Understanding Rights of Way

Bryan L. Jones, PE

Right of Way

Former Director of Right of Way Oscar Rucker refers to "right of way" as the width of area that is under the control of the department for construction and maintenance of the road. Right of Way can be owned in fee simple, by easement, et al.

Right of Way

Current Director of Right of Way Feaster –

Close enough...

Understanding Rights of Way

- Unconsciously Incompetent You don't know what you don't know...
- Consciously Competent OJT, making mistakes
- Pulled some of my mistakes and issues into this presentation so we don't have to make the same mistakes

What do we call "Rights of Way"? What are our types of RW (title interest*) in the 50', 66', or 100' we maintain?

- Fee Simple Ownership
- Easements
- Dedicated Right of Way
- Permissions
- Prescriptive Easements
- Condemnation

^{*} Legal terminology

Meanings of Each

It is important to understand each type of "right of way." The title interest we own or the type of document used to obtain our right of way will determine our interests – present and future.

The following are basic (not legal) definitions and examples of each.

Fee Simple

This means we own all of the title interest in the property from RW line to RW line. We purchased the strip or area of land in full (by a Title to Real Estate or Deed) and it is recorded in the court house as SCDOT property. This includes all appurtenances such as land, grass, trees, etc. This is the same type of interest that each of you purchase when you purchase a home.

A fee simple interest is typically acquired when DOT is paying for the right of way.

SCDOT RW Form 802EXHI (05-03)

THE STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

2004051175 FILED, RECORDED, INDEXED 89/23/2004 13:40:43:983
-Rec Fee:\$10.00 St Fee:\$0.00EXEMPT Co Fee:\$0.00 Pages:2
Lexington County ROD Debra M. Gunter DEED Bk:Pg 9589:64

TITLE TO REAL ESTATE

Approximate Survey Station

2 12 22	103+00 To 107+00 Left	
Road/Route SC ROUTE 6	SC Route 6	
File <u>32.145B</u>	800+00 To 805+00 Left	
Item	Nazareth Road	
ProjectSTP-COMB(018)	To	
PIN26215		

KNOW ALL MEN BY THESE PRESENTS, That I (or we) Timothy M Jones and Helen J Sturkie, 4055
Bachman Road, West Columbia SC 29172 in consideration of the sum of THIRTY FIVE THOUSAND EIGHT
HUNDRED AND FIFTY AND NO/100 DOLLARS (\$35,850.00) and other valuable consideration to me (or us) in hand
paid at and before the sealing and delivering thereof, by the South Carolina Department of Transportation, Columbia, South
Carolina, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do
grant, bargain, sell and release, unto the said South Carolina Department of Transportation, its successors and assigns, all that
certain real property of the Grantor in fee simple absolute from SC Route 602 (Platt Springs Road) to just South of Road
S-70 (Old Two Notch Road) on SC Route 6, State and County aforesaid, as shown on plans prepared by the South Carolina
Department of Transportation and dated June 12, 2003.

SPECIAL PROVISIONS: The above consideration is for all that certain parcel of land containing .320 acre / 13,940 S.F., more or less, and all improvements thereon, if any, owned by timothy M. Jones, et al, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.

This being a portion of the property acquired from Palmetto Design Associates Inc. by deed dated May 20, 2002 and recorded May 23, 2002 in Deed Book 7232 Page 86 in the records for Lexington County and shown as Tax Map No. 006500-05-123. Plat Book 200G, Page 718. The said Property is located in Lexington County

So based on this "title interest"

- If you were clearing and grubbing, who owns the trees?
- If you are repairing or installing sidewalk, whose tree roots are we cutting?
- What is the length of this interest?

Easement

This means SCDOT has a signed agreement (Easement or Deed to Right of Way) with the property owner (or a previous owner) for the use of THEIR land for constructing, maintaining and improving the roadway and ditches within the "RW" limits. Our RW interest limits the landowner's ability to use the RW for any use that conflicts with highway purposes. When a landowner transfers their property to future landowners it is still subject to our easement unless the easement is excluded from the sale. We do not OWN the strip of land, the dirt, the trees, etc.; we simply have the right to use it for highway purposes.

An easement interest is typical for most of the roads in our secondary system as well as some outfall ditches.

The State of South Carolina COUNTY OF Aiken	Deed to Right-of-Way +, we) Frank H. Goodyear	
Road Route No. 32 Project No. 2.258 Approx. survey station, from 123/90 to 163/00		
KNOW ALL MEN BY THESE PRESENTS, That I (or		
in consideration of the sum of One Dollar, to me (or us) in handing and delivering thereof, by the South Carolina Highway Depa granted, bargained, sold, and released, and by these presents do g Highway Department, its successors and assigns, a right-of-water construction of a section of the State Highway from	rtment, receipt of which is hereby acknowledged, have rant, bargain, sell, and relase, unto the said South Carolina	
to 24.19	on Rest No. 32 State and	
County aforesaid, as shown by plans prepared by the State Highwown in whole or in part, for the purpose of locating, constructing, with the bridges and causeways thereon. Bounded	way Department, on and over all lands which I (or we) may improving, and maintaining the above described highway	
	Owners along the Highway. QETS EST and others	
Said right-of-way to have a width of 66 feet, that is way except where a greater width is necessarry for short distant	feet on each side of the center line of the High- ces on account of large cuts or fills.	
"Special Provisions:"		

the State of South Carolina	TRACT
COUNTY OF Aiken	
Route No. 8-2079 File No. 2.757	Right of Way Easement
Project No	Lauriee O. Hydrick
Approx. survey station, from 11+60 to 20+04Rt.	Bobby C. Hydrick Rte 2, Box 209
KNOW ALL MEN BY THESE PRESENTS, That I (or we)	
in consideration of the sum of One Dollar, to me (or us) in hand paing and delivering thereof, by the South Carolina Department of Fhereby acknowledged, have granted, bargained, sold, and release lease, unto the said South Carolina Department of Highways and	lighways and Public Transportation, receipt of which is d, and by these presents do grant, bargain, sell and re- Public Transportation, its successors and assigns a right
of way for the construction of a section of the State Highway from	SC Route 113
s. E. & N. E. for 0.583 miles	on Route No. S-2079 State and
County aforesaid, as shown by plans prepared by the South Caroli on and over all lands which I (or we) may own in whole or in part, f maintaining the above described highway with the bridges and causeontrolled access facilities to said highway.	or the purpose of locating, constructing, improving, and
Bounded by the lands of George B. Hydrick, Jr. or	the west, Duane H. Brazier &
Peggy J. Brazier on the southeast,	and others.
Said right of way to have a width of	the property described herein may be used in the future.
"Special Provisions: "All right of way herein g 3+94.98 and 15+30.5 is along a relocated of	enterline as shown on the plans by
a heavy dashed line. It is understood and served that that no	

the right of way between approximate survey stations 11+60 and 12+50 will be

So based on this "title interest"

- If you were clearing and grubbing, who owns the trees?
- If you are repairing or installing sidewalk, whose tree roots are we cutting?
- What is the length of this interest?

Dedicated Right of Way

This means SCDOT occupies the right of way for the purpose of building and / or maintaining the road because it has been dedicated by the original owner and accepted by the government for the purposes of a public road. The interest is similar to an easement in that we have the right to use the RW for highway purposes, but we do not OWN the strip of land, the dirt, or the trees, etc. The entity, person or persons who dedicated the right of way (either the developer or adjacent landowners) typically retain the underlying fee ownership of the right of way area.

A dedicated right of way is typical of most downtown city or town streets and is very prevalent in subdivisions.

Docket 32.304 - Rds. 92, 92(Spur), 223, 224 & 224(Spur) -Lexington County

- Road 92: Along East St. from end of present pavement (Sta. 0/00) southeasterly to Sta. 15/00, also spur from Sta. 13/62.5 on Road 92, southwesterly to intersection with Route 76.
- Road 223: Along an unnamed St. or road from intersection with Road 51 northwesterly to intersection with Route 76.
- Road 224: Along Clark St. from intersection with U. S. Route 76, southerly to Sta. 11/65, thence westerly to intersection with Lexington Ave. (Rd. 93) at Chapin Methodist Church also spur from Sta. 4/39.1 on Road 224, westerly for 287 to intersection with Lexington Ave. (Rd.93).

No deeds were secured from individual property owners on above described streets or roads in the Town of Chapin as the Department will occupy only the dedicated widths as per letter from Town Council dated October 10, 1950, a copy of which is attached hereto.

Note: Road 51 was not included in above description of roads as this road is included in a separate Right of Way List.

TOWN OF CHAP IN

Chapin, S. G. October 12, 1950

Mr. S. M. Pearpan State Highway Engineer State Highway Bapartment Columbia, South Carolina

> Ne: Docket 32,304 --Ras. 51,92,92(Spulz) 93, 223, 224 & 224 (Spur)

Dear Sir:

With reference to the improvement of the above streets (or street) in the Town of Chapin, on behalf of the Town of Chapin, I wish to verify the widths of said streets, as shown by the map of the Town of Chapin made by Carolina Surveying Co., North, S.C., said width being as follows:

By Wm. H. Clark, April 14th, 1947.
(Road 51) (Road) St. 50 ft. from intersection with U. S. Rt. 76 southerly to Town Limits (Sts. 39/50)

(Road 92) East St. 40 ft. from end of present payement (Sta. 0400) southeasterly to Sta. 15400, also spur 40 ft. from Sta. 13462.5 on Road 92, southwesterly to intersection with Route 76.

(Road 223) Along an unmmed street or road 50 ft. from intersection with Road 51 northwesterly to intersection with Route 76.

(Road 22h: Along Clark St. 60 ft. from intersection with U. S. Route 76, southerly to sts. 11/65, thence westerly 50 ft. to intersection with Lexington Ave. (Rd. 93) at Chapin Methodist Church, also spur 50 ft. from sts. 1/39.1 on Road 22h, westerly for 287' tointersection with Lexington Ave. (Rd. 93).

In the event it is ever found necessary to widen the streets (or street) to accommodate future traffic needs such as construction of curb and gutters, storm drainage and sidewalks, such work to be accomplished as a joint undertaking between the Town and the Highway Department, the Town will cooperate in securing any necessary additional width of right of way and bear the expense, if any in connection therewith.

This letter is written by authority of resolution of the Town Council adopted on this date.

Yours very truly,

TOWN OF CHAPIN

By Mayor Its Mayor

So based on this "title interest"

- If you were clearing and grubbing, who owns the trees?
- If you are repairing or installing sidewalk, whose tree roots are we cutting?
- What is the length of this interest?

Permission

This means SCDOT has a signed agreement (Permission) with the current property owner to perform work on THEIR land for the purpose of constructing and / or maintaining SCDOT interests - typically outfall ditches or sloping rights for the duration of the project. We do not OWN or have any vested interest in the strip of land, the dirt, the trees, etc. Depending on the wording (construct vs. construct and maintain) we may have very limited future interests. Also, permission may be revoked by the property owner at any time. Permissions are desirable for sloping rights (driveways and slopes), however they are not desirable for future interests, such as with outfall ditches.

THE STATE OF SOUTH CAROLINA

PERMISSION FOR:

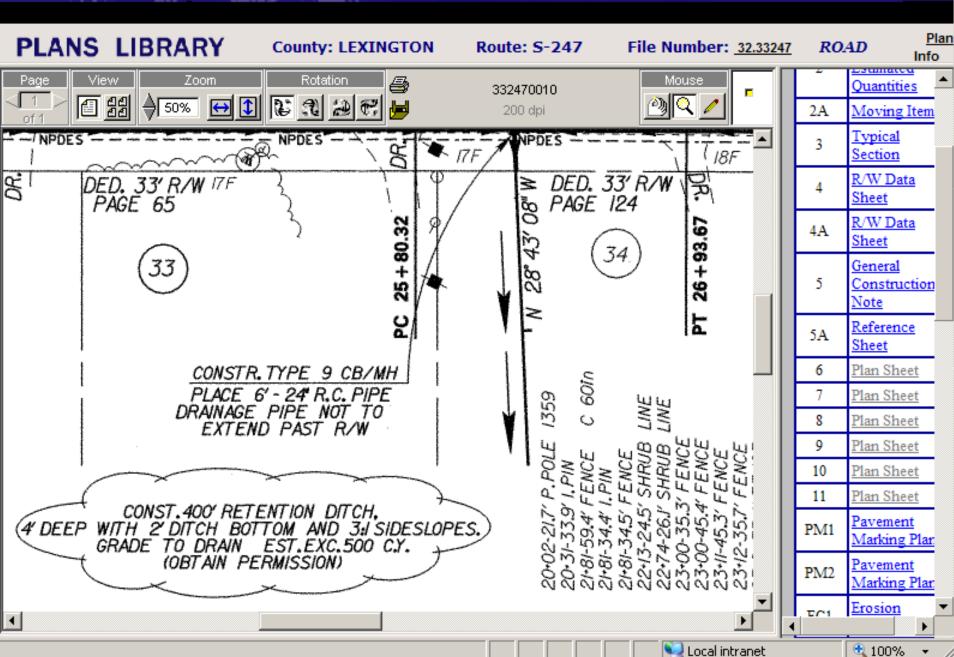
CONTRUCT DRIVE

COUNTY OF LEXINGTON

		commercial and the
		CONSTRUCTION SLOPES
Road/Route	SC ROUTE 6	
File .	32.145B	
Item		
Project	STP-COMB(018)	
PIN	26215	

KNOW ALL MEN BY THESE PRESENTS, That I (or we) Timothy M Jones and Helen J. Sturkie, 4055 Bachman Road, West Columbia SC 29172 in consideration of the sum of One Dollar (\$1.00), to me (or us) in hand paid, and other valuable consideration at and before the sealing and delivering hereof, do hereby grant to the South Carolina Department of Transportation permission to do the work as outlined below, with the understanding that this work is to be done on property of the grantor outside of the right of way, it being fully understood and agreed that no right of way is being granted to the Department for the purpose of this construction. Further, permission is granted to perform construction beyond the right of way such as grading and other work necessary to adjust the grade of driveways to conform to the proposed roadway improvements as shown on the plans for the construction of this project.





So based on this "title interest"

- Who owns the property?
- What rights do we have?
- For how long?

Prescriptive Easement

This means SCDOT has never secured a paper title for the easement, but has acquired an easement due to long use without any objection by the adjacent landowners. The legal limits of our interest are usually confined to what we have actually maintained and the public has actually used over the years. For dirt roads, this is windrow to windrow, however; on paved roads it is ditch to ditch or valley gutter to valley gutter. This may carry over to OFD's (piped or un-piped) as well as pond dams, so be very careful of working off of the right of way.

A prescriptive easement is typical of most SCDOT earthen roadways and roads that came into the state system under the Beltline Act.

Docket 32.264 - Road ho - Laxington County

Augusta Street in and adjacent to Town of West Columbia from its intersection with Route 2 (State Street) westerly to intersection with Route 215 near Horse Pond.

Road 40: No deeds were secured on Augusta Street in Town of West Columbia from Route 2 (State Street) to Whitt Street, survey stations 0/00 to Town Limits, approximate station 14/28, as the Department will occupy the dedicated width of not less than 40° as per letter from Town of West Columbia dated 7-6-48. Also; from Town Limits to survey station 51/00 (And of Survey) the Department will occupy only existing street which appears to have a width of approximately 40°.

So based on this "title interest"

- Who owns the property?
- What right do we have?
- For how long?

Condemnation

This means SCDOT has filed action through eminent domain to acquire right of way for the purpose of roadway construction. The "title interest" sought may be Fee Simple, Deed to Right of Way, or Temporary Right of Way.

County in Record Book 6524, Page 62.

- 5. County of Lexington is made a party in this action as "Other Condemnee" by virtue of its claims of interest in that certain Tax Lien for unpaid 2003 Real Property Taxes against Roy A. Finley and Dana M. Finley.
- 6. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that parcel or strip of land, in fee simple, containing 0.04 acre/ 1,720 square feet, more or less, and all improvements thereon, if any, owned by Roy A. Finley and Dan M. Finley, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations 169+00 and 172+00 left of Route SC 6.

Tax Map Number: 005498-08-053 and 005498-08-006

- 7. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.
- 8. The property sought herein is to be acquired for public purposes, more particularly for the construction of a section of Route SC 602 (Platt Spring Road) to just south of Road S-70

Special Provisions

Always be sure to check your special provisions for specific requests. These are where the property owner's specific requests are laid out. This may include driveway locations, outfall ditches, and other special requests.

SPECIAL PROVISIONS: Also herein granted are two triangular areas as follows: A 20 X 25 foot triangular area left of approximate survey station 0+20, and a 20 X 20 foot triangular area right of approximate survey station 0+20, both at the intersection of Road S-851 and Road S-926. All property herein granted is more particularly shown on the plans for this project.

special provisions: The right of way herein granted is for an outfall ditch right of approximate survey station 6+50, said ditch right of way being 10 feet on the left and 10 feet on the right side of the ditch centerline and extending to Road S-662 as shown on the plans for this project. The right of way herein granted is along a relocated centerline as shown on the plans by a dashed line between approximate survey stations 5+66.97 and 9+01.0. All property herein granted is more particularly shown on the plans for this project. Right of way herein granted is subject to plans being revised.

Said right-of-way to have a width of General feet, that is 37 feet on each side of the center line of the High-way except where a greater width is necessarry for short distances on account of large cuts or fills.

"Special Provisions:"

Shoulder

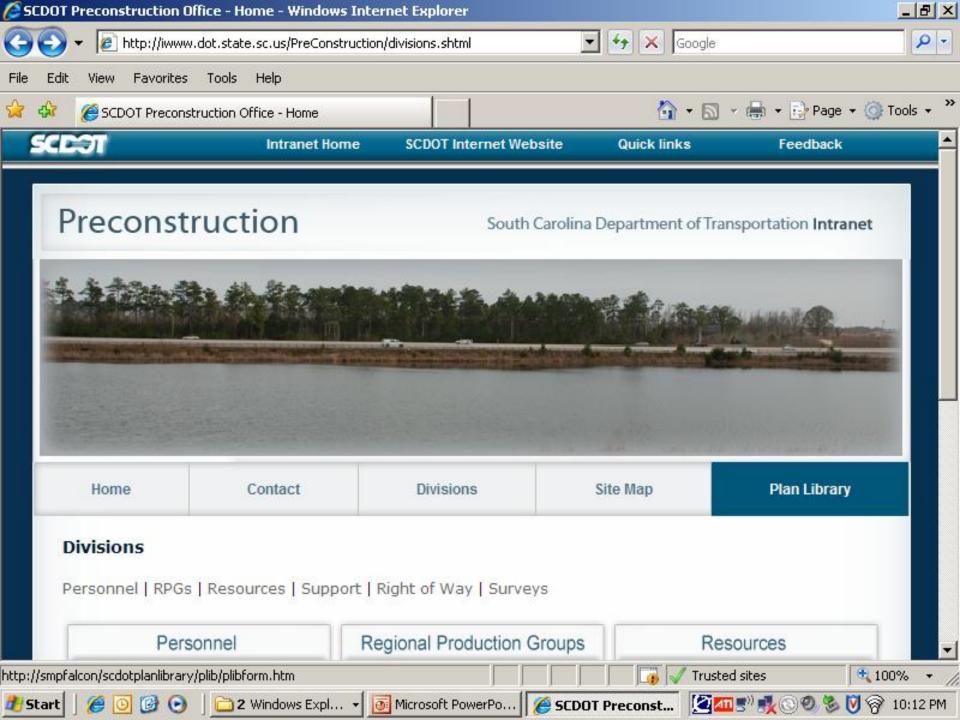
Shoulder

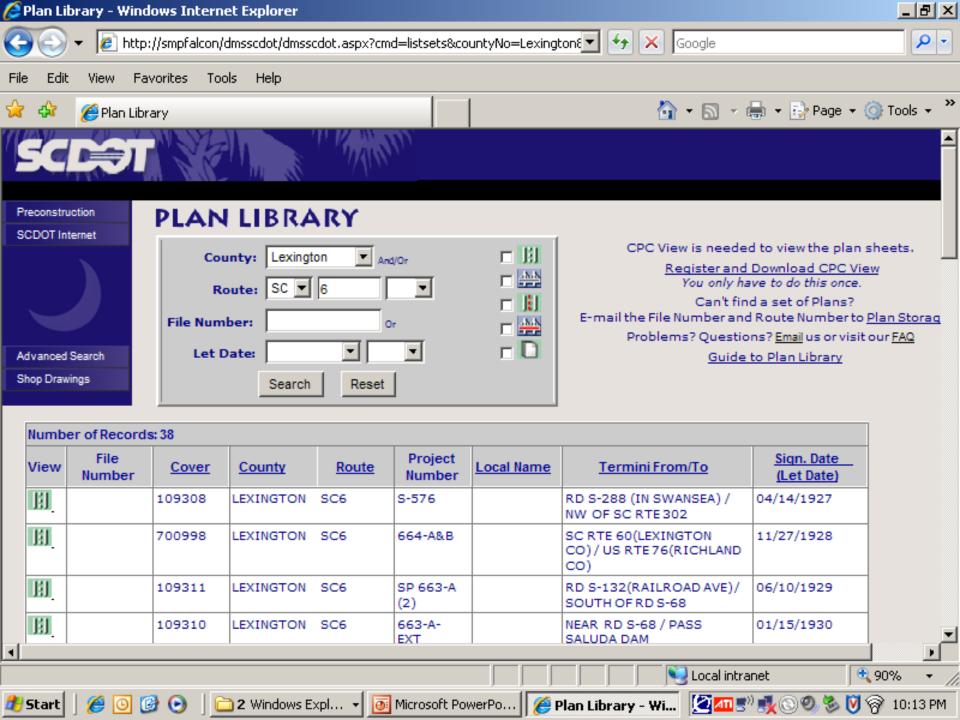
"Special Provisions Stury Dept. Agrico not to disturb Or Alstron any fances shoutbury or other property bylonging to us in the Construction of this read.

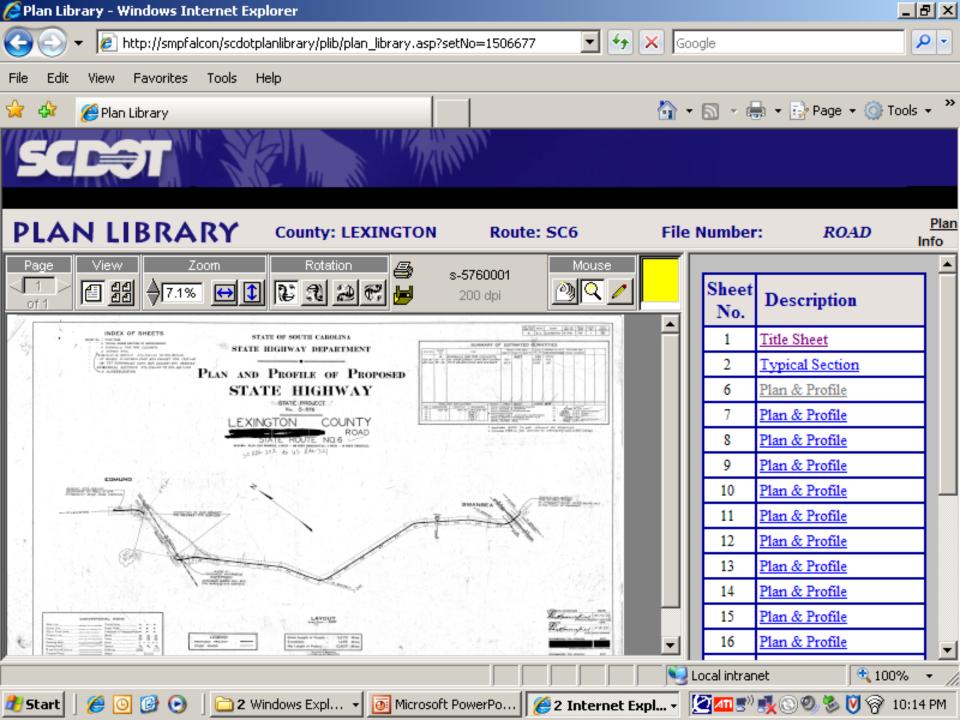
Resources

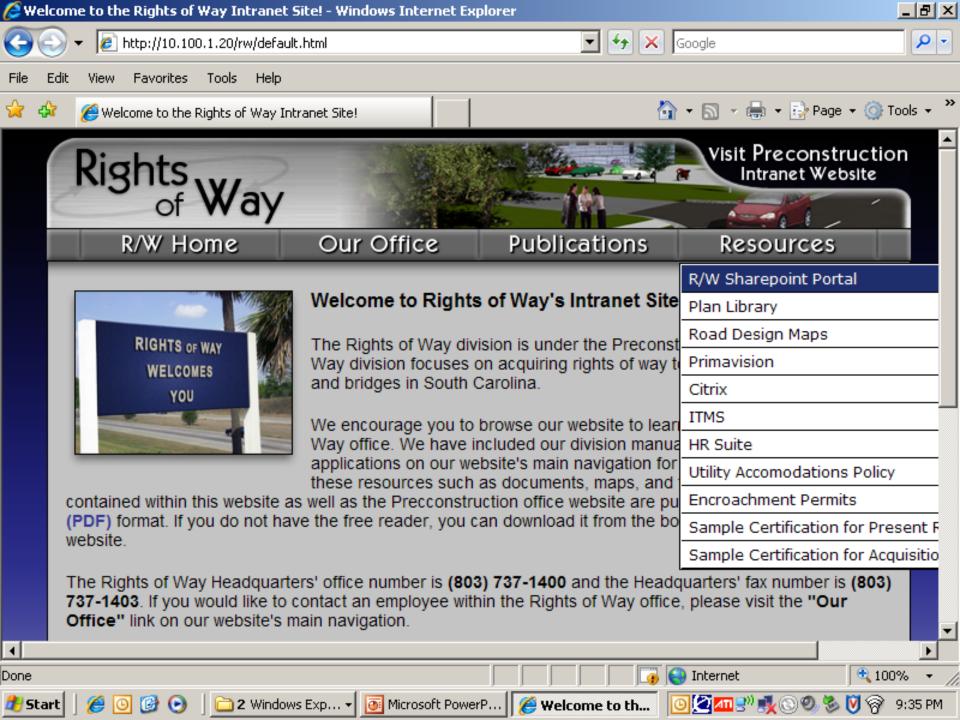
- Office Files RW folders, Plans
- Plan Library (Final Plans)
- RW Share Point Portal (New)







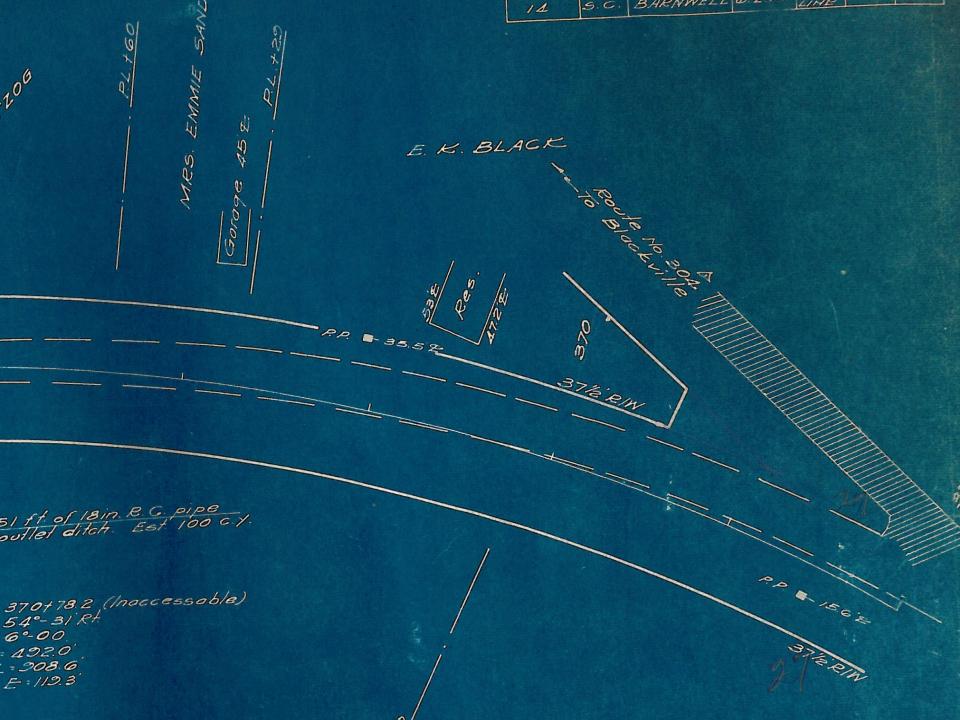




Do your homework

- Check the RW Files including special provisions
- Check the plans
- Find out who owns the property may not be who you are dealing with
- Get signatures





Docket 6.2hh - Roads bh & 45(Rt.715) - Barawell County

Streets in Town of Hilda

Black, E. K. Deed 7-18-46
Stas. 368/29 to 372/00 Lt. 366/26 to 369/89 Rt. 54 ft. R/W, that is 27 feet
on each side of the centerline of the highway. Bounded: H. D. Hutto & (Mrs) Munic
Sanders on the west and M. W. Hartsog and 304 on the east.

Black, Julia Mrs.

Deed 4-4-42

Stas. 379/97 to 380/22 Rt. 66 ft. R/W, that is 41 feet on south of the centerline of the highway. Bounded: Jim Dyches on the east and Frank Hartzog on the west.

Black, Mrs. Julia
Stas. 384/01 to 384/18 Rt. 66 ft. R/W, that is 41 feet on south of the centerline of the highway. Bounded: Town Street on the west, other lands of Mrs. Julia Black on east.

Stas. 381/61 to 381/79.5, 382/00 to 382/58 Rt. 66 ft. R/W, that is hi feet on south side of the centerline of the highway. Bounded: A. D. Hutto and W. G. Collins on the east and D. A. Dyches and A. D. Hutto on the west.

Stas. 352/28 to 354/19 Rt. 54 ft. R/N, that is 27 feet on each side of the centerline of the highway. Bounded: (Mrs) Fannie Graham on the east and Mrs. Fannie Delk on the west.

Stas. 382/58 to 383/10 Rt. 66 ft. R/W, that is 41 feet on south side of the centerline of the highway. Bounded: A. R. Still on the east and Angus Carter on the west.

E, K. BLACK 07.18.46 and the second 2) RAD

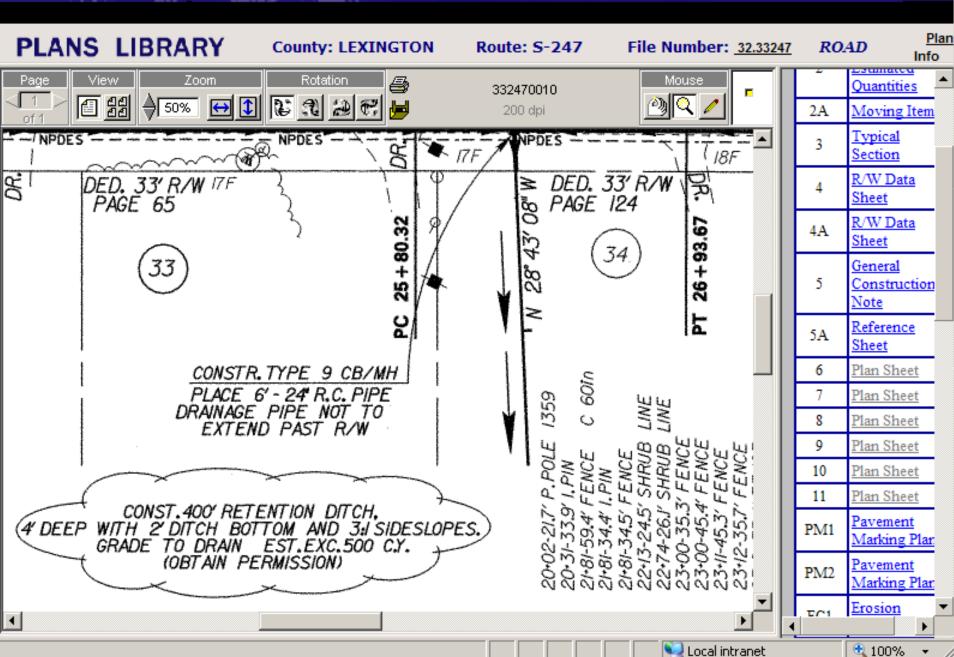












Roads Across Dams

- SCDOT does not maintain pond dams We only are responsible for the roadway itself
- Be very careful about what you maintain / repair you may inherit the dam by default
- We get into trouble way before the dam actually fails by performing repairs
- Consult your DME / DEA prior to any work on or near a dam





Questions?