

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Case No. 2018-CP-23-05191
Appellate Case No. 2020-001188

Richard Joseph Rogozinski, Respondent,

v.

County of Greenville and City of Simpsonville,

OF WHOM

City of Simpsonville is.Appellant,

and

County of Greenville is Additional Appellant.

INITIAL BRIEF OF APPELLANT COUNTY OF GREENVILLE

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE..... 2

FACTS 2

STANDARD OF REVIEW 4

ARGUMENTS..... 5

 I. The Master erred in finding that Plaintiff met his burden of strict, cogent, and convincing proof that the County accepted Maple Court. 5

 A. The Master erred in finding the Plat and the Statement of Dedication evidenced acceptance of Maple Court. 6

 B. The Master erred in finding Maple Court was accepted through public use..... 8

 II. The Master erred in finding that Plaintiff met his burden of strict, cogent, and convincing proof that the County accepted Maple Court through use by law enforcement and non-assessment of taxes. 10

 III. If the Court determines that the dedication of Maple Court was accepted by the County in 1974, the Master correctly found that Maple Court was annexed to the City in or around 1993 and is now under the jurisdiction and responsibility of the City. 12

CONCLUSION..... 13

TABLE OF AUTHORITIES

CASES

Anderson v. Town of Hemingway,
259 S.C. 351, 237 S.E. 2d 489 (1977) 5

Boyd v. Hyatt,
294 S.C. 360, 364 S.E.2d 478 (Ct. App. 1988)..... 6

Chafee v. City of Aiken,
57 S.C. 507, 35 S.E. 800 (1900) 6

Chapman v. Greenville Chamber of Commerce,
127 S.C. 173, 120 S.E. 584 (1923) 6, 12

Clardy v. Bodolosky,
383 S.C. 418, 679 S.E.2d 527 (Ct. App. 2009)..... 5

Helsel v. City of N. Myrtle Beach,
307 S.C. 24, 413 S.E.2d 821 (1992) 5, 6, 8, 9, 11

Leonard v. Talbert,
222 S.C. 79, 71 S.E.2d 603 (1952) 13

Mack v. Edens,
320 S.C. 236, 464 S.E.2d 124 (Ct. App. 1995)..... 4, 5

Martin v. Saye,
147 S.C. 433, 145 S.E. 186 (1928) 12

Outlaw v. Moise,
222 S.C. 24, 71 S.E.2d 509 (1952) 6

S.C. Dep’t of Transp. v. M & T Enters. Of Mt. Pleasant, LLC,
379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008)..... 5

Shia v. Pendergrass,
222 S.C. 342, 72 S.E.2d 699 (1952) 11

Sloan v. Greenville Cnty.,
356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003)..... 5

State v. Allen,
314 S.C. 539, 431 S.E.2d 563 (1993) 10

State v. Carver,
26 S.C.L. 217, 1850 WL 2861 (Ct. App. 1850)..... 8

State v. Harris,
299 S.C. 157, 382 S.E.2d 925 (1989) 10

Town of Kingstree v. Chapman,
405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013)..... 5, 6

Tupper v. Dorchester Cnty.,
326 S.C. 318, 487 S.E.2d 187 (1997) 5, 6

Van Blarcum v. City of N. Myrtle Beach,
337 S.C. 446, 523 S.E.2d 486 (Ct. App. 1999)..... 6

Vaughan v. Town of Lyman,
370 S.C. 436, 635 S.E.2d 631 (2006) 12

Vick v. S.C. Dep’t of Transp.,
347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001)..... 4, 5

Walker v. Guignard,

293 S.C. 247, 359 S.E.2d 528 (Ct. App. 1987).....	8, 9, 11
<i>Woodside Mills v. United States</i> , 160 F.Supp. 356 (W.D.S.C. 1958).....	8

STATUTES

S.C. Code Ann. § 17-13-40.....	10
S.C. Code Ann. § 17-13-45.....	10
S.C. Code Ann. § 56-3-1971.....	10
S.C. Code Ann. § 5-7-110.....	10
S.C. Code Ann. § 5-27-10.....	12
S.C. Code Ann. § 23-1-15.....	10
S.C. Code Ann. § 5-27-120.....	12
S.C. Code Ann. § 6-29-1170.....	6

OTHER AUTHORITIES

Greenville County Code § 18-26 (1976)	8
<i>Op. S.C. Atty. Gen.</i> , 2016 WL 7031993 (S.C.A.G. Nov. 15, 2016)	12, 13

STATEMENT OF ISSUES ON APPEAL

1. Did the Master-In-Equity err in finding acceptance of Maple Court as a public road where there was no strict, cogent, and convincing evidence of proof that Maple Court was accepted by the County of Greenville?

2. Did the Master-In-Equity err in finding use by law enforcement was a factor to consider in finding implied acceptance of Maple Court as a public road?

STATEMENT OF THE CASE

This appeal arises from an order finding that Maple Court was dedicated and accepted as a public road. The underlying action involves a road located in the County of Greenville (the “County”) and later annexed by the City of Simpsonville (the “City”). On October 9, 2018, Plaintiff Richard J. Rogozinski (“Rogozinski” or “Plaintiff”) filed this action against the County and the City (collectively, “Appellants”) to determine whether Maple Court was a public road. (Complaint, R. ____). The Appellants filed motions to dismiss on December 14, 2018. (Motions, R. ____). The Court denied the motions to dismiss on January 14, 2019. (10/10/19 Order, R. ____).

By consent of the parties, this case was referred to Charles B. Simmons, Jr., Master-in-Equity for Greenville County, by order dated December 10, 2019. (12/10/19 Order, R. at ____). The case was tried without a jury on June 2, 2020. The Master issued an order on July 7, 2020 declaring that Maple Court was a public road. (7/7/20 Order, R. at ____). On July 15, 2020 and July 17, 2020, the Appellants filed motions to reconsider, alter or amend pursuant to Rules 52 and 59, SCRPC. The Master denied the motions on August 14, 2020. (8/14/20 Order, R. at ____). The City served a notice of appeal on August 27, 2020, and the County served a notice of appeal on September 11, 2020.

FACTS

Rogozinski brought this action seeking the determination that Maple Court is a public road to be maintained by either the County or the City. (Complaint, R. at ____). Maple Court was dedicated to the County by plat on or around December 5, 1974. (Pl. Ex. 1, R. at ____). The plat was prepared by R.B. Bruce, RLS, and recorded December 5, 1974 in the Office of the Register of Deeds for Greenville County in Plat Book 4-X at Page 17 (hereinafter the “Plat”). *Id.* In addition, on December 5, 1974, a “Statement of Ownership and Consent to Dedicate Streets and Roads to Greenville County for Public Use” for Maple Court was filed in the Office of the Register

of Deeds for Greenville County in Dedication Book 1 at Page 193 (hereinafter the “Statement of Dedication”). (Pl. Ex. 2, R. at ____). E.P. Riley, the County attorney at the time, approved the Statement of Dedication only as to form. *Id.*

Rogozinski moved to the County in January 1990. (Tr. at 8:6-8:12, R. at ____). Rogozinski’s parents purchased the real property surrounding Maple Court on December 21, 1989. (Pl. Ex. 3, R. at ____). At some point thereafter, the real property was annexed into the City. (Tr. at 19:19-20:18 and 66:20-67:21, R. at ____). On December 22, 1999, Rogozinski purchased the real property from his parents. (Pl. Ex. 3, R. at ____). Rogozinski has been involved with managing an apartment complex on the real property surrounding Maple Court since he moved to the County. (Tr. at 8:17-8:19, R. at ____). Rogozinski testified that he does not pay property taxes on Maple Court. (Tr. at 10:2-10:4, R. at ____).

Maple Court starts from North Maple Street and ends in a cul-de-sac in Rogozinski’s property. (Tr. at 24:20-24:25, R. at ____); (Def. Ex. 9, R. at ____); (Def. Ex. 16, R. at ____). Rogozinski testified that the entire real property had the address of 710 North Maple Street, but his apartment complex office used 33 Maple Court “once in a while.” (Tr. at 43:14-43:19, R. at ____). During Rogozinski’s ownership of the apartment complex, he placed signage for no trespassing and no dumping on the real property accessing Maple Court. (Tr. at 18:24-19:3, R. at ____); (Def. Ex. 2, R. at ____); (Def. Ex. 6, R. at ____). Specifically, one sign states: “Security notice, residents and their guests only, no trespassing, no dumping.” (Tr. at 25:21-25:25, R. at ____). There is also a stop sign at the end of Maple Court. (Tr. 76:3-76:16, R. at ____); (Def. Ex. 15, R. at ____). The stop sign has no sticker on the back, indicating that the sign is privately owned and installed. *Id.*

Maple Court also includes a mail kiosk overhang for the residents of the apartment complex. (Def. Ex. 28, R. at ____). In addition, small speed bumps have been installed on Maple Court. (Tr. at 35:17-35:23, R. at ____). As to the speed bumps, Kisha Gamble (“Gamble”), the County Engineer, testified:

Q. And does the county – what does the county do with – does the county install speed bumps on its public roads?

A. No, sir.

Q. Explain that a little bit to the Court for me?

A. Speed bumps are something that you will find in parking lots or on private property. Those are not appropriate for public roads. Speed humps are what would be appropriate for public roads, which are larger than what you see there.

(Tr. at 77:13-77:22, R. at ____). Rogozinski further testified that Maple Court is near a school zone and that law enforcement uses Maple Court for traffic stops. (Tr. at 16:11-16:23, R. at ____).

Rogozinski brought this action to repair Maple Court for the residents of his apartment complex. (Complaint, R. at ____). Rogozinski testified that he believed Maple Court was in need of “immediate repair” and that he received several complaints from his residents about the condition of the road. (Tr. at 20:19-21:16, R. at ____). The real property surrounding Maple Court only embraces property and buildings for Rogozinski’s apartment complex. (Tr. at 46:14-46:17, R. at ____). The County has no record of Maple Court in its road inventory, and the County has never maintained Maple Court. (Tr. 74:19-75:5, R. at ____).

STANDARD OF REVIEW

“The determination of whether a road has been dedicated to public use is one in equity.” *Vick v. S.C. Dep’t of Transp.*, 347 S.C. 470, 477, 556 S.E.2d 693, 697 (Ct. App. 2001) (citing *Mack v. Edens*, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995)). In an equitable proceeding, the Court “may find facts in accordance with its own view of the preponderance of the evidence.”

Id. However, “a case with both legal and equitable issues presents a divided scope of review.” *S.C. Dep’t of Transp. v. M & T Enters. Of Mt. Pleasant, LLC*, 379 S.C. 645, 654, 667 S.E.2d 7, 12 (Ct. App. 2008). “A legal question in an equity case receives review as in law.” *Sloan v. Greenville Cnty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) (citations omitted). “Questions of law may be decided with no particular deference to the trial court.” *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) (quotation marks and citation omitted). The Court may correct errors of law in both legal and equity actions. *Id.*

ARGUMENTS

The Master-In-Equity erred in finding that Maple Court was dedicated and accepted by the County as a public road. “Two elements are required to perfect dedication. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be acceptance of such property by the public.” *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 191-92 (1997) (citing *Helsel v. City of N. Myrtle Beach*, 307 S.C. 24, 413 S.E.2d 821 (1992)). “[T]he burden of proof to establish dedication is upon the party claiming it.” *Town of Kingstree v. Chapman*, 405 S.C. 282, 302, 747 S.E.2d 494, 504 (Ct. App. 2013) (quoting *Anderson v. Town of Hemingway*, 259 S.C. 351, 354, 237 S.E. 2d 489, 490 (1977)). “Dedication is an exceptional manner of passing an interest in land and **proof thereof must be strict, cogent, and convincing.**” *Tupper*, 326 S.C. at 326, 487 S.E.2d at 191-92 (citing *Mack*, 320 S.C. 236, 464 S.E.2d 124) (emphasis added). As set forth below, Rogozinski failed to meet his burden of establishing dedication and acceptance of Maple Court as a public road.

I. The Master erred in finding that Plaintiff met his burden of strict, cogent, and convincing proof that the County accepted Maple Court.

Plaintiff provided insufficient evidentiary proof that the County accepted the dedication of Maple Court. There must be some form of acceptance to complete dedication. *Tupper*, 326 S.C.

at 326, 487 S.E.2d at 192 (citations omitted). Acceptance of a dedication can be express or implied, but it must be made within a reasonable time. *Helsel*, 307 S.C. at 72, 413 S.E.2d at 823 (citing *Outlaw v. Moise*, 222 S.C. 24, 30, 71 S.E.2d 509, 511 (1952)). Implied dedication may be found by the public's continuous use of the property. *Id.* (citing *Boyd v. Hyatt*, 294 S.C. 360, 365, 364 S.E.2d 478, 481 (Ct. App. 1988)). "Acceptance of an offer of dedication also may be recognized through a public authority's using, repairing, or working the streets." *Id.* (citing *Chafee v. City of Aiken*, 57 S.C. 507, 35 S.E. 800 (1900)). However, "[t]he mere fact the County approved the plat does not constitute an acceptance of the proposed public dedication." *Id.* (citations omitted).

A. The Master erred in finding the Plat and the Statement of Dedication evidenced acceptance of Maple Court.

The recording of the Plat and Statement of Dedication does not constitute acceptance of Maple Court. South Carolina statutory law states:

The approval of the land development plan or subdivision plat *may not be deemed to automatically constitute or effect an acceptance by the municipality or the county or the public of the dedication of any street*, easement, or other ground shown upon the plat. Public acceptance of the lands must be by action of the governing body customary to these transactions.

S.C. Code Ann. § 6-29-1170 (emphasis added). Moreover, South Carolina courts have consistently held that "[t]he mere fact the County approved the plat does not constitute an acceptance of the proposed public dedication." *Tupper*, 326 S.C. at 326-27, 487 S.E.2d at 192; *see also Chapman*, 405 S.C. at 303, 747 S.E.2d at 504; *Van Blarcum v. City of N. Myrtle Beach*, 337 S.C. 446, 450, 523 S.E.2d 486, 488 (Ct. App. 1999).

The Plat and Statement of Dedication were recorded with the County in 1974, prior to the subdivision of the property and paving of Maple Court. Specifically, Heshia Gamble, the County Engineer, testified:

Q. Judge Simmons asked you about the dedication document and the plat that was recorded.

A. Uh-huh (affirmative).

Q. Is that correct? And I believe your testimony earlier was that those were done pre-development. That is no road had been paved, no buildings had been built, no landscape island. No nothing; is that correct?

A. Yes.

Q. Okay. And even in 1974 the decision to take in maintenance of a road would have to have depended on did you do what you said you were going to do?

A. Yes.

(Tr. at 103:21-104:7, R. at ____). Accordingly, Maple Court had not yet been paved or developed at the time that the Plat and the Statement of Dedication were recorded with the County.

Gamble further testified:

Q. Okay. When does the decision to accept it, repair it and maintain it, when is that decision made visa vie [sic] a piece or property being developed?

A. If a property is being developed from scratch, once the property is platted, the design engineer and/or developer will have to present documents that indicate that the road was built to county standards and then it would be accepted for maintenance.

(Tr. at 88:13-88:20, R. at ____). Notably, the County promulgated the following ordinance consistent with Gamble's testimony:

Upon completion of construction of all required improvements and certification of their acceptability has been submitted to the planning commission by the appropriate agencies or upon providing assurances to the satisfaction of the executive director of the planning commission or authorized representative to guarantee the completion of the construction the following items are required: 2 Mylars of a final plat and an original deed must be submitted to the planning commission. After the executive director of the planning commission or authorized representative and the other requirements of this article are satisfied, the applicant will record the plat and deed which will signify the final acceptance of the road. ***No subdivision containing public roads shall be granted final acceptance until the planning commission receives an affidavit from the donor(s) of the roads and***

the contractor(s) who constructed the roads stating that construction costs have been paid and that the road is free of all encumbrances.

Greenville County Code § 18-26 (1976) (emphasis added).

There is no evidentiary proof of documents presented to indicate that Maple Court was built to county standards. The only documents recorded with the County include the Plat and Statement of Dedication that were recorded prior to the development and pavement of Maple Court. The Master erred in placing significant evidentiary weight in these recorded documents for acceptance. (8/14/2020 Order, R. at ___) (“Of great significance to the Court are the documents that have been publicly recorded since 1974.”) South Carolina law is clear that the recorded documents are not sufficient to amount to acceptance of Maple Court as a public road. Because there has been no express acceptance of Maple Court, Rogozinski was required to provide strict, cogent, and convincing proof of implied acceptance through public use. As set forth in detail below, the Master erred in finding that Rogozinski met his burden.

B. The Master erred in finding Maple Court was accepted through public use.

Rogozinski did not provide strict, cogent, and convincing proof that Maple Court was impliedly accepted as a public road. “[W]ithout some act of acceptance, or some use by the public, the owner of the land cannot create . . . a public road[.]” *State v. Carver*, 26 S.C.L. 217, 1850 WL 2861, at **2 (Ct. App. 1850). Implied acceptance may only be found through use by the public or public authorities. *Helsel*, 307 S.C. at 27, 413 S.E.2d at 823; *see also Woodside Mills v. United States*, 160 F.Supp. 356, 359 (W.D.S.C. 1958) (noting implied acceptance is “evidenced either by public use or by the acts of the public authorities.”).

This action is factually identical to *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528 (Ct. App. 1987). In *Walker v. Guignard*, a plat was recorded that divided the land into lots, but this Court found there was no express or implied acceptance. *Id.* at 249, 359 S.E.2d at 529.

Specifically, this Court held that the fact that no taxes were assessed on the property and that there was inaction by the City did not constitute implied acceptance. *Id.* Additionally, there was no evidence of acceptance “within a reasonable time” when the plat was recorded nearly thirty years prior. *Id.*; see also *Helsel*, 307 S.C. at 27, 413 S.E.2d at 823-23 (finding implied acceptance through “continuous public use [and] maintenance by public authorities for a period in excess of forty-five years.”).

Maple Court has not been accepted through public use. The record shows that Rogozinski owns the property surrounding Maple Court as an apartment complex. (Tr. at 8:17-8:19, R. at ____); (Pl. Ex. 3, R. at ____); (Def. Ex. 9, R. at ____). Maple Court is only used by residents of the apartment complex. (Tr. at 46:14-47:6, R. at ____). Additionally, Rogozinski has posted signage stating “NO TRESPASSING” and “NO DUMPING” to keep out the public. (Tr. at 18:24-19:3, 25:21-25:25, R. at ____); (Def. Ex. 2, R. at ____); (Def. Ex. 6, R. at ____). Moreover, Rogozinski installed a mail kiosk overhang in the middle of Maple Court for the apartment residents and his office for the apartment complex is located at the end of Maple Court. (Def. Ex. 28, R. at ____). Finally, at some point in time, private speed bumps were installed on Maple Court that would further deter any public use. (Tr. at 77-13-77:22, R. at ____); (Def. Ex. 24, R. at ____). It is clear that Maple Court is a private road solely for residents of Rogozinski’s apartment complex. There is no evidence of public use close in time to the recording of the Plat and the Statement of Dedication. Therefore, the Master’s order should be reversed for implied acceptance of Maple Court.

II. The Master erred in finding that Plaintiff met his burden of strict, cogent, and convincing proof that the County accepted Maple Court through use by law enforcement and non-assessment of taxes.

Rogozinski's sole evidence at trial for implied acceptance relies on police conducting traffic stops on Maple Court and the non-assessment of taxes on the property. First, the Master erred in finding that use by law enforcement was a factor supporting implied acceptance. Private road use by law enforcement should not be a determining factor for road dedication. Several South Carolina statutes and cases authorize police jurisdiction on private roads and private property. *See, e.g.,* S.C. Code Ann. § 23-1-15 (permitting police jurisdiction on parking lots); § 56-3-1971 (permitting law enforcement officers to issue parking violation tickets on private property); § 5-7-110 ("police officers shall exercise their powers on all private and public property within the corporate limits of the municipality"); § 17-13-40 (allowing law enforcement officer jurisdiction outside of county or city limits); § 17-13-45 (expanding jurisdiction when police officers respond to distress calls or requests for assistance); *see also State v. Allen*, 314 S.C. 539, 541-42, 431 S.E.2d 563, 564-65 (1993) (finding the Uniform Act Regulating Traffic is applicable to private roads); *State v. Harris*, 299 S.C. 157, 159, 382 S.E.2d 925, 926 (1989) (finding police officer's actions outside his or her jurisdiction to be lawful if they could be properly undertaken by an ordinary citizen).

To hold law enforcement use as a factor for public roadway dedication would create conflict with South Carolina law. Law enforcement has jurisdiction on private property in several instances. Any finding otherwise would produce a chilling effect on police conduct in the County. By way of example, police officers may be directed to avoid private roadways in the scope of their duties. Law enforcement use is an improper determinant for the analysis of whether a road has

been dedicated to the public. Accordingly, the Master erred in finding Maple Court was dedicated to the public through its use by law enforcement.

After preclusion of law enforcement use as a factor, the only evidence presented to the Master for implied acceptance was the non-assessment of taxes for the property. South Carolina case law is clear that the County's mere non-assessment of taxes cannot be the sole determinant for implied acceptance. While the assessment of taxes is a factor to be considered, the non-assessment alone is insufficient for County acceptance. *See Helsel*, 307 S.C. at 28, 413 S.E.2d at 824 (“Nonassessment of taxes on land *may be considered in conjunction with other facts* to show there has been a dedication and acceptance.” (emphasis added)).

Once again, in *Walker v. Guignard*, this Court affirmed that implied acceptance cannot be found by mere inaction by the County in not charging taxes on the property. 293 S.C. at 249, 359 S.E.2d at 529; *see also Shia v. Pendergrass*, 222 S.C. 342, 350, 72 S.E.2d 699, 702 (1952) (finding the payment of taxes “itself is not generally treated as very strong evidence” of dedication). Therefore, Rogozinski was required to provide strict, cogent and convincing evidence beyond the non-assessment of taxes to establish implied acceptance of Maple Court. However, Rogozinski failed to provide further evidentiary proof, and thus, the Master erred in finding implied acceptance of Maple Court.

Considering the applicable factors for acceptance, it is clear that the County has not expressly or impliedly accepted Maple Court. As set forth above, the recorded documents and use by law enforcement are not appropriate factors to consider for acceptance. Further, the documents were recorded in 1974, and Plaintiff failed to present any evidence of County conduct close to this date. In addition, South Carolina case law has found that mere inaction by the County in assessing taxes does not create an implied acceptance. Therefore, Rogozinski did not meet his burden of

strict, cogent and convincing proof for acceptance of Maple Court, and this Court should reverse the Master's Order finding County acceptance.

III. If the Court determines that the dedication of Maple Court was accepted by the County in 1974, the Master correctly found that Maple Court was annexed to the City in or around 1993 and is now under the jurisdiction and responsibility of the City.

If this Court affirms that Maple Court was properly dedicated to the County in 1974, the Master's ruling that the City has the responsibility for maintenance and repair of Maple Court should be affirmed. There is no dispute that Maple Court was annexed by the City. Thus, any maintenance or repair of Maple Court would be the responsibility of the City. S.C. Code Ann. § 5-27-120 provides:

The city or town council of any city or town of over one thousand inhabitants shall keep in good repair all the streets, ways and bridges within the limits of the city or town and for such purpose it is invested with all the powers, rights and privileges within the limits of such city or town that are given to the governing bodies of the several counties of this State as to the public roads.

The South Carolina Supreme Court has held that S.C. Code Ann. § 5-27-120 "clearly defines the duty to the general public of a municipality to maintain its streets." *Vaughan v. Town of Lyman*, 370 S.C. 436, 443, 635 S.E.2d 631, 635 (2006).

"[C]ase law shows that, as a result of sections 5-27-120 and 5-27-10 (and their prior versions), municipal councils are in control of the roads within their municipal limits and they have the power to regulate and manage such roads." *Op. S.C. Atty. Gen.*, 2016 WL 7031993, at *3 (S.C.A.G. Nov. 15, 2016).

Ordinarily, county authorities have no power to control streets within municipalities, except where the statute so provides. *Martin v. Saye*, 147 S.C. 433, 145 S.E. 186 [(1928)]. In this State, as in most States, there are statutes vesting such control in the corporate authorities of cities and incorporated towns. The usual effect of such statutes is to transfer from the county authorities to the municipality the power to regulate and control highways located therein. *Chapman v. Greenville Chamber of Commerce*, 127 S.C. 173, 120 S.E. 584, 587 [(1923)].

Leonard v. Talbert, 222 S.C. 79, 83-84, 71 S.E.2d 603, 604-05 (1952). Accordingly, the City, as the municipality, is responsible for the maintenance and repair of the roads located inside its corporate limits, not the County. *See Op. S.C. Atty. Gen.*, 2016 WL 7031993, at *5 (S.C.A.G. Nov. 15, 2016) (determining “that the municipality, and not the county, is responsible for the maintenance and repair of the roads located inside its corporate limits.”). Based on the foregoing, if this Court affirms perfect dedication of Maple Court, then this Court should also affirm that any responsibility of repair and/or maintenance would belong to the City.

CONCLUSION

For all of these reasons, the Master’s order should be reversed in favor of the County of Greenville, finding that Maple Court was not dedicated and accepted as a public road. The recorded Plat and Statement of Dedication merely indicate an intent to dedicate, but not acceptance of Maple Court as a public road.

Further, the Master erred in holding Rogozinski’s sole evidence of the law enforcement’s use of Maple Court and the non-assessment of property taxes amounted to implied acceptance as a public road. Use by law enforcement is an improper determinant contrary to South Carolina law, and non-assessment of taxes, alone, fails to suffice as strict, cogent, and convincing evidence of implied acceptance. Therefore, the Master’s order declaring Maple Court as a public road should be reversed.

Respectfully submitted,

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