

FROM THE DESK OF BILL KENDALL
TOWNS COUNTY COMMISSIONER
ROAD RIGHT OF WAY

Due to the torrid pace of land development in Towns County, many questions and conflicts have come about concerning road right of ways, the width of ROW going into proposed subdivisions, the burying of water lines, etc. There is presently a case in court between property owners and developers and the County has been brought into the conflict. Hardly a week goes by without two parties coming into my office with a dispute over a road easement, etc.

This has come about primarily because over the past 100 years the roads in the Counties of the North Georgia mountains were developed primarily by commissioners (formerly known as Ordinaries) who simply started graveling a road formerly used by wagons, horses, and foot paths for one, two, or more families to use. This has been a tradition and expected by citizens in these isolated mountain counties and continues to some extent to the present day. **The counties puts down a load of gravel now and then on these private owned roads (without deeded ROW or easements) over the years, eventually the counties acquire what is known as a Prescriptive Right of Way, simply because they have been maintaining them.**

Later, when developers purchase a large tract of land behind these roads, the property owners don't want 100 or so homes and traffic going through their property, thus the conflicts that commissioners or courts are asked to settle.

At the request of a group of North Georgia Counties led by Lamar Paris of Union County, the Association of County Commissioners of Georgia appointed a study committee, of which I am a member, which addressed these questions and problems. Commissioners and Attorneys from Union, Towns, Rabun, White, Fannin, Habersham, Lumpkin, Stephens, Gilmer and other counties attended this meeting on 7-19-06 at Gainesville College.

Following is a report on the meeting.

TO: Jim Grubiak, Matthew Hicks
FROM: Drew Curtright
DATE: July 19, 2006
RE: County Road Right of Ways Legal Questions

Background

The ACCG Economic Development and Transportation Committee appointed a study committee to examine county road Right of Way issues at the request of Lamar Paris, Union County Sole Commissioner. The study committee met Tuesday, July 11 and was attended primarily by North Georgia county officials. The purpose of the meeting was to outline ROW issues, share best practices, and identify outstanding problems experienced by counties.

1. What is required for a county to obtain ROW through prescription, e.g. how long must a county maintain the road; does the county have to declare its ownership; what are other influencing factors?
2. If ROW is obtained through prescription, how wide is the ROW? If the county needs more than what is currently maintained, how can it be obtained? For example can ROW acquired by prescription be widened by expanding the maintained area; or, are counties limited to negotiating a purchase of the additional land needed or condemning it?

3. If a county acquires ROW through prescription, does the county take full fee simple title to the property or is the use of the ROW limited to transportation and road maintenance? For example, can the county authorize a water line through this property?
4. At what point does a county become obligated to maintain a road if it has been maintained by the county at any point in the past or has been used by the public? Specifically, how much public use, or what degree of maintenance, trigger's the county's responsibility to maintain a road?
5. How can a county abandon or release its responsibility for maintaining a road? What steps must be taken?
6. What can a county do if it is asked to maintain a road that it does not think it owns? What steps must be taken to effectively deny responsibility for maintaining the road or to accept responsibility for maintaining the road?
7. Can counties use the impact of new development on existing county roads to regulate land use-especially when the county does not have a zoning ordinance? In other words, is the impact on public safety resulting from high traffic volumes on the existing road system, or the fact that current county roads may not meet minimum engineering design standards, sufficient/legitimate cause for counties to deny a building permit or require a larger minimum lot size? Or, can the fact that a narrow or substandard road is proposed as primary access to a development justify a decision by the county to reject any development proposals?

I will share with the readers in next weeks paper answers to some of these questions that were resolved at the meeting, the questions that went unresolved and were referred to ACCG to determine through legal means or proposed legislation and how some of the questions relate to specific problems and conflicts facing Towns County and its citizens.