

FROM THE DESK OF BILL KENDALL, TOWNS COUNTY COMMISSIONER

ROADS AND RIGHT OF WAY

In last week's paper I listed a number of questions concerning road right of way discussed by a Study Committee at Gainesville College, appointed by the Association of County Commissioners of Georgia. Some were resolved at the meeting and others were referred to the ACCG for legal research and possible legislation for clarity.

There was unanimous agreement that if a county acquires right of way through prescription it DOES NOT take full fee simple title to the property. For example the county CAN NOT authorize a water line or other utilities through the property. Nor can a developer who is putting in a sub-division past the prescriptive ROW put in utilities. The prescriptive ROW is limited to use by the county to transportation and road maintenance (on top of the ground).

It was firmly established and agreed that if a county obtains a ROW through prescription it is only for the width that it has been maintaining (from ditch to ditch). The county is limited to negotiating a purchase of the additional land needed or through the eminent domain process and the courts. The question of narrow one lane roads going to large developments and whether a county can require larger lots, or limit development of these tracts was unresolved and referred to the ACCG.

It was established that a county wishing to abandon or release its responsibility for maintaining a deeded county road, the county must go through public legal steps outlined in the Legal Code of Georgia Annotated. It can not simply stop maintaining a road for a number of years and declare it abandoned.

Following are some examples of these legal questions, problems and conflicts over road right of ways relating directly to Towns County and its citizens.

1. There is a dispute presently in the Court concerning a developer and individual property owners in Young Harris. County Commissioners (Ordinaries), as far back as the 1950's began graveling a road through the property to another family member's home. The family wanted to be good neighbors and let people use the road to get to forest service property to hunt or hike.

Recently a developer bought 100+ acres back of the property, got approval in 2005 from the Planning Commission to develop a large number of lots and route all this additional traffic through this family's property. The County has been brought into this Court Case. The individuals and developers are presently negotiating it out of Court. Probably some lots will be eliminated and the road will be declared a county road by prescription ROW for the county to maintain only from ditch to ditch. The other solution would be for the county to acquire a wider ROW by eminent domain (condemning their property) which I will not do.

2. I recently was invited to a meeting of the Bald Mountain Park Home Owners Association. I am very appreciative of the warm welcome and the unanimous support by the large crowd in attendance of the Ordinances that we are in the process of adopting, i.e. Blasting Ordinance, Mountain Protection Ordinance, Building Codes and Restrictions on High-Rise Buildings. Many questions came up about road maintenance, ROW's etc. Of the many roads in Bald Mountain Park ONLY ONE IS A COUNTY ROAD. The County over the past 40 years just started graveling and later paving these small roads and drives without right of ways. One lady at the meeting said that someone bought a house and put up a sign (private road) on the entrance of the road to her house but that Commissioners have always maintained the road. What can you do, was her question? We looking into this situation.

3. There is a conflict on Kelley Lane, a road that many years ago was the Old Cynth Creek Road on which a school was located. A few years ago the county paved this road to the house of one of the parties and stopped there. According to the road department the past two Commissioners have continued to gravel and maintained this old Cynth Creek road on past the paved part. The parties

with property beyond the paved part of the road are demanding the county keep maintaining the road, contrary to what the other party is demanding. WHAT does the county do? The County is in the process of having the County Attorney research and makes a recommendation on what the county can legally do. If either party disagrees they can ask the Court to resolve the matter.

My office has had calls by citizens for some gravel and stated that the other Commissioners have always graveled these roads, and we have granted these requests as being prescriptive easements.

We have granted requests by 3 or 4 citizens for a load of gravel who stated that their road was private and that former commissioners would put them on a list and deliver it when the road crew was not busy and they would pay for the gravel, which they have done.

Former Commissioners have followed a policy of paving sub-divisions for developers and let them pay for the materials and the county furnish the equipment and labor. Commissioner Dayton discontinued this practice and I have implemented this policy that the County will not pave any more roads in new sub-divisions for developers. Developers are required to have the roads in their sub-division paved before the Planning Commission will give final approval to sell lots. The only exceptions to this policy is as follows: According to records of letters and meetings Commissioner Dayton in good faith had committed to pave two or three more sub-division roads for developers with them paying for the materials. Many citizens have bought lots and built houses thinking these would be county paved roads. I will honor these commitments and with proper deeded right of way will carry out Commissioner Daytons commitments and wishes. Our word to these citizens should be our bond.

. We have a new policy requiring developers wishing the County to consider taking over a road in the future to build the road to State D.O.T. specifications until a recently appointed County Road Board makes recommendations for specification requirements.

In instituting new policies the County Road Department has recently been instructed to:

1. Discontinue the practice the county has had over the years of hauling gravel and allowing citizens to pay only for the gravel.
2. When complying with a request for road maintenance or gravel the road or drive should have a ROW or a prescriptive easement by having been previously maintained.

The Road Dept. and I have been working with State DOT Officials to get more road miles on the State Local Assistance Road Program to increase State funding for maintenance. There have been **67** roads identified that have been graveled and paved over the years by the county with no record of payment by developers or individuals and that are not listed as county roads nor have deeded ROW. The fact that Purchase Orders are now required on all purchases will help with this in the future. We are in the process of determining how many of these roads that are not on the State list can be declared as having a prescriptive ROW and can be put on the list as county roads and turned in to the State DOT to receive LARP funds.