

# EASEMENTS



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# Definition: Easement

- ⦿ An easement is a right to use land belonging to another.
- ⦿ An easement is an interest in land, and is generally created by deed. *Borders v. Yarbrough*, [237 N.C. 540](#), 542, [75 S.E.2d 541](#).

# Use Rights

- ⦿ Individual rights can be severed from the full bundle of property rights.
- ⦿ We commonly see use rights such as:
  - Mineral Rights
  - Timber Rights
  - Hunting Rights
  - Development Rights
  - Easements

held by a entity other than the primary owner.

# Easement versus Profits

## a `Prendre

- ⦿ Profits a `Prendre is the right to take the fruits of another's land.
- ⦿ “The distinguishing feature between an easement and a profit a `prendre is that the easement gives its owner only a right to use the land of another (or prevent use in certain ways) with no right to remove some specified product of the soil from the land.”
- ⦿ Webster's Real Estate Law in North Carolina (fifth Edition), §15-36.

# Basic Easement Types

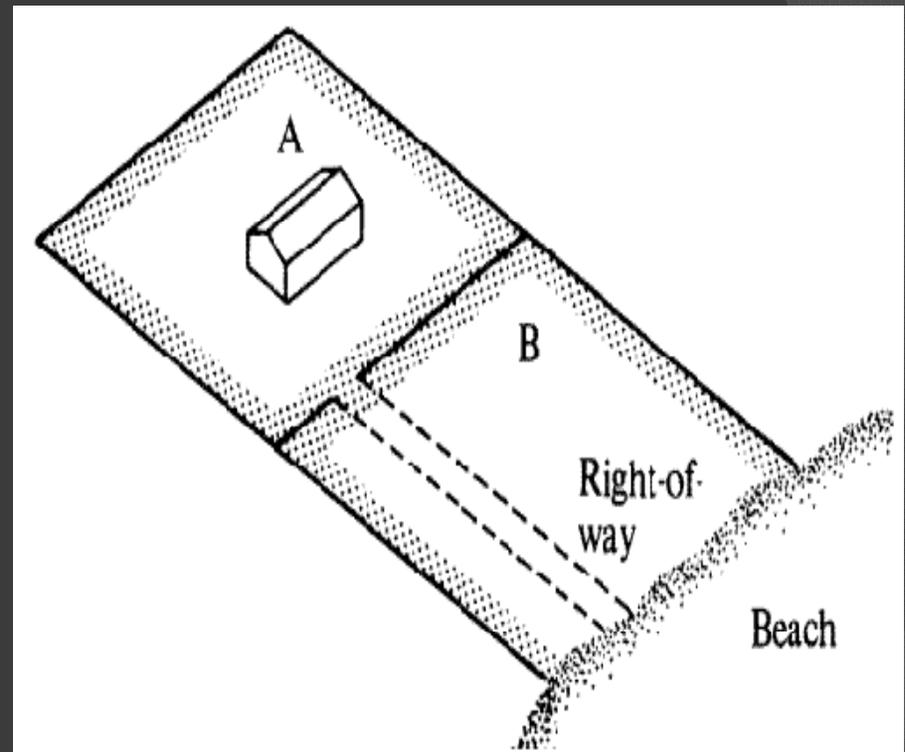
- ⦿ **Easement of Appurtenant**  
or
- ⦿ **Easement in gross**

# An Easement appurtenant.

- **Appurtenant easement** attaches to and passes with the benefited property (referred to as the dominant tenement) as an associated right of ownership.
- An Easement must have a Servient tract and Dominant Tract.
  - The parcel subject to the easement is the servient tract;
  - The parcel benefited is the dominate tract.”

# Example – Easement Appurtenant

“A” is the benefited tract.  
“B” is the servient tract.  
Beach Access is the right.



# Easement in gross

- ⦿ is not appurtenant to any estate in land or not belonging to any person by virtue of his ownership of an estate in other land,
- ⦿ The benefited is an entity (person, company, government, public, etc.).
- ⦿ Easement in Gross is a mere personal interest in or right to use the land of another; it is purely personal and usually ends with the death of the grantee.

# Example – Easement in Gross



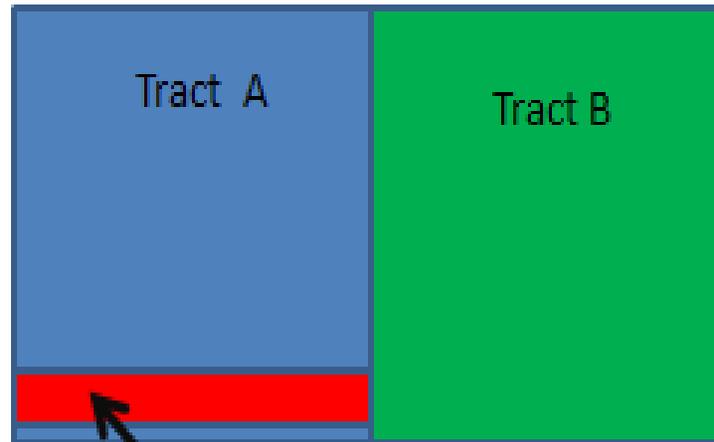
# An easement appurtenant

- ① 1. burdens one parcel of land while benefiting another parcel.
- ② 2. The parcel subject to the easement is the servient tract;
- ③ 3. The parcel benefited is the dominant tract.
- ④ 4. The Easement attaches to and passes with the dominant tract as an interest in real property.

# Example: (Easement Appurtenant)

- If A and B are adjoining parcels of land and the owner of A grants the owner of B a Road Easement across A, the easement is Appurtenant.

"A" is the Servient Tract



30' ingress egress easement

"B" is the Dominant Tract

If "B" is sold the easement transfers with "B"

# What happens if Tract B is sold?

- If the document of title granting the easement from tract A is recorded in the office of the register of deeds in the county in which the land lies, the easement transfers with tract B even if the easement is not mentioned on the deed of tract B.

# An easement appurtenant

- ⦿ is incident to an estate, and inheres in the land,
- ⦿ concerns the premises,
- ⦿ pertains to its enjoyment,
- ⦿ and passes with the transfer of the title to the land, including transfer by descent.

# Easement in gross

- 1. Is a right to use land belonging to another.
  - 2. Is not for the benefit of another tract of land.
  - 3. It terminates with the death of the individual who possesses the right.
  - 4. Is not assignable.
- 
- ⦿ Example: Stanton Brown has the right to use the Boat Ramp In Doe Creek Plantation. When Stanton dies his use right is terminated.

# Methods of acquiring an Easement

- ① **Easement by Grant**
- ② **Easement by Reservation**
- ③ **Easement by Dedication**
- ④ **Easement by Prescription**

# Easement by Grant

- ⦿ The owner of the servient tract executes a document similar to a deed or will and gives the easement rights to another person.

# Easement by Reservation

- A landowner who sells one tract and retains another reserves an easement in the conveyed tract by language in the deed to that tract.

# Easement by Dedication

- ⦿ a landowner grants certain rights to the public in the land, typically in the form of a street right-of-way

# Dedication

- ⦿ Before an easement by dedication is created, the landowner must make an offer of dedication and a public agency must accept the offer.
- ⦿ Many offers of dedication today are made expressly by showing dedicated streets on a subdivision plat and that plat being used as a description in a document of title.

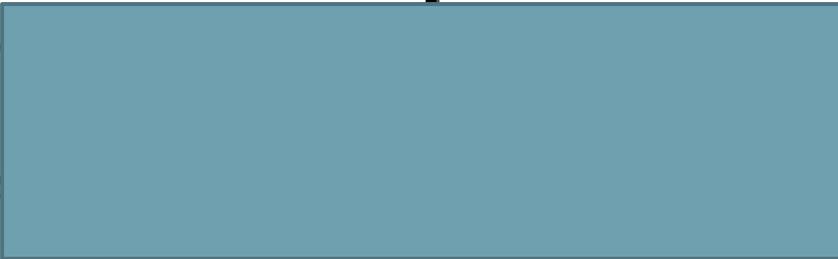
# Offer of Dedication made by certification on the face of the plat.

- Subdivision ordinances may require a certification by the owner on the face of the plat acknowledging the government jurisdictions right to impose subdivision requirements.
- This certification often includes a statement making an offer of dedication for streets, utilities, and public spaces.

## CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, WHICH IS LOCATED IN THE SUBDIVISION JURISDICTION OF THE TOWN OF SHALLOTTE AND THAT I HEREBY ADOPT THIS PLAT OF SUBDIVISION WITH MY FEES CONSENT, ESTABLISH MINIMUM BUILDING SETBACK LINES, AND DEDICATE ALL STREETS, ALLEYS, WALKS, PARKS, OPEN SPACE, AND OTHER SITES AND EASEMENTS TO PUBLIC OR PRIVATE USE AS NOTED. FURTHERMORE, I HEREBY DEDICATE ALL SANITARY SEWER, STORMWATER SEWER, AND WATER LINES, AND APPURTENANCES, TO THE TOWN OF SHALLOTTE.

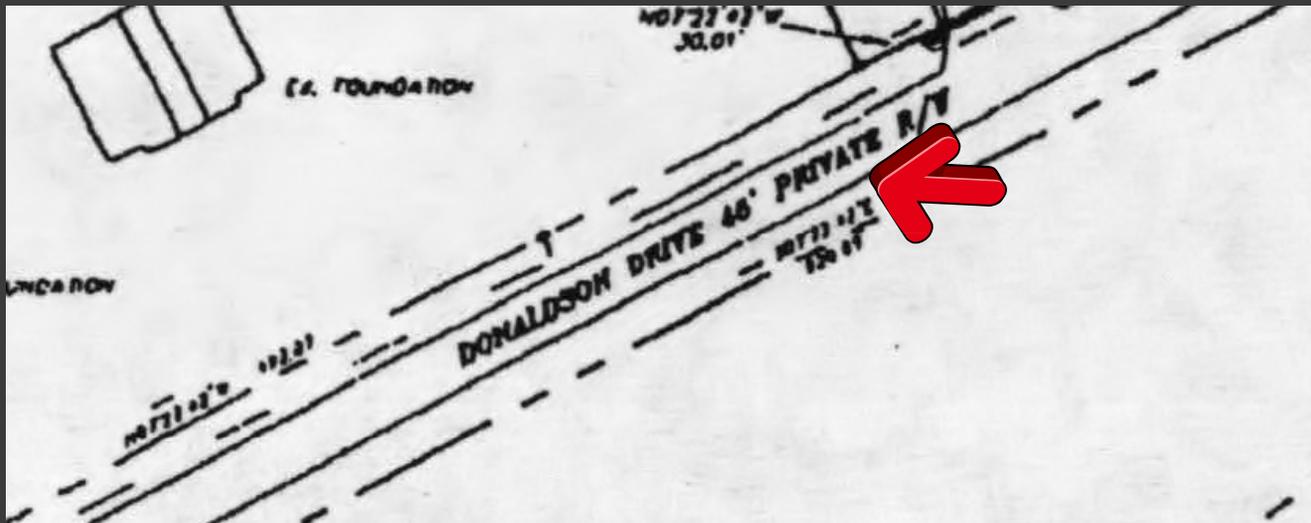
\_\_\_\_\_  
OWNER



\_\_\_\_\_  
10/24/07  
DATED

# Intent

- While this makes the intent of the owner clear, the labeling of streets as public or private as required in GS 136-102.6(d) probably has the same effect.



# Before we talk about Easements by Prescription lets discuss a Muniment

- ⦿ A easement document that transfers or grants rights is a muniment with the same statutory requirements as a deed or any other muniment.

# Definition: Muniment of title

- ① Documentary evidence of title.
- ① The instruments of writing and written evidences which the owner of land, possessions, or inheritances has, by which he is enabled to defend the title of his estate.

(Black's Law Dictionary, fifth edition)

- ⦿ A recorded plat by itself does not transfer rights or ownership,
- ⦿ But once said plat is referred to as a description in an instrument of title (such as a deed),
- ⦿ all of the elements of the plat have the same effect as if they were called out individually in the deed itself .

# NC GS 22-2:

- In North Carolina, as a result of the Statute of Frauds,
  - any change in the boundaries of a tract of land, or the establishment of any easement, way, or right in or across the land **must be in writing, signed by the owner or owners, and meet the legal standards of an effective instrument.**” (paraphrase)

# NC GS § 39-6.4:

- ⦿ a) The holder of legal or equitable title of an interest in real property **may create, grant, reserve, or declare valid easements, restrictions, or conditions of record** burdening or benefiting the same interest in real property.

# 47-14(d):

- An instrument does **not affect the interest of anyone not executing the document** with a valid acknowledgement, (notarized).  
(paraphrase)

# 47-18. Conveyances, contracts to convey, options and leases of land.

- (a) No
  - (i) conveyance of land, or
  - (ii) contract to convey, or
  - (iii) option to convey, or
  - (iv) lease of land for more than three years
  
- shall be valid to pass any property interest as **against lien creditors or purchasers for a valuable consideration** from the donor, bargainer or lesser **but from the time of registration thereof in the county where the land lies**, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.



## Under case law, an Instrument of Conveyance must contain the following

- ① 1. a competent grantor,
- ② 2. an existing grantee capable of taking title,
- ③ 3. a granting or conveyance clause,
- ④ 4. an identifiable description of the property,
- ⑤ 5. the requisite execution and "seal" of the grantor,
- ⑥ 6. satisfactory acknowledgment by a notary or authorized officer, and
- ⑦ 7. delivery to and acceptance by the grantee.

Remember rules of title apply equally to the fee of a property and to individual rights of the property.

- ① 1. Property must at all times have an owner.
- ① 2. One person cannot part with the ownership unless there be another person to take it from him.
- ① 3. There must be a "grantor and a grantee, and a thing granted." *Dupree v. Dupree*, 45 N.C. 164 (1853).
- ① 4. (easements) The right must be within the nature of rights capable of being easements.
- ① 5. (easements) The right must be sufficiently definite;

## § 47-27. Deeds of easements:

- ⦿ All persons, firms, or corporations now owning or hereafter acquiring any deed or agreement for rights-of-way and easements of any character whatsoever shall record **such deeds and agreements in the office of the register of deeds of the county where the land affected is situated.**

## § 47-27. Deeds of easements

(continued)

- No deed, agreement for right-of-way, or easement of any character shall be valid as against any creditor or purchaser for a valuable consideration but from the registration thereof within the county where the land affected thereby lies.

# What about platted easements?

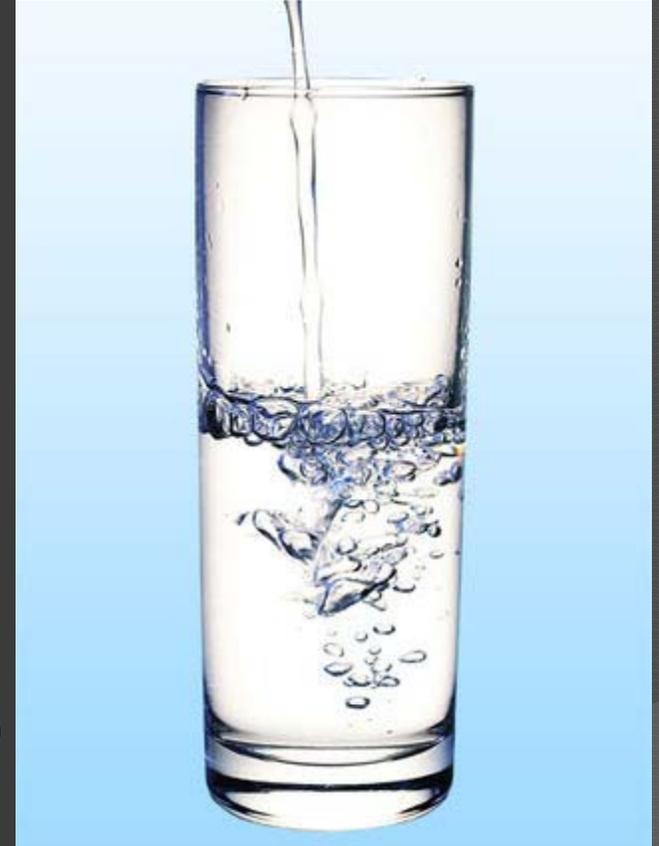
- ⦿ A recorded map or plat is not considered a muniment, its recording alone does not constitute constructive notice,
  - the only use authorized by the legislature of a survey plat recorded in the County Register of Deeds is in GS 47-30(g)
- ⦿ In plain words GS 47-30(g) means a plat is authorized to be used as a description when and only when referenced in a muniment.

# A Plat referenced in a deed

- ⦿ not only refers to the metes and bounds of the lot as depicted on the plat but
- ⦿ embodies all of the other information on the plat such as roads, utility easements, open space, and so on.

# Once a map is referenced in a deed

- ⦿ Said action constitutes the offering of dedication.
- ⦿ We are only half way there!
- ⦿ There must also be an acceptance, for the public to acquire rights.



# Acceptance!

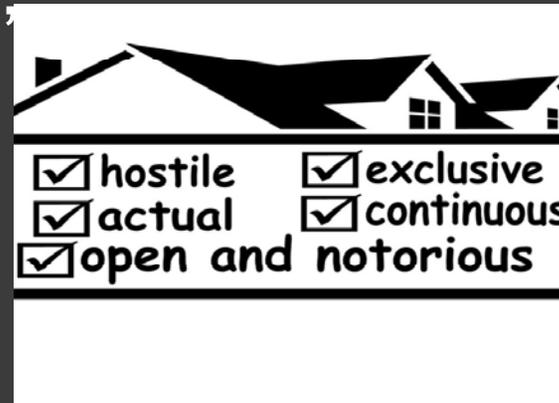
- ⦿ Acceptance of the offer of dedication can be made formally by adoption of a resolution,  
or
- ⦿ it can be by informal means, such as by exercising control over the streets offered for dedication and maintaining them.



# Easement by Prescription

⦿ A right to use another's property which is not inconsistent with the owner's rights and which is acquired by use,

- open and
- notorious,
- adverse and
- continuous



for the Statutory period (twenty years or seven years where there is a claim under color of title in North Carolina) .

# An Unwritten Right

- Acquisition of rights or property by prescription is an **unwritten acquisition of ownership once all statutory requirements have been met.**
- A court of law may affirmed or deny the validity of the contention.
- **However, title does not transfer until affirmation by the court.**
- The court decision recorded in the office of the Clerk of Court in the county where the land lies becomes the muniment (record of title).

# For unrecorded easement rights there is no standard dimension.

- ⦿ If a surveyor shows an area of use by others and proclaims it an “easement” on a plat and that plat is used as a description to transfer the property, the rights of that area of use may be granted by the court as an easement to those using the area.
- ⦿ In such a situation the surveyor by mis-identifying an unrecorded use as an easement, promoted the transfer of property rights of the grantor with out compensation.

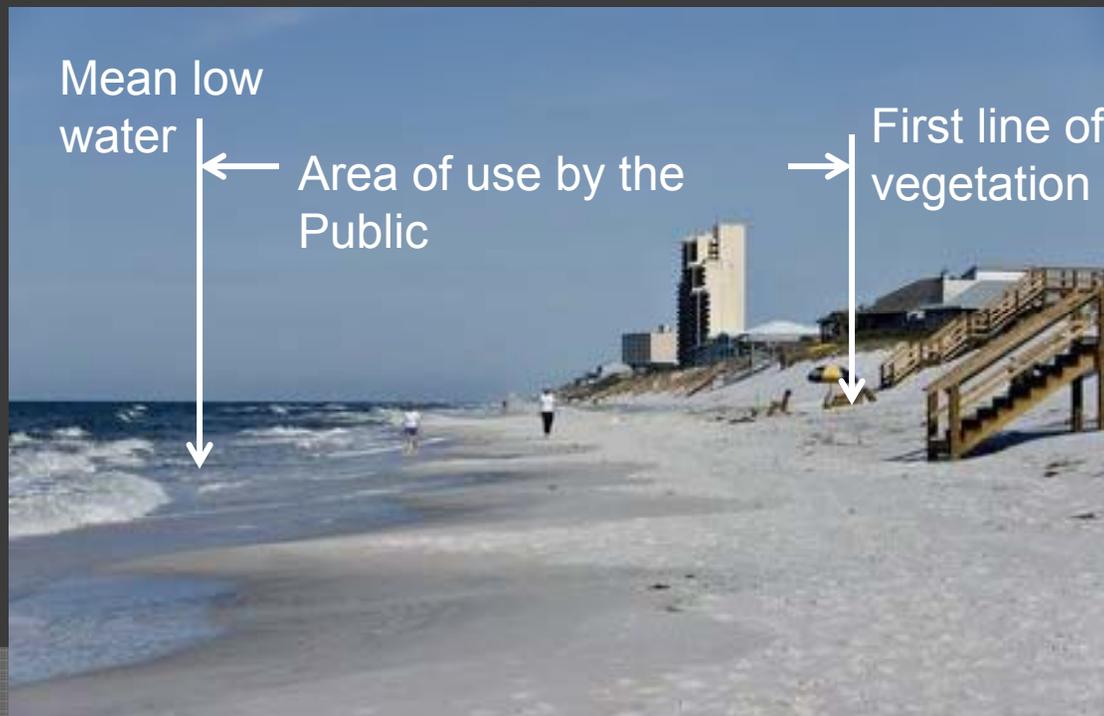
# Examples of Easement by Use “Prescription” (public):

- NC DOT maintained roads which do not have formal easement documents (Most Secondary Roads - County SR # roads). The easement is between the limits of maintenance.



# North Carolina Ocean Front Beaches

- All North Carolina Beaches have an easement by prescription from mean low water to the first line of vegetation



# An Easement may be characterized as affirmative or negative

- **Affirmative Easements** empower the holder to go on the land subject to the easement for the purpose defined in the easement document.

- Examples are:

- 1. Utility Easements
- 2. Road Easements
- 3. Sidewalk Easements
- 4. Drainage Easements

● **Negative Easements** empower the holder to restrict the use of the land subject to the easement, but The holder of the easement has no right to use the subject land.

● Example:

○ Conservation Easement

- May restrict building
- May restrict land clearing
- May restrict cutting of timber

# An easement deed is a contract

- ⦿ The intention of the parties is to be gathered from the entire instrument and not from detached portions.

Westinghouse [Electric Supply](#) Co. v. Burgess, 223 N.C. 97, 100, 25 S.E.2d 390.

# An easement deed is a contract

- An excerpt from a contract must be interpreted in context with the rest of the agreement.

Atlantic Coast Line R. Co. v. Norfolk Southern Ry. Co., [236 N.C. 247](#), 251, [72 S.E.2d 604](#).

# An easement deed is a contract

- When the language of a contract is clear and unambiguous, effect must be given to its terms, and the court, under the guise of constructions, cannot reject what the parties inserted or insert what the parties elected to omit.

Hartford Acc. & Indemnity Co. v. Hood, 226 N.C. 706, 710, 40 S.F.2d 198.

# An easement deed is a contract

- ◎ It is the province of the courts to construe and not to make contracts for the parties.

*Williamson v. Miller*, [231 N.C. 722](#), 727, [58 S.E.2d 743](#);

*Green v. Fidelity-Phenix Fire Insurance Co.*, [233 N.C. 321](#), 327,  
[64 S.E.2d 162](#)

# An easement deed is a contract

- ◎ The terms of an unambiguous contract are to be taken and understood in their plain, ordinary and popular sense.
- ◎ Bailey v. [Life Insurance Co.](#), 222 N.C. 716, 722, 24 S.E.2d 614, 166 A.L.R. 826.

# Here is what the court said!

## ⦿ WITTSOON et al. v. DOWL'ING et al. (No. 445.)

(Supreme Court of North Carolina. May 12, 1920.)

1. Dedication - Platting and selling lots with reference to plat constitutes "dedication" of streets.

When owner of suburban or other property has it **platted**, showing lots, parks, streets, alleys, etc., and **sells off lots** or any of them **in reference to plat**, as between parties, action constitutes a dedication of streets, etc., for public use, though not presently opened or accepted or used by the public.

- ② 2. Dedication —Is never complete as to the general public until acceptance.

In so far as the general public are concerned, and without reference to claims and equities of individual purchasers of lots with reference to plat made by seller, a dedication of streets and alleys shown thereon is never complete until acceptance.

- ◎ Where lots are **sold and conveyed by reference** to a map or plat which represents a division of a tract of land into streets, lots, parks, and playgrounds,
  - a purchaser of a lot or lots acquires the right to have the streets . . . kept open for his reasonable use, and this right is not subject to revocation except by agreement.

- ◎ It is said that such streets . . . are *dedicated* to the use of the lot owners in the development.
  - In a strict sense it is not a dedication. A dedication must be made to the entire public and not to only part of the public.
- ◎ It is a right in the nature of an easement appurtenant.

- ⦿ Whether it be called an easement or a dedication, the right of the lot owners to the use of the streets . . . may not be extinguished, altered or diminished except by agreement or estoppel.
- ⦿ This is true because the existence of the right was an inducement to and a part of the consideration for the purchase of the lots.
- ⦿ Thus, a street . . . may not be reduced in size or put to any use which conflicts with the purpose for which it was dedicated.

*Cleveland Realty Co. v. Hobbs*, 261 N.C. 414, 421, 135 S.E.2d 30, 35-36 (1964) (internal citations omitted).

## § 160A-374. Effect of plat approval on dedications. (city/town)

- ⦿ The approval of a plat shall not be deemed to constitute or effect the acceptance by the city or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat.
- ⦿ However, any city council may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction. (ETJ's are excluded)

## § 153A-333. Effect of plat approval on dedications. (county)

- ◎ The approval of a plat does not constitute or effect the acceptance by the county or the public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat and shall not be construed to do so.

If a plat has an offer of dedication to the public,

- that offer is considered made at the time that the **first deed is recorded** making reference to said plat.
- An offer of dedication is just that, an offer and **until that offer is accepted** by the appropriate public authority it is but a **revocable offer and neither burdens nor benefits the public**. *Owens v. Elliott*, 258 N.C. 314, 128 SE 2d 583 (1962)

# You cannot give an easement to yourself.

- ⦿ An easement shown on a plat does not exist until there is someone besides the grantor to receive the easement.
- ⦿ The term Quasi-Easement refers to things that look like easements but have no beneficiary.

- ⦿ Once a deed is given, referencing the plat, the grantee of said deed then becomes the beneficiary of the easement.
- ⦿ In the offering of dedication to the public for an easement depicted on a plat, the grantee of the deed referring to the plat is the beneficiary of the easement.
- ⦿ The easement remains a private easement until a public authority accepts the offer of dedication.

# Public roads

- ⦿ in North Carolina are easements in gross with the public being the beneficiary.
- ⦿ A right-of-way is the boundary of the easement.
- ⦿ The fee within the right-of way must belong to someone.
- ⦿ That fee is documented within the title from the original grant.

# Who owns the fee?

- ⦿ It may belong to the landowner adjoining to the easement, or
- ⦿ it may not have been transferred to the present adjacent landowner and remain with the previous owner,
- ⦿ it may remain in the ownership of the subdivision developer or a property owners association, or
- ⦿ it may have been acquired by a public custodian.

# Withdrawal of easements (private)

- If it is a private easement, the holder of the easement must file a document in the register of deeds office of the county in which the land lies relinquishing his right.
- In subdivision where the grantee by virtue of a deed for a lot receives easement rights, he may relinquish those rights by the above method.

# In North Carolina

- ◎ The grantee of a subdivision lot may not be required to release rights that are not essential for the use and enjoyment of his lot.
- The courts seem to employ the narrow view interpretation of subdivision easements.
  - Example: If a dead end street is being withdrawn and that street does not effect the grantee's lot said grantee may not be required to join in the withdrawal. (*consult an attorney*)

# Withdrawal of easements (Public)

- DOT: withdrawal of maintenance – only release DOT maintenance requirements.
- The public easement is not released.

# Withdrawal of easements (Public)

- To close public roads and easements for roads and easements not under the control of DOT NC GS 153A-241 (county) and NC GS 160A-299 (city) must be complied with.

# Distribution of Underlying Fee of Withdrawn Easement

- ⦿ “[The] presumption, however, that the grantee takes the fee of the soil to the centre of the highway, is not **absolute and conclusive**.
- ⦿ It ... allowed, in the **absence of proof**, and is based upon the idea that when the street or highway was laid out, the proprietors on each side contributed their land for the purpose, in equal portions.
- ⦿ When it appears that such was not the fact, the presumption does not arise.” (Emphasis added.)

NC Supreme Court decision No. 2004-275-Appeal. (NC 02-119) George C. Bitting et al. : v. : David A. Gray et al. states:

# The Withdrawal of a public easement

- ⦿ The withdrawal of a public easement may not remove a private easement if one exists.
- ⦿ It also does not remove utility easements that co-exist within the withdrawn easement.

# Roads or Streets not used within 15 years after dedication.

- NC GS 136-96 provides a procedure that an easement not used within 15 years after dedication may be withdrawn by the dedicator or those claiming under him.

# Additional Source:

- ◎ Investors Title Company:
  - Erasing the Paper Street:
    - <http://nc.invtile.com/node/1507>

# Questions?



# Disclaimer!

- ⦿ The intent of this document is to provide a guide to understanding easements in North Carolina; it is not to be used as legal advice. For legal advice please seek the counsel of an attorney.