

Kenny L. Smith

From: Drew Whalen <ajwhalen3@whalenlaw.net>
Sent: Thursday, May 05, 2016 9:04 AM
To: Kenny L. Smith
Subject: Ownership of public street right of way
Attachments: Griffin - 1840 City Plan.pdf

In followup to your questions yesterday, I did some research on the most authoritative source in Georgia, PINDAR'S GEORGIA REAL ESTATE LAW AND PROCEDURE, as relates to the "right and title of a municipal corporation in roads". According to Pindar, most municipal streets were constructed within rights of way that were easements where the public acquired no title; thus, upon cessation of the use, title (which remained in the underlying fee owner) reverted to the owner, his successors or assigns. Georgia later, by statute enacted in 1814, provided a practice by which the State, counties and cities could acquire land to construct roads, known as "formal dedication"; under this law, the owner delivers a warranty deed to the government for the road ROW, which the government formally accepts. Normally, this "acceptance" is by resolution which appears in the Minutes of the government body. A notation is made on the deed of the meeting at which acceptance occurred, and the deed is then recorded in the land records of the county. Under this method, dedication inures to the benefit of the public (not the government body) with the right to use the ROW for travel. The government entity is then obligated to maintain the road in relatively safe condition for travel. Under this law, the government entity was given the power to open, improve, close, and abandon ROW; if abandoned, title reverted by operation of law to the original grantor (fee owner), his heirs, successors or assigns.

Through caselaw, the courts later recognized a modification where no formal dedication could be shown, known as "implied dedication". Under this line of cases, where the evidence indicates an intent by the owner in fee simple to dedicate land for street ROW, but failed to deliver a proper deed, yet the evidence shows the government entity, without formal acceptance, took dominion and control of the land and either constructed, improved, or maintained the street for public travel, dedication was "implied" and treated as if formal dedication had occurred.

The last method Pindar discusses, of more modern origin, is acquisition of street ROW in fee simple. In other words, the government entity, either through negotiated purchase or by a court order declaring indefeasible title to be vested in the government entity (Eminent Domain), becomes the legal owner of the fee, with all rights of real property ownership. The biggest distinction involving street ROW acquired under this method is the government's power, upon closing the street, to sell or convey the former ROW or to devote it to other government purposes. Under both of the methods discussed above, upon closure and abandonment of the street, title reverts by operation of law.

With that background, I reviewed my copy of "The History of Early Griffin, Georgia", by Judge L.P. Goodrich (1943), which was the basis for the later and more comprehensive history written by the late Quimby Melton, Jr. Judge Goodrich was quite the historian, but offers little support data for his narration of how the City came to exist. He begins with the Treaty between the Creek Indians and State of Georgia, signed January 8, 1921, from which the counties of Henry and Monroe were formed. The following year, the General Assembly formed Fayette County from Henry and Pike County from Monroe. The future city of Griffin lay in then Pike County.

In 1836, Bartholomew Still acquired a tract of 1200 acres, lying in both Henry and Pike counties. This land included nearly all of the City of Griffin, as known to Judge Goodrich in the early 1940's. In 1836, the Monroe Railroad & Banking Company, of Macon, Georgia, whose President was Gen. Lewis L. Griffin, was granted a franchise by the General Assembly to construct a railroad from Forsyth, Georgia (the Monroe Railroad from Macon to Forsyth was then in construction) northward to a point described in this legislation as "Terminus", where the N-S rail would intersect with an E-W rail line being constructed by another company.

At the time, according to Goodrich, there were 4 major railroad projects under construction, with a State goal of replacing a failed transportation system of canals with that of railroads. Gen. Griffin, who Goodrich describes as well-educated despite having grown up poor on the Georgia frontier in what is today Twiggs County, had served

with distinction during the Indian Wars, known as the Florida Campaign, and also served as a Representative in the Georgia General Assembly in 1829 and 1830. He was an inspiring leader and an outspoken advocate for railroads in Georgia. Griffin foresaw that Terminus, the point of intersection of the railroads, stood to become a great city. His engineers determined this location would be located on the farm of Bartholomew Still in Pike County. Thereupon, in 1839, the Monroe Railroad & Banking Company purchased 800 acres from Still, being all of his land in Pike County, with the county boundary with Henry, lying approximately north of where Tinsley Street is today. The first lots were sold, at auction conducted by Gen. Griffin himself, on June 8, 1840.

Attached is a copy of the original layout plan for the new City of Griffin, drawn in early 1840 by Daniel Griffin, Chief Engineer of the Monroe Railroad & Banking Co. Goodrich never says whether Daniel Griffin was related to L.L. Griffin, but does say that the General held Daniel in high esteem as an engineer. He relates a good deal of his historic account to an 1854 visit to Griffin by Gen. Griffin, who then resided in Mississippi. Noting that the Monroe Railroad & Banking Company declared bankruptcy in 1844, largely due to becoming overextended while constructing a large, palatial office building in Macon, part of which is today the Macon City Hall, Griffin left the state penniless in 1845, leaving behind the unfinished railroad.

In this 1854 visit, as related through newspaper accounts at the time and Griffin's affidavit filed in the early land records of Spalding Superior Court, title to all of the streets shown on the 1840 plan was in the Company. After the General Assembly chartered the City of Griffin on December 28, 1843, in his affidavit, Gen. Griffin relates he signed a deed of dedication for the public squares and street rights of way, as shown on the attached map, to the new City, which had yet to elect officers and hold an organizational meeting (this election did not occur until late 1844, with the organizational meeting held in December 1844). He delivered this deed to the Company's Cashier, Jeremiah Leakes, to have recorded in the land records in Zebulon. Apparently, Leakes failed to record the deed or to present it to the Mayor & Council, after the City was organized, for formal acceptance.

As noted by Judge Goodrich, as far as land records show, title to the public squares and streets remains in the Monroe Railroad & Banking Company to this day; however, its legal existence ended with the bankruptcy proceedings in 1845. Of legal interest, the Estate of Bartholomew Still filed a claim in the bankruptcy contending Still had sold the land to the Monroe Railroad on credit, with a small portion of the debt remaining unpaid. The Estate sought an equitable lien on the land, most of which was then resold and/or improved. The Court granted the Estate a lien, in the amount of \$6,377.00, and ordered the Sheriff sell the lots set aside as Parade Ground and 2 Ornamental Parks, to satisfy the Judgment. According to Goodrich, the City of Griffin paid the Judgment, prior to Sheriff's sale, in order to clear title to these lots. Of significance, the Court disallowed any lien on lots that the Monroe Railroad had sold or gifted, including the streets as laid out.

My opinion, based upon this historical account and the limited public land records, is that the Monroe Railroad, after the City was chartered and before the Company declared bankruptcy, intended to formally dedicate the street ROW's to the newly-formed City. There was no formal acceptance, largely because election of officers had not occurred and no organizational meeting had been held. Functionally, the City did not operate until 1845. During the time the deed was signed and the City became operational, the deed of dedication became lost.

Further, it is my opinion that the City of Griffin possesses control of these streets today through "implied dedication", by virtue of having maintained and worked the streets over the intervening years. Should the City ever decide to close and abandon the ROW for these streets, title will revert by operation of law to the heirs, successors and assigns of the Monroe Railroad & Banking Company, which today would be the current owners of the private land on either side of the street. It has been common practice for the City, upon closing a street, to have the ROW split laterally, into equal halves and then deliver quitclaim deeds to the owners on either side for their half of the ROW.

Finally, Pindar states, at Sec. 5:24, that "Where a strip of land of definite width is expressly dedicated as a roadway, the entire width thus shown becomes the official margin even though the actual part used and occupied for road purposes may be less." *THURSTON v. CITY OF FOREST PARK*, 211 Ga. 910 (1955). In this case, the City acquired by deed of formal dedication in 1869 a 50' strip of land, containing an unpaved street of variable width between 15 and 20 feet. In 1953, the City decided to construct a paved street, with a width of 22', and proceeded to grade out the entire 50' ROW. Thurston, who had owned his property bounded by the unpaved street (no width specified in his deed) since 1940, contended part of the area graded was his private property. **HELD:** As prescription does not run against public property, the bounds of the ROW, as described in the 1869 deed, prevails to establish the true boundary, not the actual location of the former street within the ROW. This case also points out a common misbelief that streets are constructed at the center of a ROW, which in actuality is seldom true.

As noted by Pindar, encroachments upon a road ROW are deemed a nuisance, subject to abatement, and cannot be legalized by the mere passage of time as estoppel does not run against public officers, who duty is to act to abate the nuisance. Thus, a private abutting property owner, who builds an improvement on the public ROW and later discovers it is not on his property, cannot argue, in equity, that it should remain because to remove it would entail grave pecuniary loss should the public assert its right to repossess its premises. Pindar, Sec. 5:31; KELSEY v. MAYOR & COUNCIL OF OGLETHORPE, 120 Ga. 951 (1904).

This leads me to conclude that, inasmuch as the City is not closing and abandoning the ROW of Fourth Street in its entirety, and no provision is found in Georgia law for a partial abandonment of ROW acquired by dedication to the adjacent private property owner, as has been suggested, even if our current Commission approves conveyance of a portion of the ROW to Spalding Hosiery Shoppe (on the assumption it is not necessary for future street purposes), a future Commission may not be estopped to later seek to have any improvements removed and reclaim for the public such ROW. Thus, the property owner may be in jeopardy investing in any improvements under these circumstances.

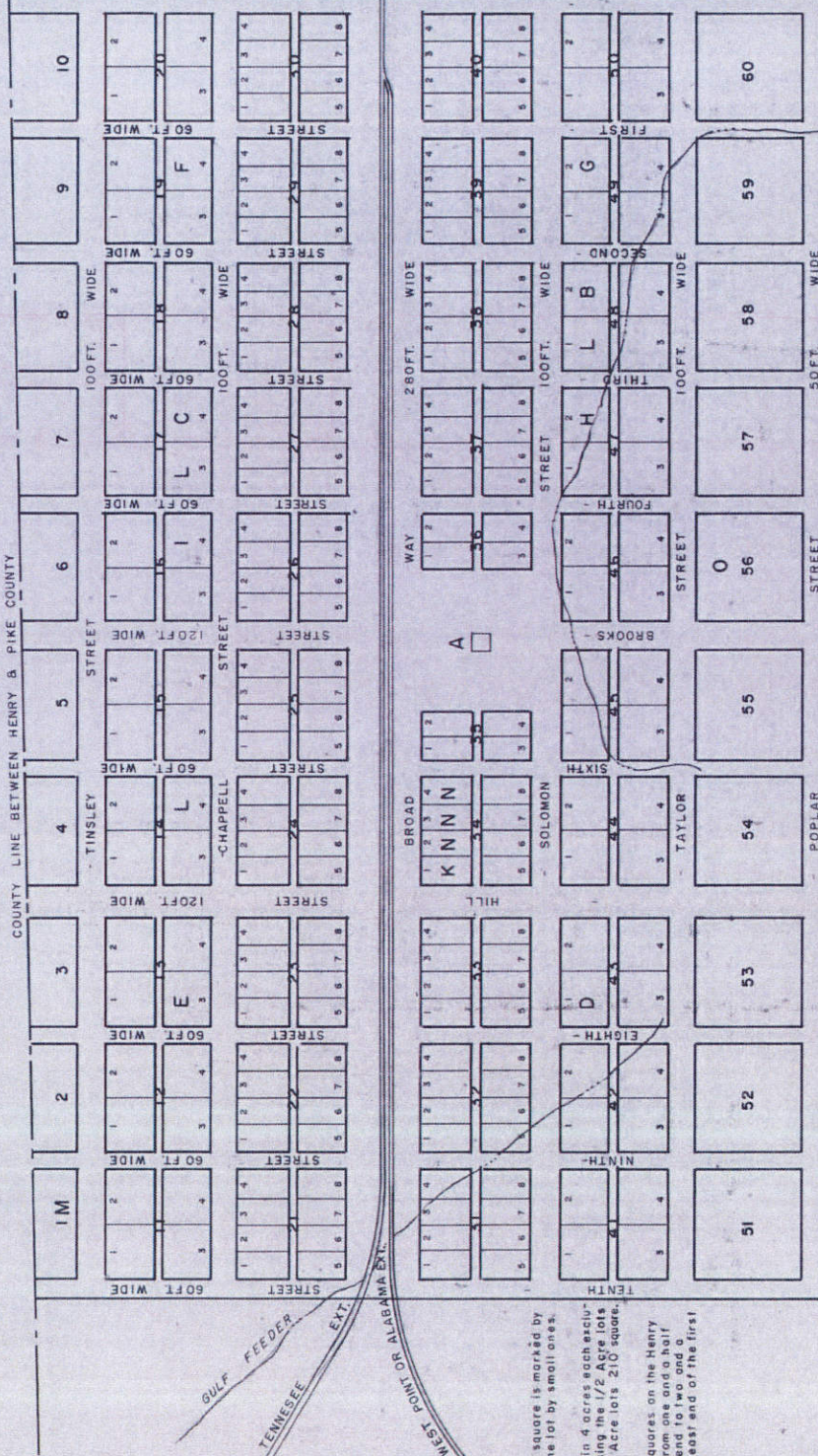
My suggestion would be to advise Bud Turner of Spalding Hosiery Shoppe to have his attorney contact one of Georgia title insurance companies to discuss this situation, assuming a majority of our Commission wants to abandon a portion of the ROW, not currently used as a street, to see if it would insure marketable title.

PLAN OF THE CITY OF GRIFFIN, GA

523-M-88



COUNTY LINE BETWEEN HENRY & PIKE COUNTY



REFERENCES

- A COURT HOUSE
- B EPISCOPAL CHURCH
- C PRESBYTERIAN "
- D BAPTIST "
- E METHODIST "
- F METH. PROT. "
- G CUMBERLAND PRES.
- H CHURCH ACADEMY
- I FEMALE "
- J MALE "
- K MONROE R. R. BANK
- L PUBLIC SQUARES
- M BURIAL GROUNDS
- N DEPOT LOTS
- O RESERVED
- GENERAL PARADE

The number of each square is marked by large figures and the lot by small ones.

The squares contain 4 acres each except size of Alleys, making the 1/2 Acre lots 105 x 210 and the Acre lots 210 square.

The fractions of squares on the Henry County Line vary from one and a half Acres on the west end to two and a half Acres on the east end of the first range.