

To: Terry Anderson - President, Parkland POA
From: Tom Tiscione, Chairman, Legends Drive Committee
cc: Legends Drive Community HOA/POA Boards
Subject: Legends Drive - Long-term maintenance solutions
Date: October 13, 2023

Report of Findings and Recommendations

Overview

The following is a final report of the Legend Drive Committee (the "Committee"), charged with finding and recommending solutions for the long-term maintenance of Legends Drive at the least cost to the communities.

The purpose for forming the Committee was to identify and examine long-term options to maintaining the Legends community's only access road, Legends Drive. Methods of maintenance at the present time are not viewed as adequate, equitable, predictable or long-term. Without a permanent solution for long-term maintenance, Legends Drive will fall into further disrepair and the cost of implementing a long-term solution will continue to rise considerably.

The Committee was comprised of as many as twenty-two members/supporters at its peak, some subsequently left as a result of differing opinions, others due to directives from their respective Boards. The Committee will disband on Friday, October 13, 2023 at the conclusion of a homeowners meeting. Any effort to further pursue any of the viable options discussed herein is beyond the scope of this project.

Discussion

At the outset, the Committee sought the support of all HOA/POAs that use Legends Drive. The members then identified the following eight potential maintenance options, in no particular order of preference:

- Special Tax District (public road)
- New LLC responsible for road maintenance (private road)
- Maintenance contract
- Legends Drive Holding, LLC; suing and piercing the corporate veil
- Filing lawsuit against Horry County
- Transfer road ownership to County; get County/State funds
- Do nothing; status quo
- No homeowner repair; businesses will fix

Of these Options, the Committee spent a significant amount of time researching and advocating for the outright transfer of Legends Drive to the County before bringing it to County standards. The objectives being to have the county take ownership now and eliminate liability risks to residents. After it is a public road it will be eligible for public funding which will then be used to bring the road up to County Standards. A task force was formed to provide focus for this very important effort. Accordingly, the ensuing

discussion and findings, together with Exhibits, spend considerable time on this particular Option.

The committee also spent a considerable amount of its time on general research, such as law reviews, legal memoranda, County ordinances, SC state law, case law, legal opinions and property documentation. Such documentation includes County correspondence, title search material, engineering reviews and opinions and other material gathered at different times. There is additional documentation in County files and available for review in some later program or effort. The title search, which produced and/or confirmed interesting information, still did not provide all the links between property transfers and grants. The title search was extremely complex, as explained by the attorneys, and would be much more expensive to expand. Any missing title information is not expected to be germane to this report. As much documentation as could be accumulated, has been provided in additional binders as part of this submission. Also provided are pertinent email correspondence between the Committee and various parties.

Findings

After careful review and consideration of all eight options, this Committee can support three options that call for maintaining Legends Drive. Options 2, 3 and 7. These Options all provide maintenance with different cost levels depending on the level of restoration and the schedule of continuing maintenance. However, the Committee does not recommend any of the three if all stakeholders along Legends Drive do not equitably participate in the solution. Equity is not the direct reason for this caveat; it is because an inequitable participation will most likely result in lawsuits and more lawsuits.

Options 5 and 6, as discussed below, are not very realistic. Based on all accumulated research and many meetings with County officials, either a legal or a persuasive avenue would have a very low prospect for success. The County is adamant in its rejection of accepting title without Legends Drive being brought to County Standards, and support for our position is very tenuous because of the subjectivity of a "significant public purpose". Likewise, litigation against the County is weak primarily, and significantly, because State and Federal law and County ordinances are strongly and overwhelmingly in the County's favor.

Option 8 is rejected by the committee. See discussion below defending our position that it is high risk, morally and financially.

Option 4 is interesting. A triangulation of title report and County documentation identifies and confirms a Legends Drive maintenance obligation by Larry D. Young, now an obligation under Legends Drive Holding LLC. See discussion below for Option 4. According to still unconfirmed verbal information, the LLC only has the ownership of the road and nominal assets to satisfy minor cost and does not have assets to satisfy a maintenance obligation with regard to eligible land sales, even though the obligation is subjective. Further, the same unconfirmed sources claim the LLC member will not / cannot contribute more capital to the LLC. Because there is little prospect for a

meaningful financial recovery, pursuing this option can be costly and time consuming for the plaintiffs. Accordingly, the Committee does not support this Option.

Option 1 is supported and recommended. Although there is support for a few other options, a Special Tax District is the Committee's only recommendation simply because none of the other options provide a viable long-term solution. Further, the public option relieves homeowners of ongoing maintenance.

Some homeowners are banking on the idea that collectively they will not be required to contribute to the cost of maintenance, meaning someone other than them will cover the cost. The Committee does not see any scenario where this would be plausible. Options 2, 3 and 7 are cost driven options; Option 8 is potentially the most cost of all, eventually, and relief under Options 4, 5 and 6 are not expected to be successful.

The County has worked with the Committee in providing different scenarios that homeowners may find useful in evaluating the public option. We're looking at longer bond terms, different boundaries and different levels of upfront contributions. Furthermore, a thorough review of all documents (title search and other documents), has revealed that not all of Legends Drive can be included in the Special Tax District. Although the County contractors can construct the entire length, the lower portion can be included in the Special Tax District and the upper portion must use private funds. This is a recent revelation and the full ramifications are still being evaluated. This will improve the prospect for a successful public option and put significant pressure on raising private funds. This is a work in progress, and information will be forthcoming.

Conclusion

It is almost a certainty that homeowners collectively will now or someday bear a significant financial burden in funding the financial requirements of Legends Drive. All options, with the exception of the Special Tax District, leave perpetual maintenance with the homeowners. For these reasons and more, the Committee highly recommends a Special Tax District. It provides the Legends Community with a maintenance solution that should eventually unite the communities instead of dividing them.

While this research and communication is still fresh in homeowner's minds, it might be beneficial for the Boards to support a working task force to further expand on the Committee's work and feel the temperature for a public solution.

I want to thank you for the opportunity to lead this important team, and I think it's now time that I returned to my day job.

Respectfully,

Tom Tiscione

Disclaimer

The Homeowner Presentation, and Report of Findings addressed to Terry Anderson, both dated October 13, 2023, are work products of the Legends Drive Committee for use by members of the Legends Drive communities, and not for publication or use as legal positions, legal advice or legal opinions. There are no practicing attorneys on the Committee therefore the provision of all information and documentation merely reports and summarizes the Committee's findings and provides comments. The purpose of providing this information is for homeowners to have a better understanding of long-term maintenance options and related financial considerations.

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Options

Option 1: Special Tax District

Discussion

The purpose of a Special Tax District is to provide a method for the County to provide a plethora of general public works, in our specific case road resurfacing, to the extent necessary and appropriate for the District and the County. Generally, §4-9-30 of the SC Code provides that a 15% signed petition is needed from our district, with names and addresses, to present to the County Council in order to create a special tax district. The County Council then adopts the Resolution certifying the the petition. The County Election Committee then orders an election be held after:

- The special district is defined,
- The services to be rendered are defined,
- The maximum mil rate is specified,
- The maximum level of taxes is determined, and
- User service charges are quantified

If approved by a majority of eligible votes in the special tax district, then approved by the County to create the Special Tax District, the County Council then approves the Ordinance for financing. The County then receives ownership of Legends Drive and completes the construction.

The process in 2023 seems identical or very similar to that of our effort in 2018. However, the homes and businesses on Legends Drive have grown since that time, which is a plus for spreading the cost, but the cost of construction and financing has also grown, a negative for the mil rate. Legends drive is in more disrepair now than in 2018, which will drive cost even higher. A line by line comparison of the 2018 construction cost estimate to the June, 2023 estimate showed that it had increased 46%. The County is working with us to find avenues to control cost, and some things on our wish list are just not being considered under these circumstances. For example, we removed the proposed right hand turn lane, which has an estimated price tag of over \$900,000. We will settle for approaching the County and State in 2025 to lobby for traffic relief.

We are looking into the prospect of upfront contributions by all stakeholders, especially businesses. In discussions with the County, If the funds are dedicated at the time of the title transfer of Legends Drive to the County, the County can significantly accelerate the start of the project. The County does not have to wait for the funds to be made available from the bond issuance if other private funds are available. Also, up front contributions reduce the bond requirements dollar-for-dollar and therefore the mil rate. There is obviously much more to the

compliance side and administrative side, which is too detailed for purposes of this report. The County is also looking at different loan terms to compare debt service under different scenarios.

The mil rate is applied against the assessed value on a property tax bill. The assessed value is arrived at by multiplying the appraised value of your home as shown on your property tax bill by 4% for primary residences and 6% for commercial and non primary property.

Primary residence example:

○ Appraised Value	\$300,000
○ Assessment Ratio	4%
○ Assessed Value	\$12,000 (\$300,000 x .04)
○ Millage Rate (arbitrary)	22
○ Special Tax District annual tax increase	\$264 (\$12,000 x .022)

See Tab M (supporting binder) for different mil rate scenarios. There are different millage results depending on homeowner selection and the County's ability to secure financing.

Although other Options are supported by the Committee, the Special Tax District option is the only one supported and also recommended by the Committee.

A special tax district mitigates the risk associated with premises and easement liability, and involves a one time direct cost (spread over the financing period) to bring Legends Drive up to County standards. The County will bring the road into the County maintenance program at the outset and maintain it in perpetuity.

The benefit of this Option over a maintenance entity or informal contract is that a majority vote is need instead of a unanimous agreement. That will not seem fair to some, but it avoids litigation and an inequitable funding liability that exists today and certainly tomorrow. With so much disagreement along Legends Drive, a revolving door of lawsuits can be expected with other options.

Option 2: A new master HOA responsible for maintenance of Legends Drive

Discussion

A master HOA is an efficient way to maintain a multi-community road like Legends Drive, responsible only for road matters and associated landscaping. If all stakeholders joined the HOA there would be total cross community representation and central decision making. One downside is that individual HOAs would not have a say in road matters except through the master. The master ownership could be proportionate based on the footprint of members, or equal ownership with fair contract terms.

The master would need to obtain ownership of Legends Drive, and the decision to eventually pursue a public road scenario would presumably lie with that entity. Obtaining funding for roadwork would also be the master's responsibility.

There are several hurdles with a master HOA. The mere thought of owning Legends Drive will not sit well with some residents. Maybe most residents. The stigma, and maybe reality of the liability that may be attached to ownership, such as premises law, will not be viewed favorably. Further, forming this HOA would not be fair if all stakeholders were not part of it. Because there is no requirement to join, and without successful litigation to compel, various stakeholders may not be receptive.

The difficulty arises primarily because Legends Drive was never meant to remain a private road from the outset. Before International Paper Realty Corporation sold Legends Drive to Larry Young, they obtained a letter of credit to ensure that Larry Young build the road to County standards. The road would have been eligible for public acceptance and maintenance in 1991, but for the refusal by the County on April 4, 1991, because the road was not a benefit to the public. The County viewed the road as only serving a golf course, without a master plan for development of the remaining land areas.

International Paper Realty Corporation owned most of the land adjacent to Legends Drive. They could have required that a maintenance program be established through a master HOA and mandatory for all easement holders with ingress and egress to Legends Drive. This was not done.

The Committee spoke with another entity in Murrells Inlet, Prince Creek West Park and Road Association, a Master HOA. The president of that organization said the master is comprised of 14 HOA members, and some of those members have additional HOA members. Our understanding is that the master is only responsible for an access road to their private communities and related landscaping. He credited the smooth maintenance arrangement with the foresight of the land owner who owned all the land in the area before development. You guessed it: International Paper. Their Master HOA had ownership of the road in question, TPC Boulevard, and after some time decided to have the county bring it up to county standards through a special tax district, and each homeowner (lot) were assessed \$1,000. Title to the road was retained by the master HOA. After about three years, the master HOA decided to dedicate the road for public service. Before accepting, the county had them satisfy a punch list of minor repairs to again bring the road to county standards. Their county now has title to the road.

Application to Legends Drive

One of the advantages of a maintenance entity or maintenance contract is that any level of maintenance can be agreed to. The gold standard would be the most costly and lesser gradations would be limitless. Potholes and road edges only, blacktopping only, etc. Also, gradations can be changed at will.

Disadvantages include having to front the money initially, and the fact that the stakeholders will have the financial responsibility until the road is accepted into the public domain. On October 4, 2023, the County estimated that to reclaim the road from hwy 501 up to Ilshin Legends Holding is estimated at \$2.9M before financing.

As much as a similar arrangement could work for Legends Drive, the one element that would be absent is the mandatory nature of their arrangement. That element is crucial to their success. The Legends Drive Committee developed a proportionate and equitable table (Exhibit H) for use in a maintenance-sharing arrangement. However, every stakeholder would need to participate.

The Committee fully supports a master entity with full participation. Because that is not viewed as realistic, the Committee supports but does not Recommend this Option.

Option 3: Maintenance contract for all Legends Drive easement holders

Discussion

There is little more to add to this option that hasn't already been discussed in Option 2. The one advantage that a maintenance contract has over a master entity though, is simplicity. It could be much easier to get agreement on a contract as opposed to a the requirements of a legal entity.

Similar to Option 2, the Committee fully supports a maintenance program with full participation. Because that is not viewed as realistic, the Committee supports but does not Recommend this Option.

Option 4: Legends Drive Holding, LLC. Suing and piercing the Corporate Veil

Discussion

Generally, an LLC, which stands for limited liability company, is a proprietorship or partnership whose owners elect limited liability status to protect themselves personally from acts or debts of their business. For income tax purposes taxable income flows to the member's individual tax return, but under federal and state law the entity is treated similar to a corporation. For example, if you own stock in IBM, you would not be personally liable if IBM became bankrupt. Similar protection afforded an LLC.

The research generally provides that courts tend to put a lot of weight in favor of limited liability, especially for small business. So there's a reluctance by courts to disregard the limited liability status, unless there is fraud involved and the members themselves disregard the administrative requirements of a corporate entity. An article by Shawn M. Flanagan suggests that there is a two prong test used by federal and state courts in South Carolina for closely held corporations: eight factors in the first prong, involving the member's adherence to corporate form, and a second prong involving primarily fundamental fairness and fraud. However, he goes on to say, and he supports citing case law, that the first prong needs to be satisfied first before you can even reach the second prong. For LLCs, it is more difficult to fail the first prong, mainly because the first prong doesn't require an LLC to maintain records. In a recent case in Florida, a lower court found a real estate LLC guilty of fraud, allowing the plaintiff to pierce the corporate veil, only to have it reversed on appeal because the plaintiff did not prove the LLC was an alter ego of the member, so the act of fraud was never considered on appeal.

Application to Legends Drive

Legends Drive is owned by Legends Drive Holding LLC. Based on hearsay, but from very reliable sources, the company has a single property, Legends Drive, together with an insurance policy and nominal funds to satisfy expenses such as property taxes and insurance premiums. The asset has low fair market value or is a negative asset. The LLC member has not invested more capital in the LLC, and it is our understanding that the member does not have the ability financially to do so in the future. Also, it is our understanding that the LLC member does not have any substantial assets.

Assuming That Legends Drive Holding is liable for Legends Drive maintenance, and the company can not/will not pay for such maintenance, there could be sufficient grounds for bringing the company to court. Presumably someone would repair Legends Drive and present the LLC with the invoice which would go unpaid.

First, maintenance is very subjective. For example, filling potholes with gravel might be an acceptable and inexpensive act of maintenance. An invoice with a cost higher than gravel might not be recoverable, if the LLC was able or willing to cover any amount. Second, if the lawsuit was a success, the plaintiff would probably be entitled to the only asset in the LLC, which is Legends Drive. Because of the road's low or negative value, I'm not sure the LLC member would be losing much. But unfortunately, the plaintiffs would not have gained much for their effort.

Now there's the question of reaching through the company by piercing the veil. There has never been a claim of fraud against Legends Drive Holding LLC, to our knowledge, so the other claim might be fairness. But if the requirements to respect the LLC structure are met, without fraud, then it is our understanding generally that piercing the veil would not be successful. However, if the plaintiff was successful in piercing the veil nevertheless, the prospect for satisfying a judgment might be slim, depending on the net assets of the LLC member. We do not know this for a fact, but it is our understanding that the LLC member does not have assets in excess of judgement exemptions worth pursuing. In piercing the corporate veil, the judgment liability goes no further than the LLC member(s).

In sum, the Committee does not see this option as a viable one, and therefore would not support or recommend spending time or resources in pursuit. If the plaintiffs were entirely successful in every respect, it would only be a moral victory and not a financial one. If the homeowners objective is to find a sustainable solution to Legends Drive maintenance, this option falls far short of that objective.

Update

Larry Young signed an easement and right of-way agreement (presumably Exhibit B) with International Paper Realty Corporation (IPRC) on January 10, 1992. This agreement was part of a land purchase containing a land improvement (Legends Road) from IPRC to Larry D. Young dated December 27, 1991. The easement contained the following paragraph:

“Until such time as the Legends Road has been accepted for dedication to public use as contemplated herein, Grantor (Larry D. Young), his heirs, successors and assigns agree to maintain the Legends Road to acceptable standards so as not to impede or restrict the use thereof by Grantee (IPRC), it’s successors and assigns.”

The rest of the title search documentation at times referred to Larry D. Young’s obligation, but there was no evidence that the obligation was removed or changed in a subsequent document. Accordingly, Larry D. Young is obligated for Legends Drive maintenance to IPRC as referenced in the following paragraph contained in the aforementioned land sale:

“Grantor(IPRC) reserves unto itself, its successors and assigns a perpetual, non exclusive and assignable easement and right-of-way over and across the premises and Legends Road herein conveyed the terms and conditions of which easement are described in the Easement and Right-of-Way attached hereto as Exhibit B which is hereby incorporated herein by this reference.”

The maintenance obligation applies to IPRC property held on December 27, 1991, and it’s successors and assigns. There are gaps in the title search documents with regard to some sales and some easement grants to various developers, including from IPRC, but it appears that the maintenance obligation does apply to several developments, including Sago and The Palms. According to title search documents, those and other tracts are traced to multiple IPRC sales that first originated after December 27, 1991. Other IPRC land sales to Larry D. Young that took place in 1988 and 1989, which comprise the HOA/POAs above the guardhouse, do not appear to be covered by Larry D. Young’s maintenance obligation (now the obligation of Legends Drive Holding LLC), because they predate December 27, 1991.

The Committee has not completed the document trails in the title search due to its complexity and time commitment. The completion is left to others to complete at a later date if deemed necessary. However, we don’t believe additional information is needed for purposes of this report.

The “Research” and “Application to Legends Drive” sections above do not need to be modified because of the updated title search information. The research assumed a maintenance liability otherwise there would not be a reason to explore LLC ramifications.

Research

- Piercing the corporate veil in SC. Shawn M. Flanagan at Buist Moore Smythe McGee,PA-Charlestown
- What is successor liability and how can you avoid it? FoundationLaw.com
- Assumption of liability in an asset purchase. [Wwww.mcneelylaw.com](http://www.mcneelylaw.com)
- Clearing the confusion about individual liability in South Carolina LLC's. Wmalawfirm.net
- Providing South Carolina Court representation to national clients. Crawford & von Keller, LLC
- Liability for debts: are you at risk of losing your personal assets to business debts? Patriotsoftware.com
- LLC holding company: everything you need to know. Upcounsel.com
- When a plaintive is able to "peers to corporate veil. Munizzilaw.com

Option 5: File Lawsuit Against Horry County

Discussion

Legends Drive is well travelled. But it is an aging road with its share of unsafe conditions

- Potholes are structural failures in the roadway.
- Faint or poorly painted lines. Lines not only guide traffic patterns but also inform drivers about how the roads must be navigated. Over time, lines can fade and lead to confusion.
- Shoulder Drop off. The shoulder is the space between a lane of traffic and the side of the road. Ideally, shoulders should be paved at the same level as the rest of the road. Accidents often occur when a shoulder drops more than two inches below the road surface.
- Signs too close to the roadway.

These unsafe road conditions can cause a driver to lose control especially when swerving to avoid a hazard. They can cause expensive damage to vehicle. Accidents are more likely to occur when faint or poorly painted lines confuse drivers. As the road continues to deteriorate it may become impassable to emergency equipment and school buses.

Legends Drive was constructed over 30 years ago and originally served as the ingress and egress to its namesake, Legends Golf and Resort. Over the ensuing years, Horry County Council has approved multiple developments to be built with Legends Drive as their only ingress and egress. This has culminated today to about 1,300 residential units in addition to the Golf Course traffic.

It is the contention of local residents that Horry County has erred in its decision to allow growth on Legends Drive in its current condition because

- this private roadway was poorly built because it was never dedicated to public service
- the increasing traffic load has caused its unacceptable condition
- Horry County has not met its responsibility to provide a safe road and the ability of school buses and safety vehicles to reach homeowners
- That Legends Drive is an atypical private road as it has many businesses using it; that with significant public use there is precedent for County engagement.
- That residents using Legends Drive pay taxes for its upkeep and maintenance.

Overall, the contention is that Horry County's decisions created the conditions that have robbed residents from their right to a safe road and therefore the County has the obligation to take the road into the public maintenance. The contention is that Horry County should be sued to rectify the road conditions they have created.

The questions are then whether the residents using Legends Drive have standing to sue Horry County and whether Horry County is actually culpable.

Standing includes the following three (3) elements: (1) Injury in Fact – did the claimant suffer harm; (2) Causation – did the other party’s action or inaction cause that harm; and (3) Redressability – can the claimant be compensated for the harm they have suffered.

If a claimant can establish these three elements in its cause of action, the claimant generally will have the right to bring that cause of action against the other party. However, a claimant may satisfy all three elements described above but still not be capable of filing a cause of action themselves, or a claimant may be prohibited or limited by statute or case law from bringing such a claim.

In determining whether Horry County is actually culpable, each claim is addressed separately.

Was Legends Drive Poorly Built?

To what standards was Legends Road built? Legends Drive is a private road. Documents and correspondence were pulled from the Horry County archives to determine the standards used to build Legends Drive.

According to documents and correspondence from Horry County archives, Legends Drive was in fact built to the then existing standards for County public dedication. However, it was not accepted because the County said it did not serve the public interest; at the time only the golf course existed and no plans were submitted for residential development.

History:

In the October 11, 1989 Application to Construct An Access Roadway off Highway 501, International Paper Realty Corporation wrote in Section 4

“The Applicant plans to give ownership of the proposed road to the County once constructed.”

In correspondence from Michael F. Redmond, PE to E. Ronald Andrews P.E., Horry County Office of County Engineer dated January 22, 1991 regarding Legends Golf Club Entrance Road, Mr. Redmond writes

“The Developer is requesting that the County accept this road for approval and acceptance as a County road.”

In correspondence dated February 8, 1991 from Spencer Harper, III Vice President & Counsel for IP Timberlands Operating Company, LTD to E. Ronald Andrews, P.E County Engineer, Horry County, Mr. Harper writes

“The current access road to the Legends Golf Course was constructed upon land owned by IP Timberlands Operating Company, LTD. Our contractual relationship with Mr. Larry

Young required that Mr. Young build the access road to a standard which would make it capable of acceptance as a dedicated public road by Horry County. It was the intention of IPTO to dedicate the road to Horry County once it was completed.”

In 1991 the County determined it was not in the public interest to adopt it. In an April 4, 1991 letter from E. Ronald Andrews, P.E. County Engineer to Michael F. Redmond, P.E. ETS Inc. regarding the Legends Golf Course Entrance Road

“Our first responsibility should be to review any new or existing road offered for public acceptance from a “benefit to the public” standpoint. The current access road to the Legends Golf Course is just as it is presented – an access road or extended driveway. We have not been able to determine any plan for this road to serve any other purpose. A master plan for the development of other tracts has not been presented and we have no reason to speculate on one’s existence. Therefore, based on our initial evaluations and the lack of a development master plan, we have concluded this road does not meet our understanding of a roadway for public acceptance and maintenance. However, we have agreed to fully develop our file on this road and to offer our comments regarding the standard of construction.

...(punch list and additional drainage outfall) We believe completion of the above items will substantially bring the road into compliance with existing County standards. “

Note: per an April 26, 1991 letter from Michael Redmond to the Legends Group, the cost of completing the inspection punch list was \$120,000

In a July 26, 1991 letter from Bill Shannon, Horry County Public Works Director and E. Ronald Andrews to Tony Niemeyer at the Legends Group regarding Legends Drive

“We are in agreement that the road as now constructed is in substantial compliance with Horry County standards. This certification shall not be interpreted as acceptance of the road into the County system, but only as acknowledgement of the actual construction of the road to a general County standards.”

Has the increased traffic load caused by the residential growth on Legends Drive caused its deterioration?

As previously discussed, Horry County Public Works in 1991 concurred that Legends Drive was in compliance with Horry County standards.

According to the documents found in the County archives, Legends Drive was built to handle about 12,000 ADTs of “light commercial and residential traffic” considerable more traffic than was detected in the 2017 Legends Drive traffic study. Stated another way, Legends

Drive was built for 12,000 average daily trips of both trucks and cars. It was not designed as a state road with heavy traffic volume.

It concluded then that Horry County would not be considered remiss in approving the construction of any of the existing developments as Legends Drive was constructed to county standards and was built to handle more traffic than it was receiving.

History:

In a July 5, 1995 letter from Steven S. Gosnell, P.E. County Engineer to Lynette Rogers at Lovelace & Rogers, P.A. Mr. Gosnell provided the results of a site inspection of Legends Drive done on June 29, 1995. The site inspection was done to check for items that might need correction prior to recommending that the road be dedicated to Horry County.

- The existing traffic volume generated by the 3 golf courses is approximately 2400 trips per day according to ITE literature. This combined with the development potential on the Legends property and the adjacent International Paper properties would indicate that the future traffic volume could easily exceed the 7000 average daily traffic (ADT) threshold for an Arterial street. Based on these factors, a minimum right of way width of 80' is required.

Note: Legends Drive currently has an 80' right of way.

- the amount of development which can access this road would need to be limited to the maximum safe capacity of a 2-lane road (generally about 12,000 ADTs. Additional development causing traffic in excess of 12,000 ADTs would require another access road to Highway 501.

Note: A traffic study was done in February 2017. The ADTs for traffic was 1,817 entering Legends Drive and 2,162 leaving Legends Drive.

- The road has been designed to carry "light commercial and residential traffic" .

Note: This is based on volume not type of vehicle.

It is the contention of local residents that heavy construction vehicle traffic has created the damage on Legends Drive.

The Moorland and Heathland golf courses were opened for play in 1990 and Parkland was opened in 1992. It is assumed that the Legends streets were already in place before residential lots began being sold in the mid 1990s.

There are varying opinions on how much heavy construction vehicle traffic accelerates wear and tear on an asphalt road. The definitive cause of the deterioration of Legends Drive however, cannot be pinpointed specifically to heavy construction vehicles and it appears that traffic volume is within the ADT maximum. Therefore we cannot exclude factors such as age, damage due to water, sun and weather, and the lack of maintenance.

Does Horry County have the responsibility to keep Legends Drive in a safe condition?

Legends Drive is a private road owned by Legends Drive Holding, LLC. The primary users of Legends Drive have access to it by easements given to them. Under common law and SC case law, the primary users of a private road, unless there is an easement agreement that states otherwise, are responsible for its repair and maintenance.

Henry McMaster, SC Attorney General referenced SC case law in his letter to Senator Creighton B. Coleman, District No. 17 dated April 27, 2010

“In the absence of an agreement, the owner of the servient tenement is under no duty to maintain and repair an easement for the benefit of the dominant tenement. Ordinarily, the owner of the dominant tenement has the duty to keep the easement in repair. When both the owner of the dominant tenement and the owner of the servient tenement use the property subject to the easement, such a gravel road, a court may equitably divide the responsibility for maintenance and repair, and may take into account such factors as the dominant tenement’s duty of maintenance and repair, the burden of the easement on the servient tenement, and the extent of the servient tenement’s use.”

The South Carolina State Constitution Article X, Section 5 requires that taxes (public funds) must be spent for public purposes. The South Carolina Office of the Attorney General has written numerous opinion letters, each stating “The Due Process Clause of the Constitution (federal and state) requires that public funds must be expended for a public purpose.” Citing the SC Supreme Court Elliot v McNair and Haesloop v. Charleston, the Office of the Attorney General repeatedly recognizes that public funds must be used for public and not private purposes. Therefore, the burden to repair and maintain Legends Drive and keep it safe absent

an easement agreement that states otherwise, falls with easement owners and cannot legally be passed to Horry County.

Is Legends Drive is an atypical private road because it has many businesses using it? Does this create significant public use giving precedent for County engagement?

Legends Drive has multiple businesses and residential communities using it, but it is not atypical. The businesses and residential communities each have easements that give them access for ingress and egress.

A private road can be used by the general public and is open to all who wish to use it, but it primarily benefits those at whose request it was established. Unlike highways that are cared for by the public at large, private roads are maintained at the expense of the private individuals who requested the road.

The duty to maintain and repair a private road rests on the person or persons for whose benefit the road is established. If a large portion of the public utilize the road or if a statute requires its designation as a public highway, then the duty to maintain and repair falls on the public at large.

Horry County has provided a means for private roads to be dedicated for public purpose and accepted into the County maintenance program.

To ensure that County road and drainage maintenance is provided such that the general public is served and that costly suits against Horry County are avoided, in Sec 16-62 : No new road or drainage ditch will be "accepted" for maintenance into the County system unless it meets the requirements set forth by the Horry County Council or this policy, whichever is legally applicable.

Do residents using Legends Drive pay taxes for its upkeep and maintenance?

Legends Drive is a private road subject to easements.

A public road is any road or street under the jurisdiction of and maintained by a public authority and open to public travel. According to the Horry County Public Works website, there are 1,484 miles of County owned public roadway in Horry County. 964 of them are paved and 520 miles are unpaved. The cost of maintenance for all these miles of roads is included in the Horry County budget that determines our mil rate.

A private road is a road owned or controlled by a private person, persons or corporation rather than a road open to the public and owned by a government. A 2016 article regarding Horry County private roads reported that there are about 1500 miles of private roads in Horry County. 550 miles of private roads are within subdivisions. The cost of maintenance for these private roads is not the responsibility of Horry County.

The tax monies paid by residents using Legends Drive are used by Horry County to support public purposes; it is illegal by SC State law for taxpayer monies to be used for private roads. Impact fees collected by Horry County can only be used for public purposes.

Application to Legends Drive

Pursuing the option to sue the County to take ownership of a private road such as Legends Drive as is, or repair it for the safety of its users is a dead end.

1. The County has emphatically conveyed that this cannot and will not happen; it is clear that under South Carolina State Law and case law, it is illegal for them to do so.
2. Legends Drive is a private road, and property owners who use Legend do so under an easement from the owner of Legends Drive, Legends Drive Holding, LLC. Under common law and as specifically stated in South Carolina State law, unless an easement expressly states otherwise, property owners in the HOAs, Ailsa Village residents, Moorland Townhomes residents, Ailsa Pub, Legends Golf & Resort, among others, are responsible for repairs and maintenance of Legends Drive.
3. The County approval of development and growth along Legends Drive is based on an asphalt road constructed to County standards and the ability for the 80' wide road to handle more traffic than it is currently receiving.

Unless provided otherwise in an easement agreement, the Dominants of Legends Drive are responsible for its current condition.

The burden to repair and maintain Legends Drive in its current condition cannot legally be passed to Horry County. Horry County will accept Legends Drive when the provisions of their Ordinances are met.

Research

- Understanding the Link Between Unsafe Road Conditions and Car Accidents, by SafeRoadsUSA, March 26, 2019. <https://www.makeroadssafe.org/understanding-the-link-between-unsafe-road-conditions-and-car-accidents/>
- The Three Elements of Standing to Sue, FVF Law, Injury Attorneys, September 29, 2022. <https://www.fvflawfirm.com/blog/the-3-elements-of-standing-to-sue/#:~:text=Standing%20includes%20the%20following%20three,action%20against%20the%20other%20party.>
- April 4, 1991 letter from E. Ronald Andrews, P.E. County Engineer to Michael F. Redmond, P.E. ETS Inc. regarding the Legends Golf Course Entrance Road
- July 26, 1991 letter from Bill Shannon, Horry County Public Works Director and E. Ronald Andrews to Tony Niemeyer at the Legends Group regarding Legends Drive
- Application to Construct An Access Roadway Off Highway 501 in Horry County, SC, by International Paper Realty Corporation dated October 11, 1989
- Correspondence from Michael F. Redmond, PE ETS Inc, to E. Ronald Andrews P.E., Horry County Office of County Engineer dated January 22, 1991 regarding Legends Golf Club Entrance Road
- Correspondence dated February 8, 1991 from Spencer Harper, III Vice President & Counsel for IP Timberlands Operating Company, LTD to E. Ronald Andrews, P.E County Engineer, Horry County
- July 5, 1995 letter from Steven S. Gosnell, P.E. County Engineer to Lynette Rogers at Lovelace & Rogers, P.A.
- Letter from Henry McMaster, SC Office of the Attorney General to the Honorable Creighton B. Coleman, Senator, District No. 17 dated April 27, 2010. <https://www.scag.gov/wp-content/uploads/2017/01/Coleman-C.-4-27-2010-01203880xD2C78.pdf>
- Letter from Henry McMaster, Attorney General, SC Office of the Attorney General to B.J. Willoughby, General Counsel South Carolina Department of Parks, Recreation & Tourism dated August 29, 2003. <https://www.scag.gov/wp-content/uploads/2013/03/03aug-29-Wiloughby.pdf>
- Elliott v. McNair, Supreme Court of South Carolina, Jul 14, 1967 250 S.C. 75 (S.C. 1967). <https://www.casemine.com/judgement/us/5914c82fadd7b049347e87db#>
- Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E. 596, 598. <https://casetext.com/case/haesloop-v-charleston>
- Horry County Public Works Website; <https://www.horrycountysc.gov/departments/public-works/>
- Code of Ordinances of Horry County, South Carolina ARTICLE III. - EXPENDITURE OF PUBLIC FUNDS FOR MAINTENANCE Chapter 16, ROADS AND BRIDGES Sec. 16-62. - Acceptance of road and drainage rights-of-way for County maintenance. https://library.municode.com/sc/horry_county/codes/code_of_ordinances?nodeId=CO

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- Private Roads, <https://law.jrank.org/pages/9421/Private-Roads.html#:~:text=A%20private%20road%20can%20be,individuals%20who%20request%20the%20road.>
-

Option 6: Property gift, abandonment, bankruptcy, forfeiture and transfer to the public domain

There are several ways that property can be transferred, sold or otherwise disposed of. This section will examine some of these options especially as it relates to a potential transaction between Legends Drive Holding LLC and Horry County for ownership of Legends Drive.

Discussion

1. Abandonment.

SC Code 57-9-10 provides that anyone can ask a competent jurisdiction to abandon or close any street if it's in the best interest of all concerned. ED-41 is an engineering directive which provides guidance on how to accomplish that. The road can be transferred to a government agency or a non-government entity, but the government has the right of first refusal. However, this applies to public streets.

Generally, private real estate cannot be abandoned. That is because owners have duties as well as rights, including the duty to pay property taxes. (J. W. Singer). In Springs Civic Ass'n v. MacKenzie (a North Carolina case), the owners tried to abandon their property but to no avail. The county tried to sell the property at a tax sale but was unsuccessful, and the title remained with the owners. The only type of abandonment of private real estate mentioned in multiple law reviews is adverse possession. This is typically squatter's rights, where under certain circumstances property could be considered abandoned if a person has continued occupancy without the permission of the legal owner.

2. Forfeited land.

SC Code 12-51-40, 50, 55 and 60 cover default on payment of taxes. After a required notice and advertisement period, the jurisdiction takes physical possession of the property against which the tax is delinquent. The property then goes through a delinquent tax sale.

The State of South Carolina enacted SC Code 12-59-10 through 150, establishing a mandated Forfeited Lands Commission (FLC) which is a governing body for the

disposal of property. When the County sells the property, it is required to make the first bid for the minimum amount to recover delinquent taxes and fees. If there are no bidders, the FLC then takes title to the property for later action. SC Code 12-59-85 provides that the FLC “may refuse to accept title to the property if the commission determines that to accept title would be against the interest of the public.”

3. Bankruptcy.

Chapter 11 bankruptcy involves a reorganization of the assets and liabilities of a company. This chapter is primarily for corporations, partnerships and LLCs. The business has a chance to propose a reorganization plan, approved by a bankruptcy court. Because this is considered complex, costly and time-consuming, corporations are advised to explore other avenues and alternatives before settling on Chapter 11.

Chapter 13 bankruptcy is primarily for individuals. Similar to Chapter 11, the debtor can come up with a plan to deal with creditors, with the approval of a bankruptcy judge. If the debtor has a judgement resulting in a bankruptcy, there are exemptions in South Carolina, which include a certain amount of equity in a home, vehicle, jewelry, basic household items, liquid assets plus pension and social security benefit exemptions.

Chapter 7 bankruptcy is a liquidation process for individuals and corporations, where assets are turned over to a trustee until the case is closed. Chapter 7 also allows exemptions for individuals similar to Chapter 13.

Title 11 of the bankruptcy code allows the trustee to abandon property of the estate if the property is burdensome to the estate or of inconsequential value. The property in this case would go back to the debtor.

4. Gift:

Articles and other research material we examined, which defines or discusses the legality of gifts, all point to a three prong test: intent of the donor, delivery of the gift and acceptance of the gift by the donee. The County has made clear to Legends Drive residents, on numerous occasions, that they will not accept Legends Drive into the County road maintenance system unless its construction is brought up to County standards. In addition a person who gives or offers gifts to a public official, member or public employee with the intent to influence is guilty of a felony.

Application to Legends Drive

Some members of the Legends Drive community have thought of ways for Legends Drive Holding LLC to dispose of its asset, Legends Drive, thereby transferring the owner's perceived maintenance obligation to the County. These actions include discontinuing property tax payments resulting in asset forfeiture, filing for bankruptcy, gifting, abandonment and successfully supporting a substantial public purpose. Based on the review of available research material and meetings with County officials, none of these ideas have worked so far and future prospects don't look good.

As mentioned in the Discussion section above, a person can not just abandon real estate except possibly with adverse possession. In the case of forfeiture for nonpayment of property taxes, the County does not have to take title to the forfeited property if it not in the interest of the public. In the case of Legends Drive, there should be little doubt that title would remain with Legends Drive Holding LLC under those circumstances. Bankruptcy under Chapter 7 for the LLC would not produce any different result. Legends Drive would be offered to creditors, who would refuse to accept it, and then be declared a burdensome asset to the estate and title would remain with the LLC debtor. Chapter 7 bankruptcy for the individual, a scenario where the creditors successfully pierced the corporate veil and the member filed for bankruptcy, would be no different. The road would still reside in the LLC, and the individual would be entitled to exempt property provisions under the bankruptcy code.

A gift of Legends Drive to the County would not be accepted by the County for a number of reasons. These reasons are very straightforward and covered in the research cited and the above discussion.

Research

- You cannot abandon real property. J. W. Singer, Bussey Professor of Law, Harvard Law School
- South Carolina Code 12-51-40, 50, 55, 60
- South Carolina Code 12-59
- South Carolina Code 12-59-10, 20, 40, 50, 80, 85
- Forfeited Land Commission (FLC)
- Abandoned property. Law.cornell.edu
- Road Abandonment. Anderson County SC
- South Carolina Code 57-9-10

- Louis V. Vick v SCDOT
- SMU Law Review, vol. 40, Sandra G. Redmond Soneff
- Title 11, §554. Bankruptcy
- 11 U.S.C. §350
- 11 U.S.C. §521 - Debtor's duties
- SC Law - Title 57, Chapter 9, Abandoning or closing of streets...
- Attacking and Defending Gifts - Kimberly A. Whaley, LLM, TEP, WEL Partners
- South Carolina Ethics Commission - Acceptance of Gifts
- National Association of Attorney General - SC Gift Statutes

Option 7: Do nothing; Status Quo

The status quo option is interesting in that the act of randomly patching the road does not take into consideration other needs. Also, it assumes that someone will step up to continue its funding.

The patching slows deterioration caused by water and weather conditions, and is an inexpensive way of providing a level of maintenance to extend the life of the road. This method can be used for many years if funding is provided. Patching, however, is only one maintenance issue, and roadside slopes is another. It is estimated that two-thirds of the Legends Drive grass shoulders need to be regraded or shored up to provide safe passage and proper water drainage, which has not been done in the recent past. In addition, the asphalt edging in many areas have broken from the road surface. These deficiencies are not being considered in the status quo, most likely due to lack of funding.

The estimate for road construction out five years is estimated to be much higher, which reflects increased cost of material and labor coupled with more repair to the road base. The cost just five years from now under a special tax district, or under a robust maintenance program, will likely move those two options well beyond the reach of homeowners even before considering the significant financing cost. Legends Drive is over thirty years old without meaningful maintenance in the recent past. Asphalt roads have a life which depends on proper maintenance.

The main issue with a status quo approach is that much of the road that can be rescued today with proper maintenance will fall to disrepair without it. Those areas are not visible at this time but will evidence themselves, first through more potholes, more alligator cracks, then combining with areas that had been previously repaired. This cycle of repairing each year appears to be a short-term solution and will require funding. As articulated by the County “roadway further deteriorates into a private gravel road. Regular maintenance is still required for private gravel roadways.”

The Committee supports the status quo option, mainly because it provides a measure of safety for residents and the public. However, the Committee does not recommend this option because it falls far short of a proper maintenance program and only delays the inevitable, which

is large funding requirements later on. Also, obtaining funding is uncertain and possibly unattainable without a formal maintenance agreement.

Option 8: No Homeowner Maintenance; Wait for Businesses to Fix the Road

This option is basically who “blinks first” to cover the cost of maintenance . If a business repairs Legends Drive because the condition of the road degrades to a point where it affects their business, then problem solved. Or is it?

The above doesn't address the span of time leading up to the repair. If the business decides to repair the road, then the road must be in pretty bad shape. Logically the road would be hazardous and a serious safety concern. Chance of injury or worse would be a possibility or even a probability.

Considering injury, the discussion in Exhibit C, on the legal doctrine of premise liability, touches on the liability risk to owners and users of Legends Drive. It would therefore be likely that at least one user of the road would not let the road deteriorate to that point. There was an outcry by residents this past June when the potholes on Legends Drive got too deep, and arrangements were made on an emergency basis to repair them. After the potholes were repaired, there were many residents that were upset that they were repaired because the businesses had then lost the incentive to fund the repair.

Considering cost, if a business repaired Legends Drive it could seek equitable reimbursement from other users of Legends Drive. See Exhibit G for a discussion of easement maintenance remedies. Because dominant easement holders can seek equitable contribution from other dominant easement holders, the game of chicken may not work as planned.

Accordingly, the Committee does not support Option 8, and considers it to be a very risky and reckless approach to any level of Legends Drive maintenance. A status quo approach, although not an ideal maintenance solution, at least attempts to mitigate the potential moral and financial implications.

Exhibits

Exhibit A: Federal, SC Law, Horry County Ordinances – Using Public Funds for Private Property

Discussion

Private vs. Public Roads

In South Carolina there are over 60,000 public road miles. SCDOT maintains over 41,000 miles of those roadways. The remaining miles are maintained by local governments, private businesses or individuals.

A public road is any road or street under the jurisdiction of and maintained by a public authority and open to public travel. According to the Horry County Public Works website, there are 1,484 miles of County owned public roadway in Horry County. 964 of them are paved and 520 miles are unpaved. The cost of maintenance for all these miles of roads is included in the Horry County budget that determines our mil rate.

What is a private road? A private road is a road owned or controlled by a private person, persons or corporation rather than a road open to the public and owned by a government. SC Code of Law defines a private road as "Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons is a "private road" or "driveway."" Usually, private roads are governed by easement agreements. A 2016 article regarding Horry County private roads reported that there are about 1500 miles of private roads in Horry County. 550 miles of private roads are within subdivisions. The cost of maintenance for these private roads is not the responsibility of Horry County.

Many private roads in South Carolina are in severe disrepair. News reports abound with stories of cars damaged by large potholes and asphalt roads that have turned to dirt because of lack of maintenance.

- Deerfield Links Drive in Surfside has large potholes, and uneven, and unkept stretches of road. A portion of the road is covered in potholes so large and so close together, that some residents are calling them craters.
- Bill's Place in Myrtle Beach is a private road spanning just two-tenths of a mile, yet the road holds 195 potholes.
- Residents along a rural private road in Clarendon County say "You go down that road, you see the puddles, don't drive in them because you don't know what's up under the puddles because the holes are so deep."
- Marble Lane, a short, private, dirt road in Colleton County hasn't been maintained by the owner in 18 years; According to residents, delivery services and bus drivers no longer drive down the road.
- About a dozen neighbors in Beaufort County were unable to drive anywhere for two days after a large tree fell blocking the only road out of their neighborhood ; Beaufort County officials legally cannot do anything because it's a private road.

Homeowners on these damaged private roads throughout South Carolina continually look to the State and County for assistance with the costly repair and maintenance. It is, however, unconstitutional for the state or County to do work on private roads.

Public Purpose

The South Carolina State Constitution Article X, Section 5 requires that taxes (public funds) must be spent for public purposes. The South Carolina Office of the Attorney General has written numerous opinion letters, each stating “The Due Process Clause of the Constitution (federal and state) requires that public funds must be expended for a public purpose.” Citing the SC Supreme Court *Elliot v McNair* and *Haesloop v. Charleston*, the Office of the Attorney General repeatedly recognizes that public funds must be used for public and not private purposes.

For the state, county, city or town to expend taxpayer monies, the project must have a public purpose - where the public good will be served but not where the expenditure of money is directly for the private benefit of certain individuals. What constitutes a public purpose was defined in the SC Supreme Court in *Anderson v. Baehr* 265 S.C. 153, 217 S.E2d 43 (1975)

As a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment for all the inhabitants or residents, or at least a substantial part thereof.

In *Nichols v South Carolina Research Authority*, 290 S.C. 415, 351 S. E. 2d 155 (1986) the court established a test to determine whether the public purpose requirements have been met

The Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree”.

In a fall, 1985 article published by the South Carolina Law Review South Carolina Law Review

"Public purpose" is not specifically defined by statute, but is a judicial construct subject to judicial determination. Courts have never specifically defined public purpose as contrasted with private purpose, but have employed a case by case approach. The South Carolina Supreme Court has stated that public purpose is a fluid concept, influenced by circumstances such as time, place, population, and economy. The court has also established that the objective of a public purpose is to promote public health and welfare. More than a remote public benefit is required to fulfill a public purpose.”

As a general summary, if the primary beneficiaries would be private parties, with only an indirect or remote public benefit, the use of public resources for the private parties would be unconstitutional.

Dedication to Public Purpose

As with other South Carolina Counties, Horry County has provided a means for private roads to be dedicated for public purpose and accepted into the County maintenance program.

To ensure that County road and drainage maintenance is provided such that the general public is served and that costly suits against Horry County are avoided, in Sec 16-62 : No new road or drainage ditch will be "accepted" for maintenance into the County system unless it meets the requirements set forth by the Horry County Council or this policy, whichever is legally applicable.

Under this policy, to be accepted into the County's system, a road or drainage right-of-way must meet all of the following standards:

- The right-of-way must be deeded to the County or be given to the County by way of permanent easement;
- The maintenance of such right-of-way must materially benefit the traveling public or general population;
- The right-of-way must be wide enough to be of practical benefit to the public and suitable for maintenance by large machines, but unless otherwise provided herein, the width shall not be less than fifty (50) feet for roads and thirty (30) feet for drainage ditches;
- The right-of-way must be accessible from an existing public right-of-way; and
- The attainment and maintenance of basic design standards must be economically feasible in line with the benefit to the general public.

Application to Legends Drive

Legends Drive is a 32 year old privately owned road that has not been properly maintained for years. Alligator cracks, potholes, crumbling edges are signs of damage from water, sun, weather, use and age. While experts vary on what the lifespan of an asphalt road will be, some say 25 years, Legends Drive is in its senior years. Over time without proper maintenance water penetrates the asphalt, washes out the base underneath it, causing it to crack, break down and collapse.

Pursuing the option for the County to take Legends Drive as is or repair it for the safety of its users is a dead end. The County has emphatically conveyed that this cannot and will not

happen; they have been clear that under South Carolina State Law and case law, it is illegal for them to do so.

The burden to repair and maintain Legends Drive in its current condition cannot legally be passed to Horry County.

There are grant monies available to fund repairs to roads that include SC State C Funds Also known as the CTC Program, the state funded C Program provides monthly allocations from the County Transportation Fund (monies coming from gas, state funds and donors) to the counties. Horry gets 5% apportionment of the state funds. FY 2019-2020 the fund had \$96.5 million and Horry County received \$4.1m. When asked about funding for Legends Drive, Danielle Minko the Brach Manager at Horry CTC stated "Unfortunately by law, no CTC funding can be spent on private roads so the committee would not be able to assist with the road improvements.". Should Legends Drive become a County maintained road, it could receive CTC funds.

The \$5 billion federal Safe Streets and Roads for All (SS4A) Grant Program closed in July, 2023 and is no longer a source.

Other federal and state grant opportunities can be pursued should Legends Drive become a public road.

Research

- Article X, Taxation, and Bonded Debt, Section 5 No tax without consent; taxes to be levied in pursuance of law, of the South Carolina State Constitution
 - No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied. (1976 (59) 2217; 1977 (60) 90.)
- Letter from Robert D. Cook, Assistant Deputy Attorney General, SC Office of the Attorney General to the Honorable Wayne C. Ramsey, Gaffney City Council dated February 3, 2005. <https://www.scag.gov/wp-content/uploads/2011/03/05feb3-Ramsey.pdf>.
- Letter from Robert D. Cook, Assistant Deputy Attorney General, SC Office of the Attorney General to the Honorable Glenn F. McConnell, President Pro Tempore, SC Senate dated January 7, 2004. <https://www.scag.gov/wp-content/uploads/2011/03/04jan7mcconnell.pdf>
- Letter from Matthew Houck, Assistant Attorney General, SC Office of the Attorney General to Mr. G. Waring Parker, Esq. Attorney Town of Summerville, dated July 5, 2023. <https://www.scag.gov/media/ziedveig/03339690.pdf>
- Letter from Charles H. Richardson, Senior Assistant Attorney General, SC Office of the Attorney General to the Honorable William C. Mescher, Senator District 44, dated

October 8, 2003. <https://www.scag.gov/wp-content/uploads/2013/03/03oct-8-Mescher.pdf>

- Letter from Henry McMaster, Attorney General, SC Office of the Attorney General to B.J. Willoughby, General Counsel South Carolina Department of Parks, Recreation & Tourism dated August 29, 2003. <https://www.scag.gov/wp-content/uploads/2013/03/03aug-29-Wiloughby.pdf>
- Elliott v. McNair, Supreme Court of South Carolina, Jul 14, 1967 250 S.C. 75 (S.C. 1967). <https://www.casemine.com/judgement/us/5914c82fadd7b049347e87db#>
- Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E. 596, 598. <https://casetext.com/case/haesloop-v-charleston>
- Due Process Clause is found in both the Fifth and Fourteenth Amendments to the United States Constitution, which prohibit the deprivation of "life, liberty, or property" by the federal and state governments, respectively, without due process of law.
- A Reexamination of the Public Purpose Doctrine: Nichols v. South Carolina Research Authority Carolina Research Authority, Arthur L. Coleman, https://scholarcommons.sc.edu/sclr/vol39/iss3/4?utm_source=scholarcommons.sc.edu%2Fsclr%2Fvol39%2Fiss3%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages
- South Carolina Law Review South Carolina Law Review Volume 37 Issue 1 ,ANNUAL SURVEY OF SOUTH CAROLINA LAW Article 6 Fall 1985 Constitutional Law , <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=2827&context=sclr>
- Code of Ordinances of Horry County, South Carolina ARTICLE III. - EXPENDITURE OF PUBLIC FUNDS FOR MAINTENANCE Chapter 16, ROADS AND BRIDGES Sec. 16-62. - Acceptance of road and drainage rights-of-way for County maintenance. https://library.municode.com/sc/horry_county/codes/code_of_ordinances?nodeId=COOR_CH16ROBR_ARTIIIEXPUFUMA_S16-36GUDEIFROWIMASYPRSUPUBEWACOEXPUFUMA
- 2022 South Carolina Code of Law Title 56 - Motor Vehicles Chapter 5 - Uniform Act Regulating Traffic On Highways Section 56-5-450. Private road defined; driveway defined.
- Horry County Public Works website; <https://www.horrycountysc.gov/departments/public-works/>

Exhibit B: Easement and Landowner Maintenance – South Carolina and Horry County Case Law

Discussion

Ownership Responsibility

Property maintenance law is summarized by Legal Match as

Property maintenance refers to the upkeep and repair of a property to ensure that it remains in good condition and functions as intended. The responsibility for property maintenance can depend on the type of property, the terms of any agreements or contracts, and local laws and regulations. However, in general, the owner of a property is responsible for ensuring that it is properly maintained.

Property owners have a duty of care to ensure that their property is safe and free from hazards that could cause harm to tenants, visitors, or the public. This duty of care includes maintaining the property in a reasonable state of repair, regularly inspecting for potential hazards, and promptly addressing any issues that arise.

Nadav Shoked, Professor of Law at Northeastern in his paper, The Duty to Maintain, expands on property law and the legal reasons owners are responsible for maintaining their property such as the liability for negligence, state and local statutory maintenance obligations, and affirmative covenants/agreements.

The duty of a property owner to maintain his property, however, may be reversed when the property is subject to an easement.

Easements

An easement is the legal right of a non-owner to use a part of another person's land for a specific purpose. It is a "nonpossessory" property interest that allows the holder of the easement to have a right of way or use property that they do not own or possess.

Road easements come into play when someone needs access to their property. Easements can be created in deeds, easement agreements, subdivision declarations, and condominium declarations.

When an easement is granted, neither the owner (grantor) or the user (grantee) can change its scope, location or size without the other party's consent.

Easements are either "exclusive" or "non-exclusive."

- An "exclusive easement" limits the right to use the easement to a particular party at the exclusion of all others. No other party may use the easement.
- A "non-exclusive easement" exists when one party has an easement on or over real estate, but the landowner can grant additional easements to other parties on or over the same real estate. In either case, the landowner may typically continue to use the real estate subject to the easement or terms of the easement agreement where his or her use does not conflict with the purpose of the easement.

Who is Responsible for Maintaining a Road Easement?

The laws governing easements can be complicated and will vary from state to state. However, it is usually the person or party using the easement (easement holder) is often the one with the duty to maintain it. While the easement owners aren't the owners of the land itself, they should maintain it as they are using it. The landowner (easement owner) will retain most rights over it and generally they also are under no duty or obligation to maintain or repair the easement's improvements.

If the owner of the servient tenement does not use the easement, the courts have ruled that he or she has no obligation to maintain the easement. In one court case, a servient tenement owner — on whose land ran a sewer line that he did not use — was found not liable when the line became clogged by the roots of a tree on his land.

Professor Shoked writes "An easement thereby benefits its holder. But it also places a duty on her. The holder of an easement may not exercise her easement in a way that places an undue burden upon the servient estate. This restriction engenders a duty to repair and maintain an easement to prevent injury to the servient estate." He concludes that easement law places on the holder of the easement the duty to maintain the portions of land that her easement covers.

Common law precedent holds that all parties who use and/or benefit from the easement have a responsibility for maintenance to keep it in usable condition based upon their contribution to wear and tear of the easement. Factors here can include frequency of use and the size of the vehicle using the easement if it's an access way.

John Rinaldi writes “Under common law, the owner of a property that gets its access by way of the easement has a duty to maintain the easement, but need only maintain the easement to the degree that the owner deems necessary for access to their own property. When more than one property uses the easement, the property owners should apportion the cost of repairs and maintenance relative to their use of the easement. Often there is an issue as to what constitutes maintenance or repair, as opposed to improvements. The best solution to the problem is to have a well-written agreement among the parties that clearly delineates maintenance responsibilities, sets out a clear procedure as to when and how the easement will be maintained, and a procedure to resolve disputes. There is no adequate “cookie-cutter” or form document that can accomplish this because every situation is different. In addition, any maintenance agreement should have the appropriate language to be binding on successors in title and should be recorded among the county land records so that it is binding on future purchasers of the properties. “

As a general rule, an easement holder has a right to do "whatever is reasonably convenient or necessary in order to enjoy fully the purposes for which the easement was granted," as long as they do not place an unreasonable burden on the servient land. On the other hand, the owner of the servient land may make any use of that land that does not unduly interfere with the easement holder's use of the easement. What constitutes an undue burden depends on the facts of each individual situation. (Snow v Smith, 41 S.C. 72)

If a court determines that a servient estate is unduly burdened by unreasonable use of the easement, the owner has several potential legal remedies. These include court orders restricting the dominant owner to an appropriate enjoyment of the easement, monetary damages when the easement holder exceeds the scope of their rights and damages the servient estate, and in some cases termination of the easement.

In other words, if you have an easement that allows you to use a portion of another person's or company's land, then it is your responsibility to maintain the easement – it is not the responsibility of the servient tenement (the person whose land is burdened by the easement).

The Dominant may be liable for damage to the Servient where failure to maintain the easement results in damage to the Servient land. For example, if the Dominant fails to maintain pipes laid on the Servient’s land resulting in leakage, the Dominant may be liable for damage caused by escaping water.

In rural areas, parcels may otherwise be inaccessible from public roads, and property owners may wish to pool resources to maintain roads not maintained by the county. In many planned developments, cities and counties require developers to create homeowner associations (HOAs) to maintain roads and related infrastructure.

For private roads, easement holders can also create a road maintenance association and record an agreement declaring that all properties along the easement shall be held, sold, and conveyed subject to the declaration. These road maintenance associations can collect dues and enforce the road maintenance agreements on behalf of members.

Can the Servient Estate be Responsible for Maintenance of an Easement?

If there is a written easement agreement, that document should — but often does not — spell out who is responsible for maintaining an easement used by two or more property holders.

The respective obligations of easement holders and property owners depend on how the easement was created. As with other interests in land, easements are subject to the Statute of Frauds, which generally require express creation by a written instrument. Most express easements are created by grant deed or quitclaim deed, but some easements are created in easement agreements.

In his letter to Senator Creighton Coleman regarding the maintenance of an easement in the subdivision Sand Creek Properties, Henry McMaster as the South Carolina Attorney General wrote

“Generally, the owner in fee simple has all the rights and responsibilities of maintaining property. However, when an easement is created, a small portion of the rights are given away by the grantor to the grantee. As easement is the right to use the land of another for a specific purpose. The grantor or fee simple owner would be considered servient and the grantee or easement owner would be considered dominant.

South Carolina Jurisprudence explains the duties of each as follows:

In the absence of an agreement, the owner of the servient tenement is under no duty to maintain and repair an easement for the benefit of the dominant tenement. Ordinarily, the owner of the dominant tenement has the duty to keep the easement in repair. When both the owner of the dominant tenement and the owner of the servient tenement use the property subject to the easement, such a gravel road, a court may equitably divide the responsibility for maintenance and repair, and may take into account such factors as the dominant tenement’s duty of maintenance and repair, the burden of the easement on the servient tenement, and the extent of the servient tenement’s use.”

The Attorney General's opinion is sourced from Hayes v. Tompkins 287 S.C. 289 (1985) 337 S.E.2d 888

- In the absence of an agreement, the Tompkinses, as owners of the servient tenement, are under no duty to maintain and repair the easement represented by the gravel road for the benefit of the dominant tenement owned by Hayes. Richardson v. Jennings, 184 N.C. 559, 114 S.E. 821 (1922); Carson v. Jackson Land & Mining Co., 90 W. Va. 781, 111 S.E. 846 (1922). Ordinarily, the owner of an easement has the duty to keep it in repair. Capers v. Fripp, S.C.L. (Rice) 224 (1839); 25 Am. Jur. (2d) Easements and Licenses § 85 at 491 (1966).

Referencing South Carolina Case law, for the servient estate to be solely responsible for maintenance of their burdened property, they must expressly undertake the duty to maintain and repair the easement through a maintenance agreement, a grant in a deed, or other operation of law.

Can an Easement be Terminated?

Easements typically do not terminate. However, there are few ways in which they can be. According to Law Shelf, some ways to terminate an easement include:

- Release: Both parties agree to the easements' end for a particular reason.
- Expiration: If the easement was created for a specific time period (for example, a construction job), it can become void after a particular date or the completion of use.
- Merger: If one owner acquires the landlocked property and the original land, then the easement will no longer be necessary.
- Abandonment: If the party holding the easement stopped using it or clearly indicates they intend to give it up, the easement will end.

Easement Maintenance Remedies

With easement responsibilities established, what remedies are available to a property owner or to the user of the easement property if the necessary repairs and maintenance are not performed and the easement property deteriorates?

How do you enforce your rights under an easement? If you have rights under an easement, a court can help you to enforce them.

Both parties to an easement may have legal remedies if a conflict occurs. The servient estate owner may seek an injunction to block certain activities. He or she might also request a termination of the easement. The dominant estate holder may sue for trespass. Also, both parties may be able to request money damages for certain acts.

If the Dominant wants to use the easement, it must do the work necessary to ensure the easement remains useable: *Duncan v Louch* (1845) 6 QB 904. To that end, the Dominant has an implied right to enter the burdened land to do whatever is reasonably necessary to ensure continued use of the easement, but may not broaden or enlarge the ambit of the easement: *Zeneare v Leate* (1980) 1 BPR 9300.

While there may be a right for the Servient to be consulted and provide input, ultimately the choice of method of work or maintenance proposed remains with the Dominant: *Burke v Frasers Lorne Pty Ltd* (2008) 14 BPR 26,111. The rationale being that in performing maintenance, the Dominant is exercising its rights under the easement and will be the party responsible for paying for the maintenance.

In limited circumstances, the Dominant may be liable for damage to the Servient where failure to maintain the easement results in damage to the Servient. For example, if the Dominant fails to maintain pipes laid on the Servient's land resulting in leakage, the Dominant may be liable for damage caused by escaping water: *Comserv (No 1877) Pty Ltd and another v Wollongong City Council*

If the easement rights of the dominant estate are interfered with by the holder of the servient estate, then the dominant estate holder can file a lawsuit to enforce their easement rights over the servient estate. For example, the dominant estate holder with a driveway easement over a servient estate can seek damages if the servient estate owner blocks the driveway over the servient estate. The dominant estate is often said to be benefited by the easement, while the servient estate is burdened by the easement.

If a court determines that a Servient estate is unduly burdened by unreasonable use of the easement, the Servient has several potential legal remedies. These include court orders restricting the Dominant to an appropriate enjoyment of the easement, monetary damages when the Dominant exceeds the scope of their rights and damages the servient estate, and in some cases termination of the easement.

At the same time, the servient estate owner can bring an action against the dominant estate owner if the dominant estate misuses or exceeds the scope of their access or other easement right. For example, if the dominant estate holder erects a structure on the access

easement, the servient estate owner can ask a court to remove the structure, make the dominant estate holder pay damages, and/or terminate the dominant estate holder's easement.

Application to Legends Drive

Legends Drive is property owned by Legends Drive Holding LLC. Property owners in the HOAs, Ailsa Village residents, Moorland Townhomes residents, Ailsa Pub, and Legends Golf & Resort are landlocked and use an easement from Legends Drive Holding LLC for ingress and egress to State Highway 501.

Using easement law terminology, Legends Drive Holding LLC is the servient estate or easement owner. The property owners that use Legends Drive for ingress and egress are the dominant estate or easement holder.

Under common law and as specifically stated in South Carolina State law, unless an easement expressly states otherwise,

1. Legends Drive Holding LLC is under no obligation to to maintain or repair the easement
2. Property owners and Businesses using Legends Drive for ingress and egress (Dominants) are responsible for repairs and maintenance of Legends Drive.

The Legends Drive Committee on behalf of the property owners that use Legends Drive initiated a title search to uncover the details of the easements provided to them individually. The language in those easements will confirm if there is an agreement that specifies how repair and maintenance are to be paid for.

To the extent The Property Owners and Businesses using Legends Drive are responsible for repairs and maintenance of Legends Drive, Legends Drive Holding LLC may seek legal remedies for noncompliance.

Addendum

There are key terms used in discussing easements

- Land affected or "burdened" by an easement or the owner of the property giving easement privileges; must allow the dominant estate to use a portion of its land or resources. Known as
 - Grantor,
 - Owner of the Burdened Land,
 - Servient Estate, or
 - Easement Owner.
- The person benefited by the easement or the party receiving the easement privileges; has the right to use the servient estate for a specific purpose. Known as
 - Easement Holder,
 - Owner of the benefitted land.
 - Grantee,
 - Dominant Estate, or
 - Easement User.
- Encumbrance: A legal term referring to any claim, lien, or burden on a property, such as an easement, that may affect its title, use, or transferability.
- Scope of Use: The specific activities or purposes for which the easement holder is granted the right to use the servient estate, as defined in the easement agreement.
- Termination: The end or cessation of an easement, which can occur through various means, such as expiration of a time-limited easement, abandonment, mutual agreement, or court order.
- Fee Simple: a permanent and absolute tenure in land with freedom to dispose of it at will, especially (in full fee simple absolute in possession) a freehold tenure, which is the main type of land ownership. (Oxford Dictionary)
- easement appurtenant deals with two pieces of land (e.g., two neighboring parcels) and tend to be conveyed with a sale of the land.
- easement in gross deals with one piece of land (e.g., one parcel and another person' right to use the one parcel) and tend to not be conveyed with a sale of the land.
- Landlocked Property: a property with no legal access road that leads to it. It is surrounded by land owned by other individuals or entities, and the only way to access it is by traveling through or crossing the property of another party.

Various types of easements can be established in property law. Here are some common types:

- Easement of Necessity: This type of easement arises when a landlocked property requires access through an adjoining property to reach a public road or utility line.
- Easement by Prescription: Also known as a prescriptive easement, it is acquired through continuous, open, and uninterrupted use of another person's property for a specific period, typically prescribed by state law.
- Easement by Grant: An easement by grant is created through a written agreement between the property owner (grantor) and the party acquiring the easement (grantee). The terms and conditions of the easement are explicitly stated in the agreement.
- Easement by Reservation: This type of easement occurs when a property owner sells or transfers ownership of the property but reserves certain rights to continue using a specific portion of the property.
- Easement in Gross: An easement in gross benefits a specific individual or entity rather than a particular property. It is not tied to the ownership of any specific land and does not transfer with the sale or transfer of property.
- Affirmative Easement: An affirmative easement grants a specific right or privilege to the holder, such as the right to access a property, use a driveway, or install utility lines.
- Negative Easement: A negative easement imposes restrictions on the property owner, prohibiting certain actions or activities. For example, it may prevent the property owner from obstructing views or building structures that block sunlight.
- Utility Easement: A utility easement allows utility companies, such as electric, water, or gas providers, to access a property to install, maintain, or repair utility lines or equipment.
- Conservation Easement: A conservation easement is voluntarily granted by a property owner to protect natural resources or preserve the land's environmental, scenic, or historic value.
- Recreational Easement: This easement allows public access to private property for recreational activities such as hiking, fishing, or hunting.
- An implied easement occurs when circumstances and facts regarding the property, the parties using the property, and the transaction or another characteristic demonstrate that both parties' objective intent is to create an easement. These include easements by necessity and easements by prior use.
- Express easements are created through contracts, deeds or other written documents. They describe the easement's location and dimensions, as well as the scope of the interest being conveyed. South Carolina courts will attempt to establish the parties'

intentions if the express easement is too ambiguous by examining the facts and circumstances of the transaction.

- Rights-of-way are essentially a specific type of easement, usually an easement appurtenant; it establishes the freedom to use a pathway or road on another's property without conferring ownership. Therefore, while all rights-of-way are easements, the opposite is not true. A public right-of-way is broader than a typical easement because it allows anyone access to a defined portion of private property and doesn't tie to a specific person.

Research

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-

Exhibit C: Premise Liability

Discussion

According to the legal doctrine of premises liability, the owner or occupier of a property owes a duty of care to invitees and licensees. (MSL Legal) An invitee is someone who visits a property, like a meter reader or a restaurant patron, for the benefit of the owner or occupier. A licensee is someone who visits the property for their own benefit, like a friend. The higher duty of care is afforded the invitee. The owner/occupier does not owe a duty of care to trespassers, however the owner/occupier is responsible for keeping the property free of hazardous conditions especially if a child might be attracted to the property and sustain injuries. Children are in a special category because they aren't expected to have the same cognitive abilities as adults. (Christy Bieber)

Common causes of premises liability include hazardous conditions on the property such as cracks or holes in sidewalks, inadequate lighting, faulty wiring, slippery floor surface, and inadequate security. Liability can turn on whether the owner/occupier did know or should have known about a hazardous condition. On the other hand, there are contributory considerations where the injured party has a level of responsibility of awareness to avoid hazardous conditions.

When easements are involved, this area gets more murky. It appears that the owner has a high level of responsibility to maintain the property, but many times a premises liability will be determined or highly influenced by contracts and agreements between the owner and easement holders. Owners typically carry liability insurance due to the high incidence of owner liability.

Application to Legends Drive

Legends Drive Holding LLC is the owner of Legends Drive and carries liability insurance. At times, Legends Drive has conditions that cause drivers to slow down or navigate their vehicle to avoid areas of the road they feel unsafe. Over the past twenty years there have

been numerous incidents on Legends Drive involving vehicle damage, and even death in two cases. At a slow speed a person should be able to avoid these problem areas, but weather conditions, distractions and poor visibility could play a role in a person's ability to otherwise drive safely.

The focus of this report is to examine maintenance options primarily for homeowners, not LLCs. The fact that the owner LLC will probably be a defendant in a premises lawsuit and covered by insurance should give little comfort to the significant number of dominants easement holders and users of the road. A maintenance contract between easement owner and easement holder, if any, should certainly have a bearing on the litigation outcome. However, other factors will play heavy into findings, such as status of the injured, contributory degree of the victim and hazards of litigation. Also, it will be blatantly obvious and indisputably clear that most users of the road know that the road is failing. When considering litigation, especially when looking to be awarded significant damages, it is likely that homeowners would be prime targets.

Research

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Exhibit D: Proportional, equitable, maintenance obligation table

There were several maintenance options under consideration for both long-term and short-term maintenance solutions for Legends Drive. The challenge is to find an equitable method to either apportion or allocate cost among stakeholders. Stakeholders are entities that have direct or indirect ingress or egress to Legends Drive, with the exception of the public domain. A straight allocation using total stakeholders as a denominator was not considered fair because it gives equal weight to all stakeholders without considering their profile in terms of footprint or how far they penetrate Legends Drive.

Three factors were considered in arriving at a proportionate, equitable formula: Distance, footprint and time. Distance and footprint were incorporated in the formula, time was not used.

1. Distance:

Legends Drive is a dead end road, so distance is fixed at approximately 13,200 linear feet. Depending on where the stakeholder is situated at their furthest entrance/exit to Legends Drive, their unique distance is used as a factor in determining their proportion.

2. Footprint:

This is the factor that considers how dominant the stakeholder is in comparison to other stakeholders. At the outset, we used building lots, so Parkland would have a broader footprint than Gleneagles Cottages because Parkland has more lots. This would seem equitable but was not a level playing field for attached homes, and businesses that do not have building lots, like the golf course and IHOP. We have a traffic study that recorded the amount of traffic at various intervals along the road, but it doesn't identify the origin or destination of that traffic. For lack of a better method, the Committee decided to use an Horry County table created to evaluate County road requirements. This table, "Table 4-B Trip Generation Rates by Major Land-Use Categories" considers different categories of establishments that use a road and assigns daily trip generation rates based on traffic studies. This Table uses different categories such as residential single family, townhouse or apartment; office building; retail store, etc. The measurements used, range from trips per residential home to trips for different building square footage. The Committee decided to use this Table to measure a footprint because it's study-based, County approved and cross-categorized.

Owners who sublease their homes are counted once, the lessee is not counted in that situation so as not to double count. With businesses however, a business lessee would be rolled up to a business lessor for purposes of using the County table. I.e., Classic Swing School is rolled up to Ilshin Legends LLC before applying trip generation rates.

3. Time:

This measurement looks at how long a person or business is present on Legends Drive. Parkland was built approximately twenty-eight years ago and Legends Village only five years ago. Moorland Reserve this year and Ailsa Village last year. More granular, some residents have lived here for nearly thirty years and others moved in last week. Further, house ownership has turned over many times and some houses are rented and others not yet built. Some residents do not spend all their time here due to second homes or seasonal vacations. And so on.

Considering the above, calculating a time factor is not practical below the entity level. We also rejected time as a factor at the entity level, logically assuming that performing due diligence in determining the fair market value of property already reflects the condition of all roads in the community. I.e., the poor condition of Legends Drive should have been reflected in the arms length negotiations for property purchased by Moorland Reserve and Ailsa Village, and the fact that they are privately maintained roads. Using a time factor would result in a double benefit: lower land cost followed by lower maintenance cost. Raw land ownership was not factored in the apportionment table until such time as the land is developed. Although a case can be made for inclusion, it seems more equitable to wait until full or at least significant development.

Accordingly, the time factor is not used for purposes of proportionality.

The formula ultimately used by the committee for maintenance proportionality is as follows:

(Entity trips per day) X (Entity distance \ aggregate distance) = proportional use.

See attached schedule “Proportionate and Equitable Maintenance Obligation Table.” This schedule is an update to a prior schedule used by the Committee for a short-term maintenance funding request. The funding schedule that we used previously was based on the current Table, but the County engineer said a more recent Table still in draft form was much more realistic. We changed to the draft Table. Another reason for using the County table is that in the event of maintenance litigation, a court or jury should find equity in the County’s own table. It should also be kept in mind that as new developments enter the Legends Drive community, the apportionment among stakeholders will change from that point on to reflect the new entrants.

Exhibit E: Title search and engineering survey

The title search for Legends Drive was conducted by Bellamy Law Firm in Myrtle Beach and completed in late September. Because of the complexity and volume of transfers and sales that took place over the years, there are still some documentation gaps. However, for purposes of this project enough information has been gathered to answer the most pressing questions. Reference to these documents are made in various sections of this report, as appropriate.

In addition to the title survey, other important documents were obtained from County online services and archived files. The archived material was photographed on site at the County offices, and later copied and added to the research material for this project. That documentation helped bridge the road construction and acquisition chronology.

An engineering survey will not be conducted because of time and budget constraints. If homeowners opt for a special tax district the County will engage an engineering firm. If homeowners opt for a maintenance contract, a decision needs to be made at that time whether a survey is necessary.

Because of the volume, all these documents are in separate binders and available as part of the Committee's documentation.

Miscellaneous

Sample Funding Sources for Public Roads

State Funding

- **SC State C Funds**

Also known as the CTC Program, the state funded C Program provides monthly allocations from the County Transportation Fund (monies coming from gas, state funds and donors) to the counties. Horry gets 5% apportionment of the state funds. FY 2019-2020 the fund had \$96.5 million and Horry County received \$4.1m.

- **2023-2024 PAVEMENT IMPROVEMENT PROGRAM**

Rehab and Reconstruction Projects on the Primaries, Farm to Market Secondaries and Neighborhood Streets

The selection of projects for the Proposed 2024 Pavement Improvement Program followed a ranking process that relies on objective and measurable criteria. These criteria align with the Ten-Year Plan, support the performance targets outlined in the Transportation Asset Management Plan, and prioritize a fair distribution of paving funds across all counties in the state. This approach guarantees that every county receives its share of funding for pavement improvements.

The South Carolina Department of Transportation Commission approved the Agency's 2024 Pavement Improvement Program by adding another \$775 million to the previously invested \$2.8 billion in pavement improvements across the state of South Carolina since the Strategic 10-Year plan was implemented. This is the seventh year of an accelerated pavement improvement program and adds another 877 miles of roadway to the more than 8,000 miles of ongoing road work.

Federal Grants

- **Safe Streets and Roads for All (SS4A)**

The Bipartisan Infrastructure Law (BIL) established the Safe Streets and Roads for All (SS4A) discretionary program, with \$5 billion in appropriated funds over 5 years, 2022-2026. The SS4A program funds regional, local, and Tribal initiatives through grants to prevent roadway deaths and serious injuries. Grant Program

closed in July, 2023. The FY24 Notice of Funding Opportunity (NOFO) for SS4A is expected to open in Spring 2024.

- **State and Community Highway Safety Program (Section 402).**

Through the State and Community Highway Safety Program, South Carolina administers \$7-\$10 million in Highway Safety grant funds from the National Highway Traffic Safety Administration (NHTSA) of the US Department of Transportation each year. These funds, as well as other pools of federal funds for which the state may qualify or apply and receive, are used to assist, via grants, eligible entities in carrying out specific programs that will have a direct impact in improving driver behavior and reducing the number of traffic-related collisions, injuries, and fatalities.

- **The RAISE grant program**

expanded under the Bipartisan Infrastructure Law, supports communities of all sizes, with half of the FY2023 funding going to rural areas and the other half to urban areas. The grants are part of President Biden's Investing in America