

RICHLAND COUNTY PLANNING COMMISSION
December 2, 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[Members Present: Jason Branham, Heather Cairns, Stephen Gilchrist, David Tuttle, Mettauier Carlisle, Wallace Brown, Sr., Christopher Yonke, Gary Dennis, Jr.]

Called to order: 3:03 pm

MR. PRICE: One of the Staff Attorneys will be present, they typically are present for appeals. So.

CHAIRMAN GILCHRIST: Can we just –

MR. PRICE: Oh, we can – we can get started. He'll be here in case, more for procedural questions.

CHAIRMAN GILCHRIST: Can I just do the Chairman's Report and we come back?

MR. PRICE: If you would like to.

CHAIRMAN GILCHRIST: Yeah, let's do that and then we'll come right back when the attorney gets here. That way we can kill two birds with one stone, we can get it outta the way. Cause there is something I wanna mention to the Commission today and put it on your radar screen, so let's skip down to Item V., guys, on the Agenda, Chairman's Report. We'll come back to the Administrative Review once the attorney arrives. In the past we've had a discussion, no action has ever been taken on this, regarding homeowners associations. And you've heard me bring this up a couple of different times, I've had the pleasure of not only being involved with this here on the Planning Commission but also in some of my community work in the community about some of the power that many of these HOAs have in the County. And it's my understanding that when I brought it to the Planning Commission about a year or so ago, a little bit longer

1 than a year ago, and you may remember the article that I shared with you was called
2 'The HOAs from Hell' and it talked about this reach that some of these HOAs have been
3 able to garner and they've used the power of local ordinances in some ways to in some
4 ways intimidate and harass homeowners, which was never the intention from the
5 inception of some of this stuff when it was set up, it was set up to make sure that they
6 manage and hold folks accountable for paying homeowner association fees and all
7 those kinds of things and the protocols by which you should live in your community or
8 subdivision. Well since that time that has become a much larger issue in South Carolina
9 and more recently there's been a pre-filed Bill this year that Representative Rutherford
10 has introduced in the House, House Bill 4741, that speaks to limiting the authority of
11 HOAs. I bring this to your attention because I think this will get a lot of attention and I
12 think there's some ways that, particularly for those who are involved in real estate and
13 development, might have some interest in wanting to chime in on what this particular
14 piece of legislation will look like. But I would submit to you that even as we think about
15 our rewrite and what some of that might include, this particular issue in Richland County
16 has become a very ugly issue among our people here in this County. And it's something
17 that needs to be addressed and I'm delighted to know that the representative from
18 Richland County has introduced this as a Bill to begin to look at. But I offer that just to
19 say that at some point, you know, as this kinda gets worked through the legislature I'm
20 sure local governments will be called upon to chime in on what they think about this and
21 certainly Richland County will obviously be front and center on that since it's your
22 representative that's the one introducing it. So I just wanted to bring that to your
23 attention, House Bill 4741. As I get more information about – I called Todd today

1 actually and asked him to get me some information on it because I would love to share
2 it with you, because I'm very passionate about this and I think it's something that has
3 gone beyond where it is supposed to be and at some point local ordinances needs to
4 catch up with what's been happening on this front, particularly when people have been
5 foreclosed on and yet they're still paying their mortgages every month but they're being
6 foreclosed on because they can't pay a \$435 homeowners association fee. That's
7 unacceptable and that should not be happening in this County. So anyway, I just share
8 that to say that as this continues to roll out this is something that I would like to kinda
9 keep you abreast about as we move forward. And if anybody's got any comments on
10 that I welcome those.

11 MR. TUTTLE: Yeah, at the risk of being on other side of the issue, Mr. Chairman,
12 if the Bill were to get through in its current form you would bankrupt every HOA in the
13 State. There would be no rationale for anybody living in an HOA to pay any past due
14 bills or any current bills until such time they sold their home. Without the ability to file a
15 lien and follow through with foreclosure you have no way to collect the dues so what
16 you're gonna do is the people in the neighborhood that they're paying their bills on time
17 and doing what's right are gonna disproportionately have to pay for the others who
18 aren't. Absent hardship cases, which there are plenty of ways to work around and
19 through that which we do every day in our business, but it would be catastrophic to the
20 professionally run HOAs in the State.

21 CHAIRMAN GILCHRIST: Well I appreciate that, Mr. Tuttle, and I'm not
22 suggesting that the Bill in its current form is the end all, but I do think that it certainly
23 raises the opportunity to bring the attention to the matter. And it's my hope that some of

1 us will be able to chime in to try to make it the kinda legislation that it needs to be so
2 that it's balanced. I believe in balanced legislation, I don't believe in it being a run of the
3 mill kinda thing. But the current way this stuff is set up, there is no guidance, at all on it.
4 I mean, except for what the HOAs define.

5 MR. TUTTLE: Well, except that – and we don't have to debate this – in the
6 neighborhoods that I've been involved in that have covenants and restrictions and HOA
7 rules and regulations, all those are adopted prior to anybody every purchasing property.

8 CHAIRMAN GILCHRIST: Correct.

9 MR. TUTTLE: They're filed at the Clerk of Court. Anybody that buys
10 subsequently in that neighborhood their attorney should've searched the title, made the
11 purchaser aware that they were there and these are the rules and these are the fines
12 and this is how it could work. This type of legislation's come up every year at the State
13 House for the last six years. There've generally been two concurrent Bills running each
14 time. I've worked on a couple subcommittees relative to that trying to find middle
15 ground. It's complicated cause you have some associations that are condo associations
16 that do a lot more than, say a Lake Carolina HOA does, so there's, you know, this broad
17 swath of constituents out there and some probably could work with these rules and
18 others can't and vice versa. So it's pretty complicated, but I'm glad to see Mr.
19 Rutherford working on it, we'll see what comes up.

20 CHAIRMAN GILCHRIST: Yeah, well I appreciate that, appreciate that. So I'll
21 certainly keep everybody abreast of what's going on in it. There are ideas that anybody
22 around this Commission that has, which is why I brought it up, that we have that we can
23 offer to this, let's do it. But it is certainly that has to be addressed, so. Other than that I

1 hope everybody has a nice Christmas later on and get some rest and all that good stuff
2 and get ready for 2020, it's gonna be an exciting year. So we'll see. Any attorneys arrive
3 yet?

4 MR. PRICE: Yes.

5 CHAIRMAN GILCHRIST: Okay. Alright, good. Alright, let's do it. Administrative
6 Review 19-006 AR.

7 **CASE NO. 19-006 AR:**

8 MR. PRICE: As you just stated the next item is Administrative Review 19-006
9 AR. The Applicant is appealing the provision of §26-224 which prevents the further
10 subdivision of land and Staff's requirement that the owners of the land on which the
11 existing easement crosses, which in this case is Rufus Miles Road, grant permission for
12 the change in use of the easement prior to the proposed subdivision of land. I wanna
13 make sure I can try to explain this the best way I can. You know, it's always a lot easier
14 for Staff because these are things that we kind of deal with on a day to day basis so I
15 wanna make sure I explain this to you. Section 26-222 of the Richland County Land
16 Development Code, which is under our subdivision regulations, it requires that all
17 residential subdivisions and all subdivision lots have direct access to a public or private
18 right-if-way which conforms to the requirements established by the County Engineer. So
19 in a nutshell when you subdivide property it needs to be connected to a right-of-way or
20 road. However, in 2011, around November 2011, County Council adopted §26-224
21 entitled 'Certain Subdivisions Exempt from Road Standards'. And under this provision,
22 this is also known as the heir property subdivision section, and under this section the
23 Planning Director or his or her designee may exempt subdivisions from road

1 construction requirements if the property is given for no monetary compensation or for
2 any other consideration to the owner's immediately family members, or is being
3 transferred by a will, intestate, succession or forced division decree by appropriate
4 judicial authority. And there are a number of provisions that must be met in order for
5 them to do this, but what this does is it allows people to subdivide property without
6 having to build roads to give for family members. These newly created lots can be
7 accessed by driveways, easements or if they want to they can build a road. But that
8 road, of course, doesn't have to be built to County standards. In this particular case, and
9 also, I'm sorry, that the easement, if it's proposed to be off of an easement it may be an
10 existing easement as maintained by Richland County. What we have before you is we
11 did have a request to subdivide property off of Rufus Miles Road under the heir
12 property, or as appropriately entitled Certain Subdivisions Exempt from Road
13 Standards. What Staff – Rufus Miles is a prescriptive easement. We say that because
14 we don't know if there's any legal documentation that establishes it as an easement but
15 due to its use, I believe it's 20 years, continuous use it becomes a prescriptive
16 easement. What Staff has requested as part of not only this particular request but for
17 any request that's similar, that whenever you're going to use an easement, if it's an
18 existing easement, that all parties in which the easement runs through must give their
19 agreement to the newly created subdivisions. And that's mainly because easements run
20 through, they're part of a person's property and because you're going to change up the
21 terms in which the prescriptive easement was originally established but with the
22 additional subdivision lots, we require that all of the properties that the easement runs
23 through also okay the subdivision. The Applicant is objecting to that requirement and

1 also the requirement that states that the lots may not be further subdivided until road
2 access is provided and a revised plat is approved by Richland County. Essentially
3 whenever you do the Certain Subdivisions Exempt from Road Standards, whenever you
4 apply that to the subdivision of land, it's one time, you know, when we speak to
5 applicants we always let them know, think carefully, think far ahead on how you plan to
6 subdivide because you only get to do it one time. If you decide to come back in later on
7 once it's been approved and recorded and say, well we want to create a few more lots,
8 the only what that can be done is by developing the road to County standards. So we
9 always tell them to be very careful going forward. So in this particular case again, that
10 particular provision, I know it's being appealed to the Planning Commission, however,
11 that is actually part of the ordinance that's been codified and I believe the only what that
12 can actually, that provision can be waived is by a text amendment, whoever initiates it,
13 but it needs to be approved by Council. But as far as the requirement that access, that
14 approval be given by all property owners who abut the Rufus Mile Road easement, that
15 is what the Applicant is arguing that it's not required.

16 CHAIRMAN GILCHRIST: Okay. Questions for Mr. Price on this?

17 MR. BRANHAM: Question.

18 CHAIRMAN GILCHRIST: Yes, sir, Mr. Branham.

19 MR. BRANHAM: This easement's called Rufus Mile Road, is that right?

20 MR. PRICE: Yes.

21 MR. BRANHAM: Okay. So it's my understanding from reading the case, the
22 materials, there is a right-of-way for maintenance which has been granted to the
23 County.

1 MR. PRICE: Yes.

2 MR. BRANHAM: Rufus Miles Road.

3 MR. PRICE: Correct.

4 MR. BRANHAM: And I'm also understanding that there's no recorded easement
5 that provides a written consent granting an ingress or egress easement to these parcels
6 that are in question.

7 MR. PRICE: That has not been presented to Staff nor has Staff found this.

8 MR. BRANHAM: Thank you.

9 CHAIRMAN GILCHRIST: Okay.

10 **TESTIMONY OF MIKE POLK:**

11 MR. POLK: Good afternoon, my name is Mike Polk. I'm here on behalf of Teresa
12 Lancaster who's the personal representative of the Estate of Opal Wright and I'm also
13 here with the other heirs, Maxine Cooper and Brenda Timmy. These are the three ladies
14 who would be affected by the ruling today. Opal Wright was their mother. Opal Wright,
15 from these ladies' perspective, their grandmother and grandfather became the owner of
16 the property in question in 1944. It was part of a total of 92.3 acres. As owners of all this
17 property there are deeds in there that refer to roads such as, I believe from the title
18 search that's Portia Road, and their grandparents, these common grantors, these
19 common owners, owned property on both sides of the road. Their father became the
20 owner of the property in 1963 and their mother became the sole owner in 2002 after
21 their father died and their father [sic] passed away in 2015 and we've been trying to
22 figure out a way to divide up this property in a fair and equitable manner since then. The
23 three sisters who are Ms. Wright's daughters are the sole heirs. Ms. Wright lived on the

1 property, this is family property. The family has used the property for as long as Rufus
2 Miles Road has been there. They've used it continuously since Rufus Miles Road has
3 been there. These ladies grew up on the property, they used Rufus Miles Road then
4 and they use it now. Maxine Cooper lives on the property, she still uses the property. It's
5 their belief and my belief that according to the law, and I think that the County would
6 agree that they have an easement in and to the property, even though there is not a
7 written easement. There's not a written easement but they have used this property
8 continuously for decades. So there's nobody on Rufus Miles Road that can exclude
9 anybody else from Rufus Miles Road. The County maintains Rufus Miles Road or has
10 an easement to maintain Rufus Miles Road. In our view there's no reason to go to every
11 single owner on Rufus Miles Road and try to get reciprocal easements for all of them.
12 Nobody likes to sign legal documents, nobody likes to be approached with legal
13 documents, and it's frankly unnecessary because nobody believes that anybody else
14 has rights in and to Rufus Miles Road. For those reasons we believe that reading a
15 requirement for a written easement is just contrary to the spirit and the intent of the heirs
16 property provisions in the ordinances and we respectfully say that the County has erred
17 at a lower level and we're looking to this County to let the family divide up the property,
18 divide up their family property that's been in their blood for generations so that they can
19 continue using it and divide it up in a way that's satisfactory to them. There's no, they're
20 not trying to rezone it but they each want their own property as their own owners so that
21 we don't get involved in a situation where when one passes away then all of a sudden
22 you have nine owners and then 12 owners and then 16 owners and then the property
23 can't be used for anything. So that's, it's a very simple argument, this has been in their

1 common grantor which gives them the rights continuous, open use of Rufus Miles Road
2 for years which gives them rights. There's no reason to make them jump through hoops
3 to either a, get other land owners to sign off on this which is not specified in the
4 ordinance, or frankly to file a lawsuit to make sure that we can declare all the rights into
5 everybody at tremendous cost, expense, aggravation and a delay in the probate
6 administration as well.

7 CHAIRMAN GILCHRIST: Okay. Yes, ma'am, Ms. – go ahead, Mr. Branham.

8 MR. BRANHAM: Thank you, Mr. Polk. Does the County Attorney have anything
9 that he would like to share with the Commission? Is it, Mr. Chair, is that okay?

10 CHAIRMAN GILCHRIST: Sure, yeah. I was, he was hiding behind the podium
11 but I was looking for him.

12 MR. FARRAR: Brad Farrar, I'm the Deputy County Attorney for Richland County.
13 Yeah, normally I don't come to these meetings but I've been made aware that there's an
14 administrative appeal and these are rare; I think the last one of these was several years
15 ago. But as I understand the issue there's three ways you can really acquire an
16 easement in South Carolina, be it by grant, you know, express document, you can do it
17 by necessity if a parcel's landlocked, for example, you can do it by prescriptive
18 easement which is what I understand is at issue here. The way the County prescriptive
19 easement works, it's usually for maintenance and what that is is we'll have a dirt road,
20 for example, and you know, half the residents saying they want it scraped and
21 maintained and maybe the other half's saying no, so at some point you have to make a
22 decision is it a County road, not a County road, so there's this continuous for 20 years
23 has there been maintenance, and that gives you certain rights. I think the issue here is if

1 you have a prescriptive easement, I think Planning Staff has taken the position that that
2 prescriptive easement was granted for a specific, well was obtained for a specific
3 purpose cause it wasn't necessarily granted. And so as I understand it the larger tract
4 that you're looking at there is somewhere between 50 and 60 acres, I don't know if
5 that's a fair estimate of it. And so when the prescriptive easement was obtained through
6 maintenance over the years it was to get to that one parcel, so if it's subdivided, and I
7 think you've got two, three, four parcels, I'm not exactly sure but it's not a lot but it is a
8 subdivision, did the owners of the property that are going to be kind of traversed across,
9 for lack of a better description, did they envision that there would be, you know, four lots
10 back there instead of one. And so the issue really I think before the Planning
11 Commission is, is that an expansion of the prescriptive easement, and if so is that an
12 impermissible expansion. You're not gonna find a statute on this that says, you know,
13 thou shalt do this or that with a prescriptive easement, it's more case law. And what
14 you're gonna find with the case law is does it satisfy the necessary period of time, which
15 in this case is 20 years, and in particular do you consider an expansion of this. So just
16 to give you an example, if somebody walked across someone else's property for 20
17 years and they just did that to get to a pond or something like that, but then all of a
18 sudden they decided to start riding a motorcycle across the property. Well the owner
19 could say, well I didn't say anything for 20 years while you walked across my yard but
20 not you're starting to bring a motorcycle, that's a change and it may be a material
21 change to that person. So that's the kinda thing you have to decide in this case. You're
22 not dealing with a motorcycle, you're dealing with is it an increase of use from going
23 from one lot *per se* to three of four, if that's what it is. And that's really the issue. We

1 really haven't taken a position on it other than I understand that's what Planning Staff to
2 be procedurally for something like this, if they were gonna appeal it, you just need to
3 make sure you're creating a record. And I don't know if we still, we used to have, who
4 was the lady – you're still recording it? As long as you're recording it you can compile a
5 record, that gives them what they need should they go to the next level. So procedurally
6 that's it as long as you hear from both sides everything that they wanna say, but beyond
7 that, that's the issue before you. It's novel, we really don't have anything to look at as far
8 as expanding the prescriptive easement; again, it comes factually as to whether or not
9 you think it's a significant enough expansion. In the case of a Board of Zoning Appeals
10 case sometimes we hear, like a diminimus argument, so say for example somebody
11 builds a carport, you know, 10' over into somebody else's yard. Well, that's a pretty big
12 deal. What if they built it 10" over in somebody else's yard? So at some point you have
13 to draw a line, is that a diminimus exception or is that a big deal exception, and that's
14 kinda what you're looking at in this case, is it a significant expansion or is it something
15 you can live with, so.

16 CHAIRMAN GILCHRIST: Ms. Cairns, go right ahead.

17 MS. CAIRNS: I mean, it's just interesting, you know, being an attorney and I work
18 in land use areas, real estate and whatnot, and I think that Brad pretty much sums it up,
19 is that even if we acknowledge without question that there's a prescriptive easement
20 and that there is an easement, there is very much the issue of the fact that you're
21 dividing on an easement. And I think that it is pretty well-accepted law that you can't
22 subdivide on an easement unless you get all the servient estates to agree to that,
23 because it is an increasing burden on the easement. And I think what's important is that

1 the statute or code reg or whatever that allows the heirs property subdivision, that would
2 allow you to put an easement onto the estate land of Ms. Wright and subdivide that
3 land. But it's because you're crossing other people's land. So I mean, that's the thing is
4 you do have a solution; you have two solutions, one is either put easements on Ms.
5 Wright's land and that's where that exception comes is that, you know, if you just took
6 that 60 acres you could put easements to get back to all those parcels and then I
7 believe that that would be okay. But the problem is that you're crossing, you're using an
8 existing easement and you're asking to increase the burden on it.

9 MR. POLK: But I don't see – this is still gonna remain family property with the
10 same really number of owners out there.

11 MS. CAIRNS: You're subdividing a parcel, you're making three parcels using an
12 easement that crosses somebody else's land.

13 MR. POLK: But if the original estate had access then the other estates should
14 have access, particularly when you have the same actors who are using the access.

15 MS. CAIRNS: It was one owner. And actually what's interesting, actually if you
16 look at the original parcel of land that Ms. Opal Wright owns, she doesn't even need the
17 easement cause she's got access on whatever that road is, Portia Road. And so that's,
18 you know, the question is that you've got this one section of road that crosses
19 somebody else's land and you're putting three lots back there where there was none. I
20 mean, this was a single, I mean, I'm gonna ignore the fact that there were two lots on
21 Portia cause that's sort of irrelevant for this discussion, is that the land of Ms. Wright,
22 this large parcel, had a right of access cause it touched Portia Road. So that property
23 had no need for an easement. Now the fact that there may be a prescriptive easement

1 cause of the use, that was for the owner, which was one person. So you're subdividing
2 that land, you're increasing the burden on that easement that crosses other people's
3 land. But like I said, you could use that statute as it was drafted and put easements onto
4 Ms. Wright's property.

5 MR. POLK: Right. I think, well first of all, respectfully I think that parties can tack
6 use of prior owners and that would be the case of *Morrow v. Dykes*, so –

7 MS. CAIRNS: It's still the issue that you're subdividing though. You're taking one
8 parcel of land and making it three. So now you've got three owners, not just one.

9 MR. POLK: But if the – I view it as the family having access. I think you're
10 viewing it as –

11 MS. CAIRNS: Well you've got three lots here.

12 MR. POLK: Right, three members of the same family.

13 MS. CAIRNS: It's three lots. It's three lots. And I think that the Code section that
14 you're referring to, which is what the County did to allow the subdivision of heirs
15 property, would allow you to put easements onto Ms. Wright's property, and that's not
16 what you're proposing.

17 MR. POLK: I think the problem with that is that the family feels very strongly that
18 for generations everybody has used Rufus Miles Road. Everybody in the family. And so
19 now you're asking some members of the family to have easements, even though they
20 may just be paper easements, easements drawn across their property. And in their eyes
21 that diminishes their, the property that –

22 MS. CAIRNS: Oh I, I mean, I understand that completely, but you know, the
23 problem is you're asking to subdivide land, you will now have more parcels than you

1 had before so you will have more property owners, and therefore that is an increase on
2 the servient estate. It's just as simple as that. It's frustrating, I can appreciate that and I
3 can appreciate the challenge but that's, you know, and in the County I think it's good
4 that the County has started to take this very good line because access by easement is
5 sort of wrought with issue, but subdividing an easement you just, you can't do it unless
6 everyone agrees to it.

7 MR. POLK: Well very respectfully I feel like we're reading requirements that are
8 not in the ordinance that was passed.

9 MS. CAIRNS: But again, the ordinance would allow you to put easements onto
10 Ms. Wright's property. That's not what you're trying to do. You're trying to use an
11 existing easement and add a burden to it. And that's where the County's like, no if
12 you're gonna add burden to an existing easement you gotta get the servient estates to
13 agree to it.

14 MR. POLK: Well, I certainly disagree but we can, you know.

15 MR. BRANHAM: Is that an accurate depiction of the County's position?

16 MR. PRICE: Yes.

17 MR. BRANHAM: Okay, so [inaudible] put up the plat [inaudible].

18 MR. PRICE: We can pull it up.

19 MR. BRANHAM: So there's kinda this stretch of Rufus Miles that's running
20 between the edge of lot 1 and [inaudible] of the plat?

21 MR. POLK: Rufus Miles goes through all of it. Portia Road's the one that's on the

22 —

1 MR. BRANHAM: So it shows as now or formerly Wright, that stretch [inaudible]
2 part of the estate property?

3 MR. POLK: Which –

4 MR. BRANHAM: TMS 18000[inaudible] that runs to the south of –

5 MR. POLK: Right, that's actually, that was Opal Wright and Wright property, their
6 brother lives on that property.

7 MR. BRANHAM: Okay. [Inaudible] Is that not the main stretch of the easement
8 that's potentially problematic? To me – I'm an attorney [inaudible] gotta consent, you
9 know, by an express grant, an easement by an express grant, it's recorded in the
10 Register of Deeds office, it's referenced by a deed, it references a plat with a deed, the
11 easement is shown on the plat, that's all clear. Any other sort of easement is an
12 easement that would need to be established through, like findings of fact and
13 conclusions of law by a court of jurisdiction. And I don't see that the Planning
14 Commission or the Planning Department as being that when it comes to establishing an
15 easement by prescription or an easement by necessity. The law would need to
16 determine [inaudible] evidence. This is a question of [inaudible] an exemption [inaudible]
17 road construction [inaudible]. That's a pretty narrow thing and the code section that
18 authorizes the Department to do that further uses the term may, which is you know,
19 discretionary, it's not compulsory that they would do so. So for the Department to
20 require that, you know, a legally established easement be shown, provided, is certainly
21 very reasonable and appropriate and potentially to go beyond that by trying to make
22 their own finding of whether or not an easement existed based on evidence,

1 documentation presented to them is potentially inappropriate in my opinion. That's
2 where I would say, I would suggest that they would be within their rights to deny.

3 MR. POLK: I think that there is discretion, and for a family whose property's been
4 in it within generations I would think that the County would wanna give them the benefit
5 of the doubt. But I understand what you're saying.

6 MS. CAIRNS: And also just, I remember when we had the ordinance come up
7 that even, cause for a while there there was no subdivision of land without a road. The
8 County came in many years ago and just simply said, we're not gonna allow the
9 subdividing of land anymore without a road. And then the whole family issue came up. I
10 mean, Geo I'm correct on this, right? There was a time when they just said, no more
11 subdivision without a road. And then they came back with the family division.

12 MR. PRICE: Well, right. This all started because there were a number of parcels,
13 especially in the rural area, where they could not subdivide the property because either
14 a, they didn't have enough lot frontage because in the rural district you're required to
15 have either 120' of street frontage or you can do a flag lot of 50', but at the area where
16 you're gonna build the home that has to be the 120'. Or you have to build a road. And of
17 course, you know, you look at the cost of building roads to County standards, so
18 essentially that was just prohibiting people from being able to subdivide their land.

19 MS. CAIRNS: That's when we came back with this ordinance that allowed the
20 subdivision of family land by easement. But again, you're not staying on the family land,
21 you're staying on land that a long time ago was family land but it's just no longer family
22 land. And so, you know, like I said you can do this by easement on your land but you
23 can't do it by using somebody else's easement. I mean, Jason and I, you know, his

1 position that if there was an express easement it'd be okay, I still say, no, no, no, cause
2 you can't increase the burden on a servient estate by easement.

3 FEMALE AUDIENCE MEMBER: It's not increasing it, we've been using it all our
4 lives. I took care of my momma since 2001.

5 MS. CAIRNS: And the interest that the County, I think appropriate, has in some
6 of this also is in terms of just keeping land marketable. Because, so.

7 MR. POLK: They would just like to make a brief statement if –

8 CHAIRMAN GILCHRIST: Sure. That's fine.

9 **TESTIMONY OF TERESA LANCASTER:**

10 MS. LANCASTER: My name is Teresa Lancaster, I'm executor of the estate. I
11 live at 121 Governor Pond Road, Columbia, South Carolina. This property has been in
12 my family over 100 years that I've been able to trace back. When my father died in 2001
13 I took care of my mother every day, my sisters and I took care of my mother. Every day
14 we were there, day in and day out. She required 24 hours a day care. We have used
15 this property forever. I grew up there. I mean, we lived multiple places on this property.
16 This road goes up Rufus Miles Road, it hits Portia Road, it goes back to the left, it goes
17 back to the right. All of this was family-owned land by my grandfather and my father who
18 all farmed it. This road was used to get to other parcels of his land. Naturally there was
19 an estate involved, everybody did not get something from the estate. We are three of
20 five children so there's not very, there's people that's not very happy about the
21 decisions that my mother had to make. So I'm sure you can understand that, and as
22 executor how can I tell one person, you have an easement and two people, you don't
23 have an easement, when my mother lived on two pieces of that property? And my sister

1 Maxine has lived there since 1977, permanent. We own both sides of that road, straight
2 up both sides of the road. At that particular time my grandfather started giving land or
3 selling land to individual family members, these were family members that the property
4 was sold for. They did not give their easement away just because they gave somebody
5 else the right to live there. And as far as the, the coming around from Portia Road, I
6 believe the documents there also state something in reference to water. There is two
7 ponds there and you would be sending us back between those two ponds. Naturally
8 there's gonna be water there, certain times of the year there's gonna be even more
9 water there. I've been down to Richland County, I've discussed this with everybody I
10 could think of and I've even showed them, I asked them to come up with something
11 different, something more feasible. We spent hours ourselves trying to find something
12 more feasible and there is nothing more feasible that we can come up with. We're all in
13 agreement we're ready to move on. We have been living this life that we've been living
14 since 2001. I'm 67 years old, I want to resolve this estate in my lifetime. I don't want it to
15 go to my children, I want it to be over with and I don't want them to have to put up with
16 this mess that we've had to put up with. We've done the very best we could do, we've
17 spent hours, we've retained attorneys to help us to see if there was a better way of
18 handling it, there's just not a better way of handling it. We're doing the best we can do.
19 And just because my grandfather said, okay my daughter can have this piece, my son
20 can have this piece, didn't mean he gave his easement away. He didn't. He needed his
21 easement, he had to get back to other pieces of his property. Thank you.

22 CHAIRMAN GILCHRIST: Thank you.

23 **TESTIMONY OF BRENDA TIMMY:**

1 MS. TIMMY: My name is Brenda Timmy, I live on 178 Rimer Pond Road and I'm
2 69 years old. I have lived on this property on and off for 59 of those 69 years. The road
3 has been accessible to everybody on that road for all of those years. Everybody on that
4 road has been up and down that road, they go through our property to get to theirs. So it
5 was, it's been open since, since as far as I remember and I'm 69 years old. I have a
6 mobile home on that property today that I pay taxes on and that I pay electric bill on. It's
7 not gonna be any more traffic than has already been on there every day. There is, my
8 sister wrote the letter to everybody on that road, every single solitary person on that
9 road was sent a letter. Not one single person was concerned enough or worried enough
10 to even respond back to her. Now this road has been opened all of my life and all of a
11 sudden it's not good enough? It's been opened my whole life. The County has
12 maintained it for over 20 years, for over 20 years they have maintained this road. We
13 have used this road for 59 of my 69 years. And that's basically I need to say cause you
14 can't close a road that has been open all of a person's life. And people that should've
15 been concerned about it was not concerned about it because she wrote letters to
16 everybody on the road; not one single person was concerned enough or bothered to
17 answer her. So that's all I needed to say, thank you.

18 CHAIRMAN GILCHRIST: Thank you, ma'am. Any additional questions for the
19 attorney? Are we required to make a decision about this or is it just –

20 MR. FARRAR: Yeah, so for an administrative appeal you can either affirm it, you
21 can deny it, that's pretty much your options. You know, when you do it you need to do it,
22 you know, on the Record, I mean, you need to, you know, make a finding so they can
23 take that if they need to appeal it or if, you know.

1 MR. TUTTLE: Mr. Chair.

2 CHAIRMAN GILCHRIST: Mr. Tuttle, yes, sir.

3 MR. TUTTLE: [Inaudible] maybe I misheard, I thought there was also something
4 [inaudible] subsequent to the subdividing of the property?

5 MR. PRICE: Yes.

6 MR. TUTTLE: Yeah, so there's two things at least, right?

7 MR. PRICE: Yes, sir. It has been the determination of the Zoning Administrator
8 that prior to the subdivision of the Opal Wright estate that a note stating these lots,
9 parcels, may not be further subdivided until road access is provided and a revised plat
10 is approved by Richland County is included on the plat, which would be recorded in the
11 Register of Deeds and that prior to the approval of the Opal Wright estate subdivision
12 that the Applicant provide, from the owners of the land on which the easement crosses,
13 permission for the change of the easement, again prior to the subdivision of the land.

14 MR. BRANHAM: So again, two primary things that I'm seeing on the – Mr. Chair,
15 I'm sorry.

16 CHAIRMAN GILCHRIST: Sure, go right ahead. No, you're good.

17 MR. BRANHAM: The Applicant states that he wants 'cannot subdivide' removed
18 from the plat and then the other issue is whether Staff was within its rights to deny the
19 recording of the plat for lack of access, lack of an easement; those two things.

20 MR. PRICE: Yes, sir.

21 CHAIRMAN GILCHRIST: So we need – yes, we need a motion.

22 MS. CAIRNS: I'm gonna make the assumption that a motion is the proper way to
23 present it, but I would make a motion that the Administrative Review, both on the

1 easement issue as well as the 'cannot subdivide' requirement on the plat, both be
2 upheld as proper decisions within their discretion.

3 MR. BROWN: I second that motion, Mr. Chairman.

4 CHAIRMAN GILCHRIST: Okay, any discussion?

5 MR. TUTTLE: Mr. Chairman, if I could just ask, is there any way we could
6 address those two as separate issues?

7 MS. CAIRNS: Sure, okay so I will amend my motion to have the first motion be
8 simply that the denial of the subdivision by the Staff was proper within their discretion.

9 MR. BROWN: Second.

10 CHAIRMAN GILCHRIST: Okay, it's been moved and properly seconded. All in
11 favor, any more discussion? Okay, all in favor signify by raising your hand.

12 MR. PRICE: Those in favor: Branham, Cairns, Gilchrist, Carlisle, Tuttle, Brown,
13 Yonke, Dennis.

14 *[Approved: Branham, Cairns, Gilchrist, Carlisle, Tuttle, Brown, Yonke, Dennis]*

15 CHAIRMAN GILCHRIST: Okay, the second piece.

16 MS. CAIRNS: I make a second motion that the requirement of the subdivision,
17 the requirement of the inclusion of the note that the plat cannot be further subdivided is
18 again an appropriate decision by Staff.

19 CHAIRMAN GILCHRIST: Is there a second?

20 MR. BROWN: Second.

21 CHAIRMAN GILCHRIST: Okay. Any discussion? All in favor signify by raising
22 your hand.

1 MR. PRICE: Those in favor: Branham, Cairns, Gilchrist, Carlisle, Brown, Yonke,
2 Dennis.

3 CHAIRMAN GILCHRIST: [Inaudible]

4 MR. PRICE: Oh, I'm sorry. Excuse me, let me read that again for the Record.
5 Alright, Branham, Cairns, Gilchrist, Carlisle, Brown, Yonke.

6 CHAIRMAN GILCHRIST: Okay. Yeah, we do have – we do have two.

7 MR. PRICE: Okay, those opposed would be Tuttle and Dennis.

8 *Approved: Branham, Cairns, Gilchrist, Carlisle, Brown, Yonke; Opposed: Tuttle, Dennis*

9 MR. POLK: Just to be clear, the first vote was for the easement, for the access
10 issue, and the second was the language.

11 MR. TUTTLE: Correct.

12 MR. POLK: Okay, thank you.

13 CHAIRMAN GILCHRIST: Alright. Thank you all for your presentation. Planning
14 Director's Report. Okay, motion to adjourn.

15 MR. BROWN: Second.

16 CHAIRMAN GILCHRIST: Alright, everybody have a good Christmas. See y'all
17 next year.

18 *[Meeting adjourned at 3:52pm]*