

January 17, 2006

Ms. Lynn Richardson  
Land Use Administrator II  
Chatham County Planning Department  
P.O. Box 54  
Pittsboro, NC 27312

RE: Residential Subdivision on Mann's Chapel Road (SR 1532) in Chatham County

Dear Ms. Richardson:

We are working with Glenn Phillips, P.E., of Ballentine and Associates, in connection with the development of a residential subdivision located on Mann's Chapel Road in Chatham County. We understand that Mr. David Hackney has asserted that the North Carolina Department of Transportation ("NCDOT") may not, without his permission, make or approve improvements (e.g., a turn-lane) to Mann's Chapel Road within the existing right of way adjacent to Mr. Hackney's property. Mr. Hackney contends that he is entitled to control any roadway improvements out to the centerline of Mann's Chapel Road regardless of the existence of NCDOT's easement for Mann's Chapel Road.

In response to this assertion, we have examined the Chatham County title record for Mr. Hackney's property. The record reflects the existence of the Mann's Chapel Road (NCSR 1532) right of way well before Mr. Hackney's ownership of the property. Mr. Hackney's own deed, recorded in Book 710, Page 1013, expressly acknowledges the existence of the "right of way of NCSR 1532." The recorded Plat accompanying this deed clearly shows the Mann's Chapel Road ("SR 1532") right-of-way running along the northern margin of the property. The March 1955 deed conveying the property from which Mr. Hackney's tract is derived describes an "old road" and a "highway" in the same location as Mann's Chapel Road. In short, the chain of title in the Chatham County Register of Deeds Office for Mr. Hackney's property reflects that, well before Mr. Hackney owned the property, a right of way easement for Mann's Chapel Road had been dedicated for public use. Recordation of a plat depicting a right of way is an objective demonstration of the intent of a property owner to grant such right of way. See, e.g., Department of Transportation v. Haggerty, 127 N.C. App. 499, 492 S.E.2d 770 (1997). Right of way dedications, once accepted by a public authority, are irrevocable. See Spough v. Charlotte, 239 N.C. 149, 79 S.E.2d 748 (1954); Owens v. Elliott, 258 N.C. 314, 128 S.E.2d 583 (1962). Thus NCDOT, pursuant to its powers under N.C. GEN. STAT. § 136-18, has authority over the existing right of way of Mann's Chapel Road and may make improvements within that right of way as necessary for the public use.

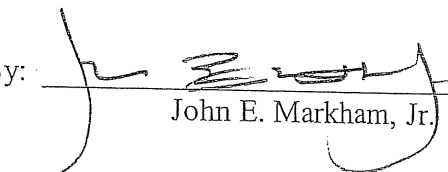
In addition, we have spoken with Mr. L.D. Caddell, the right of way agent with NCDOT with responsibility for right of way oversight in Chatham County. Mr. Caddell related to us that he is unaware of any situation similar to the position taken by Mr. Hackney regarding Mr.

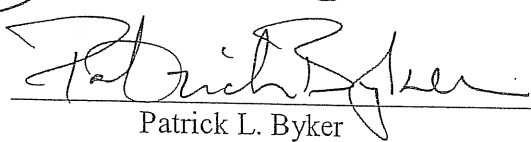
Hackney's right to prevent any road improvements proposed to occur within NCDOT's right of way on Mann's Chapel Road based upon Mr. Hackney's position that he owns to the centerline of Mann's Chapel Road. Mr. Caddell stated that he will be available for the NCDOT engineers working with Chatham County to discuss this matter, but Mr. Caddell is unaware of any reason that would prevent NCDOT from making improvements within NCDOT's easement that contains the area of Mann's Chapel Road and the areas along side the road that NCDOT has maintained for many years now. For example, NCDOT recently constructed a turn-lane at the intersection of Mann's Chapel Road and US 15-501, so NCDOT's position is that it is entitled to make appropriate improvements within its right of way on Mann's Chapel Road. We believe the same holds true for our proposal involving Mr. Dixon's property which has access to Mann's Chapel Road.

In summary, we are unaware of any legal basis for Mr. Hackney's position that his property interests preclude the construction of a turn-lane within the existing right of way for Mann's Chapel Road. We appreciate your time and we will be happy to discuss this with you in detail if you wish. Please feel free to contact us at the above-listed telephone number or email should you have any questions.

Very truly yours,

Kennedy Covington Lobdell & Hickman, L.L.P.

By:   
John E. Markham, Jr.

By:   
Patrick L. Byker

cc: Ann Anderson, Esq.  
Mr. L.D. Caddell, NC Dept. of Transportation  
Glenn Phillips, P.E.  
Robert Gunn, Esq., Chatham County Attorney

313-380-5780  
P. 1  
David G. Hackney  
3038 Manns Chapel Rd.  
Pittsboro, NC 27312  
919-933-3520

January 26, 2006

Mrs. Lynn W. Richardson  
Fax Number: 542-2698  
Land Use Administrator  
County of Chatham  
PO Box 54  
Pittsboro, NC 27312-0054

Re: Glenn Dixon Subdivision

As it relates to the Planning Board Meeting concerning the above proposed subdivision, I David Hackney, on the behalf of myself and Beulah H. Hackney would like to request a postponement of the February 7, 2006 scheduled meeting in view of my most recent notification as it relates to the right of way challenge.

We need ample time to prepare ourselves for a legal position in view of this notification having just been received. I would like for the Planning Department to consider this request so that we can prepare adequately.

Sincerely,

  
David G. Hackney

CLIFTON & SINGER, L.L.P.  
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January 31, 2006

VIA FACSIMILE: (919) 542-0527

Ms. Lynn W. Richardson  
Land Use Administrator  
Chatham County Planning Department  
Post Office Box 54  
Pittsboro, North Carolina 27312-0054

RE: David G. Hackney  
3038 Manns Chapel Road  
Pittsboro, North Carolina

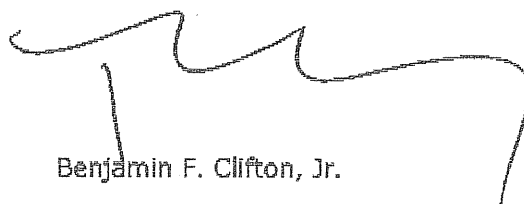
Dear Ms. Richardson:

We have reviewed, on behalf of Mr. Hackney, the letter of January 17, 2006 from John E. Markham, Jr. of the law firm of Kennedy Covington written to you. It would certainly appear from the face of the letter that the theories put forth by Mr. Markham can be challenged. The problem is time. I don't think anyone would have enough time between now and February 7 to do the research necessary to make a final decision as to the correctness of Mr. Markham's suppositions.

Thank you for your cooperation.

Yours truly,

CLIFTON & SINGER, L.L.P.



Benjamin F. Clifton, Jr.

cc: Mr. David Hackney

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