt being
20 excused?

21 MS. PARHAM: No.

22 THE COURT: Let's take a five-minute break.

23 (A recess was taken.)

24 MR. McEACHIN: We call Lacresia Boatwright.

25 (LACRESIA BOATWRIGHT, having been duly sworn,

LACRESIA BOATWRIGHT - DIRECT EXAMINATION

1 testified as follows:)

2 THE WITNESS: Lacresia Rubin Boatwright,
3 L-A-C-R-E-S-I-A, R-U-B-I-N, B-O-A-T-W-R-I-G-H-T.

4 DIRECT-EXAMINATION

5 BY MR. MCEACHIN:

6 Q If you don't mind, what is your age?

7 A 39.

8 Q Your occupation?

9 A Office manager at Med One Medical Transport.

10 Q How long have you been with Med One.

11 A Since about 2011.

12 Q What are your duties at Med One?

13 A Oversee the office, dispatch crews to calls, just
14 general office duties.

15 Q What is Med One?

16 A Ambulance transport company.

17 Q Did Med One have any patients that lived in
18 Hewitt Cemetery Road?

19 A Yes, sir.

20 Q Who was that?

21 A Mr. Joseph Jones.

22 Q For what purpose would he be transported?

23 A We pick him up to take him to and from dialysis.

24 Q Did you ever have a problem being able to pick up
25 Mr. Jones to take to your dialysis?

LACRESIA BOATWRIGHT - DIRECT EXAMINATION

1 A Yes.

2 Q What was that problem?

3 A One day we were taking him back home I think, and
4 the ambulance cut off or broke down in some kind of
5 way. A lady called, I can't remember her name, but she
6 called and she asked why was the truck sitting on her
7 property, so I explained to her that the truck broke
8 down, that the wrecker would be there in a few minutes
9 and we would be moved, because I didn't -- I could see
10 him on the GPS tracking, but didn't know if it was in
11 her yard or not. She said she would appreciate -- she
12 said the ambulance always comes down the way to get
13 Mr. Joseph Jones, and it is a private drive and she
14 would appreciate that we don't come down that drive
15 anymore, to use another road. So I told her -- I said,
16 okay, I will let my boss know, and then -- so when I
17 hung up the phone with her, I told the crews not to go
18 back and forth down the road until further notice,
19 because I wasn't sure if it was a private drive or not.

20 Q What was the name of the road?

21 A Hewitt Cemetery Road.

22 Q Do they use that road to transport Mr. Jones
23 still?

24 A I think some do. I think they do. I don't
25 really -- told them not to, but my boss said it is a

BENJAMIN MEGS, JR. - DIRECT EXAMINATION

1 public road.

2 MR. McEACHIN: Thank you.

3 CROSS-EXAMINATION

4 BY MS. PARHUM:

5 Q When did this happen?

6 A It's been awhile. Maybe almost a year ago when I
7 got the phone call. I want to say maybe March --
8 between February and March I think. I can't remember
9 the exact date.

10 Q You think it is in the past year or two?

11 A It's been in the past year, uh-huh.

12 Q So not before that?

13 A Not before that.

14 MS. PARHAM: Thank you.

15 THE COURT: Any objection to her being excused?

16 MS. PARHAM: No.

17 THE COURT: Free to go.

18 MR. McEACHIN: Robert Megs.

19 (ROBERT MEGS, having been duly sworn,
20 testified as follows:)

21 THE WITNESS: Benjamin Robert Megs, Junior.

22 DIRECT-EXAMINATION

23 BY MR. McEACHIN:

24 Q What is your age?

25 A 68.

BENJAMIN MEGS, JR. - DIRECT EXAMINATION

- 1 Q Where do you live?
- 2 A 2802 Willow Creek Road.
- 3 Q I'll refer you to Plaintiffs' 7 and represent to
- 4 you that Willow Creek Road is -- this is on the west --
- 5 this is Pamplico Highway, and this is Willow Creek; is
- 6 your house on the map?
- 7 A I'm on the curve of the road.
- 8 Q You can show us where your house is.
- 9 A My house is right here.
- 10 Q If you could, put your initials where your house
- 11 is?
- 12 A (Witness complies.)
- 13 Q You may have a seat. How long have you lived at
- 14 that location, Willow Creek Road?
- 15 A Approximately 50 years of my life.
- 16 Q And prior to that, where did you live?
- 17 A My parents lived there. I lived there until I
- 18 was five years old. We moved. After college, I moved
- 19 back to the farm and been there the last 45 years.
- 20 Q And you are retired?
- 21 A Yes, sir.
- 22 Q What was your occupation?
- 23 A Director of the Billing and Accounting Technology
- 24 Center in education.
- 25 Q How long has your family been in this area around

BENJAMIN MEGS, JR. - DIRECT EXAMINATION

1 Willow Creek Road?

2 A My great grand-daddy bought that land in 1887.

3 Q What was his name?

4 A Excuse me, my great, great grand-daddy.

5 Q And his name?

6 A Joel Megs.

7 Q Are you related to the Hewitt?

8 A Distant cousins, I guess.

9 Q Do you have any family members buried in the
10 Hewitt Cemetery?

11 A Yes, my grandparents, parents, other kin folk.

12 Q Have you ever been on Hewitt Cemetery Road?

13 A Yes, sir.

14 Q How frequently?

15 A Varies by season. In the winter, maybe once a
16 month, and summer two times a day moving tractors,
17 combines.

18 Q Do you farm?

19 A I own a farm. My brother-in-law farms, and my
20 dad did farm it, so.

21 Q When you are moving combines or tractors, why do
22 you use Hewitt Cemetery instead of Pamlico Highway or
23 another road?

24 A It is pretty dangerous to get out on Pamlico
25 with a slow tractor or wide combine.

BENJAMIN MEGS, JR. - DIRECT EXAMINATION

1 Q So for those purposes of moving equipment, how
2 long has that been done, to your knowledge, on Hewitt
3 Cemetery?

4 A It's been done all my life.

5 Q How wide is a combine with the header on?

6 A Header, I'm not sure. We're talking about
7 20-foot.

8 Q Can you get a combine down Hewitt Cemetery Road
9 with a 20-foot header on it?

10 A Oh, yeah.

11 Q Do you see the county do work on Hewitt Cemetery
12 Road?

13 A Yes, sir.

14 Q How long ago is your first recollection of seeing
15 the county working on the road?

16 A I hate to admit it, but I drove mules and wagon
17 from one farm to another down Hewitt Cemetery Road, so
18 I remember when the road plow had no engine, it was
19 pulling.

20 Q What was pulling it?

21 A It was pulled by a tractor.

22 Q So how long ago would that have been, to your
23 recollection? What decade?

24 A That would have been in the '50s, 1950s.

25 Q And since then, was there ever a gap in time

MIKELL WOOD - CROSS-EXAMINATION

1 where the county wasn't maintaining Hewitt Cemetery
2 Road, to your knowledge?

3 A No, sir.

4 Q Do you want Hewitt Cemetery Road to remain open
5 or closed?

6 A Open. I would hate to travel the long way around
7 and down traffic.

8 MR. McEACHIN: That is all I have.

9 CROSS-EXAMINATION

10 BY MS. PARHUM:

11 Q When do you recall the road being paved?

12 A The road being paved?

13 Q Yes, sir.

14 A It was paved from Cato Road to Hewitt Cemetery,
15 that strip.

16 Q When was that paved? That's a state road,
17 correct?

18 A State road from there. I'm not real sure. It
19 would have been in the '80s. I don't remember exactly.

20 Q That is the northern portion of what is now
21 Hewitt Cemetery Road, the state maintained road?

22 A Right.

23 Q And when do you recall or do you recall when the
24 county laid rock on the portion that goes through
25 Ms. Eagerton's property?

MIKELL WOOD - CROSS-EXAMINATION

1 A Well, they plowed. It was maintained, and they
2 laid rock. That would have been probably 15 years ago,
3 I guess when they laid rock. I'm not sure.

4 Q So about 2004, fair to say?

5 A Yeah.

6 Q And the records will speak for themselves?

7 A Yeah.

8 Q And also with regard to the maintenance, you said
9 sometime in the winter you go through there once a
10 month, but in the summer, you can go more frequently,
11 based on your equipment needs?

12 A Right.

13 Q You don't know when -- how often the county
14 maintained it per month or per week or per year, unless
15 you saw them or noticed a change in the road?

16 A Right, noticed a change in the road.

17 Q And, again, those county records would speak for
18 themselves, as far as when it was maintained?

19 A Right. The curve on the road used to be
20 extremely sandy, and it would be maintained more back
21 then since it had rock on it.

22 Q Let me show you what is marked as -- and entered
23 into evidence as Defendant's 3 and 4. Do you recall
24 the road looking similar to that prior to the county
25 rocking it?

MIKELL WOOD - CROSS-EXAMINATION

1 A I would this one. That one showing two trails, I
2 would not recognize that being part of the road.

3 Q But you do recall Defendant's Exhibit 13 --
4 Exhibit 3?

5 A 3, yes. Yes, that could have been.

6 Q You are aware that Ms. Eagerton has had a horse
7 farm since she purchased it?

8 A Right.

9 Q You recall her purchasing that property in the
10 early '80s?

11 A That is about right.

12 Q And how many horses have you seen out there?

13 A How many? I'm looking at the curve and traffic
14 more than counting horses.

15 Q You are aware that she boarded horses and had
16 horseback riding lessons as a business?

17 A I knew she boarded horses, I haven't seen
18 horseback riding as a business.

19 Q Are you aware that she took in horses or takes in
20 horses for the Humane Society of Florence?

21 A No.

22 Q Are you aware that she has a gate at the northern
23 and southern portion of what is now Hewitt Cemetery
24 Road, on the borders of her property?

25 A In the last couple of years, yes.

MIKELL WOOD - CROSS-EXAMINATION

1 Q Did you see that gate prior to them?

2 A The gate was not there until recently.

3 Q Well, do you recall whether the -- do you recall
4 whether it was open prior to that, or constructed prior
5 to that?

6 A The gate?

7 Q The closing of the gate?

8 A The closing of the gate?

9 Q Right.

10 A I'm not sure of your question.

11 Q When do you remember the gates being closed?

12 A I went through with the tractor and I got there
13 and I noticed there was posts on both sides of the
14 road, the gates were open. I never saw that before,
15 and I saw the signs.

16 Q When was that?

17 A Couple years ago.

18 Q Are you aware that Ms. Eagerton opposed Florence
19 County laying rock on that road?

20 A No.

21 Q Do you recall when the green sign went up saying
22 Hewitt Cemetery Road on the southern end of that road?

23 A It would have been when the county named roads,
24 so I'm not sure.

25 Q Would that be when the 911 system came through?

MIKELL WOOD - CROSS-EXAMINATION

1 A Right.

2 Q Is it correct that the state portion of the road
3 was already named that as far as Hewitt Cemetery, the
4 portion going from Cato Road to the cemetery, and when
5 911 came through, they continued the name down the
6 road?

7 A In my lifetime it has been Hewitt Cemetery Road.

8 Q Correct. As far as the state Road being named
9 that to the cemetery.

10 A It's been called Hewitt Cemetery Road from Cato
11 Road to Flowers Road, that entire strip.

12 Q When you say to Flowers Road?

13 A I mean Branch, sorry.

14 Q If my client had a route and box number and no
15 address until after 911 came through --

16 THE COURT: You are back a little bit.

17 MS. PARHUM: Oh, I'm sorry.

18 THE COURT: Right there.

19 MS. PARHUM: Right here.

20 Q (MS. PARHUM) Do you recall there being a sign on
21 this portion of Hewitt Cemetery Road saying Hewitt
22 Cemetery Road before 911 came through and officially
23 named the southern portion?

24 A No, I do not remember a sign.

25 Q You don't remember a sign on the northern

MIKELL WOOD - CROSS-EXAMINATION

1 portion? What about the southern portion of Hewitt
2 Cemetery Road that crosses Branch Road and Poor Farm
3 Road, it continues south of those roads; isn't that
4 right?

5 A Branch Road ends at -- excuse me, Hewitt Cemetery
6 Road T's into Branch Road.

7 Q And continues?

8 A To the left is Branch, right is go back to Poor
9 Farm.

10 Q Right. But are you aware that there is a sign
11 saying Hewitt Cemetery Road that continues south of
12 those roads?

13 A Up to the houses?

14 Q Yes.

15 A I have not noticed a sign, but that is probably
16 for address purposes.

17 Q Right. So you have seen that road that goes
18 south of those two roads?

19 A I'm aware there is a road going back in there,
20 but I don't travel it. I've lived in the same house
21 for 45 years, I've had three or four addresses because
22 it is was Route 3, Box 76; Route 3, Box 421, et cetera
23 until the naming of the roads.

24 Q Have you noticed an increase in traffic since the
25 road was rocked?

MIKELL WOOD - CROSS-EXAMINATION

1 A No.

2 Q Have you noticed an increase of crime since the
3 road was rocked?

4 A No.

5 Q This past year, how many times do you think you
6 traveled down that road?

7 A In 2016? Probably 40 times.

8 Q More than the summer than winter months?

9 A Yes.

10 Q How many times did you try to go through there
11 with those gates closed?

12 A They were never closed when I tried to go
13 through.

14 Q You never tried to travel through there with the
15 gates being closed?

16 A No.

17 Q Do you recall being through there and seeing a
18 sign that had to do with agriculture and livestock
19 purposes?

20 A I've seen her driveway further down from where
21 the gates are, I've seen the horse signs and et cetera,
22 but not past the gate at the property line.

23 Q Her farm is surrounded by woods on most all of
24 the sides except for where the road goes through; is
25 that right?

MIKELL WOOD - CROSS-EXAMINATION

1 A Right. I remember when -- if you are coming from
2 Hewitt Cemetery Road, they bought the right side of the
3 road, and it was later when they bought the left side
4 of the road. So the road was there a long time before
5 they got there.

6 Q But you don't know whether she purchased all of
7 the property including the road or not? I mean, you
8 don't know what the deed says, do you?

9 A I know my deed says bounded on such-and-such
10 side, by such-and-such a road.

11 Q And if hers doesn't say that?

12 A If hers doesn't say bounded by road?

13 Q Right.

14 A Then she has as a weird deed.

15 Q And if her property goes down the center of the
16 road, what would that indicate to you if it didn't have
17 any road on there?

18 MR. McEACHIN: That is a legal question as well.

19 THE COURT: Sustained.

20 A Yeah, I own miles of property that we have farm
21 on both sides of the road, that is no indication of
22 anything.

23 Q Right. Do you remember a road through here, also
24 a farm road called Plantation Road that was parallel,
25 but north of Branch Road?

BENJAMIN MEGS, JR. - REDIRECT EXAMINATION

1 A Where are you talking about?

2 Q Plaintiffs' Exhibit 8, which is in evidence.

3 This is Hewitt Cemetery Road. That is the cemetery.

4 A Right.

5 Q And this dotted line to the south is now what is
6 Branch Road. There is an old road, Plantation Road,
7 and then one here; do you remember those roads?

8 A I kind of remember a road through here, and if
9 they went back to Bossy (phonetic) Hewitt's house, but
10 we're talking a long, long time ago.

11 Q Do you remember those roads?

12 A Vaguely.

13 Q The Plantation Road to the right as well as to
14 the road to the left?

15 A That is not a road, it was basically a road
16 through a field, if I remember.

17 Q A road through a field?

18 A A road through a field.

19 THE COURT: Redirect?

20 MR. McEACHIN: Yes, sir.

21 REDIRECT-EXAMINATION

22 BY MR. McEACHIN:

23 Q Well, when you were a child, do you recall what
24 the road that runs from Cato Road down to Poor Farm,
25 Branch Road did it have a name?

BENJAMIN MEGS, JR. - REDIRECT EXAMINATION

1 A It was not called Cato Road.

2 Q No. No. I'm saying the road -- well, Cato
3 wasn't called Cato, but what is now Cato, the road that
4 runs southerly down to what is now called Poor Farm
5 Road and Branch Road, that that road connected those
6 two, did it have a name when you were a child?

7 A Hewitt Cemetery Road, that is where it went.
8 That is how it gave directions.

9 Q Right. Who lives up here on Willow Creek Road?
10 You can step down and look if you can't see where I'm
11 pointing.

12 A That is where I would be. Who lives here?

13 Q Yes, sir.

14 A It looks like the back of Winchester's property.

15 Q Billy Winchester lives there?

16 A Yes, sir.

17 Q What was his father's name?

18 A Bill Winchester.

19 Q What were they known for in the community?

20 A Raise, train and boarding horses.

21 Q Did they, in fact, raise, train and board horses
22 in this area you've indicated?

23 A Yes, sir.

24 Q And is that on Willow Creek Road?

25 A Willow Creek Road.

BENJAMIN MEGS, JR. - RECROSS-EXAMINATION

1 Q Were they able to raise, train and board their
2 horse on Willow Creek Road?

3 A Yes, sir.

4 MR. MCEACHIN: Thank you. That is all I have.

5 RECROSS-EXAMINATION

6 BY MS. PARHUM:

7 Q This is Plaintiffs' 14. I have a clearer copy.
8 I'll show you Plaintiffs' 14, that is admitted into
9 evidence. You said that as for as long as you can
10 remember, the entire path we're calling Hewitt Cemetery
11 Road was called Hewitt Cemetery Road, since you were a
12 boy. Let me show you this map. On this map it has a
13 name by the southern portion of this road which leads
14 down to Plantation Road. If you can read on that map
15 what that is called?

16 A Old Avenue.

17 Q And "PL", which I believe stands "property line."
18 But that piece was called Old Avenue; do you recall
19 that when you were a boy?

20 A Do not.

21 Q But this map would tend to suggest that at least
22 someone or the tax records called it something other
23 than Hewitt Cemetery Road, or at least that southern
24 portion?

25 A What year was that?

MIKELL WOOD - DIRECT EXAMINATION

1 Q 1968.

2 A I remember 1968.

3 Q You remember it being called Old Avenue?

4 A Old Avenue.

5 Q Thank you, Mr. Megs.

6 MR. McEACHIN: Mikell Wood.

7 (MIKELL WOOD, having been duly sworn,
8 testified as follows:)

9 THE WITNESS: Mikell Wood, M-I-K-E-L-L,
10 W-O-O-D.

11 DIRECT-EXAMINATION

12 BY MR. McEACHIN:

13 Q Where do you live?

14 A Effingham.

15 Q Have you ever lived on Hewitt Cemetery Road?

16 A Yes, sir.

17 Q When did you live there?

18 A Between 22 and 25 years ago is when I first
19 bought the place.

20 Q When did you leave?

21 A About 17 years ago.

22 Q But you are still on the property?

23 A Yes, sir.

24 Q Are there any residences on the property?

25 A Yes, sir.

MIKELL WOOD - DIRECT EXAMINATION

1 Q Who lives there?

2 A I have a tenant at 4496 Hewitt Cemetery Road, and
3 one at 4498 Hewitt Cemetery Road, but there is actually
4 four all together.

5 Q I'll show you what is marked as Plaintiffs'
6 Exhibit 9 and ask you if you recognize the property on
7 the corner of two county maintained roads; do you
8 recognize that?

9 A Yes, sir.

10 Q Is that your property?

11 A Yes, sir.

12 Q I'll show you what is Plaintiffs' 11 and show you
13 the property at the corner of Hewitt Cemetery Road and
14 Branch Road and ask you if you recognize that?

15 A Yes, sir.

16 Q On Plaintiffs' 11, the surveyor has drawn in a
17 house, is that one of your rental properties?

18 A No, sir, I sold that one.

19 Q I'll show you Plaintiffs' 12 and ask you if you
20 recognize that property?

21 A Yes, sir.

22 Q And there is a structure on the 1-acre lot that
23 is shown on Plaintiffs' 12; is that one of the rental
24 properties?

25 A Yes, sir.

MIKELL WOOD - DIRECT EXAMINATION

1 Q Do you have occasion to go to your rental
2 properties?

3 A I do all the time, yes, sir.

4 Q How do you get there?

5 A Usually from town I go down Pamplico, take a
6 right on Cato and left on Hewitt Cemetery.

7 Q And go all the way to where?

8 A My property on left-hand side.

9 Q Which would be the other end of Cato Road down
10 here on Poor Farm, Branch Road?

11 A Yes, sir.

12 Q Is Branch Road a public road?

13 A Yes, sir.

14 Q Is Cato Road a public road?

15 A Yes, sir.

16 Q And Hewitt Cemetery does what in relation to
17 those two roads?

18 A They join at the cross roads. Is that what you
19 are asking?

20 Q Well, can you tell me what Hewitt Cemetery Road
21 does in relation to Cato and Poor Farm, Branch Road?

22 A I'm not sure what you are asking, but we go down
23 to the road to get to the property, and I've seen
24 school buss go down it. When I lived there, school bus
25 used to stop at the stop sign. If you go down Hewitt

MIKELL WOOD - DIRECT EXAMINATION

1 Cemetery, across the bridge, there is another couple
2 that lives at the other end -- when you get to the
3 other end of --

4 Q When you say "other end," let's use Cato and Poor
5 Farm as references. Which end is that?

6 A The end where stage coach -- I mean Poor Farm and
7 Branch meets.

8 Q For ease of the record, I'll call it Poor Farm
9 Road. So you are speaking at the end where Hewitt
10 Cemetery intersect Poor Farm?

11 A Yes, sir.

12 Q Which direction would the school bus come from?

13 A The school bus be coming from Cato and turn and
14 go by the cemetery and come to that stop sign, which is
15 Poor Farm Road, and I have a water bill that has Hewitt
16 Cemetery Road.

17 Q So you have city water?

18 A I don't know if it is city or county, but they
19 take it out of my checking account each month.

20 Q Do you know how that water line runs to your
21 property, where it come from?

22 A I came home one day and seen the blue pipe all
23 the way down Hewitt Cemetery. Wasn't sure what it was
24 at the time, and come to find out, asking questions, it
25 was county water.

MIKELL WOOD - DIRECT EXAMINATION

1 Q And when you say all the way down Hewitt Cemetery
2 Road, where did it start?

3 A From Cato and came back down past the cemetery
4 all the way to the stop sign at Poor Farm, and I can't
5 remember if it took a left or a right.

6 Q And your property at the corner of Hewitt
7 Cemetery and Poor Farm, Branch Road, does it have
8 either city or county water?

9 A Yes, sir. I get a water bill every month, and it
10 is 4496 Hewitt Cemetery Road.

11 Q Are you familiar with the county maintaining
12 Hewitt Cemetery Road?

13 A They used to come with a plow before they took
14 the gravel. They always came down with a big dirt plow
15 and plowed the whole area, Hewitt Cemetery Road, Poor
16 Farm Road.

17 Q And how about Branch Road?

18 A Yes, sir. When they came down Hewitt Cemetery
19 Road, they would take a left and go down what I call
20 Branch, which Branch and Poor Farm meets right there.

21 Q Has there been any change in the topping of the
22 roadbed of Hewitt Cemetery Road south of the cemetery?

23 A I know Johnny Rogers was the county councilman
24 back in the day, and they graveled all of that road
25 there.

MIKELL WOOD - DIRECT EXAMINATION

1 Q Do you know how the county came to decide to
2 gravel that portion of Hewitt Cemetery Road?

3 A We got petitions from everyone that used that
4 road, because a lot of people uses that road. It is
5 just why would you not use that instead of going all
6 the way down the other way.

7 Q To whom was it presented?

8 A I can't remember if I gave it to -- I can't
9 remember who I took it to, but I know I talked to
10 Johnny Rogers, and he told me I had to get so many
11 signatures from who lived in the immediate area that
12 used that road, and I can't remember where I took it.

13 Q Did you take it to someone with the county?

14 A Yes, sir.

15 Q What, if anything, did the county do?

16 A It wasn't long, they said they had the funds to
17 put it, and they graveled the road.

18 Q You have ever tried to go down Hewitt Cemetery
19 Road and it was blocked?

20 A Yes, sir.

21 Q Tell me when it was.

22 A About a year and a half.

23 Q Tell me the route you were taking when you hit
24 the obstruction?

25 A The way I always go. I come from Florence, take

MIKELL WOOD - DIRECT EXAMINATION

1 a right on Cato, come down and take a left off Hewitt
2 and come by the graveyard.

3 Q After you came by the graveyard, what kind of
4 obstruction was on the road?

5 A A big iron gate.

6 Q And did it -- how was it supported?

7 A I'm not sure if it is wooded or big metal posts
8 on each side.

9 Q What portion of the roadway was obstructed?

10 A All the way across. I almost hit it when I came
11 on the curve. Because I owned that property for
12 20-something years and I didn't have any idea to be
13 looking at anything in the road. When I came around,
14 it is right there in your face. Almost was an
15 accident, you know.

16 Q Was the gate opened at some point?

17 A No, sir. It had a chain with a lock.

18 Q Is it opened today?

19 A Yes, sir.

20 Q How did it become open?

21 A When I got there, how did it open?

22 Q Yeah.

23 A I called the police, 911, Chief Kirby.

24 Q Don't tell me what anyone said, but as a result
25 of the call, was the gate opened?

MIKELL WOOD - DIRECT EXAMINATION

- 1 A Yes, sir.
- 2 Q Since that occasion, was the road obstructed or
3 closed again?
- 4 A Yes, sir.
- 5 Q How long ago was that?
- 6 A Not too long after.
- 7 Q What did you do?
- 8 A Same thing, called 911.
- 9 Q Law enforcement came?
- 10 A Yes, sir.
- 11 Q What happened with the gate as a result of that,
12 opened or closed?
- 13 A Opened.
- 14 Q Since the second occasion has the road been
15 obstructed?
- 16 A No, sir.
- 17 Q Do you know who put the gate up?
- 18 A I didn't see anyone.
- 19 Q Did Ms. Eagerton ever come to you when you were
20 on Cato Road and the gate was closed or gated?
- 21 A Yes, sir.
- 22 Q Who did law enforcement speak to?
- 23 A Ms. Eagerton.
- 24 Q You want Hewitt Cemetery road to be open or
25 closed?

MIKELL WOOD - DIRECT EXAMINATION

1 A Open.

2 MR. McEACHIN: That's all I have.

3 RECROSS-EXAMINATION

4 BY MS. PARHUM:

5 Q Do you recall using bolt cutters to open the gate
6 at one point?

7 A Yes, ma'am. The first time I came around and
8 almost ran into the gate, about a year-and-a-half.

9 Q You bought cutters and cut it open and you --

10 A Right.

11 Q I believe you and my client got into a physical
12 altercation?

13 A Not physical.

14 Q You deny it was physical?

15 A It wasn't physical on my part, but whoever she
16 had with her--

17 Q You deny touching the women?

18 A Right. If you recall, you all were trying to
19 take me to court, but I had the 911 letter from 911
20 operator saying what happened, which was the other --
21 whoever the lady was.

22 Q Not sure who you are talking about.

23 A There was a lady with Ms. Eagerton when that
24 incident happened, the first time the gates were
25 locked. I cut the lock on the first one, yeah, down to

MIKELL WOOD - DIRECT EXAMINATION

1 the second one. When I came to the second one, there
2 was another couple -- lady and guy on the phone with
3 911 trying to figure out what to do to get through the
4 road. So on the phone with 911, I'm cutting the lock.
5 Ms. Eagerton and whoever her help was drove over with a
6 golf cart. I have the chain on my shoulder when they
7 came up. Whoever the lady was with Ms. Eagerton, she
8 went to jump -- lunged at me to get the chain, and I
9 done like this right here (indicates). I didn't know
10 what to expect. And then the law pulled up. The law
11 pulled up and was talking to Ms. Eagerton, and she was
12 told not to shut the gates again, and everybody left.
13 Everybody left. It wasn't but a few weeks later I got
14 something in the mail for a restraining order. If I
15 hit her, she should have told the law then, but I
16 didn't never did. I didn't know who the witnesses were
17 on the other end of the gate.

18 Q So there is two gates, one at the south end, one
19 at the north end?

20 A Right.

21 Q How many times was the law called?

22 A Two, three times, because she went shutting the
23 gate.

24 Q When did you live out there?

25 A Like I said, 17, 18 -- a long time.

MIKELL WOOD - DIRECT EXAMINATION

1 Q After she bought the property, though?

2 A I bought mine not too long after she bought hers.

3 Q If she bought hers in early '80s, when did you
4 buy it?

5 A I had the property for 23, 25 years.

6 Q You said you saw a school bus going down it, when
7 was that?

8 A Every morning. I used to live there.

9 Q What years?

10 A When I first bought the property.

11 Q Do you remember what year was that?

12 A Back in the late '80s maybe, '90. I'm not sure.
13 22, 25 years coming up.

14 Q When did they lay the water line in your
15 recollection?

16 A Can't remember. That has been there a long time.
17 Before they done the gravel.

18 Q Best recollection, what year was the water line
19 laid?

20 A It's been there a long time. I would be lying if
21 I told a date, but I don't think I lived there three,
22 four years before they started that.

23 Q Do you recall Ms. Eagerton attempting to stop
24 them from laying the gravel?

25 A Never.

MIKELL WOOD - DIRECT EXAMINATION

1 Q You don't remember that?

2 A Not at all.

3 Q You been aware Ms. Eagerton has a horse farm out
4 there?

5 A Sure do.

6 Q And you are not aware of her opposing the county
7 graveling for her horse farm, you are not aware of
8 that?

9 A Not at all.

10 Q You are not aware of her going to the county
11 council or representatives or anything?

12 A I mean, I don't tend to her business.

13 Q But you didn't hear or see any of that?

14 A Not at all.

15 Q Prior to E-911, my client had a route number that
16 was her address. Did you have the same route number
17 before 911 came through?

18 A What is that?

19 Q Your address -- did it change when 911 came
20 through?

21 A The day I bought the property is when I had to
22 get an address. I came up here and they gave me the
23 address.

24 Q So you didn't have a route or box number, you had
25 an address before 911 came through there?

MIKELL WOOD - DIRECT EXAMINATION

1 A I don't know when 911 came through. I'm saying
2 when I bought the property is when they gave me an
3 address.

4 Q How long has it been since you lived out there?

5 A I think you just asked me that. 17, 18 years.

6 Q You said you moved?

7 A Right.

8 Q Tell me what years did you live out there
9 physically, not rent, but live?

10 A I bought the property 22 to 25 years ago, and I
11 have not been living out there since probably my kids
12 are 16, so about 18 years, somewhere in there. I have
13 no idea, but at least that long.

14 Q So you left there after the area -- what year did
15 you leave?

16 A I don't know. No idea.

17 Q Approximately how many years have you been living
18 out there?

19 MR. McEACHIN: Your Honor, that it is asked and
20 answered.

21 THE COURT: I think he said 18.

22 Q (MS. PARHUM) So you purchased it 20, 25 years
23 and haven't lived there in 18 years?

24 A Right.

25 Q Okay. I'm sorry. And since you moved away, you

MIKELL WOOD - DIRECT EXAMINATION

1 rent the property?

2 A I have four out there.

3 Q And you sold another property?

4 A To the right side. When everyone leaves
5 Florence, they go down Hewitt Cemetery Road.

6 Q That is not the only way to go. You can go
7 down --

8 A If you want to go the long way.

9 Q But you can?

10 A You can.

11 Q It is not land locked? You can -- there is a
12 number of ways?

13 A Right, but we all go the shortest route. Just
14 like my tenants, if they get in trouble, I want the
15 ambulance to come the shortest route, not the biggest.

16 Q That depends where the ambulance is coming from,
17 because this is your property right here, and you are
18 on the largest road, is what you are on, Poor Farm,
19 Branch?

20 A But my property is on Hewitt Cemetery.

21 Q I understand. It forms a corner?

22 A I sold the biggest part that goes on Branch Road.
23 I kept the biggest piece, which is on Hewitt Cemetery.

24 Q Right, but your property intersects both roads,
25 Branch and Hewitt?

MIKELL WOOD - DIRECT EXAMINATION

1 A I have two driveways on Hewitt Cemetery Road.

2 Q And I think they are depicted in the most recent
3 photograph, those are the two driveways?

4 A Both are on Hewitt Cemetery Road, I have no
5 driveways on Branch Road.

6 Q But it looks like the distance between your
7 driveways is rather short?

8 A What's that?

9 Q The distance between your two driveways and
10 Branch Road, how far would you say your driveways are?

11 A One goes to one, and one goes to another rental.
12 Each have their own driveway.

13 Q I understand. But this first driveway, how far
14 is that from Branch Road?

15 A Probably couple hundred feet.

16 Q Your driveway from Branch Road and the other
17 driveway, how far is that second driveway from the
18 first driveway?

19 A About 50 feet away. I know all my renters for
20 the apartment is off of Hewitt Cemetery Road.

21 Q I understand. That is all south of
22 Ms. Eagerton's property?

23 A Right.

24 Q And those driveways are several hundred feet from
25 the Branch Road?

THOMAS HUGGINS - DIRECT EXAMINATION

1 A Correct.

2 MS. PARHAM: That is all I have.

3 MR. McEACHIN: Nothing further.

4 THE COURT: Thank you very much, sir. Free to
5 go.

6 (THOMAS HUGGINS, having been duly sworn,
7 testified as follows:)

8 THE CLERK: Have a seat and state your name for
9 the record, please.

10 THE WITNESS: Thomas Brian Huggins.

11 DIRECT-EXAMINATION

12 BY MR. McEACHIN:

13 Q What is your age?

14 A 46.

15 Q Where do you live?

16 A 2918 Willow Creek Road.

17 Q This is Plaintiffs' Exhibit 7, aerial photo. I'm
18 not sure if your house is here, but this is Willow
19 Creek Road, and this is Mr. Robert Megs' place here?

20 A My place borders up here, to the right of his
21 property.

22 Q Here?

23 A Yes, sir.

24 Q How long have you lived there?

25 A Well, we built the house when I was five years

THOMAS HUGGINS - DIRECT EXAMINATION

1 old. I lived until I was about 22, moved up town
2 awhile for several years. My dad died and my mom went
3 to Methodist Manor, and I moved back to the farm.

4 Q Are you employed?

5 A Retired.

6 Q Where were you working when you retired?

7 A Railroad.

8 Q Are familiar with the Winchester property on
9 Willow Creek Road?

10 A Yes, sir.

11 Q Bill Winchester's sister is deceased?

12 A Yes.

13 Q Is Billy still alive?

14 A Yes, sir.

15 Q Did they have horses there on Willow Creek Road?

16 A Yes, sir, for a long time.

17 Q Are you familiar with Hewitt Cemetery Road?

18 A Yes, sir. My family is buried there.

19 Q Do you ever travel Hewitt Cemetery Road?

20 A Once in awhile to put flowers on my dad's grave.

21 Q How do you get there from Willow Creek; what
22 route do you take?

23 A I do Willow Creek to Poor Farm, and then Poor
24 Farm until the stop sign, and I take a right, I think
25 it is Branch Road, go down to Hewitt Cemetery and take

THOMAS HUGGINS - DIRECT EXAMINATION

1 a left.

2 Q And so you would come down this way, come up
3 here, take a left off the Hewitt Cemetery Road?

4 A Right.

5 Q Do you know Ms. Eagerton -- do you know where her
6 property is?

7 A Yes, I do.

8 Q Would you pass through where her property is to
9 get to the cemetery?

10 A Yes.

11 Q Have you ever seen the county do maintenance work
12 on that road?

13 A Yes, sir. Since I was 10 years old the county
14 would maintain the road, scrape it and keep it smooth.

15 Q Have you seen traffic other than your vehicle on
16 Hewitt Cemetery Road?

17 A Yes, sir.

18 Q Can you gauge the volume of traffic, how often
19 you see traffic?

20 A When I go to the cemetery to visit my dad, I'll
21 see maybe one, two car go by. I'm not there that long.

22 Q Do you want the road to remain open or closed?

23 A I would like it opened.

24 MR. McEACHIN: Thank you. That is all I have.

25

THOMAS HUGGINS - CROSS-EXAMINATION

1 CROSS-EXAMINATION

2 BY MS. PARHAM

3 Q You could go to Cato Road to get to the cemetery
4 rather than cutting through Ms. Eagerton's property?

5 A I could.

6 MS. PARHAM: That is all I have.

7 THE COURT: Thank you. You are free to go. I
8 appreciate you being here.

9 MR. McEACHIN: I have two more, and I know they
10 are here. I hope I have maybe two more after that, if
11 they can get here. It is the man that is on dialysis,
12 and he had to go this morning, so I'm not sure whether
13 he can get here or not, but I have a minimum of two,
14 one of whom Ms. Parham may have questions, but from my
15 questions, they are fairly short.

16 THE COURT: For this afternoon; is that right?
17 Are you ready to break for lunch?

18 MR. McEACHIN: Oh yeah.

19 THE COURT: Okay. So court will be in recess
20 until 2:30.

21 (A lunch recess was taken.)

22 THE COURT: If you're ready, we'll recognize you
23 for your next witness.

24 MR. McEACHIN: Jerry Allen.

25 (JERRY ALLEN, having been duly sworn,

JERRY ALLEN - DIRECT EXAMINATION

1 testified as follows:)

2 THE CLERK: State your name for the record.

3 THE WITNESS: Jerry Allen.

4 DIRECT-EXAMINATION

5 BY MR. McEACHIN:

6 Q How old are you?

7 A 58.

8 Q Where are you employed?

9 A Florence County Public Works.

10 Q How long have you been with Florence County
11 Public Works?

12 A Close to 40 years.

13 Q So right out of high school?

14 A Right out of high school.

15 Q What do you do for Public Works?

16 A Area supervisor.

17 Q What do you do?

18 A Take care of all the dirt roads, paved roads,
19 rock roads in the county maintenance system as far as
20 keeping them safe for the traveling public.

21 Q Does the county keep an inventory or list of the
22 roads that -- county roads, public roads, that are
23 maintained by the county?

24 A Yes, sir.

25 Q And is Hewitt Cemetery Road on that list?

JERRY ALLEN - DIRECT EXAMINATION

1 A Yes, sir.

2 Q When you first started working for Public Works,
3 what were you doing?

4 A I was working in Late City area, and I got
5 transferred in early '80s.

6 Q When you were transferred to that district, that
7 is the geographic area that included -- what is shown
8 on Plaintiffs' 7 as Hewitt Cemetery Road?

9 A Yes, sir.

10 Q What were your job duties in the early '80s with
11 Public Works?

12 A I rode a motor grater then.

13 Q Did you have it on Hewitt Cemetery Road then?

14 A Several times.

15 Q How often?

16 A Back then, they probably got plowed once every
17 two to three weeks back then.

18 Q What kind of road was it in the early '80s?

19 A It was a dirt road then.

20 Q Did you ever see any other vehicles on that road?

21 A Oh, yeah.

22 Q What would you see?

23 A Traveling public used it a right good bit, school
24 buses. We used to have to pull out of the way to get
25 out of the school buses because we always wound up on

JERRY ALLEN - DIRECT EXAMINATION

1 the road at the same time.

2 Q When you were plowing, was there ever a day you
3 plowed that was not a Monday through Friday day?

4 A Did I ever plow?

5 Q Did you plow on the weekends or?

6 A No. No. Monday through Friday is the only time
7 we plowed it.

8 Q Was there ever an occasion where you were plowing
9 during the school year where you didn't see a school
10 bus?

11 A Yeah, absolutely.

12 Q When was that?

13 A The winter months I remember because it bogged
14 down, because like I told you, the way I remember it so
15 well, the fellow driving the school bus, his dad worked
16 at Public Works and he came in pretty hot about it the
17 next morning, so we had to go back and fix it.

18 Q Was there ever an occasion where the county
19 installed drainage pipes on Hewitt Cemetery Road?

20 A Yes, sir, I did.

21 Q Can you show on Plaintiffs' 7 the location of the
22 drainage pipes?

23 A It was on the paved part where the pavement stops
24 about 50 foot, we had to clean sections out and put
25 pipe in to get out to the field out there.

JERRY ALLEN - DIRECT EXAMINATION

1 Q So wait a minute, you say the pavement, you are
2 speaking of the state road?

3 A The state road comes off of Cato Road, comes
4 around to Cemetery and stops, and the dirt road starts.

5 Q How far from the end of the paved road was it?

6 A I would say, roughly, 50 to 80 feet.

7 Q Hang on. I'll show you plat attached to
8 Plaintiffs' Exhibit 15, and this is Hewitt Cemetery,
9 this is the state road section?

10 A Right in there somewhere (indicates).

11 Q So if you could, show that to the Court.

12 A The pavement stopped here, it would be right in
13 there.

14 Q So that would be somewhere on that 40.7-acre
15 tract of land?

16 A On the dirt road, yeah.

17 Q Dirt Road, on the 40-something acres?

18 A Yeah. Yeah.

19 Q And what kind of pipe or tie did you put in?

20 A I believe it was corrugated metal pipe. The
21 gentleman met me there and was complaining about the
22 water in the field, couldn't get his hay cut.

23 Q If we look on the Plaintiffs' 7, coming off of
24 Cato Road, coming down to the cemetery, make that
25 curve, which side of the road was the field on?

JERRY ALLEN - DIRECT EXAMINATION

- 1 A The left.
- 2 Q Coming down?
- 3 A Coming down from the Cato it is on the left.
- 4 Q This field over here?
- 5 A Yeah. Yeah.
- 6 Q And if I'm looking at this correctly, tell me if
- 7 I'm wrong, this looks like a drain or creek?
- 8 A Kind of a run.
- 9 Q Where would the drain send the water?
- 10 A Away from the field. We cleaned a small section
- 11 out.
- 12 Q And when you say "out," that is for a outfall
- 13 ditch?
- 14 A Yes, sir.
- 15 Q Did the county maintain an outfall ditch?
- 16 A I don't know when they cleaned it out, because no
- 17 one requested us to do it.
- 18 Q But if people requested an outfall ditch by a
- 19 road to be cleaned, does the county do that, county
- 20 road?
- 21 A Yes, sir. Yes, sir. Provided we get our
- 22 right-of-ways.
- 23 Q Do you recall what year that was?
- 24 A No, sir.
- 25 Q Do you recall the man's name?

JERRY ALLEN - DIRECT EXAMINATION

1 A No, sir, I don't.

2 Q Do you know if it was before or after

3 Ms. Eagerton acquired this property?

4 A Can't say.

5 Q Where did you live when you grew up?

6 A Allentown, probably five miles from that.

7 Q Did you use Hewitt Cemetery Road before you went
8 to work for the county?

9 A Oh, yes. When we were kids we went over there.
10 We had friends on Cato Road and we rode dirt bikes and
11 stuff.

12 Q So you went off Poor Farm Road?

13 A No. We came from the highway, turn down Branch
14 Road and make a left, come down to get to Cato Road,
15 because we wanted to stay off of the highways because
16 highway paroles were bad back then.

17 Q Has that improved then?

18 A Not much.

19 Q I'm a little disoriented. You came off of Poor
20 Farm Road --

21 A Right, and then went up Cato.

22 Q Okay. All right. Were you still working for
23 this road when it was rocked?

24 A Yes, sir.

25 Q Do you remember when it was rocked?

JERRY ALLEN - CROSS-EXAMINATION

1 A Not the year.

2 Q Did you hear about Ms. Eagerton asking the county
3 not to rock?

4 A No, sir. I think I was transferred from this
5 area down to Area 1 shortly after she moved there, so
6 you didn't have too much dealings with her after that.

7 MR. McEACHIN: Thank you.

8 (Defendant's Exhibit 6 marked.)

9 CROSS-EXAMINATION

10 BY MS. PARHAM:

11 Q I'll show you Defense 6. Does that refresh your
12 memory when the rock was laid on the road?

13 A That sounds about right.

14 Q So when was the rock laid on Hewitt Cemetery
15 Road?

16 A It says on here January 22 of '04.

17 Q Prior to that, it had been a dirt road?

18 A Yes, ma'am.

19 Q Couple years before laying rock, do you recall
20 Florence County laying sand on it which caused the hay
21 field to flood?

22 A It's possible sand was put on the road, but I
23 don't recall flooding issues.

24 Q And you don't recall the sides of the road being
25 raised by sand which is what caused the hay field to

JERRY ALLEN - CROSS-EXAMINATION

1 flood, which is what caused you all to correct it and
2 put that drainage ditch; do you remember that?

3 A The fellow I met there, he said he needed
4 drainage, but I don't think we put that much sand on
5 the end, because the buses and all used to bog down on
6 the other end. We put dirt down there a right good
7 bit, but it was on the other end of the road.

8 Q Do you recall the sand that the county put on the
9 road causing the hay field to flood?

10 A No, ma'am.

11 Q And you don't recall the county having to come
12 back out there and correct it with the drain?

13 A No, ma'am, not me now.

14 Q All right. As far as your plowing, what years do
15 you specifically recall plowing that road?

16 A I was moved over there in early '80s. I would
17 say -- just a good guess, because it is a long time
18 ago, may be seven, eight, ten years I stayed there
19 before I moved to another position.

20 Q So about a 10-year period between '80 and '90?

21 A Oh, yeah, up there.

22 Q Now, this is Hewitt Cemetery Road we're referring
23 to, what is Heyward Hewitt Road?

24 A That is the road what runs into what we used to
25 call Branch Road, but it used to be the Old Heyward

JERRY ALLEN - CROSS-EXAMINATION

1 Hewitt Cemetery Road.

2 Q Show me that. I'm confused about all of that.

3 A This is Cato, and this is Hewitt Road, and this
4 is Branch Road here. This is Branch, that is what we
5 used to call Old Heyward Hewitt Road before 911, so
6 that is when we started naming it Branch.

7 Q So the Heyward Hewitt Road is this road before it
8 was Branch?

9 A Branch, yes, ma'am.

10 Q So this is the Heyward Hewitt Road?

11 A Yes, ma'am.

12 Q Hewitt Cemetery Road extends south of this road,
13 correct?

14 A Yeah.

15 Q Did you plow that, too?

16 A No.

17 Q You just plowed this part?

18 A Yes.

19 Q And did you participate in any maintenance of the
20 state area road?

21 A Right. Just the dirt section from here to the
22 pavement.

23 Q Did the county keep records when they did this?

24 A We kept a daily logging book.

25 Q And the daily log book is the best way to show

JERRY ALLEN - REDIRECT EXAMINATION

1 when it was in fact plowed?

2 A Yes, ma'am.

3 Q Do you recall any other instance, other than that
4 drainage pipe being laid, that the county laid pipes or
5 did any other work other than plow that road?

6 A Not that I can remember, no.

7 Q So you are saying you would not have been the
8 person to do it after 1990; so after rock was laid, you
9 had no dealings?

10 A Got moved to another position.

11 Q So you were not there when the rock was laid?

12 A No, ma'am.

13 MS. PARHAM: That is all I have.

14 THE COURT: Redirect?

15 REDIRECT-EXAMINATION

16 BY MR. MCEACHIN:

17 Q Look at Plaintiffs' 7, Cato Road crosses Pamplico
18 Highway here?

19 A Yes.

20 Q Right up here?

21 A It runs from the Clawson Road up to 51, and 51
22 over to Poor Farm.

23 Q And from Clawson Road and Pamplico, Cato Road
24 is -- whose system is it in?

25 A In the county system.

JERRY ALLEN - REDIRECT EXAMINATION

1 Q Still in the county system?

2 A Yes, sir.

3 Q And between Pamplico Highway and Poor Farm Road,
4 Cato Road is in the county system?

5 A South Carolina DOT takes care of that. It is not
6 ours.

7 Q So is it unusual in the county to have the same
8 road, one end in the county and other end in the State?

9 A No, sir. We've got some in other counties that
10 run together like that, too.

11 Q Is Cato Road between Pamplico and Poor Farm, that
12 is a public road?

13 A Yes, sir.

14 Q Poor Farm Road, is that county or state from
15 where it meets Cato Road to Hewitt Cemetery Road?

16 A That is state.

17 Q Is that a public road?

18 A It is a public road.

19 Q Does Hewitt Cemetery Road connect Cato Road with
20 Poor Farm Road?

21 A It connects to Branch.

22 Q So where does Poor Farm Road change to Branch?
23 At that interaction?

24 A From 52 to that intersection is paved, South
25 Carolina DOT's, from that intersection out to 51 is

JERRY ALLEN - REDIRECT EXAMINATION

1 Florence County.

2 Q And 51 is Pamplico Highway?

3 A 51 is Pamplico Highway.

4 Q And so from Hewitt Cemetery Road, where Branch
5 Road begins, that is a county road?

6 A Right.

7 Q Is that a public road?

8 A Yes, sir.

9 Q In the county system?

10 A Yes, sir.

11 Q Does county maintain it?

12 A Yes, sir.

13 Q Thank you.

14 MR. McEACHIN: May I have one second?

15 THE COURT: Yes, sir.

16 MR. McEACHIN: I do have another question.

17 Q (MR. McEACHIN) Did you ever drive a school bus
18 on this road?

19 A Yes, sir.

20 Q When was that?

21 A About a year before I come to work with the
22 county, drove a school bus probably four months.

23 Q What age children were on that bus?

24 A It ranged. Back then, elementary and high
25 school.

1 Q And high school would have been South Side?

2 A Yes, sir. Yes, sir.

3 Q Did you use that Hewitt Cemetery Road when you
4 drove a school bus?

5 A Yes, sir.

6 MR. McEACHIN: Thank you.

7 RECROSS-EXAMINATION

8 BY MS. PARHAM:

9 Q Were you the only person running the plow between
10 1980 and 1990?

11 A Yes, ma'am.

12 Q The only one?

13 A Yes, ma'am.

14 Q Of the records that the county provided us, these
15 are the only --

16 MS. PARHAM: Approach the witness?

17 THE COURT: Yes, ma'am.

18 MS. PARHAM: This will be Defense 7.

19 (Defendant's Exhibit 7 marked.)

20 Q Can you identify Defense 7?

21 A Uh-huh.

22 Q There is more attached, if you could look through
23 those?

24 A This is a daily log.

25 Q Is that your handwriting?

1 A No, ma'am. What it is, I had a worker that
2 followed the motor grader, that is his writing
3 probably. I didn't keep the records, they did.

4 Q That is all the records I could find with your
5 name. On any of those records, do you see the word
6 "Hewitt Cemetery Road"?

7 A You have Heyward Hewitt Road.

8 Q Right, I saw that.

9 A Well, back then, the records that were kept,
10 Heyward Hewitt Road was probably plowed all one road,
11 Hewitt Cemetery and Branch Road now.

12 Q But these records, they give away a lot of detail
13 as far as all of the names of the roads. It says,
14 Plowed beside railroad tracks and in Heyward Hewitt
15 Road and Bob Maley's (phonetic), and all of that. If
16 you could, look at these again and see if you see
17 Hewitt Cemetery in any of those records of yours?

18 A Probably going to be the same thing as Heyward
19 Hewitt Road.

20 Q But that is different than Hewitt Cemetery Road?

21 A Two different roads, yes. But back then we
22 called it all one road. That is before 911 came out,
23 that is what it is.

24 MS. PARHAM: We offer Defendant's 7 without
25 objection.

JERRY ALLEN - REDIRECT EXAMINATION

1 THE COURT: Defense 7 without objection.

2 (Defendant's Exhibit 7 admitted.)

3 Q (MS. PARHAM) You are the only one plowing this
4 road during the tenure period you worked?

5 A There was only one plow in that district, yes,
6 ma'am.

7 REDIRECT EXAMINATION

8 BY MR. MCEACHIN:

9 Q Mr. Allen, if there are records in 1983 to Ralph
10 Poston, Subject: Bobby Graham, plow H. Hewitt Road,
11 who would have been doing that plowing on February 10,
12 1983?

13 A Bobby Graham was operator then.

14 Q Were you the operator in that area in 1983?

15 A Huh-huh.

16 Q So if the last one with your name on it -- I'm
17 assuming -- it says 12/4, no year, but is that 19 --
18 well, let's see. There is 1/7/82 with your name it,
19 3/18 with no year, through -- looks like December, and
20 then Bobby Graham picks up in February of '83, so these
21 are '82 years?

22 A Yeah.

23 Q But there is no year on those?

24 A I would say so, yes.

25 Q Where is Mr. Bobby Graham?

JERRY ALLEN - REDIRECT EXAMINATION

1 A He passed away.

2 MR. McEACHIN: Can I have one moment, Your Honor?

3 (A brief pause in the proceedings.)

4 (Defendant's Exhibit 8 marked.)

5 RECROSS-EXAMINATION

6 BY MS. PARHAM:

7 Q Let me show you Defense 8. What is that?

8 A This is the maintenance sheet when they -- I
9 can't tell you when they started keeping. That has
10 Tommy Garner as the area supervisor.

11 Q Are there two different areas on that maintenance
12 sheet, one being Heyward Hewitt and one being Hewitt
13 Cemetery Road?

14 A Uh-huh.

15 Q So those are two distinct maintenance areas and,
16 in fact, they are given different areas, letters and
17 numbers in the left-hand column?

18 A Yeah.

19 Q So when he was asking you about this other record
20 of H. Hewitt Road, based on this record and other
21 records, it probably would be Heyward Hewitt Road, H.
22 Hewitt Road?

23 A Like I said awhile ago, like the road I live on
24 is Gully Road, but it is two roads, and they just put
25 down Gully Road. You know, I didn't keep the records,

JERRY ALLEN - RECROSS-EXAMINATION

1 is what I'm saying.

2 MR. McEACHIN: No objection.

3 THE COURT: Without objection, Defendant's 8.

4 (Defendant's Exhibit 8 admitted.)

5 RECROSS-EXAMINATION

6 BY MR. McEACHIN:

7 Q If you were on Branch Road -- what was Branch
8 Road?

9 A Is what we called Old Heyward Hewitt Road.

10 Q So if you plowed that, would there be a separate
11 entry to plow what is now Hewitt Cemetery Road?

12 A It would depend who is keeping the records.

13 Q When you were running the machine, if you are
14 plowing this road here, this Branch Road, and took a
15 right on Hewitt Cemetery Road, would you do it all the
16 same day and time?

17 A Yeah. On 51 to Poor Farm, where the dirt road
18 met the asphalt, plowed down there, turn around, come
19 back, stop and go down cemetery road and come back and
20 plow back out to 51 so we wouldn't have to dead head
21 this way, just go out to 51 and go to the next road.

22 Q When you plow a dirt road, how many passes did it
23 take to plow the road?

24 A It depends on the shape, but if it is not that
25 bad of shape, you cut it one time and spread it one

JOSEPH JONES - DIRECT EXAMINATION

1 time. If it is in bad shape, you double cut it, cut it
2 twice and spread it twice.

3 Q If the road is in decent shape, one time up and
4 one time back?

5 A Yes, sir.

6 MR. McEACHIN: That is all I have.

7 THE COURT: Thank you very much. You may step
8 down. Come up here. Whenever you are asked questions
9 and answer, if you would speak up loudly.

10 MR. JONES: All right, sir it is.

11 (JOSEPH JONES, having been duly sworn,
12 testified as follows:)

13 THE COURT: Mr. Jones, if you want to have a
14 seat.

15 DIRECT-EXAMINATION

16 BY MR. McEACHIN:

17 Q What is your age?

18 A Pardon me?

19 Q What is your age? How old are you?

20 A 74.

21 Q Where do you live?

22 A Hewitt Cemetery Road.

23 Q How long have you lived there?

24 A Sir, I've been there all my life.

25 Q And I'll show you, if you can see here, a map,

JOSEPH JONES - DIRECT EXAMINATION

1 and I'll represent to you that that is Cato Road, this
2 is Hewitt Cemetery coming off of. Here is a cemetery,
3 and the road comes on down to Branch Road. Is your
4 house south of Branch Road, down here?

5 A Right.

6 Q Have you ever been on the portion of Hewitt
7 Cemetery Road above Branch Road going back to Cato
8 Road?

9 A Yeah.

10 Q How often do you use that portion of the road?

11 A All the time.

12 Q Did the counties maintain part of Hewitt Cemetery
13 Road where you live?

14 A No.

15 Q Does the county maintain the part of Hewitt
16 Cemetery from Branch Road back to Cato?

17 A Yes.

18 Q And have you seen the county equipment working
19 the road?

20 A Oh, yeah.

21 Q How frequently?

22 A Pretty often. Pretty often.

23 Q Do you require regular routine medical care?

24 A Yeah, I go to dialysis.

25 Q How often do you go?

JOSEPH JONES - DIRECT EXAMINATION

1 A Three times a week.

2 Q And --

3 A Monday, Tuesday and --

4 Q How do you get there?

5 A Med One.

6 Q Picks you up?

7 A Yeah.

8 Q They come -- where do they come, to your house?

9 A Right.

10 Q What route is the taken when you leave your house
11 to go to the dialysis center?

12 A They go straight across by the graveyard and out
13 to 51.

14 Q Off of Cato Road?

15 A Right.

16 Q So they come up from Branch Road, up Hewitt
17 Cemetery to Cato Road, take a right and to Pamplico
18 Highway?

19 A I mean take a left and go up to Pamplico.

20 Q A left? I'm sorry, it is left on Pamplico. You
21 are right. You're right. Do any of your family
22 members visit you?

23 A Yeah.

24 Q Who?

25 A My brothers. They are out of town, but they

JOSEPH JONES - DIRECT EXAMINATION

1 come.

2 Q Do you have any sisters?

3 A I live with my two sisters.

4 Q How do they get to and from where you live?

5 A My sisters?

6 Q Yes.

7 A They drive.

8 Q What road do they get to your house?

9 A Same. Same.

10 Q Hewitt Cemetery Road from Cato?

11 A Yeah, same one.

12 Q And how often do they drive on the road, on

13 Hewitt Cemetery Road between Cato and Branch?

14 A Every day.

15 Q Were you ever in a Med One vehicle when there was
16 an issue of the Med One vehicle being on Cato Road?

17 A Yeah.

18 Q Tell me about that.

19 A One day they were bringing me home and the truck
20 stopped.

21 Q Where was the truck when it stopped, which road
22 was it on?

23 A Up near the horses.

24 Q Past the cemetery coming down?

25 A Well, yeah, you can say that. You know a bunch

JOSEPH JONES - DIRECT EXAMINATION

1 of trees up there.

2 Q Do you know Ms. Eagerton?

3 A Not that well.

4 Q You know where her property is?

5 A Oh, yeah.

6 Q Where was the place on the road where the Med One
7 vehicle stopped in relation to where Ms. Eagerton's
8 property is?

9 A By the trees.

10 Q There are a lot of trees. If this is Hewitt
11 Cemetery, there's the cemetery, can you pinpoint where
12 it stops?

13 A In the trees somewhere in here.

14 Q Let me ask you this. Were you on a paved road or
15 rock road or --

16 A Rock road.

17 Q Do you know where the state maintenance sign is?
18 It says "state maintenance ends"?

19 A Past the graveyard.

20 Q Just past the graveyard, yeah. Do you know if
21 the Med One stopped before or after the state
22 maintenance end sign?

23 A Sir, I'm trying to think. I know it is right at
24 the trees of where the problem started.

25 Q So when Med One stopped, Ms. Eagerton come to the

JOSEPH JONES - CROSS-EXAMINATION

1 vehicle?

2 A I wasn't in -- they were dropping me off and they
3 were going back.

4 Q Oh, I got you.

5 A And that is when the truck stopped.

6 Q Do you want this road to stay open or closed?

7 A Open, sir.

8 MR. McEACHIN: That is all I have.

9 CROSS-EXAMINATION

10 BY MS. PARHAM:

11 Q Where do you have dialysis?

12 A At the Vita (phonetic).

13 Q Where is that?

14 A What street is that?

15 Q How do you spell that?

16 THE COURT: In Florence?

17 A Right. Right. Telvita (phonetic).

18 Q (MS. PARHAM) Like "T"?

19 THE COURT: Is that.....

20 THE WITNESS: It is a clinic.

21 THE COURT: Not the hospital?

22 THE WITNESS: No. No. No, it is a clinic.

23 THE COURT: That is where they do dialysis?

24 THE WITNESS: Right.

25 Q (MS. PARHAM) Telvita Clinic?

DOROTHY JONES - DIRECT EXAMINATION

1 A Yeah.

2 Q Do you know what road it is off of?

3 A I know my sister knows because she takes me there
4 sometimes.

5 Q That's all right. I'll try to find it.

6 THE COURT: It might Davita.

7 A There you go.

8 THE COURT: Do you know where that is, what's the
9 address?

10 LAW CLERK: 1520 Flag Drive, Florence 29505. It
11 is called Davita Pamplico Dialysis or Davita Dialysis
12 Center.

13 Q (MS. PARHAM) When did you start getting dialysis
14 there, sir?

15 A It's been awhile now.

16 Q Do you recall when it was that -- I'm sorry, you
17 said you were not in the ambulance.

18 MS. PARHAM: That is all I have, Your Honor.

19 THE COURT: All right. Thank you very much, sir.

20 (DOROTHY JONES, having been duly sworn,
21 testified as follows:)

22 THE CLERK: State your name for the record.

23 THE WITNESS: Dorothy Jones.

24

25

DOROTHY JONES - DIRECT EXAMINATION

1 DIRECT-EXAMINATION

2 BY MR. McEACHIN:

3 Q What is your age?

4 A 73.

5 Q You are Joseph Jones' sister?

6 A Yes, sir.

7 Q You all live together?

8 A Yes, sir.

9 Q You live on -- where do you live?

10 A Hewitt Cemetery Road.

11 Q And I'll refer you to this aerial photo,

12 Plaintiffs' Exhibit 7. This is Cato Road, this is

13 Hewitt Cemetery Road that comes down to Branch Road?

14 A Yes, sir.

15 Q Where is your house on this aerial photo?

16 A When you get to the end of Hewitt Cemetery Road,
17 you keep right, straight across.

18 Q Across Branch Road?

19 A Yes, sir.

20 Q And your house is down there?

21 A Down there, way down in the woods like.

22 Q How long have you lived down there?

23 A On that road, over 30-some years.

24 Q And in this general area of Florence County, how
25 long have you been living?

DOROTHY JONES - DIRECT EXAMINATION

1 A All my life.

2 Q Have you ever used Hewitt Cemetery Road between
3 Branch Road and Cato Road?

4 A Every day I go to work.

5 Q Where do you work?

6 A Cane's Barbecue.

7 Q What do you do at Cane's?

8 A Cook, wash dishes. My main job is washing
9 dishes.

10 Q You cook some of that good food?

11 A Sometimes.

12 Q And Cane's Barbecue is on Pamplico Highway?

13 A Yes, sir.

14 Q Going back towards Florence?

15 A Yes, sir.

16 Q So straight line from your house to Cane's, you
17 could would be which way?

18 A On Cato Road going back to Pamplico Highway.

19 Q How would you get to Cato Road from your house?

20 A Hewitt Cemetery Road straight through by Hewitt
21 Cemetery Road by the cemetery, right out to Cato -- it
22 will run into Cato Road.

23 Q How long have you worked at Cane's?

24 A Over 30 years.

25 Q Do you see other traffic on Hewitt Cemetery

DOROTHY JONES - DIRECT EXAMINATION

1 between Branch and Cato Road when you are traveling it?

2 A Yes, sir.

3 Q How frequently?

4 A Well, every day. A heap of people live down
5 there on -- I assume they are coming from Branch Road,
6 because it's houses down there. I see traffic coming
7 from down there, turning on Hewitt Cemetery Road.

8 Q Have you ever seen the county do maintenance work
9 on Hewitt Cemetery Road?

10 A Yes, sir.

11 Q How frequently?

12 A When I came through, it was recently, because the
13 road had been plowed, you know, maintained. So I'm
14 thinking it had to have been Monday or yesterday.

15 Q Is Hewitt Cemetery Road rock now?

16 A No, sir.

17 Q Is there any rock on it or hard surface between
18 Branch Road and Cemetery?

19 A I don't know how far, but from where the lady
20 live, there is a little ditch there and it's got rocks
21 in it.

22 Q Right. Have you seen anyone from the county
23 patching Hewitt Cemetery Road?

24 A I ain't seen them physically, but the evidence is
25 there where the black stuff.

1 Q Asphalt?

2 A Yes, sir.

3 Q Do you want Hewitt Cemetery closed or left open?

4 A I prefer left open.

5 MR. McEACHIN: That is all I have.

6 THE WITNESS: That's it.

7 THE COURT: She might have questions for you.

8 CROSS-EXAMINATION

9 BY MS. PARHAM:

10 Q Do you remember when they put the rock down on
11 Hewitt Cemetery Road?

12 A No, ma'am, I don't.

13 Q All right. Did you know that the distance from
14 where Branch Road crosses Hewitt Cemetery, and your
15 home is down here at this end of Hewitt Cemetery; is
16 that correct?

17 A Down at the bottom, yes, ma'am.

18 Q Did you know from here to where it intersects
19 Pamplico Highway, that it is only .4 miles longer to go
20 this way, than to go this way?

21 A No, I didn't.

22 Q It might be .3 -- .4 miles longer. There is only
23 a .4-mile difference between going that way and that
24 way.

25 A No, I wasn't aware of that.

1 Q You agree that Branch Road is a larger road and
2 better maintained than Hewitt Cemetery?

3 A No, I wouldn't, because when you get down -- I
4 guess that is Branch Road -- to Pamplico Highway,
5 sometimes there is a little place down there, sometimes
6 it has washout.

7 Q You mentioned a washout or a ditch or something,
8 a washout here when you were talking to Mr. McEachin?

9 A That is -- there is a ditch where they don't
10 maintain.

11 Q And that is on Hewitt Cemetery Road?

12 A Yes.

13 Q So I guess, from your testimony, each road
14 sometimes has issues?

15 A Not as much as Branch Road. When they have the
16 difficulty, we can still go out of Hewitt Cemetery
17 Road.

18 Q You can also go down Branch and down to Cato to
19 Pamplico?

20 A Yeah.

21 Q A third route?

22 A Yeah.

23 Q So you can go this way, this way, or this way all
24 to the same location?

25 A All leads you to Pamplico, if that is what you

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 are saying.

2 Q Three rounds to that same location?

3 A Yeah. Right.

4 MS. PARHAM: That's all I have.

5 MR. McEACHIN: Nothing further.

6 THE COURT: Thank you. You may step down, ma'am.

7 (ARTHUR GREGG, JUNIOR, having been duly sworn,
8 testified as follows:)

9 THE WITNESS: Arthur C. Gregg, Junior.

10 DIRECT-EXAMINATION

11 BY MR. McEACHIN:

12 Q What is your age?

13 A 69.

14 Q Are you employed?

15 A I'm from Florence County.

16 Q What is your job with Florence County?

17 A Public Works director. I oversee all of the
18 maintenance of road, bridges and subdivisions.

19 Q How many miles of county roads does the county
20 have?

21 A Right at 500.

22 Q How many different roads does the county have?

23 A Approximately 1200.

24 Q Is there an inventory kept of county roads?

25 A Yes, sir.

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 Q When was that first made when it was a go-to
2 source to know where the roads were?

3 A I was promoted to Public Works director in '89.
4 We had no inventory or roads, whatsoever. There was no
5 way of identifying them. During the remainder of '89
6 and probably most of 1990, I had done an inventory,
7 assigned them a name and number.

8 Q Let me ask you this. Before 1989, did the county
9 maintain any roads?

10 A Just about the same number we have today.

11 Q How did the Public Works know what roads to
12 maintain before there was this official list of the
13 roads?

14 A I think they had the same crews for so long, they
15 just had them memorized. Each man had his own set of
16 roads in his area, and that is what he worked
17 constantly.

18 Q So was there a historical institutional memory
19 over the years of which roads the county dealt with and
20 had to maintain?

21 A I would think so, yes.

22 Q When did you first start working for the county?

23 A July 1 of 1972.

24 Q In 1972, was the county maintaining Hewitt
25 Cemetery from Cato to Poor Farm or Branch Road?

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 A I'll have to answer that is when I went to work
2 in '72, Clyde Barnes was the county administrator. He
3 asked me to familiarize myself with as many of the
4 county roads -- or all of them -- as I could. Sometime
5 during that time frame, I tried to work with motor
6 grater operator in certain areas, sometime between July
7 '72 and probably a year later, yes, I can testify that
8 Hewitt Cemetery Road was a county maintained road.

9 Q Did the county just begin the maintenance during
10 that time, or historically had the county been
11 maintaining Hewitt Cemetery Road?

12 A They had been maintaining it, because Albert Hamm
13 was the operator, and I have no idea how long before
14 that.

15 Q How old was Mr. Hamm when you saw him in '72 or
16 '73?

17 A I don't know. Probably 20 years later he
18 retired, so probably in his 50s.

19 Q How long had he been working for the county?

20 A I don't know. He had been in the chain gang for
21 years.

22 Q Did the counties keep records of county roads,
23 maintenance of county roads?

24 A Yes. Some of the other directors have those
25 booklets. The sheets you see come out of, those are

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 folder type of booklets. Normally, the worker's
2 assistant, which was driving the pickup truck, filled
3 out the daily log. Those were handed in, and whenever
4 it was needed, they were utilized. In other words, if
5 they weren't, they were stored. When we got the
6 Freedom of Information to provide what we had, it was a
7 toss-up, because the archives said we didn't have to
8 retain those records, and some we're destroyed in a
9 flood in, some were disposed of.

10 Q When was that flood?

11 A Five years ago. So what you have there is what I
12 could find.

13 Q Is this a complete record of the maintenance work
14 done on Hewitt Cemetery Road prior to the county going
15 on the computer system where these records are kept?

16 A For what could be found, yes.

17 Q Would there have been other records showing
18 maintenance on Hewitt Cemetery that were lost?

19 A I'm sure there was, because you can look at the
20 dates and see there is gaps.

21 (Plaintiffs' Exhibit 19 marked.)

22 Q Look at Plaintiffs' Exhibit 19. Tell me if that
23 represents the precomputer records?

24 A Yes -- well, this right here is shaped from the
25 inventory that I had done.

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 Q That would have been in 1989 or so?

2 A Or '90. And what I took was -- that is a
3 section -- in other words, we had a county map and we
4 went through, and these numbers you see, like 1D and so
5 forth, the "D" is the foreman of that area at that
6 point.

7 Q That is his last name?

8 A No. No. It went A and went on.

9 Q So someone that was in the area on Plaintiffs'
10 Exhibit 7, he was "D" foreman?

11 A Yeah. Didn't have anything to do with the
12 operator's name, just how it went through the alphabet.
13 You asked me was this complete of the Hewitt Cemetery
14 Road. No. There is no way it can be, because there is
15 gaps in the dates. I think the best I can remember,
16 and it is a long time that this case has been going on,
17 I think '81 was the first daily log I could find.

18 Q What is the schedule the county has for
19 maintenance on dirt roads?

20 A On dirt roads, 95 percent of the county dirt
21 roads is plowed every two weeks. Something like
22 Heyward Hewitt Road, which has stone and crushed
23 asphalt, is when needed.

24 Q You referred to Heyward Hewitt Road, show me on
25 Plaintiffs' 7, particularly if it is indicated on

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 Plaintiffs' 19, where would Heyward Hewitt Road be, if
2 this is Poor Farm?

3 A Branch to Pamplico, and Cemetery to Cato
4 (indicates).

5 Q That is what is indicated on your records?

6 A Right.

7 MR. McEACHIN: I move Plaintiffs' 19. Part of it
8 is already in evidence, but I move it in.

9 THE COURT: Without objection, Plaintiffs' 19.
10 (Plaintiffs' Exhibit 19 admitted.)

11 Q (MR. McEACHIN) On July 6, 1993, there is an
12 entry of Heyward Hewitt Road add to joint of pipe; do
13 you recall where that was placed?

14 A No, sir, I can't. Going back that far.....

15 Q Do you recall pipe or tile placed on the section
16 of Heyward Hewitt Road between Cato and Branch Road?

17 A No, I do not. I did have discussion, as you all
18 heard, with Jerry Allen, but I was not Public Works
19 director.

20 (Plaintiffs' Exhibit 20 marked.)

21 Q I'll show you Plaintiffs' 20 and ask if you can
22 tell the Court what that is?

23 A If my memory is right, 1999 it went computer.
24 This is the maintenance records on computer. That is
25 off the sheets you are looking at.

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 Q And Plaintiffs' 20, is it showing just plowing or
2 any other activity?

3 A That is just plowing.

4 Q Is Heyward Cemetery Road on each one of these
5 sheets?

6 A I'm assuming that's the way we pulled them, yeah.
7 Yes. "1" represents a single cut, "2" represents a
8 double cut.

9 Q If you could, explain to the Court the legend on
10 this. What does "1" mean up there? What does that
11 mean, the heading one?

12 A That is July 1st.

13 Q Oh, that's the date, I got you. Okay. I'm with
14 you.

15 A I was going to say, one is a single cut, back and
16 forth, or there is a double cut.

17 Q And then the far right, "total plows," that's how
18 many times it was plowed?

19 A Right. Right.

20 Q Is that for the month?

21 A For the month.

22 Q And the "total miles" is miles plowed?

23 A Yes. That is another thing, in '89 I calculated
24 the mileage.

25 MR. McEACHIN: Move for Plaintiffs' 20, Your

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 Honor.

2 MS. PARHAM: No objection, Plaintiffs' 20.

3 (Plaintiffs' Exhibit 20 admitted.)

4 (Plaintiffs' Exhibit 21 marked.)

5 Q (MR. McEACHIN) Mr. Gregg, did you go over the
6 same computer records from January of 2002 through
7 June of 2013? I'll show you Plaintiffs' 21.

8 A You are referring to Hewitt Cemetery Road.

9 Q Yes, sir.

10 A Yes.

11 Q That is what 21 is? Hewitt Cemetery is on there
12 for that time period?

13 A Yes.

14 Q And so at the time the lawsuit was filed, this
15 would have been current? It was filed in -- suit was
16 filed in December of 2013. At that time, would this
17 have been the current list, June of 2013?

18 A Yes.

19 MS. PARHAM: Without objection.

20 (Plaintiffs' Exhibit 21 admitted.)

21 Q (MR. McEACHIN) And 21 has the same legend as
22 Plaintiffs' 20, date across the top, number of plows,
23 mileage?

24 A Yes, sir. That's the computer sheet.

25 Q What was the width of the road when it was being

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 maintained, when it was being plowed?

2 A Hewitt Cemetery Road?

3 Q The section between Cato Road and Branch Road.

4 A I can't say. I can't imagine two cars could
5 meet. A motor grater, like Jerry said, a single cut
6 down and single spread back, 6 feet.

7 Q Is the portion of Hewitt Cemetery Road from Cato
8 to just beyond the Cemetery a state road?

9 A Yes, sir.

10 Q If Heyward Cemetery Road was closed beyond the
11 state road, that is a dead-end for the state road,
12 would it not?

13 A Correct.

14 Q Is there a cul-de-sac?

15 A No, sir.

16 Q Is there a turn-around area?

17 A No, sir, except the cemetery property.

18 Q The state road goes past the cemetery, so is
19 there a turn-around?

20 A No, sir, it would be dead end.

21 Q Do you recall when Hewitt Cemetery was rocked?

22 A 2004, somewhere in that neighborhood.

23 Q Who paid for that?

24 A Johnny Rogers.

25 Q Who is that?

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 A Councilman for District 5 at that time.

2 Q Did he pay for it with his own private funds?

3 A Yes, he paid it out of one of his accounts.

4 Q Sorry?

5 A He paid it out of one of his accounts.

6 Q Private or taxpayer's money?

7 A County money.

8 Q Anyone else pay for having that road rocked?

9 A No, sir.

10 Q Is there any provision in the law that allows the
11 county to spend public taxpayer's money on private
12 property?

13 A No, sir.

14 Q Did you ever hear from Mr. Eagerton an objection
15 to the county rocking Hewitt Cemetery Road?

16 A No, sir.

17 Q Did Ms. Eagerton call you and complain about it
18 being rocked?

19 A No, sir. I never had a conversation with
20 Ms. Eagerton.

21 Q You are the head director of Florence County
22 Public Works?

23 A Yes, sir.

24 Q Who are the complaints directed to that come into
25 your office?

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 A Usually one of my secretaries, then me.

2 Q Do you see all of the complaints when they come
3 in at some point?

4 A 90 percent, unless it goes straight to a
5 supervisor.

6 Q Did Ms. Eagerton ever ask the county to pipe the
7 ditch along Hewitt Cemetery Road?

8 A We are talking a lot of years back, but it seems
9 like Joe King was the county administrator and we
10 talked with Ms. Eagerton on-site, and best I can
11 remember, there was something about a path going from
12 her house out towards the cemetery, and she wanted some
13 pipes put up under the trailer.

14 Q Under where?

15 A A trailer. It was like a horse trailer going out
16 to some equestrian -- where she had the gate at at the
17 cemetery.

18 Q Was this equestrian trail county property?

19 A No, sir, it was private property.

20 Q Did they spend taxpayer's dollars to put a pipe
21 in on private property?

22 A No, sir. He explained he couldn't do it.

23 Q At that point, did Ms. Eagerton ask that Hewitt
24 Cemetery Road be closed?

25 A No. Not at that time, no.

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 Q At the time, was there a county water line placed
2 down Hewitt Cemetery Road?

3 A Without a doubt there was, but it had nothing to
4 do with the water department. Yes, it would have had
5 to have been county and then sold to the city.

6 Q That goes -- does it go down Hewitt Cemetery
7 Road?

8 A Yes.

9 Q Had there been any barricades, gates or
10 interference with traffic on Hewitt Cemetery Road
11 before Ms. Eagerton put her gates up?

12 A Not that I'm aware of, no, sir.

13 Q Did any member of the public contact your office
14 objecting to Florence County maintaining Hewitt
15 Cemetery Road?

16 A No, sir.

17 Q Does Hewitt Cemetery Road connect to other public
18 roads?

19 A Cato and Branch.

20 Q There's been some discussion about stone being
21 put on the road, explain to the Court what that means.
22 What is the difference between that and black top
23 asphalt road?

24 A You go in and grade the road and put NBC stone
25 and crunched asphalt on top of it.

ARTHUR GREGG, JR - DIRECT EXAMINATION

1 Q So what is the difference between that and a
2 black top road?

3 A Well, considering the amount of cost, for one
4 thing, but stone is loose impacted the best it can be,
5 and then the crunched asphalt. Depending how much tack
6 it has in it depends on how it sets up. Hewitt
7 Cemetery Road is set up pretty well, so we've patched
8 the potholes, more than anything else.

9 Q Has the county patched potholes on Hewitt
10 Cemetery Road?

11 A On a regular basis, yes, sir.

12 Q Is that shown on here, Plaintiffs' 21?

13 A No, sir, you won't see it on there.

14 Q Is the crunched asphalt recycled for when they
15 take up a road to repave it?

16 A It is when it is milled, yes, sir.

17 Q Do you know how much it cost the county to rock?

18 A I think the total material was around 23,000.

19 Q Are there any fire hydrants?

20 A One at 72.

21 Q Are there any on Branch Road or Poor Farm?

22 A That, I can't answer.

23 Q But is there one at the cemetery?

24 A Across from the cemetery on the little hill.

25 Q Is that connected to the city water system now?

ARTHUR GREGG - CROSS-EXAMINATION

1 A Yes, sir.

2 Q We had a hurricane in October; do you remember
3 that?

4 A Yes, sir.

5 Q Trees down?

6 A Yeah.

7 Q Did you get any calls about trees on Heyward --
8 Hewitt Cemetery Road?

9 A Yes.

10 Q What did the county do?

11 A Nothing.

12 Q Did the county refer that to the state?

13 A Yes, sir, and they came in and cleared.

14 MR. McEACHIN: That is all I have.

15 CROSS-EXAMINATION

16 BY MS. PARHAM

17 Q So you testified that the county plowed the road
18 before it had rock on it?

19 A Yes.

20 Q And you testified they laid the aggregate or rock
21 on the road around 2004 and patched potholes when
22 needed?

23 A Yes, ma'am.

24 Q Are you aware of anything else that the county
25 has spent money on or done on that road since you have

ARTHUR GREGG - CROSS-EXAMINATION

1 been director?

2 A No, ma'am.

3 Q That is all?

4 A That I can recollect, yes, 'ma'am.

5 Q Your testimony is that there is no written record
6 of any maintenance on that road prior to 1981 that you
7 can find?

8 A Exactly.

9 Q And you also testify that the records between --
10 it appears -- 1980 and 1990, although they don't refer
11 to Hewitt Cemetery Road, they refer to Heyward Hewitt
12 Road, that you believe that the words "Heyward Hewitt
13 Road" encompasses Hewitt Cemetery Road?

14 A No, ma'am, I don't believe it. I know it.

15 Q Even though in other written records they are two
16 distinct sections by the county; in fact, they are
17 given a different letter and number?

18 A Not until after I did the inventory in '89.

19 Q No written records before '81 and after '81 based
20 on you being in charge, there is plowing, the laying of
21 the aggregate and the patching of holes when needed?

22 A Yes, ma'am.

23 Q Mr. McEachin asked you about a water line. Are
24 you aware that was placed at Ms. Eagerton's request
25 because she paid a deposit to have a water line run to

ARTHUR GREGG - CROSS-EXAMINATION

1 her house?

2 A No's, ma'am, I don't.

3 Q You heard Mr. Wood testify that he saw the county
4 laying some kind of line, but do you know whether the
5 county laid the water line from Branch Road to her
6 house or Cato Road to her house; do you have any idea
7 how the county laid the water line?

8 A If the county laid it, it was with a contractor.

9 Q Do you know which direction the water line goes?

10 A No. I'm hoping it would make a loop.

11 Q But do you even know whether it stops at her
12 house or continues; do you have any idea about that?

13 A I think one of my supervisors called the city to
14 inquire, and it runs all the way down at least to
15 Branch Road. From there, I do not know.

16 Q From her house to Branch Road?

17 A Yeah. It comes from the Cato Road, if that is
18 your question.

19 Q Are there any records showing that there is a
20 water line from here to her house, or just here to her
21 house, or do you not know?

22 A The fire hydrants is at the cemetery.

23 Q Do you know if there is water line that extends
24 past the cemetery?

25 A No. I had nothing to do with the water line.

ARTHUR GREGG - CROSS-EXAMINATION

1 The only thing I do know is there is a water meter out
2 on Cato, that would indicate that it comes off of Cato
3 Road.

4 Q Her address was a route number until these
5 addresses came into being; do you know when that was?

6 A That was to E-911. That was a pretty lengthy
7 process, so somewhere in the late '90s. And, actually,
8 that is where the names that your roads have gotten now
9 come from.

10 Q The laying of the rock aggregate, that was also
11 done on a contract basis, correct?

12 A That was done on a hauling contract, and the
13 county laid it down.

14 Q It was Jones paving?

15 A Probably.

16 Q Were they the ones that laid it?

17 A It was Jones Trucking. They would have hauled it
18 to the site, and the county would have laid it down.

19 Q Do you know who for the county would have laid
20 that stone?

21 A You mean employee?

22 Q Yes, sir.

23 A Probably Tommy Gardner.

24 Q If it weren't Mr. Gardner, who would it have
25 been?

ARTHUR GREGG - CROSS-EXAMINATION

1 A I have no idea.

2 Q What do you believe to be the width of the road
3 with the aggregate?

4 A 16, 17 feet.

5 Q What was it before the aggregate?

6 A We go on the same descriptive right-of-way that
7 we maintained prior. We have roads that run from 15 to
8 20.

9 Q So your testimony is that you believe the dirt
10 road would have been the same width as the rock road?

11 A Yes, ma'am.

12 Q How is he able to stop this from being rock?

13 A Can't answer that.

14 Q You have no knowledge?

15 A No, ma'am. The councilman, Johnny Rogers, made
16 that decision.

17 Q That is all I have -- I'm sorry, one more direct?

18 THE COURT: Sure. Go ahead.

19 Q You said Ms. Eagerton never called and objected
20 to you, to the rock going down. No one from the county
21 ever had any conversation with her prior to laying that
22 rock?

23 A Can't answer that.

24 Q You did not?

25 A I did not, no.

ARTHUR GREGG - REDIRECT EXAMINATION

1 Q You didn't ask her permission to lay it?

2 A No, ma'am.

3 Q You testified earlier that the state road extends
4 past the cemetery?

5 A Yes, ma'am.

6 Q Isn't it fair to say that is a short distance
7 from the settlement to end of state road?

8 A Yes.

9 Q Can you approximate it in feet?

10 A I guess it depends how you look at the cemetery,
11 whether you look all the way to her house, it is a
12 short distance, probably 75 feet, 80.

13 Q From the end of the cemetery to the end of the
14 state road?

15 A Yes, ma'am.

16 REDIRECT-EXAMINATION

17 BY MR. MCEACHIN:

18 Q Mr. Gregg, cemetery is not on county property?

19 A No.

20 Q It is private property?

21 A Yes, sir.

22 Q In your experience of roads, has the county ever
23 did a road and expect people to turn around to get back
24 in a different direction by crossing onto private
25 properties?

ARTHUR GREGG - REDIRECT EXAMINATION

1 A No, sir. I mean, our subdivision ordinance has a
2 provision, you have to have cul-de-sacs, you can't have
3 dead ends.

4 Q If you would have closed Hewitt Cemetery Road
5 below the cemetery, the only place people would be
6 turning around would be in that cemetery?

7 A Yes, sir.

8 Q As I recall your testimony, there is a fire
9 hydrant near the cemetery?

10 A Up on the hill across the cemetery.

11 Q And Ms. Eagerton's property is here, and she's
12 got water?

13 A No, she has a water meter.

14 Q But there is water to her property?

15 A , sir.

16 Q And then Mr. Wood testified he has water down
17 here at the other end, does that pretty much cover the
18 whole length of Hewitt Cemetery Road?

19 A It covers the total length.

20 Q Before 911 and early '91s, were roads in Florence
21 County named? Did they have names?

22 A Whatever the communities wanted to call them, and
23 like I say, when I did the inventory in '89, I tried to
24 use as many of those as I could. In 1998, '99,
25 whenever the council government enhanced 911, they took

ARTHUR GREG- RE CROSS-EXAMINATION

1 my map and 95 percent of the names was on my map, is
2 what they used. Now, they had public hearings, but
3 none of them were changed.

4 Q None of them were named Route 3 Box 98, were
5 they, the road?

6 A Not the road, no. That was your address.

7 Q For the U.S. Post Office?

8 A Right.

9 Q You asked if anything was done other than plowing
10 and putting crushed asphalt, do you agree there was
11 also pipe being placed on Hewitt Cemetery Road across
12 from the hay field, as Mr. Allen testified?

13 A I believe Mr. Allen's testimony, yes.

14 RE CROSS-EXAMINATION

15 BY MS. PARHAM:

16 Q There is a circle drive-thru at the cemetery; is
17 there not?

18 A I can't really answer that. If it is, it is on
19 cemetery property.

20 THE COURT: Thank you, you may step down.

21 MR. McEACHIN: That's our case, Your Honor.

22 MS. PARHAM: I would request if I could argue the
23 directed verdict motion tomorrow morning?

24 MR. McEACHIN: You want me to wait until then, or
25 go now?

ARTHUR GREG- RECROSS-EXAMINATION

1 THE COURT: We'll take it up in the morning, both
2 of you. Ms. Parham, do you anticipate being able to
3 get your case in tomorrow?

4 MS. PARHAM: Yes.

5 THE COURT: So if we start at 9:30, we don't need
6 to start extra early?

7 MS. PARHAM: No, sir, we'll be finished tomorrow.

8 THE COURT: We'll start at 9:30 and begin with
9 the directed verdict motions, and then proceed if we
10 need to proceed. All right? Court is in recess until
11 9:30.

12 (WHEREUPON THE PROCEEDINGS CONCLUDED FOR JANUARY
13 11, 2017. THE FOLLOWING WAS HAD ON JANUARY 12, 2017)

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ARTHUR GREG- RECROSS-EXAMINATION

1 (WHEREUPON THE PROCEEDINGS CONCLUDED FOR JANUARY
2 11, 2017. THE FOLLOWING WAS HAD ON JANUARY 12, 2017)

3 THE COURT: We were at the close of Plaintiffs'
4 case and haven't taken up any motions at the close of
5 the plaintiffs' case, so we reserved that for today, so
6 we'll proceed with that. Are you ready?

7 MR. McEACHIN: I move for a directed verdict on
8 behalf of the plaintiff on the theory of dedication of
9 the roadway and on the theory of prescriptive
10 easement. The undisputed testimony is that
11 Ms. Eagerton owns a 2.51 acre tract of land, a 40.7
12 acre tract land and 20.9 acre tract of land, and
13 Hewitt Cemetery Road bisects that property. The deeds
14 for the defendant shows the road. One shows the road
15 as a county road, county maintained. All of the
16 testimony was that they not only used the road, they
17 witnessed the county maintain it the entire time.
18 That clearly establishes the 20-year requirement of
19 the prescriptive easement rule. The designation of
20 the object is subject to the prescriptive easement is
21 not in dispute, it is Hewitt Cemetery Road and shown
22 on the plats, and the county, particularly on the
23 dedication issue, the county, by maintaining the road
24 all these many, many years has accepted the road as a
25 public road. Likewise, under the County of Darlington

ARTHUR GREG- RECROSS-EXAMINATION

1 versus Perkins case, Your Honor, the requirements of
2 the prescriptive easement has been met, but the 20
3 years use of the property by the public being
4 maintained by the county. There is also a water line
5 going down the road that services water to the
6 defendants' house for a fire hydrant, north of the
7 defendants' house at the cemetery and Mr. Wood's house
8 south of the defendants' property. The claim of right
9 of requirement for prescription easement would be that
10 -- whether or not the county had a deed, which the
11 county doesn't have deeds to any of its roads, I don't
12 think, but as long as the county thought it was a
13 public road and maintaining it as a public road, that
14 meets the requirement under the claim of right, and
15 that was also explained in the County of Darlington
16 versus Perkins case. So for those reasons, we move
17 for a directed verdict on behalf of the county.

18 THE COURT: All right. Ms. Parham.

19 MS. PARHAM: Thank you, Your Honor. We rely on a
20 South Carolina Supreme Court case to establish the
21 burden in this case, it is W.H. Bundy versus Bobby
22 Brent Shirley. It was filed May 16, 2015, South
23 Carolina Supreme Court. It just says that, you know,
24 there had been a contradiction what the burden of
25 proof was, and so this court sets out the fact that it

ARTHUR GREG- RECROSS-EXAMINATION

1 is clear and convincing evidence, and that the
2 plaintiff has to prove each element by that standard.
3 It quotes Williamson versus Abbott, a 1917 supreme
4 court case, saying that the court in 1917 alluded to
5 the heightened standard of proof when it stated the
6 private ways and easement in favor of another in
7 derogation of the rights of the owner and, hence, does
8 not arise without clear unequivocal proof of such
9 facts as would give right from the owners to the
10 plaintiff. The stricter standard of proof may be the
11 result of a general opinion expressed by courts and
12 commentators that prescriptive rights are not favored
13 in the law since they result in corresponding losses
14 or forfeitures of the rights of other persons.
15 Accordingly, we join the majority of state
16 jurisdictions and hold that it has to prove each of
17 the elements by a clear and convincing evidence.

18 Your Honor, I don't believe they can meet that
19 standard on the dedication to the public or the
20 prescriptive easement. With regard to dedication of
21 public, we rely on Town of Kingstree versus Gary W.
22 Chapman, 405 S.C. 282, 2013, as well as Matt versus
23 Edens, 320 S.C. 236, 1995. Both of those cases hold
24 there was no implied dedication to the public. In the
25 Edens case, the witnesses testified that the dirt road

ARTHUR GREG- RECROSS-EXAMINATION

1 historically had been used for the public for various
2 purposes, including delivering mail, traveling to saw
3 mill, a flower mill, to swim, to fish, to attend
4 baptismal services, school parties at a point,
5 maintain public utilities, have emergency access to
6 max property, and even under those circumstances the
7 Court found that there was no dedication to the
8 public, and the reason for that is only the owner of
9 the land can make that dedication, and it has to be by
10 strict and cogent proof that cannot be mistaken for
11 anything else. It has to be clear and unmistakable.

12 So the only person that can make dedication is
13 Ms. Eagerton or the people who owned the property
14 before her, and there is no evidence that either party
15 made that dedication to the public, especially saying
16 the public can use my land. The reason for that, Your
17 Honor, is that, in essence, is giving away your
18 property to the county.

19 With regard to the prescriptive easement, Your
20 Honor, it has to be -- let me go back to the
21 dedication to the public. Our courts held that the
22 route must be used by the general public and not
23 particular individuals. The use must not be by a
24 limited community or a class of people. That is
25 Burrell versus Kirkland, 242 S.C. 201, 1963. The

ARTHUR GREG- RECROSS-EXAMINATION

1 plaintiffs put on a specific group of people. They
2 have eight people testify that they live over there
3 and like to use it as a shortcut. They did have an
4 ambulance driver, and I can see she's a member of the
5 general public, but she was driving to a house over
6 there. They had testimony that they saw a school bus,
7 but there is not much testimony that that road is used
8 by the general public of Florence, I don't think clear
9 and convincing evidence that the general public uses
10 that. You know, this case is so different in so many
11 ways from so many cases that I read. A lot of the
12 cases I read deal with land-locked people or going to
13 a boat landing or recreational area where that is the
14 only road. We're talking about a half-mile shortcut,
15 and it is .4 miles shorter than an alternative route.
16 The big difference with this case than with the
17 Billings case that Mr. McEachin cites in his brief is
18 that the owner knew the alleyway was not included in
19 the property he was buying. That was part of the
20 deed, that it was not included in the property he was
21 buying. This is so different from that.

22 If you look at the map attached to the deeds, and
23 we would agree that maps are incorporated by reference
24 into the deeds, but if you look at the two maps,
25 Plaintiffs' 15 and 16, you will note when she buys

ARTHUR GREG- RECROSS-EXAMINATION

1 Parcel 43, it says, Center of road, property line.
2 When she buys the right side, 40.7 acres, it has the
3 same notation, Center of dirt road to property line.
4 So she buys all the way to the center of the dirt
5 road. There is no exclusion of this alleyway or road
6 by the county. These parcels have other road as well.
7 Plaintiffs' 16 has another road, old road, cutting
8 through the middle of her property. The other, 15,
9 has Plantation Road through the bottom of her
10 property. These we're essentially farm and market
11 paths, all of them, and all dirt roads.

12 The fact that the county laid the road before
13 they laid rock in 2004, the fact that they plowed this
14 road on a somewhat regular basis, and the fact that
15 people in the community use it as a shortcut, is that
16 enough to take away property rights? I submit it is
17 not. You know, in the Pittman case, our South
18 Carolina court held that any obstruction for any
19 amount of time ceases the 20-year period. There is
20 evidence that she erected barriers, and when the
21 county paved this in 2004 it changed everything as far
22 as how much it was going through the property, but we
23 submit to the Court that this is old dirt road on
24 these maps, you know, that is how Ms. Eagerton
25 accessed her property that the grantor gave to her for

ARTHUR GREG- RECROSS-EXAMINATION

1 access to her property, both ways. I mean, she would
2 need that road to get to her house either way. I
3 don't think the plaintiffs met their burden and proven
4 every element by a clear and convincing evidence.

5 With regard to the prescriptive easement, it has
6 to be adverse as well for 20 years. So this case is
7 kind of interesting because, you know, she interrupts
8 the 20-year period, but also there is a question of is
9 there some permissive use when there is a few tractors
10 going down or people coming to her house, versus when
11 it gets paved and all the sudden a bunch of people are
12 using it, and then she starts thinking, no, I don't
13 want all of these people coming through my property.
14 So I don't believe the eight people they have called
15 who lived in this area is sufficient to prove their
16 case when they didn't call members of the general
17 public. A lot of these cases involve use for decades
18 and decades for these roads, and the question is, is
19 that enough, and we submit it is not.

20 MR. McEACHIN: The argument Ms. Parham makes
21 relies on the fact that one of the deeds that the
22 defendant received, before she ever owned the
23 property, shows it is a public road, county
24 maintained. That is undisputed. They don't mention
25 that deed and don't mention that plat, but that is

ARTHUR GREG- RECROSS-EXAMINATION

1 undisputed. I think the burden of proof on the
2 dedication theory is clear and convincing, but I think
3 the burden of proof on the prescriptive is by a
4 preponderance of the evidence.

5 THE COURT: I'm going to respectively deny the
6 motions for directed verdict with regards to both the
7 dedication to the public and the prescriptive
8 easement. I think there are some issues that need to
9 be dealt with by the trier of fact, which of course in
10 this case is the Court. I don't think there is enough
11 here to preclude the defense from putting up a case, I
12 respectively deny the motion.

13 Anything from the plaintiff?

14 MR. McEACHIN: Yes, sir, Your Honor. I was told
15 this morning that two witnesses that were subpoenaed
16 Marion Joiner and Reggie Baxley -- Mr. Gregg already
17 testified, but they were not listed as witnesses on
18 the defendant's answer to interrogatories, so I would
19 like to know the purpose for those witnesses so we can
20 prepare.

21 MS. PARHAM: I believe we subpoenaed Mr. Joiner
22 last week. His name was mentioned in the police
23 report, that I don't know if you gave it to me or I
24 gave it to you, but it was a police report regarding
25 police having to be called to her property on the

ARTHUR GREG- RECROSS-EXAMINATION

1 gates. He was there when the police got there.

2 MR. McEACHIN: So you are asking him about police
3 coming to Ms. Eagerton's?

4 MS. PARHAM: And what he told the police, right.

5 MR. McEACHIN: Okay.

6 THE COURT: And the other one?

7 MR. McEACHIN: And Reggie Baxley.

8 MS. PARHAM: I don't believe we'll call Reggie
9 Baxley, but we have the tax assessor on our list. I
10 don't see him up here, but he's supposed to be, and we
11 talked about that.

12 MR. McEACHIN: Yes. Right.

13 THE COURT: Ms. Parham, I recognize the defense
14 for any motions at the close of the plaintiffs' case.

15 MS. PARHAM: Yes, Your Honor. We move for
16 judgment as a matter of law as well. I don't believe
17 that -- for the reasons I stated earlier, all of those
18 reasons, I would incorporate those into my argument
19 that they have not proven by a clear and convincing
20 evidence, that they were required to do it on both,
21 the prescriptive easement and the dedication. They
22 have not proven all of those elements by a clear and
23 convincing evidence, so we would move for a judgment
24 as a matter of law.

25 In addition, Your Honor, we moved for a jury

ARTHUR GREG- RECROSS-EXAMINATION

1 trial originally in this case and it was denied,
2 because the judge at the plaintiffs' urging found
3 there was no question of fact for a jury. I believe
4 that this case has shown there is sufficient question
5 of facts for a jury regarding some issues in this
6 case, so we would renew our earlier motion we made for
7 a jury trial regarding factual issues, and I
8 understand there are a lot of legal issues, too,
9 regarding those easements.

10 THE COURT: All right. Mr. McEachin.

11 MR. McEACHIN: Well, Your Honor, the request for
12 a jury trial at this stage of the proceedings, the
13 plaintiff has presented its case, the time of the
14 Court and attorneys involved and witnesses has gotten
15 us to this point. I think the reasonable holding by
16 the Court that this is a matter of equity and can be
17 tried without a jury is correct, and I oppose the
18 defendant's request at this stage of the game that
19 issues be submitted to a jury.

20 As to the defendant's motion for a directed
21 verdict, I can rehash everything I had spoken to the
22 Court about on the plaintiffs' motion for directed
23 verdict, or the Court will accept and I'll incorporate
24 those arguments as my response to the defendant's
25 motion for a directed verdict.

MARION JOINER - DIRECT EXAMINATION

1 THE COURT: I'll respectively deny those motions.
2 First, with regards to a -- the motion regarding a
3 request for a jury trial, you know, I think that was
4 something that probably needed to be dealt with at the
5 time. At this stage, I think it is the law of the
6 case and I'm bound by that.

7 MR. McEACHIN: I think you're right. That ruling
8 affected the mode of the trial, so it could have been
9 appealed at that time, but it was not.

10 THE COURT: I just think I'm bound by that
11 ruling. As far as the motion for a directed verdict,
12 I think there are issues of facts that need to go to
13 the trier of fact, and I'm going to respectively deny
14 those motions.

15 Is there anything else before we proceed?

16 MR. McEACHIN: No, Your Honor.

17 THE COURT: Is defense ready to proceed?

18 MS. PARHAM: Yes, Your Honor. We call Marion
19 Joiner.

20 (MARION JOINER, having been duly sworn,
21 testified as follows:)

22 THE CLERK: State your name for the record.

23 THE WITNESS: Marion Joiner.

24 DIRECT-EXAMINATION

25

MARION JOINER - DIRECT EXAMINATION

1 BY MS. PARHAM:

2 Q Where do you work?

3 A Florence County Public Works.

4 Q How long have you worked for them?

5 A 27 years.

6 Q And what are your duties there at Florence County
7 Public Works?

8 A I handle urban subdivisions and roads.

9 Q So Mr. Gregg seated at plaintiffs' table, is he
10 your supervisor?

11 A My boss, yeah.

12 Q At some point do you recall being what is now
13 being called Hewitt Cemetery Road in reference to
14 police coming out there?

15 A I am.

16 Q How many times did that happen?

17 A I remember one.

18 Q What caused you to be out there on that day?

19 A I was on-call for the week. It was on a Sunday.

20 Q For Florence County Public Works?

21 A Right. I was on-call, and they called me and
22 asked me if I would meet a deputy out there to report
23 the road being closed by two gates, and I went out
24 there and met the deputy.

25 Q Was that in July of 2013?

MARION JOINER - DIRECT EXAMINATION

1 A I'm not sure of the date. I just know it was on
2 a Sunday afternoon.

3 (Defendant's Exhibit 9 marked.)

4 A Yes, ma'am, it was.

5 Q What was the date of that incident?

6 A The 9th.

7 Q Of what?

8 A I can't see it.

9 Q Can you read the date?

10 A July 14 of '08?

11 THE CLERK: I have glasses.

12 A Can't see the exact date. July 14, '13.

13 Q 2013. So when you got there, law enforcement was
14 already there?

15 A Yes, ma'am.

16 Q Did you have a conversation with the law
17 enforcement officer that was on scene?

18 A I did.

19 Q Did you tell him that you were familiar with
20 Ms. Eagerton?

21 A It was a lady.

22 Q Did you tell her that you were familiar with
23 Ms. Eagerton?

24 A I did.

25 Q And how did you tell her that you were familiar

MARION JOINER - DIRECT EXAMINATION

1 with Ms. Eagerton?

2 A I just told her that we had problems over there
3 before, her trying to close the roads.

4 Q Do you recall telling this female officer that
5 Ms. Eagerton has been trying to, quote, been trying to
6 close this public road for years, closed quote?

7 A I don't remember telling her that that day. I
8 had just seen it just then. I may have told her that,
9 I don't know, but I don't remember saying that.

10 Q But you would agree that this report states that
11 you said that you are trying to -- Ms. Eagerton has
12 been trying to close off the roads for years?

13 A Yes, ma'am.

14 Q I mean, that is something you would remember.
15 She was trying to close the road; was she not?

16 A Yes.

17 Q And that was going on for some time before this
18 happened?

19 A Yes, ma'am.

20 Q In fact, it had been going on for years before
21 this happened?

22 A That's right.

23 Q So this is 2013, and for years before that, she
24 had been trying to close that road, and you knew about
25 it?

VIRGINIA "GINGER" ODOM - DIRECT EXAMINATION

1 A I can say before that date she had been trying to
2 close it.

3 Q And you told the officer that for years before
4 that date, she tried to close that road?

5 A I don't know what I said, but before, yeah.

6 MS. PARHAM: That is all I have, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. McEACHIN:

9 Q Do you know how many miles of road there are in
10 Florence County, county roads?

11 A No, I don't know the exact amount.

12 Q Have you ever seen a deed to Florence County for
13 the roads that Florence County maintains?

14 A I have never, no.

15 MR. McEACHIN: Thank you. That's all.

16 THE COURT: Any objection to be being excused?

17 MS. PARHAM: No, Your Honor.

18 (VIRGINIA "GINGER" ODOM, having been duly
19 sworn, testified as follows:)

20 THE CLERK: Have a seat and state your name for
21 the record.

22 THE WITNESS: Virginia Odom, I go by Ginger Odom.

23 DIRECT EXAMINATION

24 BY MS. PARHAM

25 Q Where do you live?

VIRGINIA "GINGER" ODOM - DIRECT EXAMINATION

- 1 A North Litchfield Beach.
- 2 Q How long have you lived there?
- 3 A Five years.
- 4 Q Prior to that, did you live around this area?
- 5 A I did.
- 6 Q Where did you live?
- 7 A Forest Lake here in Florence.
- 8 Q Do you know Ms. Eagerton?
- 9 A I do.
- 10 Q How long have you known Carol?
- 11 A Since 2000.
- 12 Q And how did you get to know Carol in the year of
- 13 2000?
- 14 A I boarded my horse at her facility.
- 15 Q Just one horse?
- 16 A Yes.
- 17 Q How long did your horse stay there?
- 18 A Until 2014.
- 19 Q How often would you go to Ms. Eagerton's property
- 20 to tend to your horse?
- 21 A For the first five years, every day.
- 22 Q And then after that point, how often would you
- 23 go?
- 24 A Probably two, three times a week.
- 25 Q When you started going to her farm, how many

VIRGINIA "GINGER" ODOM - DIRECT EXAMINATION

1 horses were at her farm, to the best of -- I mean
2 estimate?

3 A I would say between 15 and 20.

4 Q What types of horses were there?

5 A She had a boarding facility. Her boarding barn
6 was full, and then she had horses herself, so she had
7 personal horses and also horses that were boarded.

8 Q Are you aware of a dirt path or road that went
9 through the center of her property?

10 A I am.

11 Q Did you drive on that particular road to get to
12 the barn and to her house?

13 A Yes.

14 Q And that is the road that led to her barn and
15 house?

16 A Correct.

17 Q Let me show you Defendant's Exhibit No. 5, and
18 what is previously admitted into evidence as
19 Defendant's Exhibits 3 and 4.

20 A Okay.

21 Q Is the road depicted in those pictures similar to
22 the way it looked when you started going to Carol's
23 house?

24 A Yes.

25 Q If you could, describe how it appeared when you

VIRGINIA "GINGER" ODOM - DIRECT EXAMINATION

1 started going in 2000?

2 A It was like a dirt road, like a farm road, one
3 way in. I mean it was a one-vehicle road, one width.
4 If you -- if another car or something was coming, you
5 had to pull over in the hay field. There was only room
6 for one vehicle.

7 Q So it was a typical dirt road with like a two
8 rows of a dirt and a patch of grass in the middle?

9 A Yes.

10 MS. PARHAM: We offer Defendant's Exhibits 5.

11 MR. McEACHIN: No objection.

12 THE COURT: All right. 5 is in evidence without
13 objection.

14 (Defendant's Exhibit 5 admitted.)

15 Q It was a one-car dirt road when you started going
16 there?

17 A Yes.

18 Q When you were there, did you see much traffic on
19 the road?

20 A No.

21 Q Explain to the Court what you saw, if anything,
22 when you were there?

23 A Primarily, it was traffic going to and from
24 Carol's barn when I was going. Occasionally, there
25 would be another vehicle that came by, and I don't know

VIRGINIA "GINGER" ODOM - DIRECT EXAMINATION

1 what that was, but it was unusual. So we would stop
2 and look to see who it was. Occasionally, someone
3 would come by on a four-wheeler.

4 Q So it was unusual to see any car that was not
5 going to Carol's property go through there, but you did
6 on occasion?

7 A Correct.

8 Q And on occasion you did see a four-wheeler?

9 A Correct.

10 Q When you used the property, when you started
11 there in 2000, if you were going from Branch Road to
12 Ms. Eagerton's property, is her horse and stable area
13 to the left of the dirt road, and the hay field to the
14 right of the dirt road?

15 A Yes.

16 Q Would you use the entire area when you were doing
17 whatever you were doing at her farm?

18 A Yes.

19 Q What would the use be of the entire property?

20 A I had an athletic horse that required training.
21 We would long jog the horse on the dirt road, which was
22 very appealing. She had roads cut off of the dirt road
23 into certain areas of the woods that we could do
24 cross-country training with the horses.

25 Q When you say "we"?

VIRGINIA "GINGER" ODOM - DIRECT EXAMINATION

- 1 A My daughter and I; we both rode.
- 2 Q How old was your daughter at the time?
- 3 A She was 15.
- 4 Q Did you see other people other than the two of
- 5 you riding horses out there?
- 6 A Oh, yes.
- 7 Q You testified there were 15 to 20 horses?
- 8 A Yes.
- 9 Q On average, how many times would people be riding
- 10 horses?
- 11 A Sometimes it is just us, sometimes it would be
- 12 six or seven. It was after school, so most of the
- 13 school-aged girls would be out there exercising the
- 14 horses.
- 15 Q At some point, did things change on Carol's farm?
- 16 A Yes.
- 17 Q When was that?
- 18 A Probably when the dirt road change.
- 19 Q How did it change?
- 20 A Like I said previously, we used that road to
- 21 exercise our horses because it was dirt. When they put
- 22 down the surface of whatever they put down, we couldn't
- 23 ride our horses on it anymore.
- 24 Q Would that be approximately 2004?
- 25 A Yes.

VIRGINIA "GINGER" ODOM - DIRECT EXAMINATION

1 Q So when they put down the rock, was it the same
2 size as the dirt road had been?

3 A No. It was larger.

4 Q Explain how it was different from the dirt road.

5 A Before, the dirt road was two dirt tracks with
6 grass in between. When they did the project, it was
7 like a road. It was narrow, but two cars could pass.

8 Q Previously, prior to 2004, just one car only,
9 grass between the tires, and after 2004, it was tight,
10 but two cars could have been side by side?

11 A Yeah.

12 Q Did you notice the change of the traffic on the
13 road when that happened?

14 A There was more traffic not going to Carol's.

15 Q Can you estimate how much more than it had been?

16 A Not really. We noticed it and discussed it, but
17 I can't say if it was one car or ten, it was just more.

18 Q Did it affect the nature of the farm other than
19 -- you testified earlier you couldn't exercise your
20 horse on the dirt road anymore, did it affect the farm
21 in any way that impacted you and your daughter?

22 A Yes, because it wasn't a farm with roads anymore
23 with a path, now we had to pay attention to traffic and
24 cross over this new established road to get to the hay
25 field where she had cut roads for us to ride since we

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 couldn't ride on the road anymore.

2 Q Was her property surrounded by woods?

3 A For the most part.

4 Q Was there an opening at the top and bottom end of
5 her property.

6 A Yes.

7 Q Did you see gates at the top and bottom of her
8 property?

9 A I did.

10 Q Do you recall when the gates began?

11 A I would have to say about five years ago, because
12 it was -- I think. I'm guessing.

13 MS. PARHAM: Answer any questions from Mr.
14 McEachin.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. McEACHIN:

18 Q Good morning.

19 A Good morning.

20 Q So I take it your horses were not shod when you
21 had them at Ms. Eagerton's?

22 A Sometimes they were, and sometimes they weren't,
23 depending where we were in competition.

24 Q And if your horses were shod, you could have
25 ridden them on the road with the rock; isn't that

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 right?

2 A My horse had sensitive feet, so we chose not to
3 do that.

4 Q Not to shoe the horse, or not ride --

5 A We chose not to ride on the road. I didn't feel
6 it was safe for us to be on that road long jogging.

7 Q Beg your pardon?

8 A We didn't feel it was safe to be on that road
9 long jogging.

10 Q You're a horse person?

11 A Yes.

12 Q Have you ever heard of Billy Winchester?

13 A I think I met him a time or two.

14 Q Big ole tall guy.

15 A I think I met him.

16 Q He's a big horse person, right?

17 A Uh-huh.

18 Q He trains horses, doesn't he?

19 A I assume so. I don't know.

20 Q Do you know he boards horses?

21 A I don't know that.

22 Q But you know him to be a horse person?

23 A I do know him in the horse circuit, yeah.

24 Q Do you know he lives right here on Willow Creek
25 Road?

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

- 1 A I guess. I don't know.
- 2 Q You've been back there, haven't you?
- 3 A I have, but I didn't realize it was Willow Creek
- 4 Road. I'm not familiar with the roads.
- 5 Q But you have been by Billy's place?
- 6 A Yes.
- 7 Q And you've seen his horse stables?
- 8 A Yes.
- 9 Q And his riding ring?
- 10 A Uh-huh.
- 11 Q He lives on a paved road?
- 12 A I don't remember.
- 13 Q You don't remember riding down by his place? You
- 14 don't remember you were on a paved road?
- 15 A I remember going by there, but it wasn't -- I
- 16 mean, I don't remember saying, oh, I'm on a paved road
- 17 and going to Billy Winchester's.
- 18 Q So the only road you have clear -- that you
- 19 remember is Hewitt Cemetery Road?
- 20 A Well, yeah. I mean, I have been in that area,
- 21 but I'm not familiar with the other roads.
- 22 Q You live out near Forest Lake?
- 23 A Uh-huh.
- 24 Q So, when you were coming to Ms. Eagerton's, you
- 25 came off of Pamplico Highway, down Cato Road?

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 A Yes.

2 Q And down Hewitt Cemetery Road?

3 A Yes.

4 Q And when you turned onto Cato on to Hewitt
5 Cemetery road, you turned on a paved road, didn't you?

6 A Correct.

7 Q A state road?

8 A It was paved.

9 Q You don't recall seeing signs on either the stop
10 sign or on the side saying S, dash, and numbers?

11 A I remember that there was a sign that said Hewitt
12 Cemetery Road.

13 Q And that paved road went past the cemetery,
14 didn't it?

15 A I think it stopped right at the boarder of the
16 cemetery.

17 Q Are you sure about that?

18 A No. I mean, that is what I'm remembering.

19 Q So your memory could be in error?

20 A No, I think it stopped at the edge of the
21 cemetery.

22 Q Your memory where it stopped at the cemetery is
23 just as clear as your memory about the dirt portion of
24 the road; is that right?

25 A Say that again.

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 Q Your memory about where the dirt road ends --
2 sorry, the paved road ends at the cemetery is just as
3 clear as your memory of what the dirt portion of the
4 road looked like; is that correct?

5 A Yeah, I'm pretty clear on that.

6 Q And your memory about where the dirt portion
7 stops, is that the northern part of the cemetery, or
8 the southern part of the cemetery?

9 A If I turn off of Cato Road onto Hewitt Cemetery
10 Road, I pass the cemetery on my left.

11 Q Right.

12 A And at the end of the cemetery, the pavement
13 stops.

14 Q Your testimony is that the road that was not
15 paved or rocked, shown on Defendant's 3, that is the
16 way the road looked every time you went before it was
17 rocked?

18 A That is how it looked when we started boarding
19 there, yeah. As far as I remember, until it was
20 rocked, that is how it looked.

21 Q And you went -- started boarding there in 2000?

22 A Uh-huh.

23 Q And you went every day for the first five years?

24 A Pretty much, yeah.

25 Q You saw no evidence that that road was being

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 plowed during the five years?

2 MS. PARHUM: She didn't testify to that.

3 Q (MR. McEACHIN) Let me ask you that. Did you see
4 any evidence that the road was being plowed during the
5 first five years that you were going to Ms.
6 Eagerton's?

7 A What do you mean by "plowed"?

8 Q Plowed by a road plow, fresh dirt. Do you
9 remember which month in 2000 you first went?

10 A No, I don't.

11 Q You were out every day during 2001?

12 A You know, we might have missed a day or two, but
13 pretty much every day.

14 Q January 16, 2001, Hewitt Cemetery Road was
15 plowed. In the middle of January 2001, were you going
16 to Ms. Eagerton's?

17 A Yes.

18 Q You didn't see any evidence of the road being
19 plowed with fresh dirt?

20 A I don't remember it.

21 Q February of 2001, road was plowed on
22 February 8th, February 23rd. Did you see any
23 evidence when you went in February of 2001 that road
24 being plowed?

25 A I don't remember it.

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 Q March of 2001, Hewitt Cemetery, one plow on
2 March 9th.

3 A I don't remember it happening, but it is not part
4 of my memory if you said it happened, I guess it did.

5 Q If it was plowed, there wouldn't be any grass in
6 the middle of the road, would it?

7 A I don't know how they plow. I don't know. I
8 remember there being grass there.

9 Q If the road is plowed -- my question to you is,
10 if the road is plowed by a county road plow, there is
11 not any grass when the plowing is completed, is there?

12 A I don't know.

13 Q May is growing season; you agree with me?

14 A Uh-huh.

15 Q Grass is going to grow in May, isn't it?

16 A I would think so.

17 Q Plowed May 15, 2001. That is during you going
18 there every-day period of time?

19 A Yes.

20 Q Didn't see any evidence of the plow?

21 A I think I stated several times I don't remember
22 that. If it happened, it happened, but I don't recall
23 it.

24 Q Do you remember seeing grass in the middle of the
25 road in May of 2001?

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 A I don't remember. I just remember the road.

2 Q The road was plowed every month. Here are the
3 records. So if the road is plowed at least once or
4 twice a month, would you agree there is not going to be
5 any grass growing in the road?

6 A That is what you are saying. I don't remember --
7 I remember there being grass in the road.

8 Q One time?

9 A I remember it being one time; is that what you
10 are saying?

11 Q Just one time you remember that?

12 A No. I remember it being that way when we started
13 going that way. When it changed or if it changed, I
14 don't remember.

15 Q The road was being plowed before you got there,
16 July 1999. I can go through every month in 1999 if you
17 want me to.

18 A I remember it being like it was in the picture.

19 Q And what you see in the picture, it is your
20 contention that is Hewitt Cemetery Road and not some
21 other road on Ms. Eagerton's property?

22 A Yes.

23 Q To your knowledge, Ms. Eagerton didn't
24 participate in the maintenance of Hewitt Cemetery Road?

25 A I wouldn't know.

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 Q Did you?

2 A No.

3 Q You, as a member of the public, used Hewitt
4 Cemetery Road to go to Ms. Eagerton's barn to the
5 stables?

6 A Yes.

7 Q When you boarded your horse, did you have to get
8 water for your horse? Was it hand pumped, or did you
9 turn on a spigot?

10 A She had a spigot.

11 Q She had now what is county water?

12 A I don't know if it was the county's or a well,
13 but I know there was water in the barn. I don't know
14 the source.

15 Q Do you know Mr. Carnell that has horses and hay
16 out on 327 and Pamplico Highway?

17 A No, I don't.

18 Q Do you remember when Cato Road was a dirt road?

19 A No, I don't.

20 Q It's always been a paved road?

21 A From my experience.

22 Q And that would be coming on the --

23 A I remember the other part of Cato Road.

24 Q Going between Pamplico and Clawson Road, that was
25 a dirt road?

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 A Yeah, I remember that being dirt.

2 Q Do you remember when the portion of Cato Road
3 between Pamplico and Poor Farm Road was dirt?

4 A No.

5 Q I think you testified you were familiar with
6 Branch Road?

7 A If that is the road at the end of the other side
8 of Carol's property. Is that the dirt road there?

9 Q Yeah. I'll show you on Plaintiffs' 7. This is
10 Cato Road here (indicates), Hewitt Cemetery Road
11 (indicates), and this is Branch Road right here
12 (indicates), dirt road that goes back to the highway.
13 Are you familiar with that?

14 A I am.

15 Q You saw the county plowing that road, didn't you,
16 or evidence of it?

17 A It was like a regular dirt road.

18 Q Did you ride your horse on that road?

19 A I did.

20 Q You never called anyone at the county complaining
21 about traffic on Hewitt Cemetery?

22 A No.

23 Q You never called anyone at the county about --
24 you testified earlier that she put the gates up about
25 five years ago?

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 A That is my guess, but I don't know. Yeah, I
2 think it is about five years ago.

3 Q If the police record is dated in June of 2013, is
4 that consistent with when you thought the gate went up
5 -- sorry, July of 2013?

6 A I wasn't going regularly at the time, and I just
7 remember talking to Carol, and she said she put up a
8 gate, but it wasn't when I was going on a regular
9 basis.

10 Q So you never saw the gate?

11 A I did. When I went, it was already there. I
12 don't remember -- I was guessing it was five years ago,
13 because that is when I moved to Florence, and I was
14 thinking that was the same time line.

15 Q You wouldn't disagree that that record is dated
16 July of 2013, that that is when it happened?

17 MS. PARHAM: That is not the testimony that that
18 is when the gates went up. That is testimony that one
19 time the gates were closed.

20 THE COURT: Correct.

21 Q (MR. McEACHIN) If there is only one police
22 report that we know about that said it was in July of
23 2013, would you agree that that is when your
24 recollection is, when they were put up?

25 A No. I know there is a police report that you say

VIRGINIA "GINGER" ODOM - CROSS-EXAMINATION

1 the police came and the gates were there, but I don't
2 know how long they were there prior to the police
3 report. I'm guessing five years, in my memory.

4 Q That is the same memory that recalls there was no
5 plowing on Hewitt Cemetery Road?

6 A There may have been plowing of the road, but I'm
7 just not remembering it. We rode on that road a lot.
8 I just remember there being grass on the roads.

9 Q Do you know that Ms. Eagerton contacted the
10 county about putting drain pipes on Hewitt Cemetery
11 Road?

12 A No.

13 Q You know county can't spend public tax money on
14 private property?

15 A I have not read the law, but I assume that is the
16 way it would go.

17 MR. McEACHIN: Can I have one moment?

18 THE COURT: Yes, sir.

19 (A brief pause in the proceedings.)

20 Q (MR. McEACHIN) You consider Ms. Eagerton a
21 friend of yours?

22 A Yes.

23 Q Do anything to assist her?

24 A She is a great friend and she took good care of
25 us when we had our horse.

VIRGINIA "GINGER" ODOM- REDIRECT AND RECROSS-EXAMINATION

1 Q And you would do anything you could to assist
2 her?

3 A Sure.

4 Q Thank you.

5 REDIRECT EXAMINATION

6 BY MS. PARHAM:

7 Q Would you lie under oath to help her?

8 A Absolutely not.

9 Q What do you believe the distance was of that road
10 that went through her property from the top to bottom,
11 if you had to estimate the length?

12 A Like a half mile.

13 THE COURT: Anything further of this witness?

14 RECROSS-EXAMINATION

15 BY MR McEACHIN

16 Q You haven't measured the road?

17 A No.

18 Q Haven't measured the length or the width?

19 A No.

20 THE COURT: Any objection to her being excused?

21 MS. PARHAM: No, Your Honor.

22 THE COURT: Thank you. You are free to go.

23 MS. PARHAM: We call Maria Cooper.

24 (MARIA COOPER, having been duly sworn,
25 testified as follows:)

MARIA COOPER - DIRECT EXAMINATION

1 THE CLERK: State your name, please.

2 THE WITNESS: Maria Cooper.

3 DIRECT-EXAMINATION

4 BY MS. PARHAM:

5 Q Where do you live Ms. Cooper?

6 A 2426 Sandy Point Road in Effingham.

7 Q How long have you lived there?

8 A Five years.

9 Q And prior to that?

10 A Sycamore Drive in Florence.

11 Q Do you know Ms. Eagerton?

12 A I do.

13 Q How do you know her?

14 A Many, many years ago we met through the horse
15 community, and I boarded my horses out there for
16 several years.

17 Q Do you recall about what time you boarded your
18 horses out there?

19 A Probably 15 years ago is when I started, up until
20 about seven years ago.

21 Q So about eight years?

22 A Yeah, that is about right.

23 Q So that would have been like 2001?

24 A Yeah. So.

25 Q The end of it, and eight years before that?

MARIA COOPER - DIRECT EXAMINATION

- 1 A Uh-huh.
- 2 Q And you had how many horses out there?
- 3 A A total of three.
- 4 Q Did you have three horses out there the entire
5 time?
- 6 A Pretty much, yes.
- 7 Q How many other horses were there during that
8 period?
- 9 A I'm not sure, but a bunch, 10, 12, 15 in there.
- 10 Q Did you ever go to Ms. Eagerton's house after you
11 boarded horses?
- 12 A Yes.
- 13 Q What was the occasion?
- 14 A Wanted to see how things were going and catch up.
- 15 Q Have you stayed in touch with her?
- 16 A I have.
- 17 Q How long do you talk with her?
- 18 A Probably once every two, three months.
- 19 Q What was the occasion you just stopped having
20 horses?
- 21 A I bought the house on Sandy Point and moved them
22 with me.
- 23 Q How would you describe the roads that led to the
24 Ms. Eagerton's house when you used it?
- 25 A As her road -- and I say that because one of the

MARIA COOPER - DIRECT EXAMINATION

1 reasons I boarded my horses with my teenage daughter
2 was for the safety factor, no traffic, safe, quiet.

3 Q And that was the entire time you were out there,
4 it was like that?

5 A Yes, ma'am.

6 Q Did you see traffic on that road other than going
7 to Ms. Eagerton's house?

8 A I have from time to time. We had trouble with
9 people spinning tires and carrying on while riding
10 horses, and it was a great concern to us and Carol.

11 Q Could you estimate the frequency you would see
12 other cars?

13 A Not being out there a whole lot, maybe every
14 three, four visits. It wasn't a lot, but there were
15 some concerns.

16 Q You would see a car on occasion?

17 A Right.

18 Q How many times a week did you go, on average?

19 A Probably three to five times a week.

20 Q What were the total number of horses out there?

21 A Maybe 12, 15, 20. I never counted, but there was
22 a bunch.

23 Q Was there also rescue horses as well as being
24 boarded?

25 A At the time I was there, maybe one or two, but I

MARIA COOPER - DIRECT EXAMINATION

1 can't exactly remember if they were rescue.

2 Q After you stopped going and visiting Carol on a
3 later date, did you notice any change on the road?

4 A It had been paved.

5 Q Do you remember when that it was or approximate
6 when that was?

7 A The time I went out it was probably three months
8 ago, first time I noticed it and said something to her
9 about it.

10 Q So you didn't notice it previously?

11 A No, because after I left, we basically would talk
12 from time, running into each other or calling each
13 other, I hadn't gone out there.

14 Q So you were just out there recently?

15 A Yes.

16 Q And how does it look compared to how it used to
17 look when you used to go out there?

18 A The time I was out there, the two or three
19 months, there was several cars coming down that road,
20 so it was busier than it had been.

21 Q Was there a difference in the size of the road
22 that you recall?

23 A It was wider. Yes, absolutely. You hardly could
24 walk two horses side by side before, and it was wide
25 enough for a car or two now.

MARIA COOPER - CROSS-EXAMINATION

1 Q And you don't remember it being like that when
2 you used it?

3 A No.

4 Q I'll show you what is admitted into evidence as -
5 3, 4 and 5, focusing primarily on the dirt road in
6 those photos.

7 A Uh-huh.

8 Q That is how it looked the entire time you were
9 there?

10 A Absolutely. It sure did. Big change.

11 MS. PARHAM: That is all I have.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MR. MCEACHIN:

15 Q If you were going to take a picture of a road,
16 particularly to use as evidence in a case disputing the
17 road, you probably would want to stand in the middle of
18 the road and take a shot straight down the road,
19 wouldn't you?

20 A I assume, but I'm not really into taking pictures
21 of roads.

22 Q But that is common sense, logical way to do it?

23 A I guess.

24 Q And that would certainly show how the road
25 looked, width?

MARIA COOPER - CROSS-EXAMINATION

1 A Yes.

2 Q We don't have a picture like that, do we?

3 A No, but would it show me anything differently?

4 Q I'm asking do we have a picture like that?

5 A I don't know. I just saw what I saw. Maybe you
6 don't.

7 Q You haven't seen a picture like that?

8 A Correct.

9 Q Now, did you see any evidence on the times you
10 would go to Hewitt Cemetery Road and then go to Ms.
11 Eagerton's, any evidence that the road had been plowed?

12 A Not when I was out there, no.

13 Q And you were there --

14 A Up until about seven years ago.

15 Q Up until seven years ago?

16 A Uh-huh.

17 Q You first started going out there?

18 A About 15 years ago.

19 Q 15 years ago. So you would have been there in
20 2008?

21 A Uh-huh.

22 Q 2009?

23 A Uh-huh.

24 Q And you didn't notice the rock road, hard top
25 road in 2008, 2009?

MARIA COOPER - CROSS-EXAMINATION

1 A Sir, when I would go out there, you know, as you
2 know with dirt roads, sometimes they gravel them, you
3 know, even them out, scrape them, so I didn't notice
4 anything unusual, no.

5 Q As I understood your testimony, the first time
6 you noticed that there was a rock road or hard top road
7 is when you went out there three months ago?

8 A Uh-huh.

9 Q That is the first time?

10 A Right, because I hadn't been out there in several
11 years.

12 Q But you don't remember seeing it like that prior
13 to three months ago?

14 A No, sir, I don't.

15 Q And you traveled this road three, four times a
16 week from 2001 through 2007?

17 A Uh-huh.

18 Q Didn't see any evidence that the road was being
19 plowed?

20 A When you say "plowed," like roads are scraped
21 time to time in the county, and that is not something
22 that would catch my attention.

23 Q Did you see the road where there was no grass
24 growing between the tracks?

25 A Yes.

MARIA COOPER - CROSS-EXAMINATION

1 Q Plenty of times?

2 A Yes.

3 Q And that was as a result of the road being plowed
4 by the county?

5 A I don't know who was plowing it.

6 Q Well, Ms. Eagerton wasn't plowing it, was it?

7 A I don't know. It was her land.

8 Q Do you know of your own personal knowledge if
9 Ms. Eagerton was plowing the road?

10 A No.

11 Q Did you plow it?

12 A No.

13 Q Of your own personal knowledge, do you know of
14 any private individual that was plowing Hewitt Cemetery
15 Road?

16 A Of course not.

17 Q Did you go down Branch Road?

18 A Once or twice, very seldom.

19 Q That's another dirt road?

20 A Uh-huh.

21 Q It was the same road as Hewitt Cemetery Road when
22 it was plowed; do you agree with that?

23 A I assume I agree. I'm not positive.

24 Q Based on your recollection of having been on both
25 of the roads, they are about the --

MARIA COOPER - CROSS-EXAMINATION

1 A How many potholes are on Evans Street? I'm
2 trying my best to tell you what I remember. Don't try
3 to trick me.

4 Q I'm not trying to trick you, just trying to get
5 answers. My question is: When you travel Branch Road
6 and Hewitt Cemetery Road, they were about the same size
7 road; isn't that true?

8 A Yes.

9 Q You would see cars on the road other than your
10 car other than Ms. Eagerton's car?

11 A Yes.

12 Q Approximately three months ago, Ms. Eagerton
13 called you to come visit her?

14 A No. A friend and I went out there after
15 discussion how she was doing, let's go see her. We
16 went out there to catch up.

17 Q Did she talk to you about this case?

18 A She did.

19 Q Did she tell you that she wanted you to testify?

20 A Not at that time.

21 Q You discussed what your testimony would be,
22 didn't you?

23 A Not at that time, no.

24 Q At any time?

25 A To some degree, yes, to tell what I knew.

DAVID GARRISON - DIRECT EXAMINATION

1 MR. McEACHIN: That is all I have.

2 THE COURT: Redirect?

3 MS. PARHAM: Nothing.

4 THE COURT: Any objection to Ms. Cooper being
5 excused?

6 MR. McEACHIN: No, sir.

7 THE COURT: Thank you for being here. You are
8 free to go.

9 MS. PARHAM: David Garrison.

10 (DAVID GARRISON, having been duly sworn,
11 testified as follows:)

12 THE CLERK: Have a seat and your state your name.

13 THE WITNESS: David Garrison.

14 DIRECT-EXAMINATION

15 BY MS. PARHAM:

16 Q How old are you, Garrison?

17 A 78.

18 Q Where do you live?

19 A I live at 4324 Cato Road, Effingham.

20 Q 4324 Cato Road, Effingham. How long have you
21 lived there, sir?

22 A I think '78, 1978.

23 Q Where did you live prior to that?

24 A Second Loop Road.

25 Q Is where you live depicted on this map here?

DAVID GARRISON - DIRECT EXAMINATION

1 This is Cato Road here, and this is Ms. Eagerton's
2 property here.

3 A Hewitt Cemetery Road?

4 Q Right here.

5 A Coming back this way, so this is my place here.

6 Q So if you would put your initials here on
7 Plaintiffs' Exhibit 7.

8 So you live right there?

9 A Yes.

10 Q Not too far from the intersection of Hewitt
11 Cemetery and Cato?

12 A That's correct. I own all this through here,
13 Hewitt Cemetery Road.

14 Q How long have you owned that land?

15 A Since '76 I think. I bought it in '76.

16 Q Do you own any other land around here?

17 A On this land and this land (indicates), and I
18 lease this land, lease these two fields, but I own
19 this.

20 Q And so --

21 A And all of this.

22 Q And all of that?

23 A Yes.

24 Q So if we're looking at this plan, and I'll try to
25 describe it accurately, where Hewitt Cemetery Road tees

DAVID GARRISON - DIRECT EXAMINATION

- 1 into Cato Road, you own the bottom left quadrant; how
2 many acres?
- 3 A 25 there.
- 4 Q And bottom right quadrant?
- 5 A There is 11-and-a-half acres here.
- 6 Q And then across the top of the tee on the other
7 side?
- 8 A 28 acres.
- 9 Q You own all of that?
- 10 A Yes.
- 11 Q How long have you owned all of that?
- 12 A I bought this and this in 2000.
- 13 Q And you had that since 1976?
- 14 A '76.
- 15 Q Thank you. You can be seated. Do you work?
- 16 A I'm retired.
- 17 Q What did you do before you were retired?
- 18 A Worked at the paper company. They keep changing
19 the name.
- 20 Q How long did you work there?
- 21 A 42 years.
- 22 Q Are you familiar with Carol Eagerton?
- 23 A Yes, ma'am.
- 24 Q How long have you known her?
- 25 A Probably since about '70s -- '76, '77. First

DAVID GARRISON - DIRECT EXAMINATION

1 time I met her, she did my income tax. She worked at
2 H&R Block, and then next time I saw her, she moved.

3 Q And at some point, she bought property near you?

4 A Yeah.

5 Q And do you remember when that was?

6 A When she bought it?

7 Q Yes, sir.

8 A She bought it after I did. She moved after I
9 did. I was out there in '78. I think she was there
10 probably -- wasn't long, a year maybe.

11 Q From the time you have lived out there, have you
12 traveled what is labeled as Hewitt Cemetery Road?

13 A Yes.

14 Q Are you familiar with all of the changes that
15 took place outside there?

16 A Yes.

17 Q How would you describe Hewitt Cemetery Road, or
18 what is labeled as that prior to the county laying
19 rock?

20 A It wasn't much of a road. Once you leave her hay
21 field going towards Branch Road, that wasn't much of a
22 road. You couldn't pass anyone. There wasn't much to
23 it.

24 Q So it was not wide enough for two cars?

25 A No.

DAVID GARRISON - DIRECT EXAMINATION

1 Q What did it look like? How did it appear?

2 A It looked rather deserted. There wasn't much
3 there.

4 Q Was it dirt?

5 A Yes.

6 Q Were you ever made aware of the county scraping
7 the road?

8 A They made a mess when they started putting that
9 rock out there.

10 Q Was there changes in the road after the county
11 did it?

12 A It was wider. It was -- it wasn't -- I mean, I
13 mowed hay fields and stuff, and it was a problem when
14 they moved in there because.....

15 Q So you mowed Ms. Eagerton's hay field for her?

16 A Yes.

17 Q And so that is -- if you are looking at the
18 picture of her home and the barn is on -- if you are
19 facing this photograph, Plaintiffs' Exhibit 7, that is
20 on the left side, and the hay field is on the right
21 side?

22 A Right.

23 Q And so you would mow that for her?

24 A Yes, ma'am.

25 Q How often would you do that?

DAVID GARRISON - DIRECT EXAMINATION

1 A I mowed it about four times a year, three, four
2 weeks apart.

3 Q How did the laying rock at the road affect the
4 hay field?

5 A I don't know if they explained, but I have what
6 is a hay conditioner. When you cut hay, anything in
7 the field is not good, it destroys your equipment.
8 Every time I would go over there to cut hay, I would
9 have to get off, walk the whole field, pick up the beer
10 bottles, trash, throw rocks out of the road and cut the
11 grass. To add to the problem, people started cutting
12 shortcuts across the field, cut the ruts, which is not
13 good, I can assure you of that.

14 Q So it would suit you for people not to use that
15 road?

16 A I would be tickled to death, because it would cut
17 down on drug traffic.

18 Q What do you mean?

19 A People come down Hewitt Cemetery and park. They
20 can look both ways. They dealing drugs, and I know
21 this.

22 Q How do you know they are dealing drugs?

23 A Well, I'll put it this way. I'm in a tree stand.
24 I hunt deer. I see people passing white envelopes back
25 and forth, and I'm assuming it is drugs. I can't tell

DAVID GARRISON - DIRECT EXAMINATION

1 you that it is drugs. When you see someone jump out of
2 a car and run under a tree and pick up something, run
3 back and leave, I'm assuming it was drugs.

4 Q Did you notice that back when Hewitt Cemetery
5 Road was dirt?

6 A No. There was very little traffic on that Road,
7 very, very little traffic when I moved out there.

8 Q How significantly did it increase after rock was
9 laid?

10 A It picked up. It kept getting heavier and
11 heavier, more and more traffic.

12 Q Do you remember the day that the rock was laid?

13 A I don't remember the exact date.

14 Q Do you recall seeing Ms. Eagerton that day or the
15 day after?

16 A Oh, yes. She was quite ill. She tried to get
17 them to stop it, and they wouldn't do it.

18 Q So they didn't stop even though she --

19 A I didn't get in the conversation, but they didn't
20 stop. I knew she was upset.

21 Q So she was visually upset?

22 A Yes.

23 Q Are you familiar that the county is trying to
24 rock Branch Road that leads to Pamplico?

25 A Yes, and I was told the reason they didn't do it

DAVID GARRISON - DIRECT EXAMINATION

1 is that someone stopped --

2 MR. McEACHIN: Object to hearsay.

3 THE COURT: Sustain as to hearsay. So.

4 Q That road did not get rocked?

5 A No.

6 Q How long is Hewitt Cemetery Road? I'm talking
7 about through Ms. Eagerton's land.

8 A Probably about a mile.

9 Q When you travel, do you know how much further it
10 would be to go down Branch Road to Pamplico Highway
11 instead of cutting through her property?

12 A Probably three or four-tenths of a mile.

13 Q So not too much longer?

14 A No.

15 Q Compare Branch Road to this Hewitt Cemetery Road
16 in size and type.

17 A Branch is wide. It is well graded and taken care
18 of. It is a much better road. Until recently, that
19 part of Hewitt Cemetery, until they started doing work
20 in there, you couldn't travel that road if it were wet,
21 you would bog down. It was not much of a road. In
22 fact, I went over there one time because a guy bogged
23 down. I carried my tractor over there and pulled him
24 out of it.

25 Q Before they laid the rock, how wide was the road

DAVID GARRISON - DIRECT EXAMINATION

1 that went through her property?

2 A About 12-foot.

3 Q When it was dirt?

4 A About 12-foot.

5 Q After they laid the rock, how wide would you say
6 it is?

7 A I don't know, I guess 20-foot.

8 Q So you recall it wider now as opposed to when it
9 was --

10 MR. MCEACHIN: Leading question.

11 THE COURT: Sustained.

12 Q (MS. PARHAM) When it was a dirt road, could one
13 or two cars pass at the same time?

14 A Now?

15 Q No, when it was a dirt road.

16 A Not in the one section, no, you could not pass.
17 In fact, if you went towards Branch Road and saw a
18 vehicle, you stayed in the field area until they were
19 through, and then you would go. You can pass on there
20 now.

21 Q And you would not mind this road being closed
22 permanently?

23 A Not at all.

24 Q When you acquired your land, was the state land
25 labeled on your deed?

DAVID GARRISON - CROSS-EXAMINATION

1 A I think so. I'm not sure. I can't answer that
2 without seeing.

3 Q So you knew when you bought your land that you
4 weren't buying any portion of that road?

5 A Yes. Oh, yeah.

6 Q How long has that piece been paved from Cato to
7 the cemetery?

8 A From Cato to the cemetery?

9 Q Yes, sir.

10 A I'm not sure. I would say not too long when I
11 moved out there because the people who had property
12 gave some right-of-ways for that road to the cemetery.

13 Q Is there a place for cars to turn around at the
14 cemetery?

15 A Yes, it is a double driveway.

16 Q It forms a circle?

17 A Yes.

18 CROSS-EXAMINATION

19 BY MR. McEACHIN:

20 Q Good morning. Your concern is that illegal
21 activity is taking place at Hewitt Cemetery?

22 A Yeah, and on the bridge there. At the cemetery
23 and the bridge.

24 Q And the bridge is back up here?

25 A Yeah.

DAVID GARRISON - CROSS-EXAMINATION

1 Q So to get to the cemetery, you are on the state
2 road?

3 A Correct.

4 Q And you understand that this case doesn't involve
5 closing the state road?

6 A That's right.

7 Q So your concern about illegal activity has
8 nothing to do with this road being closed and this
9 lawsuit, does it?

10 A Right.

11 Q Your concern about illegal activity to Hewitt
12 Cemetery Road is on the state portion of Hewitt
13 Cemetery Road; is that correct?

14 A That's correct.

15 Q And the activities you saw from your deer stand
16 was taking place on the state portion of Hewitt
17 Cemetery Road?

18 A At times, yes, but I also have a deer stand on
19 her property at the corner, which is directly across
20 from the cemetery.

21 Q And you were observing the activities taking
22 place at the cemetery?

23 A Yeah, and I also had one in back of the cemetery
24 on her property.

25 Q You live here on Cato Road. You have city water?

DAVID GARRISON - CROSS-EXAMINATION

1 A No.

2 Q You could get city water if you wanted?

3 A I could, yes.

4 Q And the fire hydrants you mentioned that came
5 off -- the water supply came off of the line on Cato
6 Road and came down at Hewitt Cemetery Road; is that
7 correct?

8 A No.

9 Q There is a fire hydrant down there, right?

10 A Yeah.

11 Q And the water for that fire hydrant is coming
12 from the city water source; is that correct?

13 A Yeah.

14 Q So that line comes from Branch Road or Cato Road?

15 A Branch.

16 Q So it comes from Branch Road and all the way up
17 Hewitt Cemetery?

18 A And stops there at the cemetery.

19 Q Prior to Hewitt Cemetery Road being rocked, you
20 saw county road plows plowing Hewitt Cemetery Road?

21 A No, I never seen it. I didn't say they didn't do
22 it, I just never saw it.

23 Q So you weren't on the road that often, then, I
24 take it?

25 A No.

DAVID GARRISON - CROSS-EXAMINATION

1 Q Didn't travel Hewitt Cemetery Road very often at
2 all?

3 A No, I didn't travel except when I needed to and
4 doing hay season.

5 Q Okay. Were you baling that hay after you cut it?

6 A Yes.

7 Q Do you have horses?

8 A No.

9 Q You were baling it for Ms. Hewitt?

10 A Who?

11 Q I'm sorry, for Ms. Eagerton.

12 A Yes.

13 Q And she paid you to bale that hay?

14 A That's correct.

15 Q And she paid you to mow the hay?

16 A Yes, sir.

17 Q Are you still doing that for her?

18 A No.

19 Q You stopped in what year?

20 A About five, six years, I'm not sure. I decided
21 to retire.

22 Q The fellow that bogged down, you didn't even know
23 who he was, did you?

24 A No.

25 Q And that is when Hewitt Cemetery was still a dirt

DAVID GARRISON - CROSS-EXAMINATION

1 road?

2 A No, it was not a dirt road then.

3 Q When he bogged down?

4 A He bogged down -- I can show you.

5 Q Yeah, show me on the map. I understood your
6 testimony was that Hewitt Cemetery Road wasn't a good
7 road and he bogged --

8 A Well, no. See, let me find the road.

9 Q This is Cato. This is your house. There is
10 Branch Road, and this is Hewitt Cemetery.

11 A Hewitt Cemetery, this is the cemetery here. He
12 bogged down here.

13 Q That is on Hewitt Cemetery Road?

14 A Yeah. Yeah.

15 Q So that would be on the portion of Hewitt
16 Cemetery Road where Ms. Eagerton owned the property?

17 A Yeah. Yeah, she owned the property I think.

18 Q So the fellow that was bogged down, at the time
19 he was bogged down, Hewitt Cemetery Road was still a
20 dirt road?

21 A From Cato Road to the cemetery road it was paved.
22 It was a dirt road from there on out, which is.....

23 Q That is my question. The fellow that bogged down
24 that you pulled out with your tractor, at that time
25 where he was bogged down on Hewitt Cemetery Road, it

DAVID GARRISON - CROSS-EXAMINATION

1 was a dirt road?

2 A Yeah.

3 Q So that would have been before 2004?

4 A Yeah.

5 Q And you didn't know the fellow?

6 A No.

7 Q He didn't live out there?

8 A No.

9 Q He was traveling through?

10 A He came to my house and asked if I could pull him
11 out.

12 Q But the fellow that you pulled out, he was
13 traveling through?

14 A I don't know. He had a girlfriend, and they
15 bogged down. He told me a deer ran out in front of him
16 and caused him to bog down.

17 Q But he wasn't someone that you recognized as
18 living in this community?

19 A He did not live in that community, not that I
20 know of or aware of.

21 Q You certainly want folks to be able to access
22 Hewitt Cemetery, don't you?

23 A Oh, sure. I have no problem with that.

24 Q And if there are a number of people that live
25 down here on the southern-most part of Plaintiffs'

DAVID GARRISON - CROSS-EXAMINATION

1 Exhibit 7, the logical way for them to go to the
2 cemetery is coming up Hewitt Cemetery Road; isn't that
3 correct?

4 A That is the shortest way, but they could get
5 through it two other ways.

6 Q Right. But that would be the shortest way,
7 wouldn't it?

8 A I guess. It is their shortest way.

9 Q And that would be the way that they historically
10 had gone to visit their loved ones who are buried in
11 the cemetery?

12 A Probably.

13 Q That would be of some comfort to them, wouldn't
14 it, to go the same way to the same cemetery?

15 A It wouldn't me.

16 Q Wouldn't to you, but it would be to them, don't
17 you think?

18 A It would be a possibility it could be if they are
19 sentimental about the road.

20 Q And you don't have any relatives buried in the
21 cemetery, do you?

22 A No.

23 Q I think you stopped in the testimony, but you
24 said something about you were mowing in the hay field
25 and you said something about the elevation of the road;

DAVID GARRISON - CROSS-EXAMINATION

1 was that a problem?

2 A Yes.

3 Q Why was that a problem?

4 A The road comes out after they rocked it and
5 stuff, they plowed it and it left a ridge on the side
6 of the road like this. You are mowing along -- mower
7 is on the right-hand side of the tractor when you are
8 making the rounds. If your wheel dropped off, you dug
9 up, dug up the road, they had to pull it out, dig all
10 the dirt and rocks and whatever.

11 Q And was that elevation of the road you just
12 mentioned, was it elevated before it was rocked?

13 A No, not much. It wasn't a problem -- it wasn't a
14 problem until they rocked the road.

15 Q Did you see anyone at the county about that?

16 A No.

17 Q Do you recall the county putting in a cross pipe
18 from the hay field up here for drainage into -- what is
19 the name of this branch?

20 A I don't know the name of the branch, but they put
21 drainage back in there.

22 Q The county did?

23 A Someone did. I don't know who done it.

24 Q But you remember that happening?

25 A Yeah.

DAVID GARRISON - CROSS-EXAMINATION

1 Q And that would have been before the road was
2 rocked, or after the road was rocked?

3 A I don't know. I can't answer that.

4 Q You agree that the county can't spend public
5 money on private property?

6 A They can't, no. They shouldn't, I wouldn't
7 think.

8 Q On occasion, you would see the plow on Hewitt
9 Cemetery Road, wouldn't you?

10 A Yeah, I would see it over there -- after they
11 rocked it, I would see it over there.

12 Q They weren't plowing the road after it was
13 rocked, were they?

14 A Yes.

15 Q They plowed a rock road?

16 A Yeah.

17 Q The county did?

18 A Yeah.

19 Q A rock road is hard surface.

20 A They would grade the rock.

21 Q As they were laying it down?

22 A No, after they laid it down. They would grade
23 the rock. They still do it on the other roads with
24 gravel. They scrape and re-leveled and fill in the
25 holes. They do it now.

DAVID GARRISON - CROSS-EXAMINATION

1 Q There is a difference between a gravel road and a
2 road that is rocked with reclaimed asphalt, isn't
3 there?

4 A You say there is a difference? I don't know --,
5 they both have rock. The rock they lay down on that
6 road, it is not permanent paved. They scraped back
7 over it. Branch Road, they do the same thing, run a
8 motor grader up and down Branch Road.

9 Q But Branch Road is a dirt road, though, isn't it?

10 A They put the rock on it. They poured the rock on
11 that road. Tommy Hewitt, he stopped them, I think.

12 Q It is your testimony from the intersection of
13 Hewitt Cemetery Road and Branch Road east, that has the
14 same road surface that Hewitt Cemetery has?

15 A They look the same to me.

16 Q But back to the plowing. Before the county put
17 the reclaimed asphalt on Hewitt Cemetery Road, do you
18 recall seeing the county plowing when it was a dirt
19 road?

20 A No.

21 Q Never?

22 A No, I didn't. I didn't say they didn't, I just
23 don't recall them doing it.

24 Q Because you weren't down there very often?

25 A Could be, but I -- I been doing hay for years and

DAVID GARRISON - CROSS-EXAMINATION

1 I never seen them do it in the summertime.

2 Q So that field is 10 acres?

3 A 10 acres.

4 Q You can cut a hay field in a day, can't you?

5 A Four hours.

6 Q And you have to let the hay dry out before you
7 bale it?

8 A Uh-huh.

9 Q So if it doesn't rain, you can do it the next
10 day, right?

11 A It depends.

12 Q Sir?

13 A Depends.

14 Q Usually the next day if it is not wet and not
15 excess humidity, you can bale the hay the next day,
16 right?

17 A If it wasn't wet you can bale it the same day,
18 but it depends on the thickness of the hay.

19 Q So sometimes you would cut it and bale it in the
20 same day?

21 A I have done it.

22 Q And that is four times a year?

23 A That is under perfect conditions. Sometimes
24 three, four. Depends on the weather.

25 Q You agree with me that if Hewitt Cemetery Road

DAVID GARRISON - CROSS-EXAMINATION

1 from below the cemetery is closed, then this state road
2 is a dead-end?

3 A Yeah.

4 Q There is no way to turn around?

5 A Yeah, there is a dual driveway. You just have to
6 make a circle.

7 Q That's private property?

8 A Hewitt Cemetery?

9 Q Yeah.

10 A Okay.

11 Q If Cato Road dead-ends right here at your
12 property, looks like you have a circular road, would
13 you want the public turning around in your yard?

14 A No, I don't want them turning around in the yard,
15 but -- if that's all you are worried about, someone
16 turning around, she probably would donate enough for
17 you to turn around.

18 Q So you would want state or the county to pay for
19 that, though, wouldn't you?

20 A Why not? I mean, they are paying having it
21 resurfaced and stuff.

22 Q Did you call and object to the county maintaining
23 Hewitt Cemetery Road?

24 A No, I never have.

25 Q Did you ever call the county and object to the

DAVID GARRISON - REDIRECT EXAMINATION

1 Hewitt Cemetery Road being -- having a hard surface
2 placed on it from below the cemetery down to Branch
3 Road?

4 A Object? No.

5 MR. McEACHIN: Can I have one second? That is
6 all I have.

7 REDIRECT-EXAMINATION

8 BY MS. PARHAM:

9 Q Mr. Garrison, I thought you testified earlier on
10 direct that you had seen an increase in crime since
11 that road was rocked?

12 A Yes.

13 Q He was asking about seeing crime on your end of
14 the road, state end of Hewitt Cemetery, how do you
15 think the rocking of the rock below there increased the
16 crime?

17 A Increased the traffic.

18 Q What do you base that on?

19 A The more traffic?

20 Q Explain how more traffic increased the crime and
21 all of that?

22 A There is more cars, and particularly at the end
23 of the month you see an extreme amount of traffic on
24 there.

25 Q How long would you say that is going on?

DAVID GARRISON - REDIRECT EXAMINATION

1 A It is gradually getting worse every year.

2 Q Because you see the people coming by your house?

3 A Oh, yes.

4 Q Prior to them laying the rock, how would you
5 describe the traffic?

6 A Very little traffic through there, very little.

7 Q Do they both come from the same direction when
8 they leave the cemetery, or one comes from the south
9 end and one from the north end?

10 A Seen it both ways. A lot of times one will come
11 and wait until the other comes in, and they'll pass
12 whatever, and then one will go one way and the other
13 will go another way. I've seen it done -- it is not
14 hard to find. They even have a few concerts down on
15 the bridge sometimes at night.

16 Q When you say "concerts"?

17 A Noise I mean. Music and carrying on. That is
18 where they throw furniture and stuff in the creek.

19 Q Right here?

20 A Yeah. That is a little creek. They fill it with
21 garbage. In fact, there is still some down there now
22 on the side of the road. That is one thing I would
23 like to see it closed, for that one reason. Because
24 they go down there with a truckload of furniture and
25 come back and none on it. You know what they just

DAVID GARRISON - RECROSS-EXAMINATION

1 done, they dumped it. I don't think if that road was
2 closed, I don't think there would be as much littering
3 and dumping as they is now.

4 Q Because they have to go back the same way they
5 come?

6 A That's right.

7 Q Do you remember when the county put up the sign
8 saying Hewitt Cemetery Road?

9 A No, I don't know.

10 MS. PARHAM: That's all I have.

11 RECROSS-EXAMINATION

12 BY MR. McEACHIN:

13 Q When you see the crime, do you call the Sheriff's
14 Office?

15 A Yes, sir. Yes, sir. My son did.

16 Q Did you call the Sheriff's Office?

17 A No, my son did.

18 Q And you didn't fill out any records, didn't get
19 anyone out there, did you?

20 A I didn't.

21 Q And this area where you say people are dumping
22 trash at the bridge, that is on the state part of the
23 road?

24 A That's right.

25 Q And you say there is trash being dumped would be

DAVID GARRISON - RECROSS-EXAMINATION

1 a reason for closing the road?

2 A I'm saying that it would cut down on dumping,
3 that is my opinion.

4 Q Cutting down on dumping, that is a reason for
5 closing the road?

6 A It would be to me, because that road serves no
7 purpose other than her. She's the only one living on
8 the road.

9 Q And, of course, there is trash on Pamplico
10 Highway?

11 A Yeah.

12 Q Is that a reason for closing Pamplico Highway
13 down?

14 A No.

15 Q Trash on Clawson Road, is that a reason for
16 closing Clawson Road down?

17 A No.

18 Q Trash on Cato, is that a reason for closing Cato
19 Road down?

20 A No. I didn't say that was a reason because of
21 the traffic, I didn't say that, but I'm saying it would
22 help the situation, dumping situation, if it were
23 closed.

24 Q It would help the trash situation on Pamplico
25 Highway if you closed it?

DAVID GARRISON - RECROSS-EXAMINATION

1 A Probably would.

2 Q And Clawson Road?

3 A Yeah.

4 Q And Cato Road?

5 A Yeah.

6 Q Let me ask you this. Cato Road to Pamplico
7 Highway crosses Pamplico and comes on your side of
8 Pamplico Highway?

9 A That's right.

10 Q And up to a year or two ago, Cato Road between
11 Clawson and Pamplico Highway was a dirt road?

12 A Right.

13 Q And now it's a paved road, isn't it?

14 A Now I think it is.

15 Q The county paved it?

16 A I guess. I don't know who paved it.

17 Q Do you agree Cato Road is a county road between
18 Clawson Road and the highway?

19 A I would think so.

20 Q And that Cato Road is now a paved road that
21 connects two other roads, Clawson and Pamplico Highway.
22 You've observed the increase of traffic on Cato,
23 haven't you?

24 A Yeah.

25 Q And it has increased since Cato Road has been

DAVID GARRISON - RECROSS-EXAMINATION

1 paved?

2 A I don't know about that now. The traffic
3 increased on Cato Road on my end of it, increased
4 tremendously when they built the Effingham Hilton down
5 there.

6 Q And since they have paved Cato Road between
7 Clawson and Pamplico Highway, that has increased the
8 highway on that part of Cato Road as well, hasn't it?

9 A Between Clawson and --

10 Q Pamplico?

11 A I don't know. I don't get out there and observe
12 the traffic on that road. I don't know.

13 Q So the only road you observed the traffic on is
14 this section of Hewitt Cemetery Road?

15 A Yeah, I notice it because that's where I live.. I
16 have properties on both sides of the road, and I pick
17 up trash on that road. I try to get to it before the
18 state mows it and turns it into confetti, beer cans and
19 bottles and stuff.

20 Q You don't like that?

21 A No, I don't like to pick up that stuff.

22 Q And if that road is closed, you wouldn't have to
23 do that?

24 A I probably would, but not as bad as it is now,
25 that is my opinion.

DONNA ANDERSON - DIRECT EXAMINATION

1 Q It's on the bridge, too, isn't it?

2 A Yeah.

3 MR. McEACHIN: That is all.

4 THE COURT: Anything further?

5 MS. PARHAM: No, sir.

6 THE COURT: Thank you. Any objection to him
7 being excused?

8 MS. PARHAM: No, sir. Donna Anderson.

9 (DONNA ANDERSON, having been duly sworn,
10 testified as follows:)

11 THE CLERK: Have a seat and state your name for
12 the record.

13 THE WITNESS: I'm Donna Dean Anderson.

14 DIRECT-EXAMINATION

15 BY MS. PARHAM:

16 Q Where do you live?

17 A I live in Marion.

18 Q How long have you lived in Marion?

19 A About two years now.

20 Q Prior to living in Marion, where did you live?

21 A Pamplico Highway in Florence.

22 Q How long did you live on Pamplico Highway?

23 A About 10 years.

24 Q Do you know Carol Eagerton?

25 A Yes, ma'am.

DONNA ANDERSON - DIRECT EXAMINATION

1 Q How long have you known Carol?

2 A Six or seven years.

3 Q How did you come to know Carol?

4 A I needed to board my horse.

5 MR. McEACHIN: I'm sorry, I couldn't hear.

6 THE COURT: She found Carol's barn, that is how
7 she ended up out there.

8 Q (MS. PARHAM) So you found Carol's barn?

9 A Yes, ma'am.

10 Q What year do you think you started keeping your
11 horse there?

12 A I think around 2011, 2012. I can't remember the
13 right, but item saying 2011.

14 Q How often would you go out there?

15 A Every day.

16 Q When you started boarding your horse, how would
17 you describe the road that cut through Carol's
18 property?

19 A Kind of a gravel road.

20 Q And at some point -- let me ask you this. Did
21 you ever see gates on Carol's property?

22 A Yes.

23 Q Where were the gates on Carol's property?

24 A There was a few. All over the farm.

25 Q In relation to -- I'll show you Plaintiffs'

DONNA ANDERSON - DIRECT EXAMINATION

1 Exhibit 7. This is labeled on this map as Hewitt
2 Cemetery Road. In relation to this cut-through, where
3 were the gates she had?

4 A We had a gate where the cemetery is, where the
5 hay field starts, then we had a gate on the other side
6 of the hay field.

7 Q At the wood line?

8 A Uh-huh.

9 Q So right before the cemetery and right at the
10 wood line?

11 A Yes, ma'am.

12 Q Do you know why those gates were there?

13 A A lot of times when we would be riding or
14 something, we would close them for the kids that would
15 be riding, because we had a lot of people that drove
16 crazy.

17 Q At some point -- let me ask you this. When you
18 would come and go from her property, and you said you
19 would go there almost every day, how did you get --
20 would those gates be opened or closed when you were
21 there?

22 A Open.

23 Q Were you ever there when the gates were closed?

24 A Yes.

25 Q When were the gates closed?

DONNA ANDERSON - DIRECT EXAMINATION

1 A Carol closed them one time when this man drove
2 through her hay field that she just had nitrogen put
3 on. Wasn't the first time he had done it. We had
4 other problems with sleeping drug addicts in the field
5 and stuff like that.

6 Q How often would you see gates closed?

7 A The barn gates stayed closed all the time at
8 night to keep the horses in.

9 Q What about the gates at the top and bottom you
10 talked about earlier?

11 A Just on occasion when we had a problem.

12 Q When they were closed, was there a lock on them,
13 or did you have to do something to open them?

14 A There was a lock on them.

15 Q How would you open that lock?

16 A There was a key on one end, and the other one had
17 a lock on the gate.

18 Q So there was a key pad on one -- which one had a
19 key pad, if you remember?

20 A The one next to the cemetery.

21 Q Had a key pad?

22 A Yeah, but even at that you could go around it,
23 wasn't keeping you out.

24 Q Totally?

25 A Yeah.

DONNA ANDERSON - DIRECT EXAMINATION

1 Q And this down here, what kind of lock did it
2 have?

3 A A chain.

4 Q When is the earliest time you remember when you
5 were going there that she locked those gates?

6 A I would get there around 3:30 to 4:30 and I would
7 be there about 5:30 in the summer.

8 Q I guess I'm not clear. I mean what year?

9 A Oh, what year?

10 Q Yeah.

11 A Oh, from the time I got there, about 2011.

12 Q So you recall her closing those gates
13 periodically as early as 2011?

14 A Yes, sir.

15 Q Did she do it throughout the time you were taking
16 your horse there, or did it stop?

17 A No, it continued.

18 Q How many would you say that she would close those
19 gates at the top and bottom of her property?

20 A Periodically. Like I said, when there would be a
21 problem, like there was different problems and things
22 going on in the neighborhood.

23 Q Was it effective?

24 A It caused a couple of the people that caused the
25 problems to get angry and bully us.

DONNA ANDERSON - CROSS-EXAMINATION

1 Q Were you there on one particular occasion when
2 police were called?

3 A Yes, ma'am. Yes, ma'am.

4 Q And that would be an incident with Michael Wood?

5 A Yes, ma'am.

6 Q And so you kept your horse there from 2011
7 through 2000 what year?

8 A '15.

9 CROSS-EXAMINATION

10 BY MR. McEACHIN:

11 Q Good morning, Ms. Anderson.

12 A Good morning.

13 Q Now, I think you testified you would see people
14 driving crazy on Hewitt Cemetery Road?

15 A Yes, sir.

16 Q Of course, you called the highway patrol every
17 time you saw that, didn't you?

18 A No. Actually, we have stopped people, but -- let
19 me finish. We have called the police out there to sit,
20 and of course that, I guess, deterred them.

21 Q So you didn't call the highway patrol, but you
22 called the police? City?

23 A County.

24 Q Sheriff's Department?

25 A Yes.

DONNA ANDERSON - CROSS-EXAMINATION

1 Q And they came?

2 A Usually sometimes that day, and maybe not, maybe
3 the next day.

4 Q And that was the presence of law enforcement,
5 right?

6 A Yes, sir.

7 Q And they sat on a public road?

8 A Yes, sir.

9 Q Now --

10 A Well, they sit at the cemetery.

11 Q And people drive crazy on Cato Road, can't they?

12 A Oh, sure, people drive crazy anywhere.

13 Q They drive on Pamplico Highway, can't they?

14 A Yeah.

15 Q I mean, people getting killed on that road,
16 aren't they?

17 A Right in front of my house they have.

18 Q Right. And is that a reason for closing the
19 Pamplico Highway, because people drive crazy on
20 Pamplico Highway?

21 A That is not a reason to close since it is a
22 fairway for everything, and there is no reason for us
23 to close it.

24 Q Beg your pardon?

25 A There is no reason.

DONNA ANDERSON - CROSS-EXAMINATION

1 Q Because people are driving crazy everywhere,
2 right?

3 A Explain yourself, what do you mean by that?

4 Q I'm asking you the reason that people -- using
5 your terminology -- drive crazy on the Pamplico
6 Highway, is that a reason for closing the Pamplico --

7 A And, no, I just told you, no.

8 Q Not a reason for closing Cato Road?

9 A No.

10 Q Not a reason for closing House Springs Road, is
11 it?

12 A No.

13 Q But it happens on all of those roads?

14 A Uh-huh.

15 Q Is that a yes?

16 A Yes. Did you hear me?

17 Q You said uh-huh, I didn't know what that meant.

18 A Oh, okay.

19 Q You understand, it is against the law to obstruct
20 a public road?

21 A Well, of course.

22 Q And when on one occasion -- at least one
23 occasion -- the Sheriff's Office came to Hewitt
24 Cemetery Road and required the gates to be opened and
25 the locks taken off because a public road was being

DONNA ANDERSON - CROSS-EXAMINATION

1 obstructed; isn't that correct?

2 A They didn't say that it was -- they didn't make
3 us take the chains off. They asked us to after Mike
4 Wood was showing out so bad.

5 Q But you were advised it was against the law, were
6 you not, to obstruct the public?

7 A He couldn't advise us. He said he didn't know.
8 He said it was a civil case.

9 Q Right. And you -- after the sheriff came -- he
10 came more than one time?

11 A Yeah.

12 Q And after he came the last time, those gates
13 stayed opened?

14 A The last time I wasn't there when he came.

15 Q But to your knowledge, the last time since he
16 came the last time, those gates have stayed open,
17 haven't they?

18 A I guess so. I haven't been by lately.

19 Q You haven't seen them closed since then, have
20 you?

21 A I haven't been by in the last year.

22 Q And members of the public that you don't know,
23 don't know where there came from, you have seen them on
24 Hewitt Cemetery Road?

25 A What you mean by that?

DONNA ANDERSON - CROSS-EXAMINATION

1 Q Someone you didn't know, someone you don't
2 recognize drive a vehicle on Hewitt Cemetery Road, you
3 have seen that?

4 A Yes. And what I was saying awhile ago is when
5 someone goes through the hay field instead of staying
6 on the road or dumps their trash, that kind of
7 craziness is one of the reasons --

8 Q So that is your basis for saying Hewitt Cemetery
9 Road should be closed?

10 A Yes.

11 Q Now, if someone lived on Clawson Road and had a
12 barn off of Clawson Road that was repeatedly broken
13 into, is that a reason for closing Clawson Road?

14 A No, but there is only one house that one person
15 lives over there besides Dave Garrison's.

16 Q If someone lived on Clawson Road and had a pecan
17 orchard and people ride off the road and cut donuts in
18 the pecan orchard, is that a reason to close Clawson
19 Road?

20 A No, but was it their property? Clawson Road is
21 not their property.

22 Q It is a public road, though, isn't it?

23 A I don't think that that road is public.

24 Q Clawson Road --

25 A Oh, yeah, Clawson is public, but I don't think

DONNA ANDERSON - CROSS-EXAMINATION

1 Carol's road is.

2 Q And Hewitt Cemetery Road is used by the public
3 for longer than you have been on this earth?

4 A I have no clue. I have no clue.

5 Q The cemetery -- you would agree that people are
6 buried in this cemetery more than a hundred years ago?

7 A Oh, yeah.

8 Q So somebody has been using it to get to the
9 cemetery for over a hundred years -- let me finish --
10 correct?

11 A I'm sure, but just to that cemetery, like I said.

12 Q You don't know if they were coming from this end
13 or Cato Road; you don't know that, do you?

14 A Well, there is not much difference if you go
15 around and to Cato.

16 Q My question is: You don't know whether people
17 going to the cemetery are coming from the Branch Road
18 in or the Cato Road in, do you?

19 A No. No, I don't. I can't read minds. My
20 crystal ball is broke.

21 Q You started going to Ms. Eagerton's in 2011 or
22 2012?

23 A Actually, it was 2011.

24 Q And Hewitt Cemetery Road was a hard surface when
25 you started going?

DONNA ANDERSON - CROSS-EXAMINATION

1 A It looks like it was paved, but it was full of
2 potholes and gravel in spots.

3 Q And you could see where it was patched?

4 A No.

5 Q You never saw a patched pothole?

6 A Not right until I left.

7 Q So you have seen a patched pothole?

8 A But it was next to the cemetery.

9 Q I'm speaking of the part from below the cemetery
10 to Branch?

11 A No.

12 Q Never saw --

13 A I rode my horse down that way.

14 Q You did?

15 A Yeah.

16 Q On a regular basis?

17 A Yeah.

18 Q You didn't have a problem riding your horse down
19 there, did you?

20 A No, because I rode on the edge of the road.

21 Q But no problem riding your horse, ma'am?

22 A Because I rode her on the edge of the road
23 because she wasn't shod.

24 Q Right, but you had no problem doing that, did
25 you, because you did it?

DONNA ANDERSON - REDIRECT EXAMINATION

1 A No.

2 Q Thank you.

3 THE COURT: Redirect?

4 REDIRECT-EXAMINATION

5 BY MS. PARHAM:

6 Q Who else lives on what is labeled as Hewitt
7 Cemetery Road on Plaintiffs' 7?

8 A Mark Garrison, he lives -- like the cemetery is
9 here and Mark is on this side about 50 feet before you
10 get to the cemetery.

11 Q And does anyone else live below the curve of the
12 road before the wood line other than Ms. Eagerton?

13 A That's it.

14 Q Just Ms. Eagerton?

15 A Uh-huh.

16 Q In your estimation, how long is this road from
17 the cemetery to the bottom past the wood line?

18 A Maybe a half a mile, if that. It is an
19 estimation.

20 Q Have you traveled down the east side of Branch
21 before it gets to Pamplico Highway where it is red clay
22 down there?

23 A Yeah.

24 Q How would you describe the condition of the east
25 side of Branch that leads up to Pamplico as opposed to

DONNA ANDERSON - RECROSS-EXAMINATION

1 this portion that cuts through Ms. Eagerton's land.

2 A It is a much better road.

3 Q How is it better?

4 A It is wider, smoother. Other than that, there is
5 no comparison.

6 Q Have you ever driven down Branch Road to Pamplico
7 Highway and come around to Hewitt Cemetery, the other
8 way?

9 A Yeah.

10 Q Do you know how much farther it is to do that
11 rather than cut through her property?

12 A Probably not much of a difference.

13 Q Have you driven all of these roads having lived
14 on Palmetto Highway?

15 A Yes, ma'am.

16 MS. PARHAM: That is all I have.

17 RECROSS-EXAMINATION

18 BY MR. McEACHIN:

19 Q Ms. Anderson, where did you live on Pamplico
20 Highway?

21 A Do you know where the ball park is?

22 Q Greenwood County?

23 A Right. The new one they built, I lived -- there
24 is like a new laundromat, I lived right across the
25 corner.

DONNA ANDERSON - REDIRECT EXAMINATION

1 Q So you lived north of Cato Road?

2 A Yes, ma'am.

3 Q So when you would come to Ms. Eagerton's, you
4 would come to Cato Road and then down Hewitt Cemetery,
5 down to her house?

6 A Yes.

7 Q And the other folks boarding horses, they did the
8 same?

9 A Yes, sir, as far as I know.

10 MR. McEACHIN: Thank you.

11 REDIRECT-EXAMINATION

12 BY MS. PARHAM:

13 Q You say you remember her closing the gates in
14 2011, how many times do you remember her doing that, to
15 the best of your knowledge, in that year?

16 A A few times. To be honest, I can't remember
17 exact.

18 Q And then in 2012, how many times?

19 A That is when we started closing them a little
20 more frequently.

21 Q How many times would you estimate in that year 4?

22 A At least once a week, if not more.

23 Q And 2013, how many times?

24 A About the same.

25 Q 2012?

DONNA ANDERSON - REDIRECT EXAMINATION

1 A Yeah, maybe a little more.

2 MS. PARHAM: That is all I have.

3 THE COURT: Thank you. Any objection to her
4 being excused?

5 MS. PARHAM: No, sir.

6 THE COURT: Free to go. Thank you for being
7 here.

8 MS. PARHAM: I have Ms. Eagerton and her
9 daughter, I don't know if I'm going to call one or
10 both.

11 THE COURT: We'll adjourn until 1:30.

12 MR. McEACHIN: I request that no discussion be
13 had with the daughter --

14 MS. PARHAM: Oh, we're not going to do that.

15 THE COURT: No conversation about any prior
16 testimony. We'll start at 1:30.

17 (A lunch recess was taken.)

18 THE COURT: Anything before we get started.

19 MS. PARHAM: No, sir.

20 MR. McEACHIN: No, sir.

21 THE COURT: Call your next witness.

22 MS. PARHAM: Lisa Suggs.

23 (LISA SUGGS, having been duly sworn, testified
24 as follows:)

25 THE CLERK: Have a seat and state your name.

LISA SUGGS - DIRECT EXAMINATION

1 THE WITNESS: Lisa Eagerton Suggs.

2 DIRECT-EXAMINATION

3 BY MS. PARHAM:

4 Q How old are you?

5 A 52.

6 Q Where do you live?

7 A Currently in Darlington, South Carolina.

8 Q How long have you lived there?

9 A 15, 20 years. Sorry, I'm horrible with numbers.

10 Q How are you related to Carol Eagerton?

11 A I'm her daughter.

12 Q You are familiar with the property we've been
13 discussing where she lives?

14 A Yes. I used to live there with her.

15 Q What years did you live with her there?

16 A I graduated college in '88.

17 Q Okay.

18 A And I was living there at that time. I continued
19 living there until I got married, my first marriage,
20 and, I'm sorry, I'm horrible with dates. I know I got
21 married September 7th, but don't know the year. I
22 know that sounds crazy.

23 Q '80s or '90s?

24 A I believe it was the '90s. I know it was after
25 college, several years after college.

LISA SUGGS - DIRECT EXAMINATION

1 Q When you say you lived there, did you spend every
2 he night or --

3 A Yes. Yes, I was there full time.

4 Q Right. And so tell me the years ago.

5 A From the time she moved out there, when she had a
6 trailer. Originally when they bought the property,
7 they moved a trailer out there. I lived out there
8 then, and I lived there until my first marriage, which
9 was in the '90s, I don't know what year.

10 Q So that would have been prior to her acquiring
11 the second parcel, which is to the right of the dirt
12 road we've been discussing?

13 A I'm sorry, I don't know the dates.

14 Q Did she have the trailer in the same place where
15 the house is located?

16 A It is was directly in front of where the house
17 was located.

18 Q Let me show you what has been entered a Defense
19 3, 4 and 5. Are those photographs of her property
20 during that time period?

21 A Yes. Yes, and, yes.

22 Q And what traffic, if any, did you see on this
23 dirt path that went through the property when you lived
24 there?

25 A It was rare to see anything other than people

LISA SUGGS - DIRECT EXAMINATION

1 coming to see us, people coming to the barn to ride or,
2 you know, to come to visit us. Occasionally, we would
3 see a stray car, usually it was someone lost and made a
4 wrong turn, but not always. Occasionally, we would see
5 something, but very rare. We used to laugh about,
6 look, there is a car.

7 Q At some point did this change?

8 A Yes.

9 Q When was that?

10 A It changed -- got a little more, you know, over
11 the years, but it was never appreciable until they put
12 the rock down on the road.

13 Q And then what happened after that?

14 A It just increased crazily. It has been a lot of
15 activity on the road, a lot of shady activity on the
16 road.

17 Q Did you ever see the county plow the road while
18 it was dirt when you were living there?

19 A Not the entire time I lived there.

20 Q That would have been from 1981 until you got
21 married, but don't remember the year?

22 A Yeah, it would have been sometime in the '90s. I
23 was trying to run down stairs to 210 and find the date.

24 Q You don't remember seeing any county plows during
25 that time?

LISA SUGGS - CROSS-EXAMINATION

1 A Never saw any.

2 Q Did you ride horses on this property?

3 A I did.

4 Q Did you ride throughout the whole property?

5 A Yes.

6 Q Do you recall when your mother got water on the
7 property; is that when you were there or after?

8 A I don't recall that.

9 Q Did she have a well for the stables when you were
10 there?

11 A Yes.

12 MS. PARHAM: Answer any questions Mr. McEachin
13 has.

14 CROSS-EXAMINATION

15 BY MR. McEACHIN:

16 Q Is your mother's house on the 40-acre tract of
17 land that she acquired? Is that the parcel that the
18 house is on, over here (indicates)?

19 A That's the original tract? I'm sorry, I don't
20 know, I would have to look at the deeds.

21 Q I'll show you Plaintiffs' 15, 16 and 17, and 18
22 is just -- well, wait a minute. Yeah, 18 is the same
23 land, different grantor.

24 A I have to look at them in order because I didn't
25 know the acreage of the tracts. I wasn't involved in

LISA SUGGS - CROSS-EXAMINATION

1 the buying, obviously.

2 Q What would be a landmark for you --

3 A It would be the very first one she bought.

4 Q So that one would be this one, I think?

5 A It was the first piece of property that she
6 purchased. My eyes are not seeing it well.

7 Q This is 20.9 acres. She acquired that in 1981.

8 A I could probably look at the plat.

9 Q That plat?

10 A Yes. It is this piece, yeah, 20.9 acres. That
11 is it.

12 Q And, of course, that plat shows a road on the
13 eastern boundary of the property; does it not?

14 A Let me get my bearings. Which is the eastern
15 side?

16 Q North is up, east to the right.

17 A This side?

18 Q East would be this side.

19 A Something is drawn. I don't know if it is a
20 property line or what. I'm sorry, my eyes are not
21 reading the map well. It is too small for my glasses.
22 They are just readers. I don't know if that is a
23 property line or.....

24 Q Let me see if I can help you a little bit.

25 A I can't tell what the map says, it is too small.

LISA SUGGS - CROSS-EXAMINATION

1 Q You would agree with me that there was a road
2 where you lived with your mother from Cato Road past
3 the cemetery, down to where your mother's home is?

4 A It was not a road at the time she bought the, and
5 for the longest time when I lived there it was more of
6 a path than a road. It was not anything that most
7 people would want to drive. I drove a very low
8 Corvette, and I could not get down that road.

9 Q Let me ask you this. When your mother bought the
10 property, which is the 20.9 acres on Plaintiffs'
11 Exhibit 16, and though you said you can't read it, but
12 if the plat attached shows a road on the certain side
13 of the property, right here, you would agree with me
14 that that would have given notice to your mother that
15 the person conveying the property to her recognized
16 there was a road out there?

17 A I don't know that. I'm not legal -- I can't
18 answer that. You know, to me, you have to go by what
19 people tell you and what the paper say.

20 Q By what is on the deed?

21 A Yes, I guess.

22 Q When your mother bought the 40.7 acres, which is
23 across Hewitt Cemetery Road, and the plat shows there
24 is a road, you agree the person getting the deed would
25 have to go by what is in the deed in the plat?

LISA SUGGS - CROSS-EXAMINATION

1 A I guess you go by the law, whatever that is. If
2 it is drawn to show where the property line is, then it
3 is the property line.

4 Q But if the plat said "road," in both of those
5 deeds I just asked you about, that would indicate,
6 would it not, the person conveying the property to your
7 mother recognized there was a road there?

8 A I don't know that.

9 Q I'll ask you about the 12.15-acre land. It is
10 this way. Can you read what is on that plat, on the
11 northern tip of the property?

12 A Yes, it says, "Hewitt Cemetery Road, dirt."

13 Q What else does it say?

14 A Where? It says a lot on this thing.

15 Q About the road.

16 A That says, "County maintained."

17 Q That would have been the plat attached to the
18 deed to your mother?

19 A I'm assuming so, yes, sir. It says it is to her
20 and Nathan.

21 Q And matter of fact, this deed is where Nathan is
22 conveying his interest. There is an earlier deed where
23 -- this is where Nathan is conveying the 12 acres to
24 your mother.

25 A Okay.

LISA SUGGS - CROSS-EXAMINATION

1 Q That would certainly be a recognition by Nathan
2 that there was a county road known as Hewitt Cemetery
3 Road at the time this property was conveyed to your
4 mother?

5 A It was conveyed because of a divorce at that
6 time.

7 Q Right. But it was a recognition that there was
8 -- well, let me -- when did your parents divorce?

9 A Sorry, I don't know my own divorce, I certainly
10 don't know theirs. He's not my parent, he was my
11 step-father.

12 Q Okay. Sorry. Well, the deed is dated
13 October 22, 2002, but the plat was prepared in 2000, so
14 it would have predated the divorce, right?

15 A I'm sorry, I don't know their dates.

16 Q Back to my question. There was a recognition by
17 Nathan when this deed was conveyed to your mother that
18 there was a county maintained road known as Hewitt
19 Cemetery bordering this 12-plus acre tract of land?

20 A That is what that says, yes, sir.

21 Q As a matter of fact, the deed from Roberta
22 Griffin to Nathan Fowler, which was in April of 2000,
23 has that same plat attached; does it not?

24 A Yeah, it looks like in 2000.

25 Q And that would be a recognition by Roberta

LISA SUGGS - CROSS-EXAMINATION

1 Griffin that the 12-plus acre tract of land was on
2 bounded on the north by a county road known as Hewitt
3 Cemetery that was county maintained?

4 A I'm assuming so.

5 Q Now, you lived with your mother from 1988 until
6 sometime in the --

7 A From the time she bought the property, I lived
8 there, except I was off at college for six years.

9 Q Out of state?

10 A Yes, in Georgia. I came home over the summers
11 and weekends and was there.

12 Q And never saw any evidence that the county was
13 maintaining Hewitt Cemetery Road?

14 A Never. The whole time I was there, she was
15 plowing the road.

16 Q Your mother was plowing it?

17 A Yes, it was hers to plow.

18 Q What was she plowing it with?

19 A A tractor.

20 Q What kind of blade?

21 A A scrape blade. I don't know what it's called
22 exactly, but like a flat shovel blade.

23 Q Did she ditch the road before she plowed it?

24 A No, sir.

25 Q So she was using a blade on a tractor on a hard

LISA SUGGS - CROSS-EXAMINATION

1 surface dirt road without preparing the road?

2 A That's what I do on mine now. It is a private
3 road. We take our scrape blade and drop it down and
4 push and push and level it all out.

5 Q You do not plow it first with a --

6 A No. No. If we plowed our road now, the road I
7 live on, as soon as the water came in, it would wash
8 our entire road out.

9 Q You were living on your mother's property in
10 1981?

11 A After they pulled the trailer there. I'm not
12 sure -- I think she bought the property in '81; is that
13 correct? She bought that part in '81, she moved a
14 trailer in there, and when I was home from school,
15 which I started school -- graduated high school in '81,
16 and once she moved the trailer there, and I don't know
17 date, I don't know if it was two months after they got
18 the property or a year, but once they bought it, we
19 moved out there, and I lived there continuously except
20 when I went off to school. I had a second place off at
21 school at college, but I still continued to come home
22 on the weekends and summers.

23 Q Did you see any evidence that the county plowed
24 the road on October 28, 1981?

25 A No, sir.

LISA SUGGS - CROSS-EXAMINATION

1 Q Did you see any evidence that the county plowed
2 the road on January 7, 1982?

3 A No.

4 Q See any evidence that the county paved the
5 road -- plowed the road on January 8, 1982?

6 A No.

7 Q March 18, 1982?

8 A No.

9 Q May 26, 1982?

10 A No. But as I said, some of these I could have
11 been off at college. I don't know, because I was at
12 college, but I did come home. I wouldn't have known
13 unless I saw the plow, because my mom maintained the
14 road before that, and I never came home and said, Did
15 someone else plow this road for you.

16 Q So you don't know of your own personal knowledge
17 that the county was not maintaining this road, do you?

18 A I don't know that they weren't, but I never saw
19 anyone.

20 Q But you were away at school?

21 A Some, but I was there all summer long, every
22 summer.

23 Q And all summer long, every summer from 1981
24 through when?

25 A Sometime in the '90s when I got married.

LISA SUGGS - CROSS-EXAMINATION

1 Q It is your testimony there was never a time when
2 the county maintained that road, plowed it, scraped it?

3 A I never saw it or understood they were
4 maintaining it.

5 Q You can't in your testimony today dispute that
6 the county was plowing and maintaining that road at
7 least once a month?

8 A I'm not saying I couldn't have missed it, but I
9 think I would have noticed.

10 Q You visited your mother regularly after you got
11 married?

12 A Yes.

13 Q On Hewitt Cemetery after you got married?

14 A After I got married, I was pretty busy and had a
15 full time job out of town, so I didn't go out as often
16 after my marriage.

17 Q In 1999, did you see your mother?

18 A I assume I saw her at some point, but I don't
19 know if I went to her house or met her in town.

20 Q So you have no independent recollection on being
21 on Hewitt Cemetery Road in 1999?

22 A I'm sure I was, but I don't remember years to
23 know.

24 Q Did you see evidence that the county was
25 maintaining and plowing Hewitt Cemetery Road in 1999?

LISA SUGGS -- CROSS-EXAMINATION

1 A I don't know. Like I said, my mother always kept
2 it plowed. I never asked about it until the point
3 where it was obvious she was not keeping it anymore,
4 and that is when they laid the gravel down, because
5 they did a terrible job. My mother would not have done
6 that kind of work.

7 Q But you don't know that the county was not
8 maintaining that road for years, even before your
9 mother bought the property?

10 A No, I never saw them out there when I lived
11 there. I do know my mom was doing it. I saw her doing
12 it. It would not have gotten in the shape it was in if
13 someone else was doing it at that point, unless they
14 have very poor people working.

15 Q So your mother, was she plowing and tending to
16 the road beyond her property line to Branch Road?

17 A I doubt that.

18 Q Right. So the county was doing that?

19 A I don't know.

20 Q That portion of the road was maintained as well,
21 wasn't it?

22 A I don't know. That is not a way I ever went. I
23 came from Cato and went to our property and stopped,
24 because there wasn't enough road for me for go through,
25 and I never used that other end.

LISA SUGGS - CROSS-EXAMINATION

1 Q But other people did, didn't they?

2 A Not that I saw. Not when we first got there.

3 Not for a long time.

4 Q Never saw anyone else on the road with you, your
5 mother or whoever was seeing your mother?

6 A Like I said, there was an occasional person that
7 would come down, and we would laugh and say they must
8 have taken the wrong turn. They must be lost. It was
9 almost a joke, because we didn't see traffic and didn't
10 want to. It was a very occasional thing. Every time
11 we saw headlights or a car pulling in, we would look to
12 see who was coming to see us.

13 Q In 2000, do you recall any month in 2000 where
14 you saw evidence that the county plowed, maintained it?

15 A I wasn't living there in 2000.

16 Q Well, when you visited.

17 A Well, I mean, when I would go out there, the
18 road, after the county did take it over, when the rock
19 came down, that is when I realized she wasn't
20 maintaining this anymore, other than the times -- she
21 had told me that they came out there and tried to put
22 rock down and it was -- she tried to go out and stop
23 them, and they basically pushed her out of the way,
24 would not let her.

25 Q County has a lot of roads; does it not?

LISA SUGGS - CROSS-EXAMINATION

1 A Sure.

2 Q Not as many now, but in the time frame you are
3 talking about '80 and '90 and 2000, a lot of them were
4 dirt roads, weren't they?

5 A I guess.

6 Q County had a good bit to keep up with?

7 A Sure.

8 Q Where do you work?

9 A Currently, I'm an owner at Sexton Dental, but I
10 just retired from my pharmacy career.

11 Q What was your pharmacy career?

12 A I worked numerous places.

13 Q What did you do?

14 A I'm a pharmacist.

15 Q Pharmacists have to fill out forms, don't they?

16 A Yes.

17 Q DHEC forms, you have to keep up with all the
18 medicines you have, right?

19 A Uh-huh.

20 Q And you sure don't want to do any more paperwork
21 than absolutely necessary, do you?

22 A I don't.

23 Q Yeah. Nobody would, would they?

24 A I don't know. Some people prefer desk jobs, but
25 that's not me.

LISA SUGGS - CROSS-EXAMINATION

1 Q Normally, an average person wouldn't want to fill
2 out any more forms than they have to, because they have
3 plenty of work to do?

4 A Can't speak for others than myself.

5 Q You wouldn't?

6 A I wouldn't.

7 Q Absolutely not. So all of these forms right
8 here, an employee of the county had to make a record of
9 the work done on Hewitt Cemetery Road, they wouldn't be
10 doing that to make it up, would they? More paperwork
11 for them?

12 A But they also get paid to do that job. If they
13 don't say that they are scraping something, I guess
14 they don't get paid for it, could they?

15 Q Unfortunately, I ask the questions, you give the
16 answers.

17 A Oh, okay.

18 Q But it wouldn't make sense for someone to create
19 extra work for themselves, would it?

20 A Some people do it.

21 Q But a commonsense approach to the answer to the
22 question I just made, you wouldn't want to create extra
23 work for yourself, would you?

24 A Commonsense, I wouldn't. But a lot of people
25 don't have commonsense.

LISA SUGGS - CROSS-EXAMINATION

1 Q Do you know that the county came over and put
2 drainage beneath the road to drain from the hay field
3 back over to this watershed, this creek?

4 A Yes, I am aware of that, after they flooded the
5 hay field with their work.

6 Q And that happened in the '80s?

7 A I don't know when it happened.

8 Q And they flooded the hay field because of the
9 county's work, right?

10 A Right.

11 Q So the county was working on the road, to your
12 knowledge?

13 A That was one of the first times I was aware they
14 had done something, yes.

15 Q But that would have been early on?

16 A That is what I said. I don't know when it was.
17 I don't know years and dates.

18 Q And the county used county personnel to put that
19 pipe in, right?

20 A I'm assuming.

21 Q And the county used tax dollars to pay for the
22 pipe to put in?

23 A I'm not their bookkeeper, I don't know, but I'm
24 assuming.

25 Q They would have to buy the pipe to have put in,

LISA SUGGS - CROSS-EXAMINATION

1 wouldn't they?

2 A I guess. I don't know whether they used a
3 general contractor, though.

4 Q But they would have had to pay the general
5 contractor for the cost of the pipe?

6 A Someone.

7 Q Let me finish the question. If they were going
8 to hire a general contractor to put the pipe in, they
9 would have had to pay the general contractor for the
10 materials he used, right?

11 A I would think so, yes, sir.

12 Q Of course, you know that you can't use public
13 funds on private property; you do know that, don't you?

14 A Correct.

15 Q And so was it Mr. Fowler or your mother that
16 asked for that pipe to be put in?

17 A I'm assuming Mr. Fowler, but I don't know.

18 Q And he and your mother were married at the time?

19 A Common-law marriage.

20 Q So neither your mother nor Mr. Fowler engaged in
21 a contract to put that pipe in, they went to the county
22 and asked the county to put that pipe in?

23 A Because of what the county had done. It caused a
24 problem.

25 Q Working on the road?

LISA SUGGS - CROSS-EXAMINATION

1 A Yes.

2 Q And there were no barricades, gates, put up at
3 that time stopping traffic on Hewitt Cemetery when the
4 pipe was put in?

5 A Not that I'm aware of, no.

6 Q Your mother's house has city water?

7 A I believe it's county.

8 Q It has government water?

9 A Now, yes. It did not when I lived there.

10 Q But she got it before the road was paved with the
11 reclaimed asphalt; isn't that true?

12 A Say that take again.

13 Q Your mother got county water before it was paved
14 with the hard surface you described earlier?

15 A I know she got county water at some point, but I
16 don't know the relation of that.

17 Q Haven't seen any evidence of the hard surface of
18 Hewitt Cemetery Road was dug up and then patched for
19 the water to put in, have you?

20 A Not that I'm aware of, no. Like I say, I don't
21 go to the other end where the water comes from.

22 Q But the water goes all the way up to the
23 cemetery. Isn't there a fire hydrant at the cemetery?

24 A I believe it goes to the cemetery.

25 Q So you saw that part of the road, and you see no

LISA SUGGS - CROSS-EXAMINATION

1 evidence that it was trenched up after the hard surface
2 was placed, have you?

3 A I don't guess so. I don't know when they would
4 lay a pipe whether it would go beside the road or down
5 the middle.

6 Q And of course the pipe would have to be put on a
7 public property to put the pipe down?

8 A I don't know.

9 Q To your knowledge, did your mother ever give a
10 deed or right-of-way to the city to put that pipe down
11 at Hewitt Cemetery Road?

12 A I know she had requested county water be brought
13 to her house, that is as far as I know. I know it took
14 a very long time for it to happen.

15 Q Do you know that the City of Florence operates
16 the water system?

17 A Yes.

18 Q The system that services your mother's house?

19 A I thought it was county.

20 Q Would it surprise you that it was the city?

21 A It would. Like I said, I haven't lived out there
22 in years.

23 Q Haven't been out there in years a lot, have you?

24 A Yes, I, have. I do go out there often.

25 Q When did you and your mother first start talking

LISA SUGGS - CROSS-EXAMINATION

1 about this case?

2 A I'm not good with dates. It has been going on
3 for years. The first time I remember her telling me
4 anything, that there was a problem, was after I was
5 married and moved away. She told me she went out there
6 and told them it is a private road, you are not
7 supposed to be there. They told her, no, this was a
8 county owned road, is what they told her, and to please
9 stand aside.

10 Q When I asked you about this case, I'm talking
11 about this lawsuit, Florence County versus Carol
12 Eagerton, when did you and your mother first begin
13 talking about this case?

14 A About this case? I know it's been about -- dates
15 are not my forte.

16 Q This case was filed December 12, 2017. It would
17 have been sometime after that that you discussed it?

18 A We have discussed trying to find a way to close
19 the road for many years before that. This was the last
20 straw, to stop the progress that was bringing all the
21 bad stuff out to our home.

22 Q This lawsuit is brought by the county because
23 your mother was trying to barricade the road; isn't
24 that correct?

25 A Yes, I think so.

LISA SUGGS - CROSS-EXAMINATION

1 Q It was brought in December of 2013?

2 A Yes.

3 Q And so did you and your mother discuss the
4 testimony you would offer in this case after
5 December 2013?

6 A No. I didn't know I was going to testify until
7 today at all.

8 Q What did your mother ask you to concentrate on in
9 your testimony about?

10 A She didn't ask me to testify at all, Rose Mary
11 did. No one told me walking into this courtroom today
12 what I would be testifying about.

13 Q Is Ms. Parham your attorney?

14 A No.

15 Q What did she tell you she wanted you to testify
16 about?

17 A She didn't. She asked if I would testify. That
18 is like two hours ago. She said I might testify, like,
19 yesterday.

20 Q Did you ever have any other discussion with
21 Ms. Parham about what your discussion would be?

22 A No.

23 Q She had no idea?

24 A No.

25 Q You testified that you couldn't get your Corvette

LISA SUGGS - CROSS-EXAMINATION

1 down Hewitt Cemetery Road, did you park it down at
2 Cato?

3 A No. I started driving another vehicle and
4 parking at a friend's house.

5 Q What vehicle did you start driving?

6 A I had a Dodge 400 -- or maybe it was the Chrysler
7 LeBaron at that time. That is the car I used to take
8 to school with me.

9 Q And that was the car you took to your mother's
10 house?

11 A Yes.

12 Q And no problem driving that car?

13 A No. There was a good 8 inches, 10 inches on that
14 one.

15 Q Even when you first started living out there,
16 from Cato Road to past the cemetery, it was paved;
17 isn't that correct?

18 A From Cato to the cemetery, just past it was the
19 state maintained road and that was paved, yes.

20 MR. McEACHIN: Thank you. That is all I have.

21 MS. PARHAM: Nothing.

22 THE COURT: Thank you. You may step down.

23 MS. PARHAM: Carol Eagerton.

24 (CAROL EAGERTON, having been duly sworn,
25 testified as follows:)

CAROL EAGERTON - DIRECT EXAMINATION

1 DIRECT EXAMINATION

2 BY MS. PARHAM:

3 Q How old are you?

4 A 79.

5 Q You heard today's testimony about where you live.

6 When you first bought that property, the first parcel
7 of property, how did that come to be? Did you go look
8 at it how? How did you come to buy the property?

9 A We had been looking for -- my husband and I had
10 been looking for probably two years or more for a piece
11 of property to make our horse farm.

12 Q So you looked at this property?

13 A I did.

14 Q And you ended up buying the first piece of that
15 property to the left of the dirt road?

16 A No, to the right.

17 Q How many acres did you first buy?

18 A 20-something odd.

19 Q In 1981?

20 A Correct.

21 Q When you bought that property, did you hire a
22 lawyer?

23 A I say no, but I'm not positive about that,
24 because my husband handled all of the paperwork,
25 whatever negotiations was being done. I was working

CAROL EAGERTON - DIRECT EXAMINATION

1 full time.

2 Q Do you recall after purchasing that property
3 seeing a deed to that property?

4 A Sorry?

5 Q When you bought that property, do you recall
6 getting a copy of the deed to that property?

7 A I'm sure we did.

8 Q When you went out there to look at the property,
9 did you notice any dirt roads on the property?

10 A There were no dirt roads after -- we stopped at
11 the cemetery and chatted a little. We saw that there
12 was a -- it looked like a tractor path, so we drove on
13 down in there, and the whole area was totally isolated.
14 There were no homes, no motor homes, no buildings
15 whatsoever. It was farmland. So Nate went to wherever
16 you go to find out who owns properties, he did all of
17 this. I wasn't involved in it. Actually, he found who
18 it belonged to, and I realized that I believe the
19 brother-in-law -- Hugh Griffin was the brother-in-law
20 of the person that owned it. The owner lived in
21 Charleston, so I told Nate, I know Hugh Griffin. He is
22 a very good friend of my dad's, why don't you talk to
23 him. So Mr. Griffin called or got Willa Mae Painter
24 and brought her out there, and we discussed buying some
25 of the property with her and with Mr. Griffin.

CAROL EAGERTON - DIRECT EXAMINATION

1 Q Let me approach and show you what is entered as
2 Plaintiffs' Exhibit 16. This is the first parcel,
3 20.9 acres?

4 A Correct.

5 Q I might have confused you when I said left off
6 the road, but if you come from Branch Road --

7 A Oh, from Branch Road, yeah, it is on the left.
8 Sorry.

9 Q So that is on Plaintiffs' Exhibit 7, this piece
10 right here, correct, to the left? Here is the
11 cemetery.

12 A Correct.

13 Q At any time, did anyone tell you that there was
14 any easement across your property other than for you to
15 get on and off your property?

16 A No.

17 Q But you did notice the fact there was a dirt road
18 there?

19 A It was like a one-lane tractor path, is what I
20 would call it.

21 Q Let me show you this map attached to your deed.
22 You can see on this map that it says, Center of road,
23 P, slash, L, property line. You could see through the
24 middle of the 20-acre parcel that there is another
25 dotted line that says Old Road across the middle. Was

CAROL EAGERTON - DIRECT EXAMINATION

1 there a tractor path there?

2 A There was -- I won't call it a tractor path, but
3 what it was was Bobby Knight's property. It was over
4 this way, and he had kind of made a trail through
5 there. There was no -- he had no fencing. There was
6 no fencing anywhere. It was just a trail to get a
7 shortcut to get wherever he wanted to go. He lived
8 over this way.

9 Q So there is different trails across your
10 property, including the one at debate today, but also
11 the one through the middle called Old Road on this map?

12 A Correct.

13 Q But no on ever -- your lawyer or --

14 MR. McEACHIN: Object to leading.

15 THE COURT: Sustained.

16 Q (MS. PARHAM) Did anyone tell you there was any
17 kind of county road or easement?

18 A No.

19 Q Did you know there was a state road from Cato to
20 the cemetery?

21 A I did.

22 Q Was it in existence when you bought this
23 property?

24 A It was.

25 Q Was it paved when you bought this property?

CAROL EAGERTON - DIRECT EXAMINATION

1 A It was.

2 Q What about the southern-most portion of the
3 house, how was it down there where Mr. Wood testified
4 that he owns that two acres down there? What did that
5 look like? What did all of this look like through the
6 trees and down to his property?

7 A It was basically -- I just can't help it, but I
8 call it a tractor path, because if I'm not mistaken,
9 Heyward Hewitt was one of the people -- or maybe the
10 only person -- that worked that land that belonged to
11 Ms. Painter.

12 Q That would be the father of the gentleman, Thomas
13 Hewitt, that testified?

14 A Yes. Yes. And I'm assuming he would ride -- I
15 didn't see this, of course, because at that time I
16 think he was no longer farming it, but I guess he went
17 through that wooded area to get to the fields with his
18 tractor and equipment.

19 MR. McEACHIN: Your Honor, I would object if she
20 doesn't have any personal knowledge who was doing it
21 now. She's describing what he's doing.

22 Q (MS. PARHAM) At some point later, in 1988, did
23 you acquire another piece of property?

24 A Yes. That is 40-plus acres.

25 Q On the other side?

CAROL EAGERTON - DIRECT EXAMINATION

1 A Yes.

2 Q Directly adjacent to the first piece you bought?

3 A Yes.

4 Q And do you recall if you were represented in that
5 transaction?

6 A I believe Nate had Jim Bell do a title -- I guess
7 you call it a title search. As I stated, I was working
8 full time. He was in real estate and life insurance.

9 Q When you acquired that property, did anyone
10 mention any kind of an easement or county road or
11 anything like that when you acquired the second piece?

12 A No.

13 Q Did you keep a box and maintain paperwork as it
14 relates to these purchases?

15 A Yes.

16 Q At my request, did you find a letter originally
17 received from Mr. Bell with regard to that purchase?

18 A I did.

19 (Defendant's Exhibit 10 marked.)

20 Q (MS. PARHAM) Can you identify Defendant's 10?

21 A Yes. This is the letter that Jim Bell wrote
22 addressed to me and Mr. Fowler.

23 Q Is that the original with his signature?

24 A It is.

25 Q Do you keep that in the regular course of

CAROL EAGERTON - DIRECT EXAMINATION

1 business related to your real estate at your house?

2 A Yes.

3 Q And it's been in your possession the entire time?

4 A Yes, ma'am.

5 Q Does it appear the same as it always had since
6 you maintained it?

7 A Yes.

8 MR. MCEACHIN: Your Honor, she's not in -- my
9 understanding in the regular course of business
10 involving real estate matters, she's not in the
11 regular course of business in a -- she's in regular
12 course of business as a horse operation, and so I get
13 it is a hearsay, so I object.

14 (A brief pause in the proceedings.)

15 THE COURT: You know, I don't think it falls
16 under any business record exception. It is a letter,
17 but Mr. Bell is not present for cross-examination. It
18 is all hearsay. I don't know what exception it would
19 fit under.

20 MS. PARHUM: I believe she and her husband
21 purchased this property for farmland because she does
22 have horses and she's maintained this letter.

23 THE COURT: Sure.

24 MS. PARHAM: I mean, the reason for the
25 exceptions is to prevent against fraud. It appears to

CAROL EAGERTON - DIRECT EXAMINATION

1 be an original letter with original signatures, and
2 she testified that she kept it in a box at home the
3 entire time. I mean, you know, it's not -- and I
4 think it is pertinent in that it goes to part of the
5 issue at hand, because Mr. McEachin is alleging that
6 the map shows a road, but what this shows is that she
7 actually had a lawyer who researched this and advised
8 her about the -- you know, researched this property
9 and didn't mention anything about an easement or
10 county road. So it goes to the heart of the issue,
11 and it is something that she maintained. It is an
12 original, and she's kept it at her house in the course
13 of her business.

14 MR. McEACHIN: May I respond? The legal
15 description contained in the title --

16 THE WITNESS: I'm sorry, Judge, I can't hear him.

17 MR. McEACHIN: Sorry. The letter of Mr. Bell
18 refers to a plat, gives a legal description of the
19 property and refers to the plat, which is attached to
20 the deed for this 40-acre tract, which shows a road on
21 it.

22 THE COURT: What is the objection?

23 MR. McEACHIN: She's trying to get a document in
24 to demonstrate there is no existence of a road, and if
25 that is the inference they are trying to take from

CAROL EAGERTON - DIRECT EXAMINATION

1 that letter, it is hearsay. It is not --

2 THE COURT: I don't want to speak for you, and
3 correct me if I'm wrong, if I'm mistaken, I think the
4 purpose is -- if I'm not mistaken -- is to show that
5 she was represented by counsel, and counsel did not
6 inform her or her husband that there was a road or
7 easement?

8 MS. PARHAM: Right. But testimony is always --
9 this shows that she was, in fact, not.

10 THE COURT: I'll overrule the objection. I'll
11 allow it in under this circumstance.

12 Q With regard to this letter, Ms. Eagerton, it
13 speaks for itself, but did your lawyer ever advise you
14 as to any kind of public road or easements?

15 (Defendant's Exhibit 10 admitted.)

16 MR. McEACHIN: Objection. The letter is now in,
17 and that is it.

18 THE COURT: Sustained.

19 (Defendant's Exhibit 11 marked.)

20 Q (MS. PARHAM) With regard to your first purchase,
21 you couldn't recall whether you were represented, but
22 when you were searching through your documents, did
23 you find the original closing documents and mortgage
24 that you -- this is the original that you received?

25 A Yes.

CAROL EAGERTON - DIRECT EXAMINATION

1 Q And that is regarding the first purchase?

2 A Yes, it is.

3 MR. MCEACHIN: Is that the mortgage? I have no
4 objection to the mortgage.

5 MR. MCEACHIN: No objection.

6 THE COURT: Defense 11 without objection.

7 (Defendant's Exhibit 11 admitted.)

8 THE COURT: That is the mortgage?

9 MS. PARHAM: Yes.

10 Q (MS. PARHAM) And there is no reference in this
11 to any kind of easement or road as a boundary or
12 right-of-way?

13 A No.

14 Q Now, at some point you acquired a third parcel,
15 and that was at the southern-most end of the property,
16 or towards Branch Road?

17 A Correct.

18 Q There is a map attached. The 12.51 acres, you
19 purchased this in the year 2000; is that correct?

20 A I didn't purchase that, my husband did.

21 Q So that is your husband -- you acquired that?

22 A In our divorce.

23 Q When was that that you acquired this piece of
24 property?

25 A I knew you would ask me that. I can't remember

CAROL EAGERTON - DIRECT EXAMINATION

1 the date of our divorce, I'm so sorry.

2 Q This parcel is just to the left and above what is
3 on the map as Old Plantation Road; do you see the
4 notation of Plantation Road?

5 A Where is Cato Road?

6 Q It is here, and Branch Road is here.

7 A Yes, it would have been.

8 Q And this is -- on this map below, your other
9 piece of property --

10 A Yes, it adjoins.

11 Q Right. And there is a road to the left,
12 Plantation Road?

13 A Yes.

14 Q Do you remember that road, Plantation Road?

15 A I do.

16 Q What was that road like?

17 A What was it like?

18 Q Yes, ma'am.

19 A It was definitely a farm road. I never went all
20 the way to the end of it. I think it just opened into
21 some fields, but all of the woods on the 40 acres was
22 -- had trails through it, and we would go -- I would
23 take the kids with their horses and go own Plantation
24 Road a little ways and turn into the woods and ride the
25 roads, trails, and come back out to the hay field and

CAROL EAGERTON - DIRECT EXAMINATION

1 then back across to the barn.

2 Q So Plantation Road on Plaintiffs' Exhibit 7 would
3 have been above Branch Road and parallels of Branch
4 Road?

5 A Yes.

6 Q When you bought this property, describe any
7 traffic you would see coming through the land, and
8 start from the early '80s, as best you can remember.

9 A Virtually, almost none. There might be a car
10 occasionally. It was actually almost laughable,
11 because we would be out putting fencing up when I first
12 got the first 20 acres. We would put horse fencing up
13 and doing things outside. If we saw a car, we would
14 say, look, there is a car, and laugh about it, because
15 virtually there was no traffic. We kind of -- it was
16 kind of a joke. We would say, well, they must be lost.

17 Q When did that change?

18 A It didn't change until after the county sanded,
19 clayed, the road. The traffic started getting heavier
20 and heavier. Now, of course, I had people coming to my
21 farm because I was boarding horses, but that was the
22 only purpose they had in coming down the road.

23 Q You heard different individuals testify that they
24 use that road periodically to go to the cemetery or
25 take a plow across the field; do you recall any of

CAROL EAGERTON - DIRECT EXAMINATION

1 that?

2 A No.

3 Q When is the first time you saw the county vehicle
4 or plow on this road? And maybe I should qualify. Did
5 you ever see a plow at the bottom end of the road, and
6 not your end? Or did you just not see anything down by
7 Branch Road?

8 A No, I didn't.

9 Q Do you recall the county coming and scraping the
10 road?

11 A My first recollection, we had actually bought the
12 40 acres. I don't know.....

13 Q Which would have been '88, so after 1988?

14 A Yes, I think that is correct.

15 Q When you first saw them plowing, what did you
16 think?

17 A I was at work. We were both at work in town.

18 Q Where did you work?

19 A Southern Distributing Company.

20 Q If you were at work, how did you know it came
21 through?

22 A Not until I got home that afternoon. I saw the
23 sand clay on the road, and within, I don't know exactly
24 the time frame, but within just a few days, we had a
25 really heavy rain, and basically a third -- not the

CAROL EAGERTON - DIRECT EXAMINATION

1 40-acre, but the 12 acre hay field was flooded. My
2 husband, he got in touch with them. They came out, and
3 some of the county officials were out there. I don't
4 know who they were, but he said you have to correct
5 this, we're making a hay field and this is impossible.
6 So they balked and said, no, we can't do that. We
7 can't go on private property, blah, blah, blah. He
8 kept on and on until they said, okay, we'll run a
9 covert under the road to run the water off of the hay
10 field.

11 Q And they did that?

12 A They did.

13 Q But the sand clay they laid caused that?

14 A Yes.

15 Q And you didn't have a problem with that
16 previously?

17 A No.

18 Q After they did that, did you see them routinely
19 scrape it?

20 A Again, I was working full time. I'm sure they
21 probably did scrape the road. Actually -- because -- I
22 wish I could show you on the map.

23 Q If you want to step down here. This is Cato and
24 that is Branch, and that is your house and that is the
25 barn.

CAROL EAGERTON - DIRECT EXAMINATION

1 A This field right here, this is Willow Creek. My
2 property goes -- property line is right there on the
3 left-hand side of the road. When the kids would leave
4 the barn, they would ride down -- I mean I made a jump
5 field, horse jumps in it, they would ride and use the
6 jumps in the field, ride back. They weren't allowed to
7 ride in the hay field, because of course it was a hay
8 field, but I would take -- because they would make
9 horse tracks on the road, sometimes they were actually
10 running, which would make kind of ruts in the road from
11 the horse's hooves, I would take -- my daughter was a
12 little mistaken. She used -- it wasn't a plow, it was
13 what I drove the pastures with to spread manure in
14 the pastures, I would do that and keep it cleaned up,
15 and that is what I used to scrape the road where they
16 would go back and forth on this area.

17 Q So did you know that the county was maintaining
18 the condition in addition to maintenance of your road?

19 A No.

20 Q But you did know when they put the sand clay
21 down?

22 A Yes.

23 Q And you did know -- I mean, you know any other --
24 did you come home one day and notice that something was
25 cut or the road looked different to you?

CAROL EAGERTON - DIRECT EXAMINATION

1 A No. No, because I also kept that smoothed out
2 myself.

3 Q And no one ever called you about it or asked you?
4 Are just saying you didn't know?

5 A I didn't know.

6 Q At some point did your enjoyment of your property
7 change?

8 A Oh, absolutely.

9 Q You can sit back down if you want. When did that
10 happen?

11 A Some after that, but even more so after they came
12 and put rock on the road.

13 Q And we've heard testimony that that was in 2004?

14 A The rock on the road?

15 Q Yes, ma'am.

16 A I believe so, yes.

17 Q What happened the day they came to lay rock on
18 the road?

19 A I was out on the yard, not yard, but horse
20 premises at a pasture or trail through the different
21 pastures. I saw the truck down there and I thought
22 what is going on now. So I jumped on my golf cart and
23 went down there. At first, I thought it was a sand
24 clay struck, but as I looked closer, I was like that is
25 not a sand clay truck, it is too big. I got down there

CAROL EAGERTON - DIRECT EXAMINATION

1 and realized it was a rock truck. I stopped in the
2 middle of the road blocking the rock truck. There was
3 county officials, I'm assuming. They were standing out
4 in the hay field area. I got -- left my golf cart and
5 I went over and said what is going on to one of them,
6 and I don't know what their names are, but one said
7 we're rocking every road in Florence County like this,
8 and I said, well, I don't want that stuff on this road,
9 I have horseback riders, they can't ride on rock. The
10 guy in the rock truck yelled at me and said, Get your
11 little buggy off the road. I just looked at him, and
12 he said, If you don't, I'll run over it. So I didn't
13 know what to do. I turned around and went back to the
14 house.

15 Q But you went to Mr. Garrison's house that day?

16 A I did, yes.

17 Q And talked to him about it?

18 A Told him what was happening. He had no say so
19 about it. I can't recall whether he actually came over
20 there or not.

21 Q After that, what did you do after they laid the
22 rock in?

23 A In what respect?

24 Q Did you complain? Did you contact anyone? What
25 did you do.

CAROL EAGERTON - DIRECT EXAMINATION

1 A No, I don't recall contacting any one after that.

2 Q After that, you wrote letters to your
3 representatives and county officials?

4 A Yes, the county administrator.

5 Q Did you send it return receipt requested?

6 A I did.

7 (Defendant's Exhibit 12 marked.)

8 Q (MS. PARHAM) Is this one of the letters?

9 A Yes, it is. The first letter I wrote -- I'm not
10 sure if I actually wrote a letter. I might have called
11 the county administrator's office requesting an
12 audience. I learned at some point, I think it was
13 Richard Starks at the time, I somehow learned, and I
14 don't know how I know this, but I found out that he was
15 retiring. I think they were without a county
16 administrator for a short period, and I said would you
17 please put this on hold until you get a county
18 administrator in place that I can speak with. I
19 believe that is when I wrote to Thomas Robinson.

20 Q So you had taken actions before this letter, but
21 this was the first written thing you could find?

22 A Yes. Yes.

23 Q The other is by telephone or contacting people?

24 A I believe so, yes.

25 Q While Mr. McEachin is looking at that -- well,

CAROL EAGERTON - DIRECT EXAMINATION

1 I'll just wait.

2 MR. McEACHIN: I do not object to Defendant's 12,
3 but it hadn't been marked. But the May 30th letter.
4 She's citing legal arguments that are not -- that is,
5 clearly, not admissible under her direct testimony,
6 and I object to it coming in through a letter.

7 THE COURT: I haven't seen it obviously, but, you
8 know, this is non-jury, it is not going to lay people.
9 I think I might -- if it is the legal argument part
10 that you are concerned with, I think I can probably
11 assist in that.

12 MR. McEACHIN: She's also commenting on two
13 witnesses that testified on behalf of the plaintiff in
14 this case and making personal remarks about those
15 witnesses and whether or not they are forthright.
16 That is not clearly admissible testimony from her on
17 the stand, so I object to that coming in as well on
18 that basis.

19 THE COURT: There is no objection to 12?

20 MR. McEACHIN: That's right.

21 (Defendant's Exhibit 12 admitted.)

22 THE COURT: We'll mark Defense 13, and at this
23 point, you know, again, it is hard for me to make a
24 ruling and be the finder of fact, because I have to
25 read it. But if it has the comments in it that you

CAROL EAGERTON - DIRECT EXAMINATION

1 referred to, clearly that would be inadmissible.

2 (Defendant's Exhibit 13 marked.)

3 MR. McEACHIN: I don't mind stipulating on that
4 date she wrote a letter to the county administrator
5 asking something be done about the road.

6 MS. PARHAM: I don't mind redacting the portions.

7 THE COURT: If you do that, redact those portions
8 and we'll get Emily or someone to make copies.

9 MS. PARHAM: We'll redact that with a cut out
10 piece of paper so it cannot be seen. So subject to
11 those stipulations, we would offer Defense 13.

12 THE COURT: With those redactions, you have no
13 objection?

14 MR. McEACHIN: No.

15 THE COURT: Okay. Defendant's 13.

16 (Defendant's Exhibit 13 admitted.)

17 Q (MS. PARHAM) In this letter to Mr. Robinson --

18 MR. McEACHIN: That was No. 13? I'm sorry.

19 MS. PARHAM: Yes, sorry.

20 Q (MS. PARHAM) Defense 13, in this letter do you
21 even tell him that you tried to stop the procedure of
22 having sand clay spread on it and being rocked?

23 A Yes. Yes.

24 Q So you tell county officials what you testified
25 to earlier, that you physically tried to stop it from

CAROL EAGERTON - DIRECT EXAMINATION

1 happening?

2 A Yes, I did.

3 Q Did you try to stop both sand clay and rock going
4 down -- no, sand clay happened when you were at work?

5 A Right.

6 Q How did this rock affect your business of
7 boarding horses?

8 A It just restricts the horseback riders. They
9 couldn't go across that rocked road because of the
10 horses' hooves.

11 Q Well, they could --

12 A They could, but they would take the chance of
13 crippling the horses. So, basically, they were
14 restricted to riding completely on the 20-acre side of
15 the road. The rest of the property was pretty much
16 off-limits to them.

17 Q In addition to boarding horses, did you raise
18 your own horses?

19 A I did.

20 Q How many of those?

21 A Six, eight.

22 Q Did you also take in abused horses for the Humane
23 Society?

24 A Yes. Yes.

25 Q When did you do that?

CAROL EAGERTON - DIRECT EXAMINATION

1 A Probably been eight to ten years ago.

2 Q How many years did you do it?

3 A I'm still doing it.

4 Q So you have done that for the past ten years?

5 A At least.

6 Q How many horses have you raised back to health
7 for them, in estimation?

8 A Probably 20.

9 Q How long is this stretch of road that we're
10 talking about that runs through your land?

11 A Sorry?

12 Q How long was the length of this -- from the
13 cemetery down to the bottom of your property, how long
14 is that?

15 A It is less than a half a mile, I would estimate.

16 Q All right. In addition to, you know, harming
17 your field --

18 A Just a minute, Rose Mary. Let me back up,
19 because from the end of the state road to the end of --
20 to Branch Road is probably no more than a quarter of a
21 mile.

22 Q Are you sure about that?

23 A No, estimate.

24 Q So from Cemetery to Branch Road -- yeah, Branch
25 Road, right here, your estimation is how long is that?

CAROL EAGERTON - DIRECT EXAMINATION

1 A Don't know. I'm guessing someplace maybe a
2 quarter and a half a mile.

3 Q All right. When did you put gates at the top and
4 bottom of your property?

5 A I can't give you dates. I haven't gated it -- I
6 don't remember. I put gates at the Branch Road, not at
7 the end, but.

8 Q At the wood line?

9 A Yes, at the wood line.

10 Q That is between the fields and the wood line?

11 A Yes. Now, my property runs down through the
12 woods, but I wanted the gate where I could see it.

13 Q At some point, did you put deer cameras up to
14 film things taking place on your property?

15 A I did.

16 Q What kind of problems have you had with crime
17 since the rocking occurred?

18 A Vehicles running across my hay field. If you
19 look at a map, when you come out of the woods from
20 Branch Road, you can just make a shortcut straight
21 across my hay field where the state road starts.

22 Q And take the curve out, basically?

23 A Yes. I mean, what I call the junk field and the
24 hay field, people were driving pickups or four
25 wheelers, dirt bikes cutting across and doing wheelies

CAROL EAGERTON - DIRECT EXAMINATION

1 in the fields, make deep ruts in the ground. Speeding
2 was the main thing, just going down what they called
3 Hewitt Cemetery Road. This is over -- I would say over
4 three quarters of the vehicles are speeding. I'm sure
5 I've seen them going as fast as 60 miles an hour, and
6 there is a 25 mile and hour speed limit, which I had to
7 negotiate with the county because they insisted it be
8 35. I said that is too fast, I have horse riders on
9 this property.

10 Q That is after the rock went down, the speed limit
11 sign?

12 A Yes -- I think so.

13 Q Do you remember for how many years it's been
14 since you started closing your gates to try to slow
15 this stuff down?

16 A Probably no more than two, three years.

17 Q This started in 2013, and we're in 2016 now. You
18 mean prior to this litigation?

19 A Ch, let me think about that. I believe so.

20 Q The first police reports are in 2013, so can you
21 estimate how long before the police started coming out
22 that you shut the gates?

23 A It wasn't long.

24 Q That was a gate at the top and bottom of the
25 property?

CAROL EAGERTON - DIRECT EXAMINATION

1 A Yes.

2 Q Why did you start doing that?

3 A To try to stop the vandalism and the damage to my
4 property.

5 Q Did you ever give -- scratch that. So then the
6 Plaintiff filed a suit to make you open those gates,
7 and we agreed to open those gates pending this
8 litigation?

9 A That is a question?

10 Q Yes, ma'am.

11 A Yes.

12 Q You agreed to open the gates with an agreement
13 with Mr. McEachin pending the result of this
14 litigation?

15 A Yes.

16 (Defendant's Exhibit 14 marked.)

17 Q (MS. PARHAM) In addition to these others photos,
18 I marked Defendant's 14. Could you identify that as
19 well?

20 A Yes. In the picture where the horses are is the
21 house side of the property looking directly where the
22 hay field is, and we were having a horse show.

23 MR. McEACHIN: No objection.

24 THE COURT: Without objection, Defendant's 14.

25 (Defendant's Exhibit 14 admitted.)

CAROL EAGERTON - DIRECT EXAMINATION

1 Q (MS. PARHAM) When the county laid the rock, and
2 I believe you referred to this in one of the letters
3 -- did it increase the size of the path that cut
4 through your property?

5 A Definitely.

6 Q Originally the path you talked about was big
7 enough for how many cars?

8 A One.

9 Q After they laid the rock in 2004, how big is
10 the --

11 A At least twice as wide.

12 Q Big enough for two cars now?

13 A Yes.

14 Q So, in essence, they doubled the path?

15 A Yes.

16 Q And put rock down in 2004?

17 A Right. Can I mention something else? Another
18 issue early on, after they put the rock down, they were
19 scraping the road like it was a sand clay road,
20 scraping all the rock over and building it up on the
21 other side of the road. Well, I use a riding lawn
22 mower to cut between the pasture line and the road, and
23 I had to stop because of the rock was. I did complain
24 at one point about that issue.

25 Q And you physically, as you mentioned in one of

CAROL EAGERTON - CROSS-EXAMINATION

1 these letters, tried to block the laying of the rock in
2 2004 with your golf cart?

3 A Yes. Yes.

4 MS. PARHAM: Answer any questions by Mr.
5 McEachin.

6 CROSS-EXAMINATION

7 BY MR. McEACHIN:

8 Q Good afternoon.

9 A Beg your pardon?

10 Q Good afternoon?

11 A Good afternoon.

12 Q When you bought these properties, you got a deed
13 for the acreage you purchased?

14 A Yes.

15 Q And that was important to get the deed to the
16 property?

17 A Oh, yeah.

18 Q I mean, you would have to record that deed in the
19 clerk's office to be sure no one else could claim your
20 property?

21 A Correct.

22 Q And the deeds described the land you were
23 getting?

24 A Yes.

25 Q And the plats was describing what was on the

CAROL EAGERTON - CROSS-EXAMINATION

1 land?

2 A Yes.

3 Q And when you got your first deed for the
4 28 acres.....

5 THE COURT: Number 16 I think.

6 MR. McEACHIN: Yes.

7 Q (MR. McEACHIN) I was asking you it is important
8 to record your deed so your ownership of the property
9 is protected?

10 A Sorry, repeat that.

11 Q It is important to you that your deed be recorded
12 to protect your ownership of the property?

13 A Correct.

14 Q And it is also important for the plat to be
15 recorded so the world will know what is on the ground
16 where the property is?

17 A Yes.

18 Q And the deed to you for the 20.9 acres had a plat
19 attached; is that correct?

20 A Yes.

21 Q And this is the plat I'll show you, and it shows
22 the road of your eastern boundary on your 20 acres;
23 isn't that correct?

24 A Yes.

25 Q The deed for the 40 acres also had a plat

CAROL EAGERTON - CROSS-EXAMINATION

1 attached to it?

2 A Correct.

3 Q And that was recorded in the clerk's office?

4 A Correct.

5 Q And that also showed a road on the western
6 boundaries of the 40 acres?

7 A That's correct, but let me see those, please.

8 Q Sure.

9 A If you'll notice, on both of these it says,
10 Center of road, property line. So this piece of
11 property and that piece of property join.

12 Q But the plat shows that there was a road on both
13 plats; isn't that right? Isn't that correct?

14 A Yes.

15 Q And that road didn't just stop on your property
16 either, did it? It went all the way down to Branch
17 Road?

18 A I don't know about that, because I don't have the
19 plats for the continuation of the road.

20 Q But when you bought the property, the footprint
21 of the road showed on yours, and if you continue the
22 footprint, it went all the way to Branch Road, didn't
23 it?

24 A It was a tractor path.

25 Q Is that a yes?

CAROL EAGERTON. - CROSS-EXAMINATION

1 A Yes, it was a tractor path for the sole purpose
2 of bringing farm equipment to work the land I bought.

3 Q When you got the 12.15 acres, there was a plat
4 attached to that as well?

5 A That's correct.

6 Q And that showed a road as well on the northern
7 boundaries of the 12 acres?

8 A Yes.

9 Q And it also showed it as a county maintained
10 road; isn't that correct?

11 A I believe it did.

12 Q So when you got the property for the 12.5 acres,
13 that county maintained dirt road was consistent with
14 the location of the road shown on your two earlier
15 deeds; isn't that correct?

16 A Repeat that.

17 Q When you got the deed for the 12.51 acres with
18 the plat attached, the location and direction of that
19 road, Hewitt Cemetery Road, county maintained, was
20 consistent or would have connected with the road shown
21 on the deed for the 40 acres and the deed for the
22 20 acres?

23 A Yes. That is correct, but these are not showing
24 county maintained. They were not county maintained at
25 that time.

CAROL EAGERTON - CROSS-EXAMINATION

1 Q They were not county maintained in 1968?

2 A No.

3 Q You don't know that, though, do you?

4 A When I bought this and got that plat, if it
5 wasn't shown that they were county maintained there,
6 I'm sure they weren't county maintained in '68.

7 Q But you have no knowledge, do you, of whether or
8 not the county was on this road in 1968? You have no
9 personal knowledge of that, do you?

10 A No. No.

11 Q You weren't out there in 1968?

12 A No, I wasn't.

13 Q You weren't there until 1981?

14 A Correct.

15 Q This road, it would make no sense for the county
16 to maintain 648.49 feet, would it, of county road?

17 A I don't know. I think you would have to ask the
18 county about that.

19 Q Look on this plat for the 12.51 acres, what is
20 the distance from your property line to your property
21 line on the northern boundary; what does the plat show?
22 The northeast boundary up here.

23 A Does that not say southeast?

24 Q That is a compass heading of when the surveyor
25 was running the line. So there is no confusion, the

CAROL EAGERTON - CROSS-EXAMINATION

1 top of the plat, adjacent to the road, what is the
2 distance of your property line?

3 A It says 648.94 feet.

4 Q 648.94 feet in the year of 2000; wouldn't make
5 sense for the county just to be maintaining that, would
6 it?

7 A I can't answer that.

8 Q Using your common sense, would it make sense to
9 you?

10 A It could have been maintained at the time we
11 bought it, because that did not belong to us before
12 that, and I had, you know, would have had no -- I would
13 have no jurisdiction over whether that got maintained
14 or not.

15 Q But you would agree that your 12.51 acres is up
16 here? Is that where it is according to Plaintiffs'
17 Exhibit 7, the field portion adjacent to Willow Creek
18 and Hewitt Cemetery Road near the cemetery?

19 A No. That 12 acres is at the other end, towards
20 Branch Road.

21 Q Here or here? Branch Road is here, you don't go
22 that far, do you?

23 A No. No.

24 Q Up here?

25 A Yeah. I'm saying -- not at the other end, but.

CAROL EAGERTON - CROSS-EXAMINATION

1 Q So it would be the 12.5 acres, looking at
2 Plaintiffs' Exhibit 7, if you are heading from Cato
3 Road past the cemetery, make the big curve, 12.5 acres
4 would be about half way between the big curve and
5 Branch Road?

6 A No. It is further up than that, because a
7 portion where you see my barns and my house, if you
8 come towards Branch Road, a portion of that road
9 belongs to me.

10 Q Down here?

11 A Further down than that. The portion of that --

12 Q If you don't mind, step down.

13 A That belongs to the 20 acres.

14 Q Use a pen and show me where the 12-point --

15 A Probably would have been around here.

16 Q Draw it out for us. On this side of the road?

17 A Yeah, it connects with my 20 acres here.

18 Q If you could put 12.51 near the mark you made.

19 A May I mention something else? The balance of
20 this property, from where my ownership stops all the
21 way to this corner, all the way back this way, and I'm
22 not sure where it stops here, all of this acreage
23 around my property, all the way down to past the
24 cemetery on the back side, I have a lifetime lease on.

25 Q I do need to ask you one more question, and I'm

CAROL EAGERTON - CROSS-EXAMINATION

1 sorry. I couldn't see. You mentioned there were
2 jumping rails, so where are they?

3 A Up here.

4 Q If you are looking at Plaintiffs' Exhibit 7,
5 write "jump" right in here.

6 Is there a fence that runs along the Hewitt
7 Cemetery Road?

8 A There used to be.

9 Q How long ago?

10 A How long ago? I would say approximately five
11 years.

12 Q So the fence was taken down?

13 A Yes. The reason it was put up was because horses
14 have a tendency, if they get the opportunity and they
15 are in a jump area, they will try to run out of that
16 area. So I fenced that to avoid that happening with
17 the children that were riding there. It was kind of a
18 safety issue.

19 Q So the picture of Defendant's 5, at the bottom,
20 that is taken before the hard surface went down on
21 Hewitt Cemetery Road?

22 A Yes -- say that again.

23 Q It would have been taken before the hard surface
24 went down on Hewitt Cemetery Road?

25 A The fence taken down?

CAROL EAGERTON - CROSS-EXAMINATION

1 Q No, ma'am. The photograph, was the photograph
2 taken before the hard surface placed on Hewitt Cemetery
3 Road?

4 A I believe so, yes. Yes, I'm sure it was, because
5 the jumps were no longer there.

6 Q That is pre-2004. So the hard surface was placed
7 in 2004, that photograph would be taken?

8 A Yes. Yes.

9 MR. McEACHIN: Which exhibit number was the
10 mortgage?

11 Q Defendant's 11 is a mortgage from you to
12 Ms. Painter; do you agree with that?

13 A Yes.

14 Q When you received the deed from Ms. Painter,
15 which was -- you received two deeds from her, but when
16 you received the deed from her for the 20 acres, you
17 gave her a mortgage? Do you recall when this mortgage
18 was given? Was it about the same time you bought the
19 20 acres?

20 A Yes, I would say so.

21 Q Did you pay money to James Dennis the Third, Mary
22 Dennis Sexton, and Sarah F. Dennis? Reason I ask is
23 the deed --

24 A I don't recall.

25 Q The deed to you for the 20.9 acres, that is the

CAROL EAGERTON - CROSS-EXAMINATION

1 only land in the deed, and that was in December 1981,
2 December 11, 1981, Plaintiffs' Exhibit No. 16.
3 Ms. Painter signed it, James Dennis the Third signed
4 it, and Marilyn Dennis Sexton signed it and Sarah
5 Dennis signed the deed, but you only gave a mortgage to
6 Willa Mae Painter. Did you pay these other folks?

7 A No, I would assume I paid Willa Mae Painter.

8 Q Okay.

9 A Well, no --

10 Q The deed says \$47,025, and the mortgage says
11 \$22,000.

12 A That can't be right.

13 Q Here is the mortgage.

14 A Apparently the mortgage.....

15 Q It is a little half of what the deed cites for
16 the consideration of the property. That is not a
17 mortgage. That's a distribution buyer's statement.
18 All you have attached to the exhibit is the front page
19 of the mortgage.

20 A It says the amount being financed is 22.

21 Q That's what the mortgage says, and the
22 consideration of the deed is -- you'll have to hand me
23 the deed. \$47,025.

24 A I don't know why.

25 Q But, again --

CAROL EAGERTON - CROSS-EXAMINATION

1 A I'm sure -- my husband handled all of that.

2 Q But it is in your name?

3 A Yeah.

4 Q You would have signed the mortgage?

5 A Yeah.

6 Q There is not a signature page, but you would have
7 signed it, right?

8 A Right.

9 Q You are the responsible party?

10 A Yep.

11 Q And the mortgage referred to the same plat for
12 the 20.9 acres that was in the deed?

13 A Let me see the mortgage again, please. I don't
14 know. I can't explain that. I know the property was
15 paid for.

16 Q But the legal description of the mortgage
17 referred to Ms. Painter refers to the same plat that
18 shows the road?

19 A I would assume so.

20 Q I mean, if you want to compare it, please do, but
21 it is the same legal description.

22 A I don't understand what you are getting at. Are
23 you trying to say --

24 THE COURT: I would like to have the relevance as
25 well. You have a mortgage without a date on it. For

CAROL EAGERTON - CROSS-EXAMINATION

1 all we know, the property was bought in '81, and
2 sometime later they used it as collateral to make a
3 loan to borrow money from Ms. Painter, I mean.

4 MR. McEACHIN: I can ask her that.

5 Q Did you ever borrow money from Ms. Painter other
6 than financing a portion of the purchase price for this
7 property?

8 A No.

9 Q Never went to her for a loan --

10 A No. No. No. No.

11 Q Aside from the issue about the difference in the
12 consideration of the deed and mortgage, the legal
13 description is in the same, in both documents?

14 A They are.

15 Q Ms. Painter in accepting the mortgage, accepted
16 the plat with that road on it, didn't she?

17 A I'm sorry, say it again.

18 Q In taking the mortgage back from you, the legal
19 description is the same legal description that is in
20 the deed in Plaintiffs' 16?

21 A Uh-huh.

22 Q Ms. Painter accepts this mortgage back from you?

23 A Uh-huh.

24 Q She accepted the reference in this plat that
25 showed the road in this mortgage, did she not?

CAROL EAGERTON - CROSS-EXAMINATION

1 A The plat also says the property line is in the
2 center of the road.

3 Q Is also shows a road?

4 A I would assume.

5 Q You had a series of letters you introduced. The
6 first one is a letter you wrote in Tom Robinson in
7 November of 2011; is that correct?

8 A Correct.

9 Q Defendant's 12?

10 A Uh-huh.

11 Q And in November of 2011, you had a concern about
12 the road being backed with gravel. You complained
13 about drug exchanges, people riding on your property,
14 speeding; is that right?

15 A That's right.

16 Q In the letter, did you not acknowledge it was a
17 county road?

18 A No.

19 Q In the letter, didn't you state additionally
20 because of the amount of abusive traffic on this road,
21 I see no hope for the county to be able to maintain its
22 property. You acknowledge in the letter it was a
23 county road, last sentence of the page?

24 A (Witness examines document.) the letter says,
25 Additionally, because of the amount of the abusive

CAROL EAGERTON - CROSS-EXAMINATION

1 traffic on this road, I see no hope of the county being
2 able to maintain it properly, not "its property."

3 Q It properly, that was an acknowledgment that the
4 county was maintaining the road, isn't it?

5 A That was what year?

6 Q 2011, November of 2011?

7 A Yes. Yes, you are right.

8 Q County was maintaining the road, right?

9 A Uh-huh.

10 Q And you were writing to the county administrator
11 asking that he do something about a county road; isn't
12 that correct?

13 A You are probably right, because at the time --
14 because the county was maintaining the road or doing
15 something on the road -- I wouldn't call it
16 maintaining -- I was probably assuming that it was, and
17 at some point in time, I pulled out my plat and deeds,
18 and this is because after I wrote my letter to Senator
19 Hugh Leatherman sent me a letter back saying he had
20 gone to the county and talked with --

21 MR. McEACHIN: I object, not responsive.

22 MS. PARHAM: It is responsive. I ask that she be
23 allowed to finish.

24 MR. McEACHIN: I didn't ask her about --

25 THE COURT: Not hearsay. She can't testify as to

CAROL EAGERTON - CROSS-EXAMINATION

1 what someone else told her.

2 A Sorry.

3 THE COURT: You can -- in trying to respond to
4 his question, you can't say what some third party told
5 you, you can't say what someone else told you.

6 THE WITNESS: You mean Senator Leatherman?

7 THE COURT: Correct.

8 THE WITNESS: I have the letter from Senator --

9 THE COURT: Well, I don't know if you intend to
10 submit that or not, but at this point it is hearsay.
11 You can't testify as to what Senator Leatherman told
12 you.

13 THE WITNESS: Okay.

14 A What is your question?

15 Q I forgot. Moving on. You wrote Mr. Robinson on
16 May 30, 2012, and that is Defendant's 13?

17 A Uh-huh.

18 THE COURT: That is 2012?

19 MR. McEACHIN: Yes, sir, 2012, Defendant's 13.

20 Q In that letter, you asked the county to close the
21 road; isn't that correct?

22 A Uh-huh.

23 Q You acknowledge that it was a county road and you
24 wanted the county to close its road; isn't that
25 correct?

CAROL EAGERTON - CROSS-EXAMINATION

1 A Not exactly -- actually, yes, you are right,
2 because at that time -- until I checked my plats and my
3 deeds, I wasn't fully aware that the road actually was
4 on my property.

5 Q But the county -- you knew the county was
6 maintaining the road?

7 A Uh-huh.

8 Q And you wrote the county, because it was your
9 understanding that it was a county road?

10 A No, it was my understanding that the county was
11 messing up my road.

12 Q On May --

13 A Messing up the road.

14 Q On May 20, 2012, you asked the county to close
15 the road?

16 A Yes.

17 Q And that was the general consensus of people who
18 lived in this part of Florence County that people on
19 Hewitt Cemetery is a county road, isn't that correct?

20 A I have no idea what the general consensuses was.

21 Q At least you thought that?

22 A I may have at the time.

23 Q When the pipe was put in on Hewitt Cemetery Road,
24 because of the hay field flooding -- let's do it this
25 way. Can you show me where the hay field at issue was

CAROL EAGERTON - CROSS-EXAMINATION

1 located? There you go, how about that, does that help?

2 A Yeah.

3 Q If you would, put "hay field." Here is Cato Road
4 there. This is your house, and there is the cemetery.

5 A Okay.

6 Q Okay?

7 A The pipe is right along here.

8 Q Could you put "pipe" right in that open space so
9 we can see it?

10 A This whole section of the hay field was flooded,
11 because of what they did with the pipe.

12 Q And you didn't buy the pipe?

13 A Sorry?

14 Q You did not purchase the pipe?

15 A No.

16 Q The county was responsible for putting the pipe
17 in?

18 A Correct.

19 Q And you didn't give an easement or right-of-way
20 or any written permission for the county to put the
21 pipe under the road, did you?

22 A Repeat that.

23 Q You didn't give an easement or right-of-way or
24 any written document to the county for permission to
25 put the pipe beneath the road?

CAROL EAGERTON - CROSS-EXAMINATION

1 A No.

2 Q And the county -- you agree that public dollars
3 cannot be used on private property?

4 A They did it because they caused the problem, and
5 they knew that.

6 Q But they put it beneath the road?

7 A Yes.

8 Q You did not give them, nor did you request, any
9 permission to put the pipe beneath the road?

10 A No.

11 Q At the time the pipe was put in, you considered
12 Hewitt Cemetery Road a public county road?

13 A I wouldn't say that -- well, maybe, because like
14 I said, I did not realize until some time later when I
15 pulled out my plats and deeds that the road is on my
16 property.

17 Q But the pipe was put in before either the
18 Defendant's 12 or Defendant's 13 were written; isn't
19 that correct? It is in before November of 2011, the
20 pipe?

21 A Okay.

22 Q I'm asking you.

23 A I'm not positive. I'm a little confused,
24 frankly.

25 Q When the pipe was put in, you were still married

CAROL EAGERTON - CROSS-EXAMINATION

1 to Ms. Fowler?

2 A Yes.

3 Q And we can agree that the deed for the 12.51
4 acres from Mr. Fowler to you was part of your divorce?

5 A Uh-huh.

6 Q And that deed was signed in October of 2002; do
7 you agree with that?

8 A What is the date that the pipe was put in?

9 Q You testified earlier it was while you were still
10 married to Mr. Fowler?

11 A Okay. That is probably not -- probably a
12 mistake. I probably should not have said that, because
13 obviously this property was deeded to me when we
14 divorced, so that was done after that.

15 Q But you didn't contact the county about putting
16 the pipe in, Mr. Fowler did; isn't that correct?

17 A It seems like we both did, but it is hard for me
18 to answer.

19 Q After 2002, you and Mr. Fowler were not together
20 anymore, right?

21 A Correct, according to this.

22 Q You don't dispute that Plaintiffs' 17 was a deed
23 that was part of the equitable division in your divorce
24 action?

25 A Yes. Yes.

CAROL EAGERTON - CROSS-EXAMINATION

1 Q So 2002 would be ten years before these letters
2 went to Mr. Robinson with the county, right?

3 A Yes.

4 Q So when the pipe was put in, you considered this
5 a county road; isn't that true?

6 A No.

7 Q In 2012 you considered Hewitt Cemetery Road a
8 county road.

9 A Why do you say that?

10 Q That was your testimony.

11 A Okay. You are right. You are right. I didn't
12 know in writing that it was on my property.

13 Q As a matter of fact, there was a process with the
14 county to close a county road; isn't that true?

15 A I don't know that for a fact, because I have --

16 Q Let me rephrase the question. There is a process
17 or method by which you can request the county to close
18 a county road; isn't that true?

19 A Not according to what the county wrote back to me
20 and said, and I don't think that letter is here. It
21 may be. Because they told me -- and I can produce
22 it -- but not at the moment. They told me that there
23 was no procedures to close county roads.

24 Q Did you go to Mr. Gregg's office and fill out an
25 application asking for Hewitt Cemetery Road to be

CAROL EAGERTON - CROSS-EXAMINATION

1 closed?

2 A Yes. I did.

3 Q You did. So there was a procedure. You could go
4 to the Director of Public Works with Florence County
5 and fill out an application and ask that a public road
6 be closed; isn't that correct?

7 A I can't remember the time frame.

8 Q Right. But you did?

9 A Well, I may have, but when I was writing to the
10 county administrator, at some point -- I think it was
11 after Kent Cottle became my county councilman --
12 yeah -- that they said there was no procedures in place
13 to close county roads, and so I would have to pay, I
14 forget --

15 Q \$25 to file an application and have a survey?

16 A No. They said I would have to pay some amount of
17 money to get this done.

18 Q And they told you that members of the public,
19 they would have to be notified of your request to close
20 the road; isn't that correct?

21 A No, they didn't tell me that.

22 Q And if anyone objected, they couldn't close the
23 road; isn't that correct?

24 A Oh, you are right, because they actually sent me
25 a letter back and said they couldn't close the road

CAROL EAGERTON - CROSS-EXAMINATION

1 because Michael Woods objected.

2 Q When you filed the application with the county to
3 close the road, you acknowledged it was a county road
4 and you asked the county to close it?

5 A Because I did not realize it was not a county
6 road.

7 Q You put up deer cameras?

8 A Uh-huh.

9 Q We haven't seen those pictures?

10 A I have dozens of them.

11 Q They show cars going up and down Hewitt Cemetery
12 Road?

13 A Uh-huh.

14 Q Not your car?

15 A No, not my car.

16 Q Not your daughter's car?

17 A No.

18 Q Not Ms. Anderson's car.

19 A I don't know.

20 Q Not Mr. Griffin's car?

21 A Mr. Griffin? Garrison?

22 Q Garrison, not his car?

23 A I'm not sure if they show those cars or not.

24 Q But it showed plenty of cars that you didn't know
25 who they belonged to?

CAROL EAGERTON - CROSS-EXAMINATION

1 A Some of them I knew who they belonged to.

2 Q And some you didn't?

3 A Correct.

4 Q The 25-mile an hour speed limit on Hewitt
5 Cemetery Road, at one point there was a concern it
6 would be 35 miles an hour?

7 A It is the sign they put up, 35 miles.

8 Q "They," being the county?

9 A Yes.

10 Q And you went to the county about the speed limit
11 on the road?

12 A They were on my property and I said I really
13 would like the speed limit less because of the horses.

14 Q So you asked for a 25-mile-an-hour speed limit?

15 A Yes.

16 Q You didn't say don't put any speed limit, this is
17 my land, not yours; you asked for a 25-mile-per-hour
18 speed limit?

19 A Correct.

20 Q As I recall your testimony, when you first put
21 the gates up, you testified it wasn't long before the
22 police came?

23 A That's correct.

24 Q And so the police came in July of 2013, if I have
25 the date right?

CAROL EAGERTON - CROSS-EXAMINATION

1 A I'm not sure about that.

2 Q Whatever the testimony was, when the police came,
3 the gate went up shortly before then?

4 A Sorry?

5 Q Whatever date was testified when the police came,
6 the gates went up shortly before that?

7 A Yes.

8 Q And it was a sheriff's officer, wasn't it?

9 A Yes.

10 Q And they responded and said you can't close the
11 road?

12 A Correct.

13 Q These are a series of photographs you took, I
14 guess. You see patches on the road since the hard
15 surface was put down, haven't you?

16 A Uh-huh.

17 Q And the county has done that?

18 A Uh-huh.

19 Q Are these photos you took of the road?

20 A Yes, sir. Yes, they are. Yes. Yes.

21 (Plaintiffs' Exhibit 22 marked.)

22 MR. McEACHIN: Do you have and objection?

23 THE COURT: Is that without objection? Any
24 objection?

25 MS. PARHAM: No.

CAROL EAGERTON - REDIRECT EXAMINATION

1 THE COURT: Plaintiffs' 22 without objection.

2 (Plaintiffs' Exhibit 22 admitted.)

3 Q You don't dispute that the county was out working
4 on Hewitt Cemetery Road during the period of time shown
5 in these maintenance records?

6 A No, I don't dispute it.

7 MR. McEACHIN: That is all I have.

8 THE COURT: Redirect?

9 REDIRECT-EXAMINATION

10 BY MS. PARHAM:

11 Q When you say you don't dispute those maintenance
12 records, when those records say Heyward Hewitt Road and
13 some say Hewitt Cemetery Road, I take it you don't
14 dispute Hewitt Cemetery, but when they say they are
15 mowing Heyward Hewitt Road, a totally different road,
16 do you know if they are mowing Hewitt Cemetery or
17 Heyward Hewitt, or both?

18 MR. McEACHIN: Object to the characterizations of
19 a totally different road. Mr. Gregg testified it was
20 one in the same.

21 MS. PARHAM: There has been no testimony it was
22 one in the same. They just testified that when they
23 did Heyward Hewitt, they might have done Hewitt
24 Cemetery, they just never separated, that they just
25 kept sloppy records.

CAROL EAGERTON - REDIRECT EXAMINATION

1 MR. McEACHIN: My recollection of the testimony
2 is that when the earlier records were kept, Heyward
3 Hewitt Road and Hewitt Cemetery Road were the same
4 road.

5 THE COURT: I mean, I'll go on my recollection, I
6 guess.

7 MS. PARHUM: My recollection is that Heyward
8 Hewitt Road is now Poor Farm, slash, Branch Road, and
9 when I asked them why the records -- earlier records
10 have Heyward Hewitt Road being mowed, but not Hewitt
11 Cemetery, they said, oh, well, we could have just put
12 Heyward Hewitt and not included the other because the
13 records were sloppy.

14 THE COURT: I think their testimony was we did
15 the whole thing, but only called it Heyward Hewitt
16 Road, we didn't call it -- they didn't designate they
17 were two different roads.

18 MS. PARHAM: Right, and in later records they do.

19 THE COURT: Right. Sure.

20 Q (MS. PARHAM) At any rate, when you bought this
21 property in 1981, were you under any impression that
22 this was any kind of a county road?

23 A No.

24 Q Were you under the impression that it was a
25 county maintained road?

CAROL EAGERTON - REDIRECT EXAMINATION

1 A No.

2 Q 1982, same questions, were you under any
3 impression that it was a county road or county
4 maintained road?

5 A No.

6 Q Throughout the 1980s were you under any
7 impression of that?

8 A No.

9 Q And at some point in the 1990s, you don't
10 remember what day, but you came home from work and saw
11 sand laid on your road?

12 A Correct.

13 Q And you knew that the county did that?

14 A Correct.

15 Q But you didn't know if this is a county road or
16 what is going on?

17 MR. McEACHIN: Object to leading.

18 A Exactly.

19 THE COURT: Sustained.

20 Q (MS. PARHAM) Then in 2004 you see these trucks
21 coming again, and what did you do?

22 A I went and tried to stop the procedure.

23 Q Physically, in a golf cart?

24 A Yes.

25 Q And verbally with your words?

CAROL EAGERTON - REDIRECT EXAMINATION

1 A Yes.

2 Q Were you successful?

3 A No.

4 Q So county lays rock on what you think is yours?

5 A Correct.

6 Q And Mr. McEachin all these past few days says,
7 well, the county can't do things on private property,
8 you have no control what the county chooses to do or
9 not do, correct?

10 A That's correct.

11 MR. McEACHIN: Object to leading. She's
12 testifying and leading.

13 THE COURT: Sustained.

14 Q (MS. PARHAM) Did you ask them to lay this rock?

15 A No. No.

16 Q Did anyone call and ask you to lay rock?

17 A No.

18 Q When they laid that rock, did you think it was
19 your road and not their road?

20 A Yes, of course.

21 Q So, then, they lay this rock, and what did you do
22 next?

23 A I turned around and went to the house, because I
24 didn't know what to do.

25 Q At some point when Mr. McEachin was asking you on

CAROL EAGERTON - REDIRECT EXAMINATION

1 cross that when you write these letters, are you
2 wondering is it a county road and do I need to do
3 something else?

4 MR. McEACHIN: Your Honor, she's leading.

5 Q I'll rephrase. When he asked you whether you
6 thought it was the county road or not, in 2011, when
7 you wrote the first letter, what did you mean by your
8 response to him, Mr. McEachin?

9 A What was my response?

10 Q That you said -- you tell me. In 2011, when you
11 wrote this letter, at that point did you think this was
12 a county road, or not?

13 A No. The whole point being I couldn't get
14 anything done. I didn't want the sand, clay or rock on
15 my property, and the only way -- I thought the only way
16 I could get it stopped was to go to the county
17 administrator and request that they stop it. It wasn't
18 a matter if it was a county road or belonged to me, it
19 was ruining my property and damaging the horses.

20 Q Before you wrote these letters, did you make
21 phone calls that are not -- you know, obviously not
22 documented because they are phone calls?

23 A To county people?

24 Q Yes. I believe you testified that someone was
25 sick or being replaced?

CAROL EAGERTON - REDIRECT EXAMINATION

1 A Richard Starks, he was the county administrator
2 at the time.

3 Q And so you believe you made phone calls?

4 A I did.

5 Q And do you know what time frame that was in?

6 A Exactly? If I could look at the date on the
7 letter to Richard Starks.

8 Q I don't see a letter to Richard Starks.

9 THE COURT: There was a letter, 2011.

10 A I thought I had a letter to Richard Starks.

11 MS. PARHAM: Let me look through the ones you
12 brought.

13 Q (MS. PARHAM) From the time you bought this
14 property until today's date, have your taxes ever been
15 any different?

16 A I believe so.

17 Q Are you paying taxes on the same amount of
18 acreage today --

19 A Yes. Yes.

20 Q -- when you acquired all of the acreage?

21 A Yes.

22 Q On any of your taxes, did you ever see any kind
23 of credit or deduction for any part of the acreage
24 based on it being the county's and not yours?

25 A No.

CAROL EAGERTON - REDIRECT EXAMINATION

1 Q So you have been paying taxes on the full
2 acreage?

3 A Yes.

4 Q And received no credits?

5 A No. No credit. May I say something more?
6 Originally, the three pieces of properties had three
7 different property numbers, and I can't remember the
8 date, I think you probably have the information
9 where -- when the appraisal was made and all of the
10 property was changed to be included under one property,
11 which indicates to me that there was no break in the
12 properties, in the three different parcels.

13 Q So they were put under one property number?

14 A Yes.

15 Q Which would encompass the whole amount of land
16 that we're talking about, even the piece of land that
17 the road runs through?

18 A Correct. Correct.

19 Q I don't see the letter, but it is your
20 understanding you wrote or called Mr. Starks?

21 A I'm pretty sure there is a letter to Mr. Starks.

22 Q Somewhere in your records?

23 A Yes.

24 Q And did you call his office?

25 A I called his office after I learned that he was

CAROL EAGERTON - RECROSS-EXAMINATION

1 retiring or -- I don't know the circumstances, but I
2 understand he was ill and would be retiring, that is
3 when I called the county. I spoke with Connie
4 Hazelton. I asked her, I said, why don't we put this
5 on hold until there is a new county administrator in
6 place. There was a period of time -- it was a pretty
7 good while, I would say a few months, and then I
8 learned that they had brought Thomas Robinson in. I
9 think I'm correct on that.

10 Q To this day, do you believe your road is a county
11 road?

12 A No. Absolutely not.

13 MS. PARHAM: That is all I have.

14 RECROSS-EXAMINATION

15 BY MR. McEACHIN:

16 Q On the combined tax notice, you don't know what
17 the combined acreage is?

18 A Yes, 77 acres. It states 77 acres.

19 Q Tax notice shows 77 acres?

20 A Yes.

21 Q But if you total up the acres on your deeds, it
22 is 74.11, if my math is right?

23 A So that would have to be the tax assessor's
24 error.

25 Q So you don't know the exact acres you are being

CAROL EAGERTON - RE-CROSS-EXAMINATION

1 taxed?

2 A No, I don't. I'm being taxed on 77 acres, that
3 is what my receipt shows.

4 Q You were asked a moment ago, you always
5 considered Hewitt Cemetery Road to be your road, but
6 did you not on cross-examination acknowledge that at
7 least as of November 2011 and in May 2012, you
8 considered it a public road?

9 A No.

10 Q When you wrote those letters?

11 A No. No. No. I never considered it a public
12 road. I was seeking help to get the road closed. I
13 didn't say I considered it a public road.

14 Q That is not your earlier testimony.

15 A Sorry?

16 Q That was not your earlier testimony on
17 cross-examination.

18 A What was my testimony?

19 Q In 2011 and 2012, and prior to that date, you
20 considered Hewitt Cemetery Road a public road; wasn't
21 that your testimony?

22 A It could have been, because at that time I was
23 not aware that the road was actually on my property.

24 Q Your testimony was that you hadn't looked at the
25 plats?

CAROL EAGERTON - REDIRECT EXAMINATION

1 A I had not, no.

2 Q But one of the plats show Hewitt Cemetery Road,
3 county maintained; that is a public road, right?

4 A The property line is in the center of the road.

5 Q But one of the plats you looked at to convince
6 yourself that it was not a public road, after these
7 letters were sent, one of those show it as a public
8 road; isn't that correct?

9 A That is correct. May I add something, though?
10 That date, Mr. McEachin --

11 MR. McEACHIN: I think I'm through with my
12 question.

13 THE COURT: Ms. Parham, is going to ask you
14 questions.

15 REDIRECT-EXAMINATION

16 BY MS. PARHAM:

17 Q What would you like to add?

18 MR. McEACHIN: I object.

19 THE COURT: Sustained.

20 (Defendant's Exhibit 15 marked.)

21 MR. McEACHIN: Without objection.

22 THE COURT: Without objection, Defendant's 15.

23 (Defendant's Exhibit 15 admitted.)

24 Q (MS. PARHAM) Can you identify these records?

25 A Yes.

CAROL EAGERTON - REDIRECT EXAMINATION

1 Q What are they?

2 A It is a reassessment.

3 Q Look through the whole stack. Are some of them
4 your tax receipts you brought to the office?

5 A Yes. Yes, tax receipts.

6 Q If you will look at those. On the top page of
7 2004, what is the total acreage?

8 A 20.

9 Q Each parcel has as different sheet, so the first
10 page is what?

11 A 20 acres.

12 Q And the second page for 2004 is?

13 A 43 acres and 12 acres.

14 Q That was in 2004?

15 A You are asking for total acreage?

16 Q Yes, ma'am.

17 A 77.

18 Q Yes, ma'am. Attached to that three other pages,
19 2004, do you know why in 2004 it increased your acreage
20 from 75 to 77?

21 A I don't.

22 Q Since that time, you have been paying for the
23 full 77 acres?

24 A Yes.

25 Q And you don't know why they increased the acreage

CAROL EAGERTON - RECROSS-EXAMINATION

1 amount?

2 A No. To be honest, I didn't actually add up all
3 of the old tax records to see that they did not add up
4 to 77. I may have questioned it at the time had I done
5 that.

6 MS. PARHAM: That's all I have.

7 RECROSS-EXAMINATION

8 BY MR. McEACHIN:

9 Q There is not a recent survey of all of your
10 property, is there?

11 A No.

12 Q And you would agree with me that as technology
13 improves, the ability to measure distance gets better
14 and better?

15 A Probably.

16 Q And if you had a current survey, you may have
17 more than 77 acres; you agree that?

18 A Possibly. Or less.

19 MR. McEACHIN: That is all I have.

20 THE COURT: Thank you very much, ma'am. You may
21 step down.

22 MS. PARHAM: I remember when we talked about
23 taxes that Mr. Newsome was supposed to be back up here
24 at 9:30 for me. Yesterday he was released by the
25 plaintiff. I talked to him in the hallway and he was

JACK NEWSOME - DIRECT EXAMINATION

1 going to be up here at 9:30. I completely forgot
2 until we started talking about this tax issue. If I
3 could have a break and call downstairs and see if he
4 can come up here?

5 THE COURT: We'll take a few minutes.

6 (A recess was taken.)

7 (JACK NEWSOME, having been duly sworn,
8 testified as follows:) witnesses witness jack knew sum

9 DIRECT-EXAMINATION

10 BY MS. PARHAM:

11 Q Where do you work?

12 A Here for the tax assessor.

13 Q How long have you done that?

14 A Here in Florence since '08.

15 Q Is your role as tax assessor, what do you do for
16 the county?

17 A Our main thing is to discover property, put
18 property on for taxing purposes.

19 Q All right. Yesterday when you were here at the
20 courtroom, did I ask you to go down and research a few
21 issues regarding Ms. Eagerton's property?

22 A Right.

23 Q And did you do that in the interim since we spoke
24 with you yesterday?

25 A I did.

JACK NEWSOME - DIRECT EXAMINATION

1 Q Did you make a determination of whether she is
2 paying taxes on the entire land mass, entire amount of
3 her property?

4 A As far as we're concerned, she's paying taxes on
5 the whole thing.

6 Q Including what the county alleges to be their
7 road, Hewitt Cemetery Road?

8 A We don't have anything to -- you know, we don't
9 have any documentation to say that we should take it
10 out, so, yes, we tax her for everything, even including
11 the road.

12 Q And you've done that since inception?

13 A Exactly.

14 Q And as far as the county tax assessor's office
15 goes, is it your belief that that land belongs to
16 Ms. Eagerton?

17 A Yes, ma'am.

18 Q And you don't have anything to prove otherwise
19 from Florence County?

20 A Not really. That is a legal question.

21 Q Right. But she's never been credited for that
22 property or anything?

23 A No.

24 Q At some point, were her pieces or parcels
25 combined into one group rather than three?

JACK NEWSOME - CROSS-EXAMINATION

1 A I think it was in '04.

2 Q Do you have any idea why in '04 the acreage
3 amount changed from like 75 acres to 77 acres?

4 A No, I don't.

5 Q But she now pays since 2004 one entire unit?

6 A Right.

7 Q And that remained the same since she owned the
8 property?

9 A Right..

10 MS. PARHAM: That is all I have.

11 CROSS-EXAMINATION

12 BY MR. McEACHIN:

13 Q If I own a parcel of land and Mr. Gregg has a
14 right-of-way or easement across my land to reach his
15 land, you are still taxing me for my total acreage?

16 A Right.

17 Q And if there is a -- Cato Road, for instance, if
18 the property line for the property owners on either
19 side of Cato Road go to the center line of Cato Road,
20 you are still taxing for the total acreage; is that
21 correct?

22 A Exactly.

23 Q Even though that is a public road?

24 A Exactly.

25 MR. McEACHIN: That is all I have.

ARTHUR GREGG - REPLY TESTIMONY - DIRECT EXAMINATION

1 THE COURT: Anything further?

2 MS. PARHAM: Defense rests.

3 MR. McEACHIN: I have reply testimony. I call
4 Mr. Gregg.

5 THE COURT: You are still under oath.

6 (ARTHUR GREGG, having already been duly sworn,
7 continues to testify as follows:)

8 DIRECT-EXAMINATION

9 BY MR. McEACHIN:

10 Q Is Florence County recently under a capital
11 project of sales tax and done anything with dirt roads,
12 county dirt roads?

13 A Yes, sir.

14 Q What is that?

15 A They have rocked a lot of them. They have paved
16 a lot of them.

17 Q Now, when the county rocks or paves a road, what
18 is the footprint -- what does the footprint cover for
19 the rocking or paving?

20 A Exactly what the right-of-way was before, exactly
21 where the motor grader blade left and right.

22 Q When Hewitt Cemetery Road -- and we've used
23 different terminology, but I'll call it hard surfaced,
24 what was done in relation to the existing roadbed, dirt
25 roadbed compared to the hard surface road bed when it

ARTHUR GREGG - REPLY TESTIMONY - DIRECT EXAMINATION

1 was put down?

2 A The county councilmen figured on the length and
3 exact width of what's there.

4 Q Prior to the hard surface going down?

5 A Yes, sir.

6 Q Is that how -- once the hard surface was put
7 down, was there any variance between that hard surface
8 and the existing footprint of the dirt road?

9 A No, sir.

10 Q Now, does the county has a procedure for closing
11 a county road?

12 A Yes, sir. We do now, yes, sir.

13 Q What is that procedure?

14 A Ordinance passed by county council where the
15 person requesting the road be closed fills it out and
16 supplies certain documentation and requirements.

17 Q Did Ms. Eagerton do that?

18 A Yes, sir, she did.

19 Q What, if anything, was done regarding her
20 application to close Hewitt Cemetery Road, for the
21 county to close Hewitt Cemetery Road?

22 A Started normal procedures as far as pulling tax
23 maps and property owners. At the same time, I was
24 getting calls from Mr. Hewitt and Mr. Woods objecting
25 to it. I went through the procedure, and explained

ARTHUR GREGG - REPLY TESTIMONY - DIRECT EXAMINATION

1 that to her, that we had other concerns being that we
2 spent 20-some thousand dollars on improving the road,
3 it would affect property owners who were objecting, and
4 if I remember right, the last sentence in that letter
5 was until these concerns are resolved, and I never
6 heard anything after that.

7 Q So did the county close the road?

8 A No, sir. Let me reiterate. It couldn't even go
9 before county council under those circumstances.

10 Q How many miles of road does the county have?

11 A Approximately 500.

12 Q And of those 500 miles, how many of those roads
13 have deeded right-of-way to the county?

14 A We're talking about unimproved roads?

15 Q Dirt roads out in the county or paved roads of
16 the county.

17 A In all of my years, I can only think of one that
18 resulted from a lawsuit on the Whip Wheel Road, and it
19 is approximately 5-, 600 feet where a gentleman claimed
20 we destroyed two rows of beans. Part of the judgment
21 by the judge is that he would deed section to Florence
22 County.

23 Q Other than that one section, to your knowledge,
24 is there any deeds, written right-of-ways for the roads
25 in Florence County?

ARTHUR GREGG - REPLY TESTIMONY - CROSS-EXAMINATION

1 A Not on unimproved roads.

2 Q Unimproved roads, outside of subdivisions?

3 A Right. Yes.

4 CROSS-EXAMINATION

5 BY MS. PARHAM:

6 Q Were you there when the county was rocked in
7 2004?

8 A No, ma'am.

9 Q You haven't --

10 A I was with the county, but not on-site.

11 Q You don't have the measurements of the width of
12 the road when it was a dirt road, and the width of the
13 road when it was a paved road on your county record
14 books, do you?

15 A Oh, yeah.

16 Q You have the measurements where you measured?

17 A Yes.

18 Q Where are those?

19 A Public Works. I mean, that has been quite
20 awhile. You are talking about the estimate or the
21 records?

22 Q Measuring from the left tire mark to the right
23 tire mark of the dirt road in those pictures, anyone
24 ever measure that?

25 A Yeah. We had to do the assessment to know that.

ARTHUR GREGG - REPLY TESTIMONY - CROSS-EXAMINATION

1 Yes, ma'am. Can I find that document? I can't answer
2 that.

3 Q Never been provided to the defense?

4 A No.

5 Q How do you explain all the of the witnesses'
6 testimony that the paved road is wide enough for two
7 cars, and the dirt road was wide enough for one car,
8 and that is what it looks like in photographs as well?

9 A I can't explain that. I traveled that road, and
10 I had no problem facing a car.

11 Q On a dirt road?

12 A On Hewitt Cemetery Road.

13 Q When it was a dirt road?

14 A Yeah.

15 Q There is only lines for two wheels in the
16 pictures.

17 A I don't know about the pictures, ma'am. I never
18 did see a shot of the road down the road.

19 Q Let's take a look at it then. While I'm looking
20 for this, you don't have any evidence to show that
21 Florence County --

22 THE COURT: There were some pictures you started
23 flipping through.

24 Q (MS. PARHAM) -- Florence County in any way
25 participated in the creating of this road, this

ARTHUR GREGG - REPLY TESTIMONY - CROSS-EXAMINATION

1 tractor path?

2 A I certain don't, no, ma'am. The only thing I was
3 able to testify to was it somewhere between the time
4 period of July '72 and '73.

5 Q But there is no records of that?

6 A No records back then, no, ma'am. That was a
7 chain gang back then.

8 Q No records of that at all. And, in fact, the
9 records that you provided from 1981 until 1990, you
10 only had 16 records of plows, and all of them say
11 Heyward Hewitt Road?

12 A Right.

13 Q So you only have --

14 A And I was lucky to even have those, because the
15 archives told us it was destroyed.

16 Q It is unusual that if archives were destroyed,
17 that you would have a representative sample from the
18 years.

19 A I explained that. Part of it was destroyed, part
20 was ruined in a flood, and the rest were on high racks.
21 So we pulled all of the boxes out and spent time to go
22 through all the old records books and pulled what we
23 could find.

24 Q And in your records provided here, there is, I
25 believe -- between like 1983 and 1990, there is an

ARTHUR GREGG - REPLY TESTIMONY - CROSS-EXAMINATION

1 eight-year period where there is only record of one
2 plow?

3 A Yes.

4 Q And it is consistent with Ms. Eagerton's
5 testimony that she never saw anyone out there?

6 A Can't respond to that.

7 Q In Defense 3 and 4, are you suggesting to me that
8 you can somehow fit two cars on that road?

9 A I never seen it like that.

10 Q You've never seen it look like that?

11 A No, sir.

12 Q Even though all of these witnesses testified that
13 is what it looked like?

14 A No, sure have not.

15 Q So you believe instead of looking like this,
16 there was a dirt road wide enough for two cars?

17 A I would say I would have plowed it with a modern
18 motor grader, 12-foot blade.

19 Q You would agree with me that when Ms. Eagerton
20 bought it, in '81, from '81 until now, she's owned it?

21 A Yeah, that seems to be.....

22 Q And seems to be the case that it was a dirt road
23 with two lanes and grass in the middle until Florence
24 County decided to rock it or put clay first and then
25 rock?

ARTHUR GREGG - REPLY TESTIMONY - CROSS-EXAMINATION

1 A I don't agree with that at all.

2 Q Speaking of the clay, obviously from listening to
3 Ms. Eagerton, there was clay put down before the rock;
4 do you know how far before the rock that clay was put
5 down?

6 A There seems to be some misunderstanding with
7 that. Jerry Allen testified that the pipe that has
8 been continuously mentioned, he put in, and that was
9 prior to '89, I have no knowledge of that.

10 Q I'm not talking about pipe, sir.

11 A Ms. Eagerton said that the field was flooded
12 because the county added sand clay.

13 Q Right.

14 A And the pipe was requested.

15 Q Right.

16 A So why didn't the two coordinate?

17 Q Right. Do you have a date when the clay was put
18 down?

19 A Prior to 1989. Jerry Allen was working, and he
20 testified to that yesterday.

21 Q Do you keep records of that?

22 A Not prior to '89, no.

23 Q Do you have any records of when the sand clay was
24 laid or when the pipe was put in?

25 A Before 1989.

ARTHUR GREGG - REPLY TESTIMONY - REDIRECT EXAMINATION

1 Q We're not talking about the water pipe, we're
2 talking about the pipe because of the flooding of the
3 field.

4 A We're talking about what Jerry Allen said, he
5 thought it was metal corrugated pipe.

6 Q I remember Mr. Allen's testimony, and he is one
7 of your employees, correct?

8 A Yes, ma'am.

9 Q But based on these records -- and it is
10 Plaintiffs' Exhibit 19 is what I'm referring to --
11 Plaintiffs' Exhibit 19, from 1981 to 1983, there is a
12 representative sample, doesn't look like anything is
13 missing, it has records of 16 plows on Heyward Hewitt,
14 and not Hewitt Cemetery Road. Let's assume that what
15 you say is that included Hewitt Cemetery Road, but
16 there is a visible gap between 9 of '83 and 8 of '90, a
17 seven-year gap, there is only record of one plow on
18 April 14, 1988. So in that period of '83 to '90, there
19 are records of one plow, but your justification is that
20 they must have been lost in the flood?

21 A They were.

22 REDIRECT-EXAMINATION

23 BY MR. McEACHIN:

24 Q Plowing the road, it was being plowed in -- being
25 plowed on a schedule; is that correct?

ARTHUR GREGG - REPLY TESTIMONY - REDIRECT EXAMINATION

1 A Yes.

2 Q And you converted to computer records to keep up
3 with the plowing?

4 A 1999.

5 Q What was the difference in the schedule pre-1999
6 and post-1999 in terms of the plowing schedule?

7 A Number of times per month. It should have been
8 close to the same. When you go back to Albert Hamm's
9 time, I can't testify to that.

10 Q But Albert Hamm's time was, when? Pre-1972?

11 A Well, Albert was there considerably before '72,
12 but he went on right to when Jerry Allen took over,
13 which was in the '80s.

14 Q She said there was only one record between 1983
15 and 1990 of Hewitt Cemetery being plowed?

16 A I know think that is what she said, but I can't
17 verify that.

18 Q If you look at what we have, I see a good many in
19 '98, good many in '97, good many in '95. The documents
20 contained in Plaintiffs' 19 is -- does each page
21 contained in Plaintiffs' 19 represent plowing Hewitt
22 Cemetery Road?

23 A I would say that is what we selected, yes, sir.

24 Q And it's the section of Hewitt Cemetery Road that
25 is the subject of this lawsuit?

MOTIONS

1 A Right. Yes, sir.

2 THE COURT: Thank you very much. You may step
3 down.

4 MR. McEACHIN: No other reply, Your Honor.

5 THE COURT: I'm going to take up any motions at
6 the close of the evidence. Let me ask you all, I
7 don't know how you want to do it, if you want to make
8 closing statements. Do you want to submit anything in
9 support of your position, or do it orally? It doesn't
10 matter to me.

11 MS. PARHAM: If we had overnight, I could make
12 copies of cases and attach it to my position and give
13 a summary and hand something in tomorrow.

14 THE COURT: I'm going to have to take
15 everything -- you know, I'm not going to make a
16 decision tomorrow. I mean, I have to look at
17 everything.

18 MS. PARHAM: If we could have overnight. It has
19 been a long day, just to prepare our thoughts and get
20 cases, because I would like to look at case law in
21 light of today's testimony.

22 THE COURT: Would you rather submit, I don't
23 know, a memorandum in support of your position,
24 instead of oral arguments?

25 MR. McEACHIN: I'm good with that.

MOTIONS

1 MS. PARHAM: I have a trial. On the 17th, I
2 have a suppression hearing, then the bar convention
3 and then a trial on the 23rd. So my problem is that
4 I'm kind of -- I'll try to get it this weekend, I
5 don't know how quickly you want it.

6 THE COURT: Whatever time you need.

7 MS. PARHAM: Whatever time you need.

8 MR. McEACHIN: I have a bad, very involved
9 mediation in a domestic case, and I met with the
10 accountant we've hired the day before yesterday,
11 because I haven't been able to get back. I need to
12 get ready for that. It is Tuesday.

13 THE COURT: Don't get me wrong, I'm not saying
14 you can't present an oral closing, I'll be happy to
15 let you do that as well, but I'm trying to accommodate
16 you.

17 MR. McEACHIN: Could we have until the end of
18 next week to get past my mediation.

19 THE COURT: If you need 10 days, that's good.
20 That is fine, we'll do that.

21 MS. PARHAM: Okay. Thank you.

22 MR. McEACHIN: Should we include a directed
23 verdict motion?

24 THE COURT: We can take that up now, at least the
25 motions at the close of the evidence, and then at that

MOTIONS

1 point --

2 MR. McEACHIN: I know where the Court is going to
3 rule on it, but I'm ready.

4 THE COURT: I'll be very candid, I'm not sure. I
5 think there is factual issues that are present, and I
6 don't anticipate granting a motion for summary
7 judgment, but I'll hear from you.

8 MR. McEACHIN: Your Honor, I believe that the
9 Plaintiffs' motion for directed verdict -- at the
10 close of the testimony, the defendant's testimony is
11 that as of, I believe it was, May or June of 2012,
12 when she was writing the county administrator, she
13 still considered Hewitt Cemetery Road a county road.
14 She made application to the county to close the road.
15 She asked to change the speed limit. She never at any
16 point, up until she started putting this gate up in
17 2013, made any contention that this was not a county
18 road. The Court has the maintenance records that show
19 an array of maintenance by the county. The testimony
20 from the plaintiffs' witnesses was that the road has
21 been used well in excess of 20 years to fit the
22 prescription easement time frame, that subject to the
23 prescriptive easement it has been identified by the
24 tax assessor's aerial photos, as well as plats that
25 have been entered into evidence, and the county's

MOTIONS

1 maintenance of the road is evidence under the third
2 prong of the prescriptive easement test, that it is
3 considered a public way. Under the dedication issue,
4 Your Honor, the road has been used by almost 80 years.
5 The plats show it as being designated as a road, but
6 what I think is telling is in the deed for the
7 12.15 acres, it is clear on that deed that it is a
8 county road and it is county maintained. When the
9 plaintiff acquired the property, and I don't recall
10 the grantor on that tract, but it recognized Hewitt
11 Cemetery Road as a county road and that it was county
12 maintained. We feel it is uncontroverted evidence
13 that the road is a public road, and we ask for a
14 directed verdict.

15 THE COURT: All right.

16 MS. PARHAM: You know, there are a lot of issues
17 here. He keeps referring to that tract, but that is
18 at the very bottom, and then you have the curve that
19 connects to the state road. There is no rule saying
20 that a road has to continue. Also, that was in 2000
21 after the county definitely started claiming it as its
22 own by either laying rock or starting to clear it more
23 frequently. The laying of the rock happened in 2004,
24 as we all know. I'm not so sure that they maintained
25 it as much as they say. I think it is unusual that

MOTIONS

1 the county has all of these records in Plaintiffs' 19
2 and they refer to Heyward Hewitt, and then others it
3 is Hewitt Cemetery and they are given two different
4 numbers. One is like 7D and one might be 6C, so they
5 are different numbers for the roads, too.

6 Anyway, there is actually no mention -- no
7 mention, whatsoever, of mowing Hewitt Cemetery Road
8 until August 2 of 1990. That is the first mention of
9 it. Now, prior to that time, in Plaintiffs' 19, there
10 are 16 mentions of mowing Heyward Hewitt Road, which
11 the testimony is that that is what is Branch Road, but
12 there has been testimony that, oh, we just included
13 everything under that name, but that's not what they
14 did, you know, nine years later. But at any rate,
15 there is 16 mowings between '81 and 1990, but there is
16 a gap between '83 and '90 of one mow, seven years of
17 one mow in Plaintiffs' 19. And he just asked him in
18 his last question, Is this the entire record and is
19 that accurate mowing, and all of that. So, you know,
20 there is a gap. Ms. Eagerton thought it was her land.

21 What starts ringing a bell -- and she's not good
22 with years -- when she comes home and sees clay on her
23 road, at that point she realizes they did something to
24 my road. Over time then, traffic increases and the
25 laying of the rock was it, and then people really

MOTIONS

1 start coming through there. You know, for a
2 dedication it has to be the landowner that can
3 dedicate. They have given no evidence, whatsoever,
4 that Willa Mae Painter dedicated that road. It has to
5 be clear and unequivocal, and then it would probably
6 show up on the deed. There is no public -- that is a
7 gift. That is like you are giving the public your
8 land. There is no evidence of that. Ms. Eagerton
9 didn't knowingly or intentionally do that. So I
10 believe that is not a good argument.

11 Then, what is a better argument, I think, is that
12 there is some kind of prescriptive easement. There is
13 an old supreme court case in South Carolina, like
14 1915, that talks about where the property line is down
15 the center of the road, that that puts people on
16 notice that there is an easement of some kind. But
17 Ms. Eagerton could think that is a private easement.
18 Interestingly, he points to the fact that it says
19 "county maintained" on the 2010 map. You know, there
20 is nothing in those 20 -- excuse me, 1981, 1988, all
21 of those, there is nothing that says "county
22 maintained." There is nothing like that. You know,
23 the first reference of "county maintained" is 2000 --
24 2000, not 2010, I'm sorry. But in those earlier
25 deeds, there is no mention of a road name, it just

MOTIONS

1 says, Dirt road, property line center. There are all
2 of these other roads that don't exist. They are all
3 basically tractor paths.

4 So it is clear when she acquired that land, that
5 she acquired all of it. That is what the tax assessor
6 says, too. So the question is, is there a
7 prescriptive easement over that tract? It has to be
8 open, continuous for 20 years. She should have
9 probably complained earlier, I'll give her that, but
10 the point is, do they have the 20 years? It has to be
11 adverse or under claim of right. What I want to do
12 more research on is they say they have a claim of
13 right, but if they don't have a valid descriptive
14 easement -- what if that is a mistaken claim of right?
15 You know, when she blocked it with her golf cart,
16 under Pittman, that it is enough I believe.

17 You know, they don't take North Carolina's view.
18 South Carolina Supreme Court says that you use words,
19 and that is enough. It says, A landowner is not
20 required -- and this is Pittman versus Louder, Supreme
21 Court 2005. A landowner is not required to battle
22 successfully for his rights. It is enough if he
23 asserts them to the other party by an overt act, which
24 if the easement existed would create a cause of
25 action. Such an assertion interrupts the would-be

MOTIONS

1 dominant owner's impression of acquiescence and the
2 growth in his mind of a fixed association of ideas.
3 We conclude actions are sufficient to interrupt the
4 prescriptive period when the servient landowner
5 engages in overt acts such as erecting physical
6 barriers which causes a brief discontinuance of the
7 landowner's use, no matter how brief. You know, this
8 case in several different places says "no matter how
9 brief." In addition, physical battery, verbal threats
10 which convey to the dominant landowner the impression
11 that the servient landowner does not acquiesce is also
12 sufficient to interrupt the period.

13 So she didn't have to park her golf cart on the
14 road. She goes and says, I don't want you to do this,
15 and they say, Get your buggy out of the way, lady. In
16 2004, she tried to interrupt them. Why she didn't try
17 to interrupt them before then, I don't think she
18 realized, either because she was working or because
19 maybe the maintenance wasn't as much as Florence would
20 have us believe, that they were exercising this, you
21 know, right to maintain the road. That is definitely
22 clear after 2004.

23 So it is their burden by a clear and convincing
24 evidence every single solitary element. If they could
25 show 20 years without interruption, then it has to be

MOTIONS

1 adverse or under a claim of right, and I'm not sure
2 that they have adverse for 20 years, because there is
3 another obscure case out there that when they -- if
4 they say they mowed her driveway -- and let me touch
5 on one other thing before I forget. You know, Malloy
6 keeps saying the state is not allowed to spend tax
7 payers' dollars on private roads, well, there is an
8 Attorney General opinion out there on the Internet,
9 and someone asked Allen Wilson about this because
10 apparently Marion County starts mowing people's yards,
11 roads, and so the landowners ask for an Attorney
12 General's opinion, you know, on when can the county
13 start mowing our roads, and does it mean it is a
14 county road? The Attorney General opinion basically
15 sets forth some of the cases that both of us have
16 mentioned, you know, it is a judicial determination
17 whether there is this, this and this.

18 So I don't think this is the only time that the
19 county starts mowing over roads and considering them
20 the county's. So I think there are a lot of factual
21 issues and legal issues, and I don't think it is
22 clear, but I do think it is a very heavy burden that
23 they have to meet every element in order to succeed,
24 and they should have to, because taking someone's land
25 is really not good. It is important. You know, this

MOTIONS

1 is not a boat landing. It is not a land-locked
2 entity. This is a shortcut, a .3-mile shortcut. It
3 isn't something that is necessary, you know.

4 Anyway, that is my argument. I ask for a
5 judgment for the defendant.

6 MR. McEACHIN: May I respond briefly? The case
7 of Matthews versus Dennis, which is 616 S.E.2d, 437,
8 365 S.C., 245.

9 THE COURT: One more time.

10 MR. McEACHIN: 616 S.E.2d, 437, 365 S.C 345,
11 Court of Appeals case. The Court held, We disagree
12 with the defendant's argument that plaintiffs' claim
13 of right was insufficient because it was based on a
14 mistaken belief of ownership. The party claiming a
15 prescriptive easement under a claim of right must
16 demonstrate a substantial belief that they have a
17 right to use the parcel or road based on the totality
18 of the circumstances.

19 So that case is holding not that we have to prove
20 that we have a deed to the roadbed. The county
21 believes it is a public road and has maintained it as
22 such, and that test under claim of right prescriptive
23 easement.

24 Also, the same case, same decision, court helped
25 that periods of prescriptive use may be tacked

MOTIONS

1 together; in other words, we didn't have to just show
2 it during the period of time that Ms. Eagerton owned
3 the property. Thank you.

4 THE COURT: I think it is clear, to me anyway,
5 that this case is not an appropriate case for a
6 directed verdict, and so as far as to the extent of
7 your arguments are supporting your position for a
8 directed verdict, I'm going to respectfully deny. I
9 think there are factual issues that the Court will
10 have to weed through, and we'll certainly do that.
11 Anything further?

12 MR. McEACHIN: No, sir.

13 MS. PARHAM: No, sir.

14 THE COURT: And as I said, I'll give you the 10
15 days, and if you need more, let me know and we'll work
16 with you on that.

17 (Whereupon, the proceedings concluded.)
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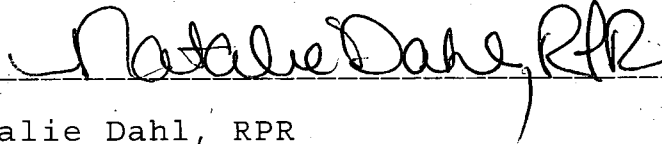
CERTIFICATE OF REPORTER

State of South Carolina)
County of Florence)

I, Natalie Dahl, Official Court Reporter for the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript
of Record of the proceedings had and evidence
introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Florence County, South Carolina, on the 11th through
the 12th days of January, 2017.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

February 21, 2018



Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 County of Florence and Thomas J. Hewitt.)
)
 Plaintiff.)
)
 vs.)
)
 Carol Eagerton.)
)
 Defendant.)
)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2013-CP-21-3192

TRIAL BRIEF

2017 FEB 15 PM 1:12
 COURT CLERK
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

FILED

Defendant, Carol Eagerton ("Eagerton"), by and through her undersigned attorney, files this trial brief in the above-referenced case. Eagerton respectfully shows the Court the following:

I. FACTS

The issue in this case is whether Florence County and the public acquired a prescriptive easement and/or an easement by dedication to the road running through the middle of Eagerton's property ("Eagerton's road"), which was a single lane dirt plow road until Florence County rocked it on January 23, 2004.

On December 11, 1981, Eagerton and her husband purchased 20.9 acres ("Tract A") from Willie Mae Painter. The map depicting the parcel shows two roads, "Old Road," a plow road that is no longer used, and "Center of Road Property Line" (Eagerton's road), the center of which formed the eastern boundary to the property. The deed to the Tract A does not contain any reference in the property description or elsewhere to an easement or any road on the property.

CERTIFIED: A TRUE COPY
Donna Poole Ottina
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

On October 21, 1988, Eagerton and her husband purchased 40.7 acres ("Tract B"), which was adjacent to and east of Tract A, from Willie Mae Painter. The map depicting the parcel shows two roads. "Plantation Road," a plow road that is no longer used, and "Center of Dirt Road Property Line" (Eagerton's road), the center of which formed the western boundary to the property. The deed to Tract B does not contain any reference in the property description or elsewhere to an easement or any road on the property.

On April 4, 2000, Eagerton and her husband purchased 12.5 acres ("Tract C"), which is adjacent to Tract A from the south and adjacent to Tract B from the west, from Roberta Griffin. The map depicting the parcel shows the eastern boundary of the property as "(County Maintained) Hewitt Cemetery Road (Dirt)." The deed to Tract C does not contain any reference in the property description or elsewhere to an easement or any road on the property.

On April 4, 2002, Eagerton acquired her husband's interests in Tracts A, B, and C.

A state maintained road, Hewitt Cemetery Road, connects the northern end of Eagerton's road to Cato Road. A county maintained road, Hewitt Cemetery Road, connects the southern end of Eagerton's road to Branch Road. It is unclear when the county began calling Eagerton's road Hewitt Cemetery Road, but several witnesses testified the latest date was in 1999 or 2000, when E911 was implemented in Florence County.

Eagerton is the only resident on Eagerton's road. Although Eagerton's road is the most direct route connecting the northern and southern portions of Hewitt Cemetery Road, there are at least two other routes, one of which (via Branch Road to the east) is .4

miles farther and the other of which (via Branch Road to the west and Cato Road) is 1.2 miles farther.

The only witnesses the Plaintiffs called were the following: Thomas Hewitt, David Hewitt, and Robbie Meggs, all of whom are cousins and live near Eagerton's road; Mike Wood, who owns property at the corner of Hewitt Cemetery Road and Branch Road; Brian Huggins, who lives near Eagerton's road; Joseph "Bubba" Jones, who lives on the portion of Hewitt Cemetery Road that is south of Branch Road and not maintained by the county; Shannon Eaddy, Bubba Jones' sister; Lecrecia Boatwright, an employee of the ambulance company that transports Bubba Jones; Jerry Allen and Carlisle Gregg, Jr., who work for Florence County Public Works; Reggie Sanders, who works in the Florence County Tax Assessor's Office; and Virginia Willcox, a title abstractor. The only witnesses who testified that they used Eagerton's road on a regular basis (aside from county maintenance) were Thomas Hewitt, David Hewitt, Robbie Meggs, Mike Wood, Brian Huggins, Bubba Jones, and Shannon Eaddy. With the exception of Shannon Eaddy, Bubba's sister, six of these witnesses live within a mile of Eagerton's road.

With regard to county maintenance, Florence County Public Works records, Plaintiff's Exhibit 19, show that "Hayward Hewitt Road," which is now Branch Road and not Hewitt Cemetery Road, was mowed on 10/28/81, 01/07/82, 01/08/82, 03/18/82, 05/26/82, 06/30/82, 07/02/82, 07/21/82, 08/25/82, 10/14/82, 12/14/82, 02/10/83, 06/13/83, 07/21/83, 08/09/83, 09/01/83, and 04/14/88. Carlisle Gregg testified that although the records referred to Hayward Hewitt Road and not Hewitt Cemetery Road, Hewitt Cemetery Road and Eagerton's road would have been included in the plow. He

also testified the county lost some of its records. The next records list Hewitt Cemetery Road (which public works employees testified encompassed Eagerton's road) being mowed monthly from 08/02/90 to the present and show that Eagerton's road, which the county at some point began calling Hewitt Cemetery Road, was rocked on January 23, 2004.

According to all of the defense witnesses, Eagerton's road was sparsely traveled until it was rocked by Florence County in 2004. In the 1980's and 1990's Eagerton ran a horse farm, boarded horses, nursed malnourished horses back to health for the Florence County Humane Society, and hosted horse back riding lessons. The defense witnesses testified that the property was peaceful and suitable for Eagerton's needs. They further described Eagerton's road as a single lane, dirt plow road with a patch of grass running through the middle of it. Defense photographs evidence this description.

The defense witnesses describe everything changed when the County rocked Eagerton's road in 2004. Eagerton testified that on the day it was rocked she tried to block the rocking equipment with her golf cart but was forced to move out of the way. Eagerton's neighbor recalled Eagerton coming to his house the same day and telling him of the events. Defense witnesses describe the resulting rocked road as being wider than the dirt road and able to accommodate two cars rather than one. The rocking of Eagerton's road gave rise to disruption of Eagerton's horse farm and livelihood as well as increased traffic and crime.

In 2011, Eagerton sought help from public officials to try and reclaim her road. Defense witnesses and Plaintiff's witnesses testified as to her erection of gates at either

end of Eagerton's road. Marion Joyner testified that he met police on Eagerton's property in 2013. According to the police report, Joyner told law enforcement that Eagerton had been trying to block the road "for years." After unsuccessful attempts to block the road, close gates, and petition public officials, Eagerton asked Florence County how to petition to close the road.

II. LAW

A. Implied Dedication

"Dedication requires two elements. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication." *Mack v. Edens*, 320 S.C. 236, 239 (Ct.App.1995) (citation omitted). "[T]he burden of proof to establish dedication is upon the party claiming it." *Anderson v. Town of Hemingway*, 269 S.C. 351, 354 (1977). The acts proved must not be consistent with any construction other than that of a dedication, and dedication may not be implied from the permissive, sporadic, and recreational use of property. The record must contain evidence the owner of the property clearly, convincingly, or unequivocally intended to dedicate the property for public use. *Mack*, 320 S.C. at 239.

Our Supreme Court has stated, "It is not a trivial thing to take another's land, and for this reason the courts will not lightly declare a dedication to public use." *Shia v. Pendergrass*, 222 S.C. 342 (1952), quoting *City and County of San Francisco v. Grote*,

120 Cal. 59. "While one may lose his land without an actual conveyance of the same, the acts and conduct upon his part, and upon the part of the one claiming to have acquired such title in such way, must be so unequivocal and positive as to leave little doubt that it was the intention of the owner to dedicate the same to the public use. *Id.* The length of time a road or driveway has been used is of no material consequence, unless it becomes important, in connection with other circumstances, to show an intention on the part of the owner of the land to dedicate it to public use. *Id.*

"[I]n order to establish title by dedication in cases where there had been no express gift of the land involved, it is incumbent on the party asserting that a dedication exists to show that the conduct of the owner, relied on to establish it, clearly, convincingly, and unequivocally indicates, expressly or by plain indication, a purpose or intention to create a right in the public to use the land adversely to him and as of right." *Town of Estill v. Clarke*, 179 S.C. 359 (1936). "Dedications being an exceptional and a peculiar mode of passing title to interest in land, the proof must usually be strict, cogent, and convincing, and the acts proved must not be consistent with any construction other than that of a dedication." *Seaboard Air Line R. Co. v. Fairfax*, 80 S.C. 414 (1908). "It is a necessary conclusion that no one except the owner of an unlimited estate in fee can make a dedication of land." *Id.* "It is of the essence of a dedication that the owner has consented, permanently, to abandon the land and, whatever the nature of the acts relied on to create a dedication, the intention to dedicate must be clearly and unequivocally

manifested. *Grady et al. v. City of Greenville et al.*, 129 S.C. 89 (1924); 18 C.J. 43, § 16; § 33.

As stated by our Supreme Court in *Shia*:

It would seem clear that to create a dedication by implication, the owner of the real estate must have done some act from which a positive intent on his part to dedicate the land to the public can be drawn. It is elementary law that an intention to dedicate must be plainly manifest. Here, there is no such manifest intention. No single act of Mrs. Berry can be pointed out as so indicating. The fact that the public was allowed to use the strip of land under circumstances such as exist here, without objection by the owner, is not sufficient from which to imply a dedication. During all of the time that the public has been permitted to use this driveway now in dispute, the appellant and Mrs. Berry, under whom she claims, have paid the taxes thereon to the City of Florence; and while this of itself is not generally treated as very strong evidence, still it is some evidence that they did not intend to dedicate it to the public.

Shia, at 349-350.

The nonassessment of taxes is a factor in the determination of dedication and acceptance. The payment of taxes on disputed property is evidence contrary to the intent to dedicate property to the public. *Mack v. Edens, supra*.

In addition, there must be proof that the route was used by the general public and not a subset of individuals. The use must not be by a limited community or class of people. *Burrell v. Kirkland*, 242 S.C. 201, 208 (1963). "In order to acquire a public easement, the user must be by the public at large, and not by a limited number of persons." 26 C.J.S., Dedication, § 18, page 74.

Where a conveyance of land describes the parcel as bounded by a street designated in the conveyance, or refers to a map on which spaces for streets, parks, or other common

uses are shown, but the conveyance says nothing about the creation of an easement or a dedication to public use, the conveyee of the land acquires an easement with respect to the street or the areas shown on the map. 3 Powell, *The Law of Real Property* ¶ 409 (1987) [footnotes omitted]. “Absent evidence of the seller’s intent to the contrary, a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a private easement by implication with respect to those streets, whether or not there is a dedication to public use.” *Newington Plantation Estates Ass’n v. Newington Plantation Estates*, 318 S.C. 362, 365 (1995).

B. Prescriptive Easement

“An easement is a right given to a person to use the land of another for a specific purpose.” *Bundy v. Shirley*, 412 S.C. 292, 304 (2015). “A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner.” *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 419 (2006). To establish a prescriptive easement, the claimant must prove by clear and convincing evidence: “(1) the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use [was] adverse under claim of right.” *Darlington Cnty. v. Perkins*, 269 S.C. 572, 576 (1977). “[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another’s rights, for the full period of 20 years, the use will be presumed to have been adverse.” *Williamson v. Abbott*, 107 S.C. 397, 400 (1917). “[A] party claiming a prescriptive easement has the burden of proving all elements by clear and convincing

evidence.” *Bundy*, 412 S.C. at 306. “A private way is an easement in favor of another, *in derogation of the rights of the owner*; and hence is not to arise without *clear, unequivocal proof of such facts* as will give the right from the owner to the claimant.” *Williamson* at 401 (emphasis added).

Our Supreme Court recently held that adverse use and claim of right cannot exist as separate methods of proving the third element of a prescriptive easement as the two terms are, in effect, one and the same. *See Simmons v. Berkeley Electric Cooperative*, ---S.C.---, 2016 WL 6520167 (November 2, 2016). The Court also took the “opportunity to emphasize that a claimant’s belief regarding the permissiveness of his use of property is irrelevant when determining the existence of a prescriptive easement. Instead, courts in this state should only determine whether the claimant’s use was indeed adverse.” *Id.* Thus, the Court simplified the test for a prescriptive easement as follows: “In order to establish a prescriptive easement, the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner’s rights for a period of twenty years.” *Id.*

In *Simmons*, the Supreme Court defined the terms “open,” “notorious,” and “adverse use:” “ ‘Open’ generally means that the use is not made in secret or stealthily. It may also mean that it is visible or apparent.” Restatement (Third) of Property (Servitudes) § 2.17(h) (2000). “ ‘Notorious’ generally means that the use is actually known to the owner, or is widely known in the neighborhood.” Restatement (Third) of Property (Servitudes) § 2.17(h) (2000). “Adverse use” is defined as “a use without

license or permission.” Black’s Law Dictionary 1681 (9th ed. 2009). The Court further noted that American Jurisprudence also recognizes that “[u]nder the law of prescriptive easements, the essence of a ‘hostile’ use, which has been referred to interchangeably in the case law as ‘adverse,’ ‘hostile,’ ‘nonpermissive,’ or ‘under a claim of right,’ is a lack of permission from the true owner.” *Simmons* at ; 68 Am. Jur. Proof of Facts 3d 239 § 15, at 287 (2002). It “is well-established that evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse.” *Bundy*, 412 S.C. at 310; *see also* 12 S.C. Jur. Easements § 10 (Supp. 2015) (“Use with the permission of the owner is not adverse.”)

Tacking of the prescriptive period is not permissible when it is unclear that use by claimant’s predecessor was adverse. *See Bundy v Shirley*, 412 S.C. 292 (2015) (Shirley did not establish that the previous owners’ use of the disputed road continued to be adverse or under a claim of right between 1969 and 1985). *See Morrow v. Dyches*, 328 S.C. 522, 528 (Ct.App. 1997) (“[I]f tacking is used, ‘the use by the previous owners must also meet the requirements of a prescriptive easement’ ” (quoting 25 Am. Jur. 2d Easements and Licenses § 70, at 640 (1996))); *Kelley v. Snyder*, 396 S.C. 564, 575 (Ct.App. 2012) (“If tacking is used, the use by the previous owners must have also been adverse or under a claim of right.”).

“Actions are sufficient to interrupt the prescriptive period when the servient landowner engages in overt acts, such as erecting physical barriers, which cause a discontinuance of the dominant landowner’s use of the land, no matter how brief. *Pittman v. Lowther*, 363 S.C. 47 (2005). “In addition to physical barriers, verbal threats

which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period. To adopt an interpretation of "effective interruption" which requires a servient landowner to take actions in addition to erecting barriers like fences and cables, would encourage wrongful or potentially violent behavior that is contrary to sound public policy considerations and the peaceful resolution of disputes." *Id.*

III. ARGUMENT

Just because the County says a road is a public road or spends money maintaining a road does not make it a public road. The fact that the County may have spent money on a road that it did not did not legally own is irrelevant. Sometimes cities, counties, and individuals usurp property which gives rise to litigation such as this. The issue is whether the County has proven by clear and convincing evidence that they legally acquired right to Eagerton's road through implied dedication or a prescriptive easement.

With regard to the arguments concerning implied dedication and prescriptive easement, it is important to look at the different portions of the road and dates on which they were acquired because an owner cannot give away or dedicate what they do not own. Further, there is no rule that a road has to connect to another road and cannot dead end. Moreover, a county can own portions of a road and not the entire road. For example, the county does not contend it owns "Hewitt Cemetery Road" south of Branch Road which leads to Bubba Jones' home.

A. Implied Dedication

The Plaintiff's argument fails because there was no implied offer to dedicate Eagerton's road to the public. Implied dedication requires intent to dedicate and an acceptance by the public. The record must contain evidence the landowner clearly, convincingly, or unequivocally intended to donate the land to public use, and the acts proved must not be consistent with any construction other than that of a dedication. Permissive and/or recreational use is not enough.

There is no evidence that establishes Willie Mae Painter ("Painter"), Roberta Griffin, or Carol Eagerton donated a portion of their property to Florence County and/or members of the general public. To the contrary, in 1981, Painter sold Eagerton acreage with the property line going to the middle of a "dirt road." The dirt road did not even have a name on the map, and the property description makes no reference to any road or easement. Further, there is another dirt road on the map that is similar to the one in dispute. Then, in 1988, Painter sells Eagerton the adjacent parcel, which again has the property line in the center of the nameless dirt road, makes reference to a named road, "Plantation Road," that the County does not claim, and has a deed with no reference to any road or easement.

The fact that a dirt road appears on a map is of no consequence. That does not make it a public road. It is more likely to be a private road or a private easement, which would seem to make sense in this case given the property line, the layout of the property, and the dates on which Eagerton acquired the parcels.

As mentioned previously, no portion of Eagerton's road was excluded from the property line. This is in clear contrast to Plaintiff's Exhibits 9, 11, and 12, wherein what

is now Mike Wood's property was never encompassed in southern Hewitt Cemetery Road. The property line is clearly to the east of and does not include any portion of Hewitt Cemetery Road. The same is true when looking at Plaintiff's Exhibit 10 regarding state-maintained Hewitt Cemetery Road to the north.

Even if the County could prove intent to dedicate, it failed to show extensive and continuous use by the public at large. The use must not be by a limited community or class of people. *Burrell v. Kirkland*, 242 S.C. 201, 208 (1963). "In order to acquire a public easement, the user must be by the public at large, and not by a limited number of persons." 26 C.J.S., Dedication, § 18, page 74. The county merely proved the use of the road by a limited group of people - nearby landowners - and did not carry its burden of proving extensive, long-term, and continual use of the road by the public at large.

In *Mack v Edens*, *supra*, several witnesses testified the dirt road was historically used by the public for various purposes, including to deliver mail; to travel to a saw mill and a flour mill; to swim, fish, and attend baptismal services and school parties at a pond near Mack's; to erect and maintain public utilities; and to have emergency services access Mack's property. The court determined the public's use of the roadway was basically recreational and religious and concluded Mack had failed to establish an implied public dedication. As in the case of *Mack*, this Court should conclude that the evidence is insufficient to prove an implied dedication of Eagerton's road.

Evidence of county maintenance, a portion of the property being excluded from tax assessment, and the deed to the property delineating a "public" road goes to the issue of

acceptance of an implied dedication and not to prove of the *intent to dedicate*. See *Mack v. Edens*.

In this case, the deed did not delineate a public road, and no portion of the property was excluded from Eagerton's taxes. However, there was some testimony regarding county maintenance. Carlisle Gregg testified that he believed Hewitt Cemetery Road began being maintained in 1972 or 1973 after he began working at Florence Public Works. Florence County records do not corroborate or substantiate Gregg's "belief." Jerry Allen testified that he began mowing Hewitt Cemetery Road in the early 1980's. He claims he mowed Eagerton's dirt road despite the fact that Eagerton never saw him mow the road and despite the fact that the county records say "Hayward Hewitt Road," which is now Branch Road as opposed to "Hewitt Cemetery Road." Regardless of when Allen may have started mowing the road, Florence County records contain an obvious lapse in maintenance, one record of mowing between 09/02/83 and 08/01/90. This lapse undermines the County's entire argument.

As stated previously, Painter and Eagerton paid taxes on the entire acreage. Eagerton still pays taxes on the entire acreage. This, too, is evidence of a contrary intent to dedicate Eagerton's road to public use and lack of acceptance of the road by the public at large. For all of these reasons, there was no implied dedication of Eagerton's road and no acceptance by the general public.

B. Prescriptive Use

The Plaintiffs' argument fails with regard to prescriptive use because the County has not proved the requisite *adverse use* for twenty years. An easement by prescription is not

established merely by the use of another's land for a period of twenty years or more. The use must be adverse. The County offered no testimony or evidence to show that the neighbors' use of Eagerton's road when it belonged to Painter and Roberta Griffin was anything other than permissive. According to the *Bundy v. Shirley, supra*, permissive use is not "adverse" and will not support a finding of a prescriptive easement. As mentioned previously, the pieces of the road need to be analyzed separately because Eagerton cannot divest herself of rights she does not have. Eagerton acquired half of the road next to Tract A in 1981. At that time, Painter still owned the other half of the road next to Tract A. In addition, in 1981, Painter and Roberta Griffin owned the southernmost portion of Eagerton's road and continued owning the southernmost portion until Eagerton acquired half when she bought Tract B in 1988 and the remaining half when she purchased Tract C in 2000. There is no testimony that the sporadic use of Eagerton's road was anything other than permissive until the County rocked the road in 2004.

Again, the Plaintiffs offered no evidence to establish the use of Eagerton's road was adverse when Painter and Griffin owned their portions or when Eagerton owned her portions prior to 2004. For all we know the neighbors and/or public could have had Painter and Griffin's permission to travel across their portion of the road or easement. Eagerton did not acquire the entire northern portion of Eagerton's road until 1988, when she purchased Tract B from Painter. That prescriptive period would not run until 2008. The Plaintiffs argument fails because they have not shown adverse use prior to 2004, and

even if they had, Eagerton began trying erect barriers and to block the use after 2004 which would be sufficient to interrupt the period under *Pittman v. Lowther, supra*.

The prescriptive period did not begin run on the southern portion of Eagerton's road with regard to Eagerton until 2000, when she and her husband purchased the other half from Griffin. According to *Bundy*, prescriptive periods from prior owners cannot be "tacked" unless the Plaintiff's made a showing the use was adverse and not permissive by those owners. Plaintiffs have made no such showing. Further, the prescriptive period on the southern portion of Eagerton's road would not run until 2020.

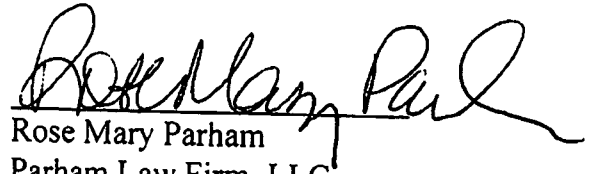
This is a case where the Plaintiffs are trying to transform a convenient shortcut for neighbors into an easement. The fact that when they tried to start rocking that convenient shortcut, Eagerton placed her body in front of the equipment shows what really happened in this case. That is when adverse possession began. That is when the county became open, notorious, and adverse. The fact that the County widened the road is also problematic to its legal theories.

Eagerton's private rights to the use of her land far outweigh the interests of some neighbors having a shortcut. As our Supreme Court in *Shia, supra*, stated, "It is not a trivial thing to take another's land, and for this reason the courts will not lightly declare a dedication to public use." The standard for prescriptive easement is equally as strict. The Plaintiffs had the burden of proving either of these theories of acquisition by clear and convincing evidence and failed to meet its hefty burden for the reasons outlined above.

IV. CONCLUSION

The Plaintiffs have failed to establish either an implied dedication or a prescriptive easement of Eagerton's road, and judgment should be entered for the defense.

Respectfully submitted.



Rose Mary Parham
Parham Law Firm, LLC
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Post Office Box 1514
Florence, South Carolina 29503
843-407-7757
Attorney for Defendant

Florence, South Carolina
February 14, 2017

375

FORM 4

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

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2103192

Florence County Of

2017 JUL 3 AM 8:44

Carol Eagerton

PLAINTIFF(S)

DORIS POULOS THASA

DEFENDANT(S)

Submitted by:

CCCP & GS
FLORENCE COUNTY, SC

Attorney for: ☐ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

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

7/3/2017

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY
Paula Offner
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

376

This judgment was entered on **June 29, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **July 3, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

D. Malloy McEachin Jr. 323 S. McQueen Street Florence,
SC 29501

Rose Mary Parham PO Box 1514 Florence, SC 29503

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

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

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

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

County of Florence and Thomas J. Hewitt,

VS.

Defendant.

ORDER

Defendant is the owner of three adjacent tracts of land in Florence County, South Carolina: a 20.9 acre tract ("Tract A"), a 40.7 acre tract ("Tract B"), and a 12.51 acre tract ("Tract C"). Hewitt Cemetery Road forms the eastern boundary to Tracts A and C, and the western

and the western
CERTIFIED: A TRUE COPY
Don Paul Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

boundary to Tract B. It runs perpendicular to Cato Road to the North and Branch Road to the South. The northern portion of Hewitt Cemetery Road from Defendant's property to Cato Road is state maintained and is not in dispute. The rest of the road runs south to Branch Road.

Defendant acquired the three individual properties at different times. On December 11, 1981, Defendant and her husband purchased Tract A from Willie Mae Painter. Pls. Ex. 16. The map depicting the parcel shows the road in question as "Center of Road Property Line," the center of which formed the eastern boundary to the property. On October 21, 1988, Defendant and her husband purchased 40.7 acres ("Tract B") adjacent to and east of Tract A, from Willie Mae Painter, and bounded on the west by "Dirt Road - The Property Line." Pls. Ex. 15. On April 4, 2000, Defendant and her husband purchased 12.5 acres from Roberta Griffin ("Tract C"), which is adjacent to Tract A from the south and Tract B from the west. The plat depicting the parcel shows the eastern boundary of the property as "(County Maintained) Hewitt Cemetery Road (Dirt)."¹ Pls. Ex. 17.

Throughout its lifetime, Hewitt Cemetery Road has been called by various names, and has been designated differently on plats recorded in the Office of the Clerk of Court:²

- "Old Ave" (plat dated April 30, 1954, prepared by Ervin Engineering Co.)
- "Old Avenue" (plat dated January 31, 1968, prepared by Ervin Engineering Co.)
- "Hewitt Cemetery Rd." (plat dated October 15, 1976, prepared by Ferrell Prosser, Registered Surveyor)
- "Dirt Road" (plat dated October 17, 1988, prepared by Ervin Engineering Co.)
- "Hewitt Cemetery Road" (plat dated February 26, 1992, prepared by Lind Hicks & Associates)
- "County Maintained Road" (plat dated July 1, 1993, prepared by Ervin Engineering Co.)
- "Hewitt Cemetery Road . . . (County Maintained)" (plat dated November 16, 1998, prepared by Nesbitt Surveying Co.)

¹ On April 4, 2002, Defendant acquired her husband's interest in all three tracts.

² It is unclear when the County officially began calling the road "Hewitt Cemetery Road," but several witnesses testified at trial that the latest date was in the late 1990's, when E-911 was implemented in Florence County.

- "Hewitt Cemetery Road . . . (County Maintained)" (plat dated August 10, 1999, prepared by Nesbitt Surveying Co.)

Additionally, records from the Florence County Department of Public Works from the 1980's refer to the road as "Hayward Hewitt Road" and "Hewitt Road."³

At trial, Plaintiffs called multiple witnesses to testify regarding the historical county maintenance of Hewitt Cemetery Road, along with its longstanding public usage. Mr. Carlisle Gregg, Director of Florence County Public Works, testified that Florence County has been maintaining Hewitt Cemetery Road since he began working there in 1972 and had been maintaining Hewitt Cemetery Road prior to that time. Although earlier records had been partially destroyed due to flooding, the records the County was able to produce indicate that from 1981 forward, the County has been regularly maintaining Hewitt Cemetery Road. Hundreds of individual, handwritten work forms, spanning from October of 1981 through July of 1998, indicate that the road in question, typically referred to then as "Hayward Hewitt Road," was being plowed or otherwise maintained.⁴ Pls' Ex. 19. Two sets of spreadsheets provided by the County, generated every month from July 1999 to December 2001 and January 2002 to June 2013, log the total number of plows performed on a geographical area of roads, including "Hewitt Cem. Rd." Pls' Exs. 20 and 21. These records show that the road in question was generally plowed at least one per month by the County. According to Mr. Gregg, the County installed a pipe along Hewitt Cemetery Road on July 6, 1993, and patches potholes along the road on a regular basis. Importantly, Mr. Gregg also testified that the County of Florence expended over \$23,000.00 rocking Hewitt Cemetery Road in 2004.

³ At trial, Reggie Sanders, a former employee of the Florence County Tax Assessor's Office and current employee of Florence County GIS Mapping, identified seven (7) aerial photographs of the area in question taken from 1965 through 2015. All of these aerial photographs showed, in clear outline, Hewitt Cemetery Road. The footprint of the road has remained consistent throughout the years.

⁴ Mr. Gregg recalled assigning names and numbers to various unidentified roads in order to inventory them from 1989-1990; before that, road names were memorized by employees and shared with each other to form a sort of historical institutional memory.

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Mr. Gregg further testified that only a portion of two roads in Florence County have been deeded to the County of Florence. The other approximately 1,200 roads are designated public roads without a written deed or easement. Mr. Gregg explained that the County has in place a procedure for County roads to be closed, and Defendant made an application to close Hewitt Cemetery Road prior to this lawsuit; however, because her application was opposed by members of the public, the request was denied.⁵

Mr. Jerry Allen, Area Supervisor for Florence County Public Works, testified that he operated a road plow for the County in the early 1980s. One of the areas he regularly plowed was Hewitt Cemetery Road, a dirt road at that time, approximately two times per month. He recalled seeing school buses and other vehicles on the road when they would plow it. Mr. Allen also recalled installing a pipe in the County portion of Hewitt Cemetery Road at the request of Defendant's ex-husband and predecessor in title to a portion of the property now owned by Defendant.

Several individuals who live in the area of Hewitt Cemetery Road—Thomas Hewitt, David Hewitt, Joseph Jones, Robbie Meggs, Mike Wood, Bryan Huggins, Joseph "Bubba" Jones, Dorothy Jones, and Jerry Allen—testified as to the public's regular use of Hewitt Cemetery Road. Thomas Hewitt is an octogenarian, Robbie Meggs, Joseph Jones, and Dorothy Jones are septuagenarians, and David Hewitt is a sexagenarian. All of the witnesses named above testified that they, their families, and other members of the public have used Hewitt Cemetery Road as far back as they can remember, from their early childhood. All of the above witnesses also testified they had witnessed the County of Florence maintaining Hewitt Cemetery Road for all of their lives, and Robbie Meggs stated specifically he does not recall there ever being a gap in county

⁵ This Court finds it noteworthy that Defendant chose to avail herself of county road closure process. Defendant further testified that she sent a letter on November 14, 2001 (Def. Ex. 12) to the then County Administrator, Thomas Robinson, requesting that the County close Hewitt Cemetery Road. She sent a subsequent letter to Mr. Robinson (Def. Ex. 13) again asking the County to close Hewitt Cemetery Road. If Defendant actually believed she was the true owner of the road, it would have been unnecessary for her to go through the petition process and air her grievances with County officials.

maintenance. Defense witnesses Maria Cooper, David Garrison, and Donna Anderson also testified to observing public use of Hewitt Cemetery Road.

II. DISCUSSION

A. Dedication

"The determination of whether a roadway has been dedicated to the public is an action in equity." *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995). "Dedication requires two elements. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication." *Id.* The burden of proving dedication is upon the party claiming it. *Anderson v. Town of Hemingway*, 269 S.C. 351, 354, 237 S.E.2d 489, 490 (1977).

"No particular formality is necessary to effect a common law dedication." *Boyd v. Hyatt*, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct. App. 1988). "An intention to dedicate may be implied from the circumstances." *Id.*

South Carolina law recognizes two types of implied dedication: "one where the question of implied dedication arises from the sale of land with reference to maps or plats; the other when the dedication arises . . . from an abandonment to or acquiescence in public use." *Shia v. Pendergrass*, 222 S.C. 342, 347, 72 S.E.2d 699, 701 (1952). "A dedication need not be made by deed or other writing, but may be effectually made by acts or declarations. Intent to dedicate may also be implied from long public use of the land to which the owner acquiesces." *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 317, 433 S.E.2d 874, 883 (Ct. App. 1992).
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dedication is an exceptional mode of passing an interest in land, and proof of dedication must be strict, cogent, and convincing. The acts proved must not be consistent with any construction other

than that of a dedication, and dedication may not be implied from the permissive, sporadic, and recreational use of property. The record must contain evidence the owner of the property clearly, convincingly, or unequivocally intended to dedicate the property for public use.

Mack, 320 S.C. at 239, 464 S.E.2d at 126.

"As with intention to dedicate, no formal acceptance by a public authority is necessary to show public acceptance. Acceptance may be implied by the public or a public authority continuously using or repairing the property." *Id.* "The use, repair, and working of the streets by public authorities is a mode of acceptance." *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 192 (1997); *see also Darlington Cnty. v. Perkins*, 269 S.C. 572, 239 S.E.2d 69 (1977) (finding County maintenance of a road to include ditching, cleaning, plowing, and installing a drainage system was proof of acceptance of a public dedication). "It is the duty of the fact finder to determine whether or not the public dedication has been accepted." *Id.* at 327, 487 S.E.2d at 192.

i. Acceptance of the Public Dedication

Here, the record indicates a historical use of the road by the public, as well as historical maintenance of the road by the County. Jerry Allen, a forty-year employee of Florence County Public Works, testified that Hewitt Cemetery Road was a dirt road in the early 1980s. In his role as Area Supervisor, Mr. Allen's job is to perform maintenance on County roads. He testified that when he and his team would plow Hewitt Cemetery Road, he would see school buses and other cars using the road. He himself used the road to ride dirt bikes when he was younger, and even drove school buses down the road when he was a bus driver. Thomas Hewitt, a lifelong resident of the area, testified that his family has always used Hewitt Cemetery Road ever since he was a child, and he uses it at least once a month to this day. He also stated that his fifty-two-year-old son has worked for the County's road maintenance division for twenty years, and would personally plow that road before it was rocked. David Hewitt, a life-long resident of the area for

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nearly seventy years, recounted that the County would scrape Hewitt Cemetery Road when he was a child, and that he has seen light traffic on the road. Robbie Meggs, a resident of the area for the past forty-five years, testified that he uses Hewitt Cemetery Road as much as twice daily and has been doing so all his life. His grandfather owned land near the Hewitt Cemetery Road, and he remembered driving mules along the road in the 1950s. David Bryan Huggins, another local life-long resident of the area, testified that he remembers seeing the County plow Hewitt Cemetery Road when he was a young child and that he still uses the road to access Hewitt Cemetery. Joseph Jones, another lifelong resident of the area for more than seventy years, testified that he uses Hewitt Cemetery Road "all the time" and that maintenance is performed on the road "pretty often." When Mr. Jones' family visits him, they use Hewitt Cemetery Road, and when Mr. Jones is picked up for dialysis treatments three times a week, his driver uses Hewitt Cemetery Road. Yet another lifelong resident of the area, Dorothy Jones, testified that she uses Hewitt Cemetery Road every day to go to work. She sees many people from her neighborhood use that road, and has seen the County doing maintenance on the road, as recently as the week of trial. Mike Wood, a local resident who owns property adjacent to Hewitt Cemetery Road, accesses his property "all the time" using the road in question. He also observed the County plowing the road before it was rocked.

Even witnesses for the defense supported Hewitt Cemetery Road's public use. Ginger Odom, Maria Cooper, and Donna Anderson, former boarders at Defendant's barn, both testified that they noticed light traffic on the road when they were on Defendant's property. Defendant's neighbor, David Garrison, testified as to the "extreme amount of traffic" on the road, stating "it's almost like a freeway."

Furthermore, there was ample evidence presented indicating that the County of Florence has maintained and repaired Hewitt Cemetery Road for decades. Arthur Gregg, Director of Public Works for Florence County since 1989, testified that the portion of the road in question

has been maintained by the County of Florence for as long as he could remember, and at least since 1972 when he began working for Florence County. He also testified that, during that time and before, Hewitt Cemetery Road was and is maintained as part of the County road system, and that the public has called him concerning routine maintenance of that road, to which the County has responded. Mr. Gregg presented maintenance charts showing periodic maintenance of the road. The County performed monthly ploughing of the road, installed a drainage system on a portion of the road at Defendant's request, rocked the road in 2004, and patches potholes on a regular basis. It cost the County approximately \$23,000 to rock Hewitt Cemetery Road, which was paid for from the public fisc as part of a capital improvement program.

ii. Dedication Arising from the Sale of Land with Reference to Maps or Plats

"Generally, where property sold is described with reference to a plat or map upon which streets and ways are shown, an easement therein is implied . . . There is an implied covenant that such ways exist and shall continue to exist." *Billings v. McDaniel*, 217 S.C. 261, 605 S.E.2d 592, 593 (1950). In the case of *Woodside Mills v. United States*, the Court construed the law of South Carolina with respect to the platting of streets, finding it was evidence of a manifestation of intent to dedicate such streets to the governing bodies and the general public. 260 F.2d 935 (4th Cir. 1958).

Here, Plaintiffs introduced multiple plats and aerial photographs showing Hewitt Cemetery Road and its existence at least back into the 1950s, long before Defendant had any ownership interest in the area. Reggie Sanders, a seventeen-year employee of the County's GIS and planning department, testified concerning aerial photographs taken between 1965 and the present day of Hewitt Cemetery Road, which are maintained as part of the records of roads kept by Florence County. The images depict Hewitt Cemetery Road in its present and historical footprint and show that its location from 1965 to the present has not changed. Pls.' Exs. 1-7.

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Plats recorded in the Office of the Clerk of Court for Florence County (Pls.' Exs. 8-14) show Hewitt Cemetery Road consistent with its configuration of the aerial photographs. Many plats show it as a "County Road" or "County Maintained."

There was further evidence presented of an express dedication of Hewitt Cemetery Road by plats referred to in deeds which are in Defendant's chain of title. Deeds into Defendant (Pls.' Exs. 15-17) show Hewitt Cemetery Road on plats referred to in the deeds. There is also a deed to Defendant's ex-husband (Pls.' Ex. 18) that references "Hewitt Cemetery Road, County maintained." No plat references a right-of-way to Defendant's property. If Hewitt Cemetery Road is not a public road as Defendant contends, then Defendant would have been buying landlocked property, as there are no easements recorded in Defendant's deeds granting access to her property from either Cato or Branch Roads.⁶

iii. Use by "the Public at Large"

Defendant argues that the local users of Hewitt Cemetery Road constitute a "special class" of the public because they live in the same community and therefore fail the test for public dedication and acceptance. See 26 C.J.S. *Dedication* § 26 ("In order to acquire a public easement, the use must be by the public at large."). However, an examination of case law makes it clear that this rule does not apply in this case.

In the case *Shia v. Pendergrass*, 222 S.C. 342, 72 S.E.2d 699 (1952), the question of implied dedication to the public was raised regarding a twelve-foot alleyway/driveway on appellant's land in the City of Florence. Shia, the owner of the servient tenement, sought to enjoin Pendergrass from utilizing the alleyway to access the rear of his grocery store, which abutted the alleyway. Pendergrass argued that the strip of land in question had been dedicated to the use of the public and to the City of Florence by the former owner, Mrs. C.M. Berry. When

⁶ According to the testimony of Arthur Gregg, Public Works Director, of the 1,200 roads (consisting of approximately 500 miles) in Florence County, only two have written right-of-way deeds to Florence County. The remaining 1,198 roads are maintained by Florence County without any written deed or right-of-way to the County.

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Mrs. Berry owned the land, she had permitted various tenants of the buildings on Pendergrass' property to utilize the alleyway for loading and unloading. Because there was evidence that "this twelve foot strip of land was used primarily by the tenants who rented the warehouse on Mrs. Berry's lot" and that "other witnesses testified that the only use made of the driveway was for business purposes by that special class of the public who had occasion to enter the rear of those stores which abutted thereon," the Court found no public dedication: "As already shown, the only thing which has been done by the owner of the property upon which an implied dedication can rest, is that they permitted a certain class of the public to use this strip of land." *Id.* at 349.

The instant case is distinguishable from *Shia*. There, only employees of the adjacent businesses had any reason to utilize the contested alleyway and there was no evidence to the contrary; a regular member of the public would have had no purpose to be in the alleyway. Thus, it is evident that only a limited number of persons were making use of the land. Here, however, Hewitt Cemetery Road is clearly used by the surrounding community at large. At trial, substantial testimony was presented that multiple individuals living in the general vicinity of the road, as well as their friends and family, school buses, and medical transport vehicles, all frequently make use of Hewitt Cemetery Road and have done so over many generations. Thus, Defendant's argument on this point fails.

iv. Payment of Taxes

Defendant argues the fact that she pays taxes on the portion of Hewitt Cemetery Road traversing her property is proof that Hewitt Cemetery Road is not dedicated as a public road. If, in fact, Defendant has paid property taxes on the footprint of Hewitt Cemetery Road as it crosses her property, this is not in and of itself significant evidence that the road was not dedicated. In *Shia v. Pendergrass*, 222 S.C. 342, 72 S.E.2d 699 (1952), the South Carolina Supreme Court explained that the fact a property owner paid taxes on a road "of itself is not generally treated as very strong evidence"

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Here, the Tax Assessor for Florence County, Jack Newsome, testified that the dirt beneath most road beds in Florence County is taxed to the property owners. Further, Hewitt Cemetery Road was dedicated as a public way long before Defendant acquired her property. All of her deeds reference plats that show either Hewitt Cemetery Road or a road or avenue located on her property before she acquired it. Therefore, the Court does not find Defendant's argument regarding payment of taxes to be compelling enough in light of all the evidence to find that no public dedication has occurred.

B. Prescriptive Easement

An easement is a right to use land of another for a specific purpose. *Steele v. Williams*, 204 S.C. 124, 132, 28 S.E.2d 644, 647 (1944). This right of way may arise by grant, from necessity, by prescription, or by implication by prior use. *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006). The requirements necessary to establish a right-of-way by prescription are: (1) the continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under claim of right. *Babb v. Harrison*, 220 S.C. 20, 66 S.E.2d 457, 458 (1951). A claimant seeking a prescriptive easement must be held to a strict standard of proof. *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170 (2015).

Again, the evidence in this case of a continuous, open, notorious, and uninterrupted use of Hewitt Cemetery Road by the public for a period of time exceeding twenty years is overwhelming, as explained above. Thus, the first and second prongs are satisfied.

As to the third prong, "[w]hen the claimant has established that the use was open, notorious, continuous, and uninterrupted, the use will be presumed to have been 'adverse,' such that the owner of the servient tenement will bear the burden of rebutting the presumption." 12 S.C. Jur. *Easements* § 10 (citing *Poole v. Edwards*, 197 S.C. 280, 15 S.E.2d 349 (1941)). Use with the permission of the owner is not adverse. *Id.* (citing *State v. Murphy*, 124 S.C. 274, 117

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S.E. 529 (1923)). Here, the evidence preponderates to the effect that the public has used Hewitt Cemetery Road adversely under claim of right for a period in excess of twenty (20) years. Although Defendant did give permission to certain individuals to access her property using Hewitt Cemetery Road (family, friends, and patrons of her stable), she did not give permission to the general public or the County and protested their use of the road, even erecting gates and keeping said gates locked on multiple occasions. Defendant did not meet her burden of rebutting the presumption because she did not present any evidence that she gave the public or the County permission to use or improve the road.

There is clear and convincing evidence that the public has had the uninterrupted use and enjoyment of Hewitt Cemetery Road for a period in excess of twenty years. The footprint of Hewitt Cemetery Road has not changed since at least 1965, as evidenced by the aerial photographs and plats that are in evidence. The fact that the County has maintained Hewitt Cemetery Road establishes the use of Hewitt Cemetery Road under a claim of right. The public, by the testimony of Plaintiff's witnesses, uses Hewitt Cemetery Road adverse to any other claim to Hewitt Cemetery Road.

III. CONCLUSION

In this case, the evidence is clear, unequivocal, and convincing that the public, by dedication, and/or by prescription, has acquired the right to use Hewitt Cemetery Road as a part of the County Road system. The continuous and widespread public usage of the road for well over twenty years, along with historical maintenance of the road performed by Florence County, without change or interference from previous owners, clearly establishes the public character of the road, and shows that the public and the County has accepted the dedication. This conclusion is fortified by the extent and duration of the maintenance which the County has performed on the road without assistance from Defendant.

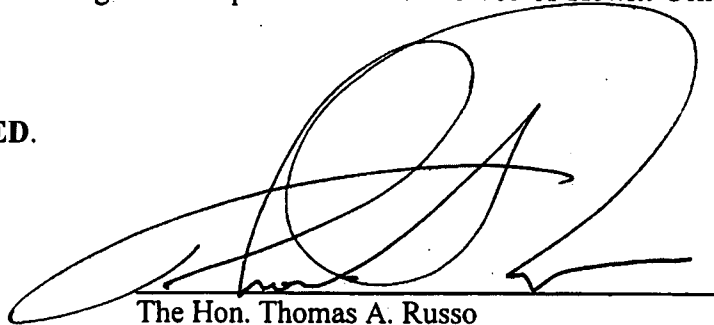
IT IS THEREFORE, ORDERED that Hewitt Cemetery Road is declared to be a public road and a public right-of-way is declared to exist for the use and benefit of the public on Hewitt Cemetery Road by virtue of dedication and prescriptive easement;

IT IS FURTHER ORDERED that Florence County has the right to maintain Hewitt Cemetery Road;

IT IS FURTHER ORDERED that Defendant, Carol Eagerton, is hereby permanently prohibited and restrained from interfering with the public's access and use of Hewitt Cemetery Road;

AND IT IS SO ORDERED.

June 29th, 2017
Florence, South Carolina



The Hon. Thomas A. Russo
Presiding Judge, Twelfth Judicial Circuit

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FLORENCE COUNTY, SC

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Paula Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	CASE NO.: 2013-CP-21-3192
	)	
County of Florence and Thomas J. Hewitt,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Carol Eagerton,	)	MOTION TO ALTER OR AMEND
	)	JUDGMENT AND MOTION FOR A
Defendant.	)	NEW TRIAL
_____	)	

Defendant, Carol Eagerton (“Eagerton”), by and through her undersigned attorney, moves for pursuant to South Carolina Rules 52(b) and 59(e) to alter or amend the judgment in the above-referenced case. Eagerton also moves pursuant to Rule 59(a) for a new trial in her case. In support thereof, Eagerton respectfully shows the Court the following:

I. FACTS

The issue in this case is whether Florence County and the public acquired a prescriptive easement and/or an easement by dedication to the road running through the middle of Eagerton’s property (“Eagerton’s road”), which was a single lane dirt plow road until Florence County rocked it on January 23, 2004.

On December 11, 1981, Eagerton and her husband purchased 20.9 acres (“Tract A”) from Willie Mae Painter. The map depicting the parcel shows two roads, “Old Road,” a plow road that is no longer used, and “Center of Road Property Line” (Eagerton’s road), the center of which formed the eastern boundary to the property. The deed to the Tract A

does not contain any reference in the property description or elsewhere to an easement or any road on the property.

On October 21, 1988, Eagerton and her husband purchased 40.7 acres ("Tract B"), which was adjacent to and east of Tract A, from Willie Mae Painter. The map depicting the parcel shows two roads, "Plantation Road," a plow road that is no longer used, and "Center of Dirt Road Property Line" (Eagerton's road), the center of which formed the western boundary to the property. The deed to Tract B does not contain any reference in the property description or elsewhere to an easement or any road on the property.

On April 4, 2000, Eagerton and her husband purchased 12.5 acres ("Tract C"), which is adjacent to Tract A from the south and adjacent to Tract B from the west, from Roberta Griffin. The map depicting the parcel shows the eastern boundary of the property as "(County Maintained) Hewitt Cemetery Road (Dirt)." The deed to Tract C does not contain any reference in the property description or elsewhere to an easement or any road on the property.

On April 4, 2002, Eagerton acquired her husband's interests in Tracts A, B, and C.

A state maintained road, Hewitt Cemetery Road, connects the northern end of Eagerton's road to Cato Road. A county maintained road, Hewitt Cemetery Road, connects the southern end of Eagerton's road to Branch Road. It is unclear when the county began calling Eagerton's road Hewitt Cemetery Road, but several witnesses testified the latest date was in 1999 or 2000, when E911 was implemented in Florence County.

Eagerton is the only resident on Eagerton's road. Although Eagerton's road is the most direct route connecting the northern and southern portions of Hewitt Cemetery Road, there are at least two other routes, one of which (via Branch Road to the east) is .4 miles farther and the other of which (via Branch Road to the west and Cato Road) is 1.2 miles farther.

The only witnesses the Plaintiffs called were the following: Thomas Hewitt, David Hewitt, and Robbie Meggs, all of whom are cousins and live near Eagerton's road; Mike Wood, who owns property at the corner of Hewitt Cemetery Road and Branch Road; Brian Huggins, who lives near Eagerton's road; Joseph "Bubba" Jones, who lives on the portion of Hewitt Cemetery Road that is south of Branch Road and not maintained by the county; Shannon Eaddy, Bubba Jones' sister; Lecrecia Boatwright, an employee of the ambulance company that transports Bubba Jones; Jerry Allen and Carlisle Gregg, Jr., who work for Florence County Public Works; Reggie Sanders, who works in the Florence County Tax Assessor's Office; and Virginia Willcox, a title abstractor. The only witnesses who testified that they used Eagerton's road on a regular basis (aside from county maintenance) were Thomas Hewitt, David Hewitt, Robbie Meggs, Mike Wood, Brian Huggins, Bubba Jones, and Shannon Eaddy. With the exception of Shannon Eaddy, Bubba's sister, six of these witnesses live within a mile of Eagerton's road.

With regard to county maintenance, Florence County Public Works records, Plaintiff's Exhibit 19, show that "Hayward Hewitt Road," which is now Branch Road and not Hewitt Cemetery Road, was mowed on 10/28/81, 01/07/82, 01/08/82, 03/18/82, 05/26/82, 06/30/82, 07/02/82, 07/21/82, 08/25/82, 10/14/82, 12/14/82, 02/10/83,

06/13/83, 07/21/83, 08/09/83, 09/01/83, and 04/14/88. Carlisle Gregg testified that although the records referred to Hayward Hewitt Road and not Hewitt Cemetery Road, Hewitt Cemetery Road and Eagerton's road would have been included in the plow. He also testified the county lost some of its records. The next records list Hewitt Cemetery Road (which public works employees testified encompassed Eagerton's road) being mowed monthly from 08/02/90 to the present and show that Eagerton's road, which the county at some point began calling Hewitt Cemetery Road, was rocked on January 23, 2004.

According to all of the defense witnesses, Eagerton's road was sparsely traveled until it was rocked by Florence County in 2004. In the 1980's and 1990's Eagerton ran a horse farm, boarded horses, nursed malnourished horses back to health for the Florence County Humane Society, and hosted horse back riding lessons. The defense witnesses testified that the property was peaceful and suitable for Eagerton's needs. They further described Eagerton's road as a single lane, dirt plow road with a patch of grass running through the middle of it. Defense photographs evidence this description.

The defense witnesses describe everything changed when the County rocked Eagerton's road in 2004. Eagerton testified that on the day it was rocked she tried to block the rocking equipment with her golf cart but was forced to move out of the way. Eagerton's neighbor recalled Eagerton coming to his house the same day and telling him of the events. Defense witnesses describe the resulting rocked road as being wider than the dirt road and able to accommodate two cars rather than one. The rocking of

Eagerton's road gave rise to disruption of Eagerton's horse farm and livelihood as well as increased traffic and crime.

In 2011, Eagerton sought help from public officials to try and reclaim her road. Defense witnesses and Plaintiff's witnesses testified as to her erection of gates at either end of Eagerton's road. Marion Joyner testified that he met police on Eagerton's property in 2013. According to the police report, Joyner told law enforcement that Eagerton had been trying to block the road "for years." After unsuccessful attempts to block the road, close gates, and petition public officials, Eagerton asked Florence County how to petition to close the road.

II. LAW

A. Implied Dedication

"Dedication requires two elements. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication." *Mack v. Edens*, 320 S.C. 236, 239 (Ct.App.1995) (citation omitted). "[T]he burden of proof to establish dedication is upon the party claiming it." *Anderson v. Town of Hemingway*, 269 S.C. 351, 354 (1977). The acts proved must not be consistent with any construction other than that of a dedication, and dedication may not be implied from the permissive, sporadic, and recreational use of property. The record must contain evidence the owner of the property clearly, convincingly, or unequivocally intended to dedicate the property for public use. *Mack*, 320 S.C. at 239.

Our Supreme Court has stated, "It is not a trivial thing to take another's land, and for this reason the courts will not lightly declare a dedication to public use." *Shia v. Pendergrass*, 222 S.C. 342 (1952), quoting *City and County of San Francisco v. Grote*, 120 Cal. 59. "While one may lose his land without an actual conveyance of the same, the acts and conduct upon his part, and upon the part of the one claiming to have acquired such title in such way, must be so unequivocal and positive as to leave little doubt that it was the intention of the owner to dedicate the same to the public use. *Id.* The length of time a road or driveway has been used is of no material consequence, unless it becomes important, in connection with other circumstances, to show an intention on the part of the owner of the land to dedicate it to public use. *Id.*

"[I]n order to establish title by dedication in cases where there had been no express gift of the land involved, it is incumbent on the party asserting that a dedication exists to show that the conduct of the owner, relied on to establish it, clearly, convincingly, and unequivocally indicates, expressly or by plain indication, a purpose or intention to create a right in the public to use the land adversely to him and as of right." *Town of Estill v. Clarke*, 179 S.C. 359 (1936). "Dedications being an exceptional and a peculiar mode of passing title to interest in land, the proof must usually be strict, cogent, and convincing, and the acts proved must not be consistent with any construction other than that of a dedication." *Seaboard Air Line R. Co. v. Fairfax*, 80 S.C. 414 (1908). "It is a necessary conclusion that no one except the owner of an unlimited estate in fee can make a dedication of land." *Id.* "It is of the essence of a dedication that the owner has

consented, permanently, to abandon the land and, whatever the nature of the acts relied on to create a dedication, the intention to dedicate must be clearly and unequivocally manifested. *Grady et al. v. City of Greenville et al.*, 129 S.C. 89 (1924); 18 C.J. 43, § 16; § 33.

As stated by our Supreme Court in *Shia*:

It would seem clear that to create a dedication by implication, the owner of the real estate must have done some act from which a positive intent on his part to dedicate the land to the public can be drawn. It is elementary law that an intention to dedicate must be plainly manifest. Here, there is no such manifest intention. No single act of Mrs. Berry can be pointed out as so indicating. The fact that the public was allowed to use the strip of land under circumstances such as exist here, without objection by the owner, is not sufficient from which to imply a dedication. During all of the time that the public has been permitted to use this driveway now in dispute, the appellant and Mrs. Berry, under whom she claims, have paid the taxes thereon to the City of Florence; and while this of itself is not generally treated as very strong evidence, still it is some evidence that they did not intend to dedicate it to the public.

Shia, at 349-350.

The nonassessment of taxes is a factor in the determination of dedication and acceptance. The payment of taxes on disputed property is evidence contrary to the intent to dedicate property to the public. *Mack v. Edens, supra*.

In addition, there must be proof that the route was used by the general public and not a subset of individuals. The use must not be by a limited community or class of people. *Burrell v. Kirkland*, 242 S.C. 201, 208 (1963). "In order to acquire a public easement, the user must be by the public at large, and not by a limited number of persons." 26 C.J.S., Dedication, § 18, page 74.

Where a conveyance of land describes the parcel as bounded by a street designated in the conveyance, or refers to a map on which spaces for streets, parks, or other common uses are shown, but the conveyance says nothing about the creation of an easement or a dedication to public use, the conveyee of the land acquires an easement with respect to the street or the areas shown on the map. 3 Powell, *The Law of Real Property* ¶ 409 (1987) [footnotes omitted]. “Absent evidence of the seller's intent to the contrary, a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a private easement by implication with respect to those streets, whether or not there is a dedication to public use.” *Newington Plantation Estates Ass'n v. Newington Plantation Estates*, 318 S.C. 362, 365 (1995).

B. Prescriptive Easement

“An easement is a right given to a person to use the land of another for a specific purpose.” *Bundy v. Shirley*, 412 S.C. 292, 304 (2015). “A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner.” *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 419 (2006). To establish a prescriptive easement, the claimant must prove by clear and convincing evidence: “(1) the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use [was] adverse under claim of right.” *Darlington Cnty. v. Perkins*, 269 S.C. 572, 576 (1977). “[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been

adverse.” *Williamson v. Abbott*, 107 S.C. 397, 400 (1917). “[A] party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence.” *Bundy*, 412 S.C. at 306. “A private way is an easement in favor of another, *in derogation of the rights of the owner*; and hence is not to arise without *clear, unequivocal proof of such facts* as will give the right from the owner to the claimant.” *Williamson* at 401 (emphasis added).

Our Supreme Court recently held that adverse use and claim of right cannot exist as separate methods of proving the third element of a prescriptive easement as the two terms are, in effect, one and the same. See *Simmons v. Berkeley Electric Cooperative*, ---S.C.---, 2016 WL 6520167 (November 2, 2016). The Court also took the “opportunity to emphasize that a claimant’s belief regarding the permissiveness of his use of property is irrelevant when determining the existence of a prescriptive easement. Instead, courts in this state should only determine whether the claimant’s use was indeed adverse.” *Id.* Thus, the Court simplified the test for a prescriptive easement as follows: “In order to establish a prescriptive easement, the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years.” *Id.*

In *Simmons*, the Supreme Court defined the terms “open,” “notorious,” and “adverse use.” “‘Open’ generally means that the use is not made in secret or stealthily. It may also mean that it is visible or apparent.” Restatement (Third) of Property (Servitudes) § 2.17(h) (2000). “‘Notorious’ generally means that the use is actually

known to the owner, or is widely known in the neighborhood.” Restatement (Third) of Property (Servitudes) § 2.17(h) (2000). “Adverse use” is defined as “a use without license or permission.” Black’s Law Dictionary 1681 (9th ed. 2009). The Court further noted that American Jurisprudence also recognizes that “[u]nder the law of prescriptive easements, the essence of a ‘hostile’ use, which has been referred to interchangeably in the case law as ‘adverse,’ ‘hostile,’ ‘nonpermissive,’ or ‘under a claim of right,’ is a lack of permission from the true owner.” *Simmons* at ; 68 Am. Jur. Proof of Facts 3d 239 § 15, at 287 (2002). It “is well-established that evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse.” *Bundy*, 412 S.C. at 310; *see also* 12 S.C. Jur. Easements § 10 (Supp. 2015) (“Use with the permission of the owner is not adverse.”)

Tacking of the prescriptive period is not permissible when it is unclear that use by claimant's predecessor was adverse. *See Bundy v Shirley*, 412 S.C. 292 (2015) (Shirley did not establish that the previous owners' use of the disputed road continued to be adverse or under a claim of right between 1969 and 1985). *See Morrow v. Dyches*, 328 S.C. 522, 528 (Ct.App. 1997) (“[I]f tacking is used, ‘the use by the previous owners must also meet the requirements of a prescriptive easement’ ” (quoting 25 Am. Jur. 2d Easements and Licenses § 70, at 640 (1996))); *Kelley v. Snyder*, 396 S.C. 564, 575 (Ct.App. 2012) (“If tacking is used, the use by the previous owners must have also been adverse or under a claim of right.”).

Actions are sufficient to interrupt the prescriptive period when the servient landowner engages in overt acts, such as erecting physical barriers, which cause a discontinuance of

the dominant landowner's use of the land, no matter how brief. *Pittman v. Lowther*, 363 S.C. 47 (2005). "In addition to physical barriers, verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period. To adopt an interpretation of "effective interruption" which requires a servient landowner to take actions in addition to erecting barriers like fences and cables, would encourage wrongful or potentially violent behavior that is contrary to sound public policy considerations and the peaceful resolution of disputes." *Id.*

III. ARGUMENT

Just because the County says a road is a public road or spends money maintaining a road does not make it a public road. The fact that the County may have spent money on a road that it did not legally own is irrelevant. Sometimes cities, counties, and individuals usurp property which gives rise to litigation such as this. The issue is whether the County has proven by clear and convincing evidence that they legally acquired right to Eagerton's road through implied dedication or a prescriptive easement.

With regard to the arguments concerning implied dedication and prescriptive easement, it is important to look at the different portions of the road and dates on which they were acquired because an owner cannot give away or dedicate what they do not own. Further, there is no rule that a road has to connect to another road and cannot dead end. Moreover, a county can own portions of a road and not the entire road. For example, the county does not contend it owns "Hewitt Cemetery Road" south of Branch Road which leads to Bubba Jones' home.

A. Implied Dedication

The Plaintiff's argument fails because there was no implied offer to dedicate Eagerton's road to the public. Implied dedication requires intent to dedicate and an acceptance by the public. The record must contain evidence the landowner clearly, convincingly, or unequivocally intended to donate the land to public use, and the acts proved must not be consistent with any construction other than that of a dedication. Permissive and/or recreational use is not enough.

There is no evidence that establishes Willie Mae Painter ("Painter"), Roberta Griffin, or Carol Eagerton donated a portion of their property to Florence County and/or members of the general public. To the contrary, in 1981, Painter sold Eagerton acreage with the property line going to the middle of a "dirt road." The dirt road did not even have a name on the map, and the property description makes no reference to any road or easement. Further, there is another dirt road on the map that is similar to the one in dispute. Then, in 1988, Painter sells Eagerton the adjacent parcel, which again has the property line in the center of the nameless dirt road, makes reference to a named road, "Plantation Road," that the County does not claim, and has a deed with no reference to any road or easement.

The fact that a dirt road appears on a map is of no consequence. That does not make it a public road. It is more likely to be a private road or a private easement, which would seem to make sense in this case given the property line, the layout of the property, and the dates on which Eagerton acquired the parcels.

As mentioned previously, no portion of Eagerton's road was excluded from the property line. This is in clear contrast to Plaintiff's Exhibits 9, 11, and 12, wherein what

is now Mike Wood's property was never encompassed in southern Hewitt Cemetery Road. The property line is clearly to the east of and does not include any portion of Hewitt Cemetery Road. The same is true when looking at Plaintiff's Exhibit 10 regarding state-maintained Hewitt Cemetery Road to the north.

Even if the County could prove intent to dedicate, it failed to show extensive and continuous use by the public at large. The use must not be by a limited community or class of people. *Burrell v. Kirkland*, 242 S.C. 201, 208 (1963). "In order to acquire a public easement, the user must be by the public at large, and not by a limited number of persons." 26 C.J.S., Dedication, § 18, page 74. The county merely proved the use of the road by a limited group of people - nearby landowners - and did not carry its burden of proving extensive, long-term, and continual use of the road by the public at large.

In *Mack v Edens*, *supra*, several witnesses testified the dirt road was historically used by the public for various purposes, including to deliver mail; to travel to a saw mill and a flour mill; to swim, fish, and attend baptismal services and school parties at a pond near Mack's; to erect and maintain public utilities; and to have emergency services access Mack's property. The court determined the public's use of the roadway was basically recreational and religious and concluded Mack had failed to establish an implied public dedication. As in the case of *Mack*, this Court should conclude that the evidence is insufficient to prove an implied dedication of Eagerton's road.

Evidence of county maintenance, a portion of the property being excluded from tax assessment, and the deed to the property delineating a "public" road goes to the issue of

acceptance of an implied dedication and not to prove of the *intent to dedicate*. See *Mack v. Edens*.

In this case, the deed did not delineate a public road, and no portion of the property was excluded from Eagerton's taxes. However, there was some testimony regarding county maintenance. Carlisle Gregg testified that he believed Hewitt Cemetery Road began being maintained in 1972 or 1973 after he began working at Florence Public Works. Florence County records do not corroborate or substantiate Gregg's "belief." Jerry Allen testified that he began mowing Hewitt Cemetery Road in the early 1980's. He claims he mowed Eagerton's dirt road despite the fact that Eagerton never saw him mow the road and despite the fact that the county records say "Hayward Hewitt Road," which is now Branch Road as opposed to "Hewitt Cemetery Road." Regardless of when Allen may have started mowing the road, Florence County records contain an obvious lapse in maintenance, one record of mowing between 09/02/83 and 08/01/90. This lapse undermines the County's entire argument.

As stated previously, Painter and Eagerton paid taxes on the entire acreage. Eagerton still pays taxes on the entire acreage. This, too, is evidence of a contrary intent to dedicate Eagerton's road to public use and lack of acceptance of the road by the public at large. For all of these reasons, there was no implied dedication of Eagerton's road and no acceptance by the general public.

B. Prescriptive Use

The Plaintiffs' argument fails with regard to prescriptive use because the County has not proved the requisite *adverse use* for twenty years. An easement by prescription is not

established merely by the use of another's land for a period of twenty years or more. The use must be adverse. The County offered no testimony or evidence to show that the neighbors' use of Eagerton's road when it belonged to Painter and Roberta Griffin was anything other than permissive. According to the *Bundy v. Shirley, supra*, permissive use is not "adverse" and will not support a finding of a prescriptive easement. As mentioned previously, the pieces of the road need to be analyzed separately because Eagerton cannot divest herself of rights she does not have. Eagerton acquired half of the road next to Tract A in 1981. At that time, Painter still owned the other half of the road next to Tract A. In addition, in 1981, Painter and Roberta Griffin owned the southernmost portion of Eagerton's road and continued owning the southernmost portion until Eagerton acquired half when she bought Tract B in 1988 and the remaining half when she purchased Tract C in 2000. There is no testimony that the sporadic use of Eagerton's road was anything other than permissive until the County rocked the road in 2004.

Again, the Plaintiffs offered no evidence to establish the use of Eagerton's road was adverse when Painter and Griffin owned their portions or when Eagerton owned her portions prior to 2004. For all we know the neighbors and/or public could have had Painter and Griffin's permission to travel across their portion of the road or easement. Eagerton did not acquire the entire northern portion of Eagerton's road until 1988, when she purchased Tract B from Painter. That prescriptive period would not run until 2008. The Plaintiffs argument fails because they have not shown adverse use prior to 2004, and

even if they had, Eagerton began trying erect barriers and to block the use after 2004 which would be sufficient to interrupt the period under *Pittman v. Lowther, supra*.

The prescriptive period did not begin run on the southern portion of Eagerton's road with regard to Eagerton until 2000, when she and her husband purchased the other half from Griffin. According to *Bundy*, prescriptive periods from prior owners cannot be "tacked" unless the Plaintiff's made a showing the use was adverse and not permissive by those owners. Plaintiffs have made no such showing. Further, the prescriptive period on the southern portion of Eagerton's road would not run until 2020.

This is a case where the Plaintiffs are trying to transform a convenient shortcut for neighbors into an easement. The fact that when they tried to start rocking that convenient shortcut, Eagerton placed her body in front of the equipment shows what really happened in this case. That is when adverse possession began. That is when the county became open, notorious, and adverse. The fact that the County widened the road is also problematic to its legal theories.

Eagerton's private rights to the use of her land far outweigh the interests of some neighbors having a shortcut. As our Supreme Court in *Shia, supra*, stated, "It is not a trivial thing to take another's land, and for this reason the courts will not lightly declare a dedication to public use." The standard for prescriptive easement is equally as strict. The Plaintiffs had the burden of proving either of these theories of acquisition by clear and convincing evidence and failed to meet its hefty burden for the reasons outlined above.

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which is now Branch Road as opposed to "Hewitt Cemetery Road." Regardless of when Allen may have started mowing the road, Florence County records contain an obvious lapse in maintenance, one record of mowing between 09/02/83 and 08/01/90. This lapse undermines the County's entire argument.

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half when she bought Tract B in 1988 and the remaining half when she purchased Tract C in 2000. There is no testimony that the sporadic use of Eagerton's road was anything other than permissive until the County rocked the road in 2004.

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The prescriptive period did not begin run on the southern portion of Eagerton's road with regard to Eagerton until 2000, when she and her husband purchased the other half from Griffin. According to *Bundy*, prescriptive periods from prior owners cannot be "tacked" unless the Plaintiff's made a showing the use was adverse and not permissive by those owners. Plaintiffs have made no such showing. Further, the prescriptive period on the southern portion of Eagerton's road would not run until 2020.

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Eagerton's private rights to the use of her land far outweigh the interests of some neighbors having a shortcut. As our Supreme Court in *Shia, supra*, stated, "It is not a trivial thing to take another's land, and for this reason the courts will not lightly declare a dedication to public use." The standard for prescriptive easement is equally as strict. The Plaintiffs had the burden of proving either of these theories of acquisition by clear and convincing evidence and failed to meet its hefty burden for the reasons outlined above.

IV. MOTION TO ALTER AND AMEND

Eagerton moves to alter or amend the Order issued on July 3, 2017, in this case with regard to the following:

- (1) On page 2, the Order states that "[t]hroughout its lifetime Hewitt Cemetery Road had been called various names, and had been designated differently on plats recorded in the Office of the Clerk of Court." The Order then refers to different plats. Eagerton objects to the fact that the Order treats all portions of the road as one and does not differentiate between the different portions of the road and when each was acquired. Eagerton also objects to any notion that the portion of her road adjacent to Tract A was ever referred to as "Hewitt Cemetery Road" or "County Maintained Road" on any plat.

- (2) On page 3, the Order states “records from the Florence County Department of Public Works from the 1980’s refer to the road as ‘Hayward Hewitt Road’ and ‘Hewitt Road’” and that “[h]undreds of individual, handwritten work forms, spanning from October of 1981 through July of 1998, indicate that the road in question, typically referred to then as ‘Hayward Hewitt Road,’ was being plowed and otherwise maintained.” Eagerton objects to these portions of the Order as not being supported by the record in this case. According to the testimony in this case, Hayward Hewitt Road is the former name for what is now Branch Road, and Hayward Hewitt Road was never the former name for Hewitt Cemetery Road. While there were work orders that Hayward Hewitt Road was maintained from 1981 to 1983, there was record of only one mow on Hayward Hewitt Road over the seven-year period of 1983 to 1990, which was dated April 14, 1988. Moreover, there are no work orders showing that Hewitt Cemetery Road was maintained prior to August 02, 1990. County employee and public works director testified that when records indicated that Hayward Hewitt Road was plowed, employees would have also plowed what is now Hewitt Cemetery Road because what is now Hewitt Cemetery Road adjoined Hayward Hewitt Road perpendicularly. However, that testimony does not explain the record of only one mow in seven years. The County apparently argues that it may have lost some records.
- (3) In the footnote on page 4, the Court finds it noteworthy that Eagerton tried to close the road through the road closure process in a letter dated “November

14, 2001” and that it would have been unnecessary for her to go through the process if she believed she was the true owner of the road. Eagerton objects to this statement and believes the letter was dated November 14, 2011, rather than 2001. Further, the Order ignores that Eagerton tried to physically block the paving of the road with her golf cart in 2004, that she closed the road with gates in 2011, and that this letter was a last resort for Eagerton when all else had failed.

- (4) Eagerton objects to the Court finding that there was an implied dedication in this case and respectfully submits that the record does not support the same. Eagerton further objects to the Order not specifying which landowner expressed in a positive and unmistakable manner his or her intention to dedicate the property to public use. If it was prior to the Eagerton's ownership, who dedicated it? Why is it not delineated in the deed or on the parcel map? Why does the deed convey the parcel to the center of the dirt road rather than to the edge if it were a public easement? Why is the dirt road not considered a private rather than public easement?
- (5) Eagerton objects to the Order's factual record regarding public use and maintenance with regard to public acceptance of the dedication. Eagerton does not believe the Order is supported by the record in the case.
- (6) Eagerton objects to page 8 of the Order wherein it states, “where property is described with reference to a plat or map upon which streets and ways are shown, and easement therein is implied...There is an implied covenant that

such ways exist and shall continue to exist.” Eagerton believes that absent a seller’s intent to the contrary, a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a *private* easement by implication. Whether or not there is a dedication to public use is a separate issue and was not proven.

- (7) Eagerton objects to the Court finding that there was use by the public at large and not by a limited group of people. Eagerton submits that the record does not support a finding of open and notorious use by the public at large and not by segment of the community as a shortcut.
- (8) Eagerton objects to the Court not putting greater weight on the fact that she has always paid and continues to pay taxes on the road that the county claims is theirs.
- (9) Eagerton objects to the Court not finding Florence County and the Plaintiffs carried their burden in proving each of the elements of implied dedication by clear and convincing evidence.
- (10) Eagerton objects to the Court finding that there was a prescriptive easement in this case and respectfully submits that the record does not support the same as there is no evidence of uninterrupted, adverse use for 20 years. Painter owned half of the dirt road until 1988. Griffin owned half of the southernmost portion of the road until 2000. The Plaintiffs offered no testimony whatsoever as to the use of the property being adverse with regard to Eagerton prior to the rocking of the road in 2004, and no testimony

whatsoever regarding adverse use with regard to the prior owners of the parcels, the Painters or the Griffins. The use could have been permissive with respect Eagerton prior to 2004, and with respect to the Painters and the Griffins during their entire ownership, but one has no way of knowing because the Plaintiffs offered no testimony regarding the same. Plaintiffs have the burden of proving adverse use of the road for 20 years and offered no testimony regarding whether the use was permissive or adverse. Further, Eagerton interrupted the use, whether it was adverse or permissive, in 2004, when she tried to block the rocking of the road with her golf cart and again in 2011, when she erected gates.

- (11) Eagerton further objects to the Court treating all parcels as one and to the lack of finding as to when the adverse use began as to each parcel.
- (12) Eagerton objects to the Court not adopting the burden of proof in *Bundy v. Shirley, supra*, of clear and convincing evidence and not finding that Plaintiffs met the burden of proof with regard to each element of prescriptive easement.

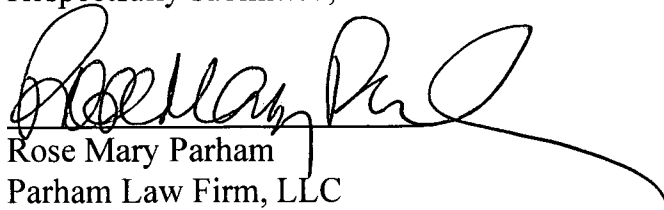
V. MOTION FOR A NEW TRIAL

Based upon all of the aforementioned arguments, Eagerton submits that the Plaintiffs did not meet their burden in proving an implied dedication or a prescriptive easement in the case and for the reasons outlined above would ask for a new trial in the case.

VI. CONCLUSION

Eagerton requests that her motion to alter and amend judgment and her motion for new trial in the case be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rose Mary Parham", written over a horizontal line.

Rose Mary Parham
Parham Law Firm, LLC
541 W. Evans Street
Post Office Box 1514
Florence, South Carolina 29503
843-407-7757
Attorney for Defendant

Florence, South Carolina
July 17, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NUMBER: 2013-CP-21-3192
	)	
County of Florence and Thomas J. Hewitt,	)	
	)	
Plaintiffs,	)	
	)	RESPONSE TO MOTION TO ALTER
vs.	)	OR AMEND JUDGMENT AND
	)	MOTION FOR A NEW TRIAL
Carol Eagerton,	)	
	)	
Defendant.	)	

The Defendant has moved for an amendment of judgment in the above case or in the alternative for a new trial. These motions are made pursuant to the South Carolina Rules of Court 52(b), 59(e) and 59(a). Rule 52(b) provides that a motion may be made to amend findings or make additional findings and amend the judgment accordingly within ten days after receipt of written notice of entry of judgment. The judgment in the above case was entered on June 29, 2017 and mailed first class or placed in the appropriate attorney's box on July 3, 2017. The motion filed by the Defendant was filed on July 17, 2017. The filing of the motion by the Defendant is outside the ten-day prescription as provided in Rule 52(b). Rule 59(b) provides that a motion for a new trial in actions tried without a jury shall be made not later than ten days after the receipt of the written notice of the entry of judgment or the filing of an order disposing of the action, if no judgment has been entered. Again, the order in this matter was filed on July 29, 2017 and mailed first class or placed in the Defendant's attorney's box on July 3, 2017. The motion for a new trial pursuant to Rule 59(a) was filed on July 17, 2017 and is outside the time prescribed in Rule 59(b). Without waiving their contest of the timeliness of the Motion to Alter or Amend Judgment and Motion for a New Trial, the Plaintiff's make the following response to the Defendant's motions.

A Rule 59(e) motion cannot be used to present to the court an issue the party could have raised prior to judgment, but did not. *S.C. Coastal Conservation v. South Carolina Department of Health and Environmental Control*, 669 S.E.2d 899; 380 S.C. 349 (Ct.App. 2008). The Defendant has provided

no affidavits as allowed under Rule 59(c) and thus, the basis for the Defendant's motions are solely the testimony of witnesses and exhibits introduced into evidence as heard by the trial judge.

The Plaintiff adopts the findings of the court in its Order dated June 29, 2017 in its response to the Defendant's motion.

The characterization of the facts in the Defendant's motions are those urged upon the court in the presentation of Defendant's case. The trial judge has the authority to find the facts in accordance with his view of the evidence presented.

The Defendant is the owner of three adjacent tracts of land in Florence County bisected by Hewitt Cemetery Road. The tracts are a 29 acre tract ("Tract A"), a 40.7 acre tract ("Tract B") and a 12.51 acre tract ("Tract C").

The evidence presented is cogent and convincing that Hewitt Cemetery Road is a County maintained public road. The Defendant's contention that Eagerton Road is a one lane road is without foundation in the evidence presented. There are no documents, no plats, and no deeds, which refer to the road in questions as Eagerton Road. The evidence presented referred to the road as either Hewitt Cemetery Road, Hayward Hewitt Road, dirt road or an old avenue. The evidence in this case establishes the public character of Hewitt Cemetery Road through the testimony of witness Carlie Gregg and the exhibits introduced from the Florence County Public Works Department proving the long time public maintenance of Hewitt Cemetery Road. The road has been maintained by Florence County according to Mr. Gregg prior to his employment with the Florence County Public Works Department in 1972. Though Mr. Gregg was unable to locate all of the maintenance records because of a flood destroying earlier records, Plaintiff's Exhibit 19 with work beginning in 1981 through 1998 provided 157 pages of work noted on Hewitt Cemetery Road. Additionally, 30 computer pages showing work done on Hewitt Cemetery Road from 1999 through 2001 were introduced and finally 138 computer pages for work done between 2002 and June 2013 were introduced into the record.

The witnesses for the Plaintiff who testified regarding the long-standing public usage of Hewitt Cemetery Road were a cross section of the public in Florence County. It was testified that the road was used the public school to operate its school buses to pick up school children, by an ambulance service to pick up patients for medical care, by farmers traveling to and from fields, by occupants of residences on Hewitt Cemetery Road and by the general public.

Aerial photographs of the area of Hewitt Cemetery Road kept by the Florence County Tax Assessor's office which began in 1965 show Hewitt Cemetery Road in its present configuration dating back to 1965.

The deeds into the Defendant reference a series of plats, all which are recorded in the office of the Clerk of Court for Florence County and are referenced in several of the deeds conveying the Plaintiff's title to her property. Deeds into other individuals whose property borders Hewitt Cemetery Road reference plats showing Hewitt Cemetery Road. The deed into Michael Wood whose property is on Hewitt Cemetery Road references a July 1, 1993 plat by Ervin Engineering Company showing a County maintained road in the location of Hewitt Cemetery Road. A plat reference in the deed to David Garrison references Hewitt Cemetery Road. The deed into the Plaintiff's property for the 40.7 acre tract of land references a plat recorded in plat book 32 at page 250 which shows a dirt road bordering the 40.7 acre tract of land. This is a 1988 deed to the Defendant and her then husband Nathan Fowler. The deed for the 29 acre tract of the Defendant's property recorded in 1981 references a deed recorded in the office of the Clerk of Court for Florence County showing a road which is Hewitt Cemetery Road bounding the 20.9 acre tract. The deed to the Defendant for the 12.51 acre tract of land references a plat recorded in the office of Clerk of Court for Florence County showing "Hewitt Cemetery Road (dirt) County maintained" bounding the 12.51 acre tract of land.

On all occasions that the Plaintiff acquired title to her property, there was the establishment and acknowledgment by previous property owners of the existence of Hewitt Cemetery Road.

The deed for the 12.5 acre tract of land is illuminating in that it contradicts the testimony of the Defendant's witnesses who testified that Hewitt Cemetery Road has not been County maintained. The deed and the plat accompanying the deed for the 12.5 acre tract of land established clearly that Hewitt Cemetery Road existed and that it was County maintained. This is not proof that Hewitt Cemetery Road was County maintained solely from the testimony of the Florence County Public Works Department, which is called into question by the Defendant. It is established by the opinion of a well-respected civil engineering firm that has been in business in Florence County since the early 20th Century. In its plat, Ervin Engineering Company stated unequivocally that Hewitt Cemetery Road is a County maintained dirt road.

Further evidence of the public nature of Hewitt Cemetery Road is the fact that a County waterline is located within the confines of the footprint of Hewitt Cemetery Road. Even the Defendant herself contacted the County to use public resources and public manpower to place a pipe beneath Hewitt Cemetery Road to facilitate drainage. This act by the Defendant is contrary to her assertion that Hewitt Cemetery Road is a private road. She requested that the County use resources of the public fisc. Public resources may only be used on public property and not private property. This request by the Defendant is an acknowledgement that Hewitt Cemetery Road is a public road. The Defendant filed a request with the County Administrator that Hewitt Cemetery Road be closed. This is a recognition by her that the road is a public road.

Hewitt Cemetery Road existed for more than 50 years prior to the Defendant's acquisition of her land.

The intent to dedicate is implied from the length of time that the public uses the road as well as by the County using, maintaining, and repairing Hewitt Cemetery Road. By virtue of the fact that the County maintained Hewitt Cemetery Road it lost its status as an unimproved area and becomes improved property. See *County of Darlington v. Perkins*, 239 S.E.2d 69, 269 S.C. 572 (1977).

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In reference to the deeds titling the Defendant's real property in her name, the court in *Estill v. Clark*, 179 S.C. 359 held, "Where an improvement company laid lands into numbered city lots and streets, making a plat thereof, and sold property marked and numbered on the plat, with reference thereto in the deeds, such acts constitute an irrevocable dedication of the streets." *Estill v. Clark*, 179 S.C. 359, 363. As set forth herein, all of the deeds into the Defendant referenced a road bounding or bisecting her property. Thus, under the doctrine set forth in *Estill*, there was an irrevocable dedication of Hewitt Cemetery Road. The case of *Newington Plantation Estates Ass'n v. Newington*, 318 S.C. 362 also stands for the proposition that property conveyed referencing a plat, which shows a road establishes that the road exists.

Common law doctrine regarding dedication as set forth in 23 Am. Jur. 2d Dedication, §27 states that no particular formality is necessary to affect the dedication. It can be by long standing use of the property by the public as well as maintenance of the road by the County of Florence. Additionally, Hewitt Cemetery Road is not a dead end road. Hewitt Cemetery Road connects two other public roads, Cato Road and Branch Road.

The Defendant's testimony that Hewitt Cemetery Road was never a public road belies the fact that she requested of the Florence County Administrator that the road be closed. This request is an affirmation of the fact that Hewitt Cemetery Road is a public road.

There were two theories presented by the evidence to establish that Hewitt Cemetery Road is a public road, one was dedication and the other prescriptive easement. Though the Defendant through the evidence presented by her contested either theory, there was sufficient evidence to establish by clear and cogent evidence that Hewitt Cemetery Road is a public road under either theory. Where the trial judge has exercised discretion invested in him and there is evidence to support his decision, it is proper for the trial judge to deny a motion to alter or amend or for a new trial. The evidence presented in this case supports the judgment of the court.

It is respectfully submitted that the Defendant's motions be denied.

s/D. Malloy McEachin, Jr. _____

D. Malloy McEachin, Jr.

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Attorney for Plaintiffs

_____, 2017

Florence, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) TWELFTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-21-3192

COUNTY OF FLORENCE AND)
THOMAS J. HEWITT,)
DORIS POULDS O'HARA)
CCCP & GS)
FLORENCE COUNTY, SC)
Plaintiffs,)

v.)

CAROL EAGERTON,)

Defendant.)

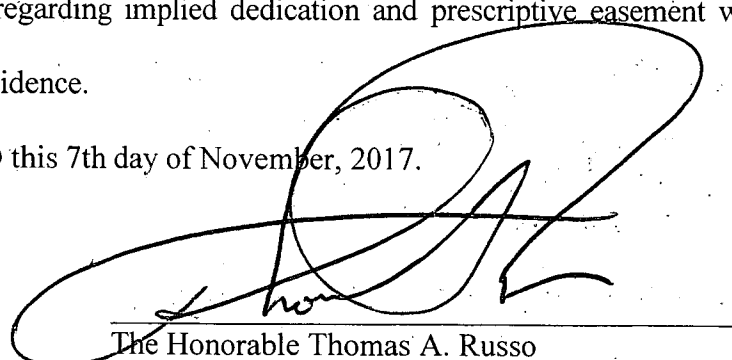
**ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL**

THIS MATTER came before the Court on Defendant's Motion to Alter or Amend Judgment and Motion for a New Trial, pursuant to Rules 52(b), 59(a), and 59(e), SCRPC.

Having considered its original Order, the relevant law, and the briefs of both parties pursuant to SCRPC 59(f), the Court is not persuaded that it made any errors of law in its original ruling, or that the law has changed over the past several months; therefore, Defendant's Motion for a New Trial is respectfully **DENIED**.

The Court does take this opportunity to issue an Amended Order to correct a scrivener's error and to emphasize that its findings regarding implied dedication and prescriptive easement were supported by clear and convincing evidence.

AND IT IS SO ORDERED this 7th day of November, 2017.



The Honorable Thomas A. Russo
Presiding Judge, Twelfth Judicial Circuit

CERTIFIED: A TRUE COPY
- Doris Poulso O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

County of Florence and Thomas J. Hewitt,

vs.

Carol Eagerton,

Defendant.

FILED

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-21-3192

2017 NOV -7 PM 3:42

DORIS POULSON G'HARA
Plaintiffs, CCCP & GS
FLORENCE COUNTY, SC

AMENDED ORDER

This action was filed on December 12, 2013, by Plaintiffs, seeking injunctive relief against Defendant and a declaration that Hewitt Cemetery Road is a public road under the theory of prescriptive easement and/or public dedication. This matter came before the Court for a non-jury trial on January 11, 2017. After carefully considering all of the testimony and exhibits introduced along with the arguments and submissions of counsel, and after reviewing the relevant law, the Court makes the following findings of fact and conclusions of law.

I. BACKGROUND AND PROCEDURAL HISTORY

This action was initiated by Plaintiffs after Defendant erected locked gates across Hewitt Cemetery Road along her property lines in order to block public access and use of the road at various times between 2011 and 2013. Plaintiffs are seeking a permanent injunction and restraining order prohibiting Defendant's interference with the road. Defendant claims the road is private and she has a right to prohibit public use, while Plaintiffs contend it is a public, county-maintained road. The issue in this case is whether Florence County and the public acquired a prescriptive easement and/or an easement by dedication to the road in question.

Defendant is the owner of three adjacent tracts of land in Florence County, South Carolina: a 20.9 acre tract ("Tract A"), a 40.7 acre tract ("Tract B"), and a 12.51 acre tract ("Tract C"). Hewitt Cemetery Road forms the eastern boundary to Tracts A and C, and the western boundary to Tract B. It runs perpendicular to Cato Road to the North and Branch Road to the South.

RECEIVED A TRUE COPY
Doris Poulson G'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

South. The northern portion of Hewitt Cemetery Road from Defendant's property to Cato Road is state maintained and is not in dispute. The rest of the road runs south to Branch Road.

Defendant acquired the three individual properties at different times. On December 11, 1981, Defendant and her husband purchased Tract A from Willie Mae Painter. Pls. Ex. 16. The map depicting the parcel shows the road in question as "Center of Road Property Line," the center of which formed the eastern boundary to the property. On October 21, 1988, Defendant and her husband purchased 40.7 acres ("Tract B") adjacent to and east of Tract A, from Willie Mae Painter, and bounded on the west by "Dirt Road - The Property Line." Pls. Ex. 15. On April 4, 2000, Defendant and her husband purchased 12.5 acres from Roberta Griffin ("Tract C"), which is adjacent to Tract A from the south and Tract B from the west. The plat depicting the parcel shows the eastern boundary of the property as "(County Maintained) Hewitt Cemetery Road (Dirt)."¹ Pls. Ex. 17.

Throughout its lifetime, Hewitt Cemetery Road has been called by various names, and has been designated differently on plats recorded in the Office of the Clerk of Court.²

- "Old Ave" (plat dated April 30, 1954, prepared by Ervin Engineering Co.)
- "Old Avenue" (plat dated January 31, 1968, prepared by Ervin Engineering Co.)
- "Hewitt Cemetery Rd." (plat dated October 15, 1976, prepared by Ferrell Prosser, Registered Surveyor)
- "Dirt Road" (plat dated October 17, 1988, prepared by Ervin Engineering Co.)
- "Hewitt Cemetery Road" (plat dated February 26, 1992, prepared by Lind Hicks & Associates)
- "County Maintained Road" (plat dated July 1, 1993, prepared by Ervin Engineering Co.)
- "Hewitt Cemetery Road . . . (County Maintained)" (plat dated November 16, 1998, prepared by Nesbitt Surveying Co.)
- "Hewitt Cemetery Road . . . (County Maintained)" (plat dated August 10, 1999, prepared by Nesbitt Surveying Co.)

¹ On April 4, 2002, Defendant acquired her husband's interest in all three tracts.

² It is unclear when the County officially began calling the road "Hewitt Cemetery Road," but several witnesses testified at trial that the latest date was in the late 1990's, when E-911 was implemented in Florence County.

Additionally, records from the Florence County Department of Public Works from the 1980's refer to the road as "Hayward Hewitt Road" and "Hewitt Road."³

At trial, Plaintiffs called multiple witnesses to testify regarding the historical county maintenance of Hewitt Cemetery Road, along with its longstanding public usage. Mr. Carlisle Gregg, Director of Florence County Public Works, testified that Florence County has been maintaining Hewitt Cemetery Road since he began working there in 1972 and had been maintaining Hewitt Cemetery Road prior to that time. Although earlier records had been partially destroyed due to flooding, the records the County was able to produce indicate that from 1981 forward, the County has been regularly maintaining the road in question. Hundreds of individual, handwritten work forms, spanning from October of 1981 through July of 1998, indicate that the road in question was being plowed or otherwise maintained.⁴ Pls' Ex. 19. Two sets of spreadsheets provided by the County, generated every month from July 1999 to December 2001 and January 2002 to June 2013, log the total number of plows performed on a geographical area of roads, including "Hewitt Cem. Rd." Pls' Exs. 20 and 21. These records show that the road in question was generally plowed at least one per month by the County. There was also testimony that when a perpendicular road, Branch Road, was maintained, the County would also complete work on the road in question as part of its scheduled maintenance of the area. According to Mr. Gregg, the County installed a pipe along Hewitt Cemetery Road on July 6, 1993, and patches potholes along the road on a regular basis. Importantly, Mr. Gregg also testified that the County of Florence expended over \$23,000.00 rocking Hewitt Cemetery Road in 2004.

³ At trial, Reggie Sanders, a former employee of the Florence County Tax Assessor's Office and current employee of Florence County GIS Mapping, identified seven (7) aerial photographs of the area in question taken from 1965 through 2015. All of these aerial photographs showed, in clear outline, Hewitt Cemetery Road. The footprint of the road has remained consistent throughout the years.

⁴ Mr. Gregg recalled assigning names and numbers to various unidentified roads in order to inventory them from 1989-1990; before that, road names were memorized by employees and shared with each other to form a sort of historical institutional memory.

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Mr. Gregg further testified that only a portion of two roads in Florence County have been deeded to the County of Florence. The other approximately 1,200 roads are designated public roads without a written deed or easement. Mr. Gregg explained that the County has in place a procedure for County roads to be closed, and Defendant made an application to close Hewitt Cemetery Road prior to this lawsuit; however, because her application was opposed by members of the public, the request was denied.⁵

Mr. Jerry Allen, Area Supervisor for Florence County Public Works, testified that he operated a road plow for the County in the early 1980s. One of the areas he regularly plowed was Hewitt Cemetery Road, a dirt road at that time, approximately two times per month. He recalled seeing school buses and other vehicles on the road when they would plow it. Mr. Allen also recalled installing a pipe in the County portion of Hewitt Cemetery Road at the request of Defendant's ex-husband and predecessor in title to a portion of the property now owned by Defendant.

Several individuals who live in the area of Hewitt Cemetery Road—Thomas Hewitt, David Hewitt, Joseph Jones, Robbie Meggs, Mike Wood, Bryan Huggins, Joseph "Bubba" Jones, Dorothy Jones, and Jerry Allen—testified as to the public's regular use of Hewitt Cemetery Road. Thomas Hewitt is an octogenarian, Robbie Meggs, Joseph Jones, and Dorothy Jones are septuagenarians, and David Hewitt is a sexagenarian. All of the witnesses named above testified that they, their families, and other members of the public have used Hewitt Cemetery Road as far back as they can remember, from their early childhood. All of the above witnesses also testified they had witnessed the County of Florence maintaining Hewitt Cemetery Road for all of their lives, and Robbie Meggs stated specifically he does not recall there ever being a gap in county

⁵ This Court finds it noteworthy that Defendant chose to avail herself of county road closure process. Defendant further testified that she sent a letter on November 14, 2011 (Def. Ex. 12) to the then County Administrator, Thomas Robinson, requesting that the County close Hewitt Cemetery Road. She sent a subsequent letter to Mr. Robinson (Def. Ex. 13) again asking the County to close Hewitt Cemetery Road. If Defendant actually believed she was the true owner of the road, it would have been unnecessary for her to go through the petition process and air her grievances with County officials.

maintenance. Defense witnesses Maria Cooper, David Garrison, and Donna Anderson also testified to observing public use of Hewitt Cemetery Road.

II. DISCUSSION

A. Dedication

"The determination of whether a roadway has been dedicated to the public is an action in equity." *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995). "Dedication requires two elements. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication." *Id.* The burden of proving dedication is upon the party claiming it. *Anderson v. Town of Hemingway*, 269 S.C. 351, 354, 237 S.E.2d 489, 490 (1977).

"No particular formality is necessary to effect a common law dedication." *Boyd v. Hyatt*, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct. App. 1988). "An intention to dedicate may be implied from the circumstances." *Id.*

South Carolina law recognizes two types of implied dedication: "one where the question of implied dedication arises from the sale of land with reference to maps or plats; the other when the dedication arises . . . from an abandonment to or acquiescence in public use." *Shia v. Pendergrass*, 222 S.C. 342, 347, 72 S.E.2d 699, 701 (1952). "A dedication need not be made by deed or other writing, but may be effectually made by acts or declarations. Intent to dedicate may also be implied from long public use of the land to which the owner acquiesces." *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 317, 433 S.E.2d 874, 883 (Ct. App. 1992).

However,

dedication is an exceptional mode of passing an interest in land, and proof of dedication must be strict, cogent, and convincing. The acts proved must not be consistent with any construction other than that of a dedication, and dedication may not be implied from the permissive, sporadic, and recreational use of property. The

record must contain evidence the owner of the property clearly, convincingly, or unequivocally intended to dedicate the property for public use.

Mack, 320 S.C. at 239, 464 S.E.2d at 126.

"As with intention to dedicate, no formal acceptance by a public authority is necessary to show public acceptance. Acceptance may be implied by the public or a public authority continuously using or repairing the property." *Id.* "The use, repair, and working of the streets by public authorities is a mode of acceptance." *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 192 (1997); *see also Darlington Cnty. v. Perkins*, 269 S.C. 572, 239 S.E.2d 69 (1977) (finding County maintenance of a road to include ditching, cleaning, plowing, and installing a drainage system was proof of acceptance of a public dedication). "It is the duty of the fact finder to determine whether or not the public dedication has been accepted." *Id.* at 327, 487 S.E.2d at 192.

i. **Acceptance of the Public Dedication**

Here, the record indicates a historical use of the road by the public, as well as historical maintenance of the road by the County. Jerry Allen, a forty-year employee of Florence County Public Works, testified that Hewitt Cemetery Road was a dirt road in the early 1980s. In his role as Area Supervisor, Mr. Allen's job is to perform maintenance on County roads. He testified that when he and his team would plow Hewitt Cemetery Road, he would see school buses and other cars using the road. He himself used the road to ride dirt bikes when he was younger, and even drove school buses down the road when he was a bus driver. Thomas Hewitt, a lifelong resident of the area, testified that his family has always used Hewitt Cemetery Road ever since he was a child, and he uses it at least once a month to this day. He also stated that his fifty-two-year-old son has worked for the County's road maintenance division for twenty years, and would personally plow that road before it was rocked. David Hewitt, a life-long resident of the area for nearly seventy years, recounted that the County would scrape Hewitt Cemetery Road when he

was a child, and that he has seen light traffic on the road. Robbie Meggs, a resident of the area for the past forty-five years, testified that he uses Hewitt Cemetery Road as much as twice daily and has been doing so all his life. His grandfather owned land near the Hewitt Cemetery Road, and he remembered driving mules along the road in the 1950s. David Bryan Huggins, another local life-long resident of the area, testified that he remembers seeing the County plow Hewitt Cemetery Road when he was a young child and that he still uses the road to access Hewitt Cemetery. Joseph Jones, another lifelong resident of the area for more than seventy years, testified that he uses Hewitt Cemetery Road "all the time" and that maintenance is performed on the road "pretty often." When Mr. Jones' family visits him, they use Hewitt Cemetery Road, and when Mr. Jones is picked up for dialysis treatments three times a week, his driver uses Hewitt Cemetery Road. Yet another lifelong resident of the area, Dorothy Jones, testified that she uses Hewitt Cemetery Road every day to go to work. She sees many people from her neighborhood use that road, and has seen the County doing maintenance on the road, as recently as the week of trial. Mike Wood, a local resident who owns property adjacent to Hewitt Cemetery Road, accesses his property "all the time" using the road in question. He also observed the County plowing the road before it was rocked.

Even witnesses for the defense supported Hewitt Cemetery Road's public use. Ginger Odom, Maria Cooper, and Donna Anderson, former boarders at Defendant's barn, both testified that they noticed light traffic on the road when they were on Defendant's property. Defendant's neighbor, David Garrison, testified as to the "extreme amount of traffic" on the road, stating "it's almost like a freeway."

Furthermore, there was ample evidence presented indicating that the County of Florence has maintained and repaired Hewitt Cemetery Road for decades. Arthur Gregg, Director of Public Works for Florence County since 1989, testified that the portion of the road in question has been maintained by the County of Florence for as long as he could remember, and at least

since 1972 when he began working for Florence County. He also testified that, during that time and before, Hewitt Cemetery Road was and is maintained as part of the County road system, and that the public has called him concerning routine maintenance of that road, to which the County has responded. Mr. Gregg presented maintenance charts showing periodic maintenance of the road. The County performed monthly ploughing of the road, installed a drainage system on a portion of the road at Defendant's request, rocked the road in 2004, and patches potholes on a regular basis. It cost the County approximately \$23,000 to rock Hewitt Cemetery Road, which was paid for from the public fisc as part of a capital improvement program.

Thus, the Court finds by clear and convincing evidence that there was acceptance of the public dedication of the road in question.

ii. **Dedication Arising from the Sale of Land with Reference to Maps or Plats**

"Generally, where property sold is described with reference to a plat or map upon which streets and ways are shown, an easement therein is implied . . . There is an implied covenant that such ways exist and shall continue to exist." *Billings v. McDaniel*, 217 S.C. 261, 605 S.E.2d 592, 593 (1950). In the case of *Woodside Mills v. United States*, the Court construed the law of South Carolina with respect to the platting of streets, finding it was evidence of a manifestation of intent to dedicate such streets to the governing bodies and the general public. 260 F.2d 935 (4th Cir. 1958).

Here, Plaintiffs introduced multiple plats and aerial photographs showing Hewitt Cemetery Road and its existence at least back into the 1950s, long before Defendant had any ownership interest in the area. Reggie Sanders, a seventeen-year employee of the County's GIS and planning department, testified concerning aerial photographs taken between 1965 and the present day of Hewitt Cemetery Road, which are maintained as part of the records of roads kept by Florence County. The images depict Hewitt Cemetery Road in its present and historical

footprint and show that its location from 1965 to the present has not changed. Pls.' Exs. 1-7. Plats recorded in the Office of the Clerk of Court for Florence County (Pls.' Exs. 8-14) show Hewitt Cemetery Road consistent with its configuration of the aerial photographs. Many plats show it as a "County Road" or "County Maintained."

There was further evidence presented of an express dedication of Hewitt Cemetery Road by plats referred to in deeds which are in Defendant's chain of title. Deeds into Defendant (Pls.' Exs. 15-17) show Hewitt Cemetery Road on plats referred to in the deeds. There is also a deed to Defendant's ex-husband (Pls.' Ex. 18) that references "Hewitt Cemetery Road, County maintained." No plat references a right-of-way to Defendant's property. If Hewitt Cemetery Road is not a public road as Defendant contends, then Defendant would have been buying landlocked property, as there are no easements recorded in Defendant's deeds granting access to her property from either Cato or Branch Roads.⁶

Thus, the Court finds by clear and convincing evidence that the road in question was expressly dedicated to the public.

iii. Use by "the Public at Large"

Defendant argues that the local users of Hewitt Cemetery Road constitute a "special class" of the public because they live in the same community and therefore fail the test for public dedication and acceptance. See 26 C.J.S. *Dedication* § 26 ("In order to acquire a public easement, the use must be by the public at large."). However, an examination of case law makes it clear that this rule does not apply in this case.

In the case *Shia v. Pendergrass*, 222 S.C. 342, 72 S.E.2d 699 (1952), the question of implied dedication to the public was raised regarding a twelve-foot alleyway/driveway on appellant's land in the City of Florence. Shia, the owner of the servient tenement, sought to

⁶ According to the testimony of Arthur Gregg, Public Works Director, of the 1,200 roads (consisting of approximately 500 miles) in Florence County, only *two* have written right-of-way deeds to Florence County. The remaining 1,198 roads are maintained by Florence County without any written deed or right-of-way to the County.

enjoin Pendergrass from utilizing the alleyway to access the rear of his grocery store, which abutted the alleyway. Pendergrass argued that the strip of land in question had been dedicated to the use of the public and to the City of Florence by the former owner, Mrs. C.M. Berry. When Mrs. Berry owned the land, she had permitted various tenants of the buildings on Pendergrass' property to utilize the alleyway for loading and unloading. Because there was evidence that "this twelve foot strip of land was used primarily by the tenants who rented the warehouse on Mrs. Berry's lot" and that "other witnesses testified that the only use made of the driveway was for business purposes by that special class of the public who had occasion to enter the rear of those stores which abutted thereon," the Court found no public dedication: "As already shown, the only thing which has been done by the owner of the property upon which an implied dedication can rest, is that they permitted a certain class of the public to use this strip of land." *Id.* at 349.

The instant case is distinguishable from *Shia*. There, only employees of the adjacent businesses had any reason to utilize the contested alleyway and there was no evidence to the contrary; a regular member of the public would have had no purpose to be in the alleyway. Thus, it is evident that only a limited number of persons were making use of the land. Here, however, Hewitt Cemetery Road is clearly used by the surrounding community at large. At trial, substantial testimony was presented that multiple individuals living in the general vicinity of the road, as well as their friends and family, school buses, and medical transport vehicles, all frequently make use of Hewitt Cemetery Road and have done so over many generations. Defendant's argument on this point fails.

Thus, the Court finds by clear and convincing evidence that there has been use of the road in question by the public at large.

iv. **Payment of Taxes**

Defendant argues the fact that she pays taxes on the portion of Hewitt Cemetery Road traversing her property is proof that Hewitt Cemetery Road is not dedicated as a public road. If,

in fact, Defendant has paid property taxes on the footprint of Hewitt Cemetery Road as it crosses her property, this is not in and of itself significant evidence that the road was not dedicated. In *Shia v. Pendergrass*, 222 S.C. 342, 72 S.E.2d 699 (1952), the South Carolina Supreme Court explained that the fact a property owner paid taxes on a road "of itself is not generally treated as very strong evidence"

Here, the Tax Assessor for Florence County, Jack Newsome, testified that the dirt beneath most road beds in Florence County is taxed to the property owners. Further, Hewitt Cemetery Road was dedicated as a public way long before Defendant acquired her property. All of her deeds reference plats that show either Hewitt Cemetery Road or a road or avenue located on her property before she acquired it. Therefore, the Court does not find Defendant's argument regarding payment of taxes to be compelling enough in light of all the evidence to find that no public dedication has occurred.

B. Prescriptive Easement

An easement is a right to use land of another for a specific purpose. *Steele v. Williams*, 204 S.C. 124, 132, 28 S.E.2d 644, 647 (1944). This right of way may arise by grant, from necessity, by prescription, or by implication by prior use. *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006). The requirements necessary to establish a right-of-way by prescription are: (1) the continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under claim of right. *Babb v. Harrison*, 220 S.C. 20, 66 S.E.2d 457, 458 (1951). A claimant seeking a prescriptive easement must be held to a strict standard of proof. *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170 (2015).

Again, the evidence in this case of a continuous, open, notorious, and uninterrupted use of Hewitt Cemetery Road by the public for a period of time exceeding twenty years is

overwhelming, as explained above. Thus, the first and second prongs are satisfied by clear and convincing evidence.

As to the third prong, "[w]hen the claimant has established that the use was open, notorious, continuous, and uninterrupted, the use will be presumed to have been 'adverse,' such that the owner of the servient tenement will bear the burden of rebutting the presumption." 12 S.C. Jur. *Easements* § 10 (citing *Poole v. Edwards*, 197 S.C. 280, 15 S.E.2d 349 (1941)). Use with the permission of the owner is not adverse. *Id.* (citing *State v. Murphy*, 124 S.C. 274, 117 S.E. 529 (1923)). Here, the evidence preponderates to the effect that the public has used Hewitt Cemetery Road adversely under claim of right for a period in excess of twenty (20) years. Although Defendant did give permission to certain individuals to access her property using Hewitt Cemetery Road (family, friends, and patrons of her stable), she did not give permission to the general public or the County and protested their use of the road, even erecting gates and keeping said gates locked on multiple occasions. Defendant did not meet her burden of rebutting the presumption because she did not present any evidence that she gave the public or the County permission to use or improve the road.

There is clear and convincing evidence that the public has had the uninterrupted use and enjoyment of Hewitt Cemetery Road for a period in excess of twenty years. The footprint of Hewitt Cemetery Road has not changed since at least 1965, as evidenced by the aerial photographs and plats that are in evidence. The fact that the County has maintained Hewitt Cemetery Road establishes the use of Hewitt Cemetery Road under a claim of right. The public, by the testimony of Plaintiff's witnesses, uses Hewitt Cemetery Road adverse to any other claim to Hewitt Cemetery Road.

[Continued on the next page.]

III. CONCLUSION

In this case, the evidence is clear, unequivocal, and convincing that the public, by dedication, and/or by prescription, has acquired the right to use Hewitt Cemetery Road as a part of the County Road system. The continuous and widespread public usage of the road for well over twenty years, along with historical maintenance of the road performed by Florence County, without change or interference from previous owners, clearly establishes the public character of the road, and shows that the public and the County has accepted the dedication. This conclusion is fortified by the extent and duration of the maintenance which the County has performed on the road without assistance from Defendant.

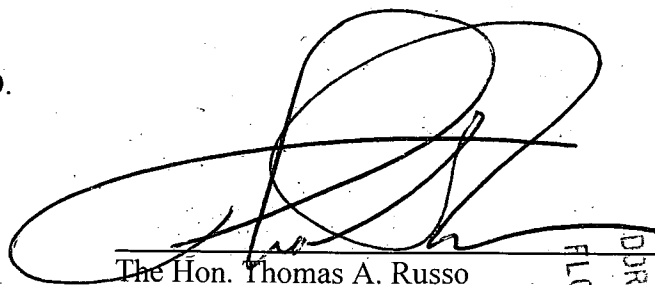
IT IS THEREFORE, ORDERED that Hewitt Cemetery Road is declared to be a public road and a public right-of-way is declared to exist for the use and benefit of the public on Hewitt Cemetery Road by virtue of dedication and prescriptive easement;

IT IS FURTHER ORDERED that Florence County has the right to maintain Hewitt Cemetery Road;

IT IS FURTHER ORDERED that Defendant, Carol Eagerton, is hereby permanently prohibited and restrained from interfering with the public's access and use of Hewitt Cemetery Road;

AND IT IS SO ORDERED.

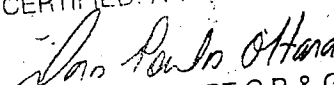
11/7, 2017
Florence, South Carolina



The Hon. Thomas A. Russo
Presiding Judge, Twelfth Judicial Circuit

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

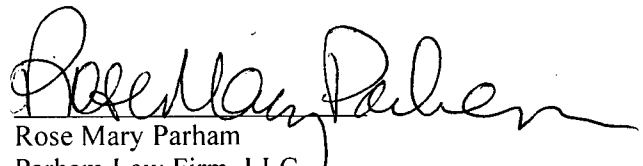
FILED

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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I, Rose Mary Parham, hereby certify that a copy of Appellant's Record on Appeal was served on the following, this 17th Day of June 2019, via United States mail, first class, to the following address:

D. Malloy McEachin, Jr., Esq
2117-B W. Palmetto Street
Florence, SC 29501


Rose Mary Parham
Parham Law Firm, LLC

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JUN 20 2019
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM FLORENCE COUNTY

RECEIVED

Thomas Russo, Circuit Court Judge

JUL 01 2019

SC Court of Appeals

Appeal Number 2017-002519

County of Florence and Thomas J. Hewitt, Respondents,

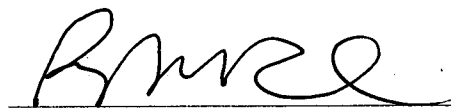
vs.

Carol Eagerton, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material preposed to be included by any of the parties and not any other material.

June 17, 2019



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Florence, SC 29503
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