

RESOLUTION NO. 2001 - 118

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE CLERK OF COURTS TO FILE THE SURVEY MAP OF MOSS DRIVE CLAIMING A VESTED INTEREST IN ST. JOHNS COUNTY IN THE RIGHT-OF-WAY DESCRIBED IN THIS SURVEY BY PRESCRIPTIVE RIGHTS OF THE PUBLIC PER CASE LAW BERGER VS. CITY OF CORAL GABLES 101 SO. 2d 396 (FLA. DIST. CT. APP.-3d DIST. 1958)

WHEREAS, the filing of the survey map (copy attached hereto and made a part hereof as Exhibit "A") with the Clerk of the Courts, shall result in the right-of-way as shown in this survey to be vested in St. Johns County, a political subdivision of the State of Florida by prescriptive rights of the public, per case law, Berger vs City of Coral Gable 101 So.2d 396 (Fla. Dist. Ct. App.-3d Dist. 1958); and

WHEREAS, Moss Drive as described and shown on the map, Exhibit "B", attached hereto and made a part hereof is one of the roads considered to be a County road; and

WHEREAS, Road and Bridge Supervisor, Johnny Newsome, has stated in a memo that the public has been continuously using Moss Drive without permission of the underlying land owners and the County has been responsible for maintaining Moss Drive for the last 20 years, copy attached hereto and made a part hereof as Exhibit "C"; and

WHEREAS, it is in the best interest of St. Johns County to acquire ownership of Moss Drive that will benefit the citizens of St. Johns County.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

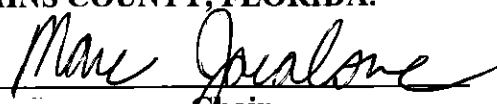
Section 1. All the above recitals are findings of fact.

Section 2. The Chair of the Board of County Commissioners and the Clerk of the Courts are hereby authorized to file the attached survey map of Moss Drive in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED, this 12th day of June, 2001.

**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA.**

By:


Chair

ATTEST: Cheryl Strickland, Clerk

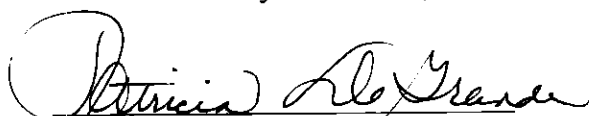

Deputy Clerk

EXHIBIT "A" TO RESOLUTION
101 So. 2d 396, *; 1958 Fla. App. LEXIS 2691, **

Dora BERGER, Appellant, v. The CITY OF CORAL GABLES, Florida, a municipal corporation organized and existing under the laws of the State of Florida, and Dade County, a political subdivision of the State of Florida, Appellees.

No. 57-323.

District Court of Appeal of Florida, Third District.

101 So. 2d 396; 1958 Fla. App. LEXIS 2691

March 6, 1958.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff grantee appealed the final decree of the Circuit Court for Dade County (Florida), which dismissed her suit to enjoin the public's continued use of a street.

OVERVIEW: Plaintiff grantee claimed to have title to the street in question because a tax deed purported to convey the property to plaintiff's son, who conveyed it to her. However, the tax deed and conveyance was based on a plat that did not place the street in its correct location. Plaintiff filed a suit to enjoin defendant city from continued use of the city street on the basis that title belonged to her. Uncontroverted testimony established that the property had been continuously used as a public street for 36 years. The circuit court dismissed plaintiff's suit. On appeal, plaintiff argued that the tax deed was prima facie evidence of title and that she took title free of any easements previously encumbering the land. The court stated that an easement by prescription was acquired when land was used by the public for a period of 20 years. The court thought that the established published easement took priority over the tax deed that plaintiff relied upon, especially because the deed stated that it was subject to existing easements.

OUTCOME: The court affirmed the dismissal of plaintiff grantee's suit to enjoin the public's use of a street because the public had acquired an easement by prescription that took priority over the tax deed that purported to grant title to plaintiff.

CORE TERMS: plat, street, easement, deed, grantee, tax deed, recorded, designated, dedication, discloses

CORE CONCEPTS - Hide Concepts

Real Property Law : Estates, Titles & Rights : Easements & Rights of Way
Governments & Legislation : Local Governments : Public Improvements & Services
Where land is used as a highway by the general public for a period of 20 years, the public acquires an easement to the same by prescription and a dedication of the land for such use is unnecessary.

COUNSEL: [1]**

Samuel B. Berger, Miami, for appellant.

Edward Semple, Miami, for City of Coral Gables.

Darrey A. Davis, Miami, for Dade County.

OPINIONBY: CARROLL

OPINION: [*396] CARROLL, CHAS., Chief Judge.

This is an appeal from a final decree of the Circuit Court for Dade County, dismissing a suit to enjoin the continued use of a city street, title to which was claimed by the plaintiff-appellant.

The record on appeal discloses that the second amended plat of Cocoplum Heights, recorded May 24, 1911, in Plat Book 1, at page 73 of the Public Records of Dade County, Florida, showed an unnamed 40 foot street. There was no dedication thereof. Uncontroverted testimony established that such property had been a roadway since 1915, and had been used continuously as a public street since then. On April 15, 1926, Coral Gables Corporation filed a plat designated as Coral Gables, Biscayne Bay Section, Part One, Plat E, which was recorded in Plat Book 25, at page 53. That 1926 plat showed a street designated as "Avenue Saldano", which appears to have been intended to be the street area involved here. However, through an error, the 1926 plat did not place the existing street where it actually [**2] was shown and located on the 1911 plat.

The record further discloses that on August 16, 1950, a plat of the F. H. Dunbar Tract was filed and recorded in Plat Book 51, at page 45. This 1950 plat showed the correct location of the street in question, as it had been shown originally on the 1911 plat.

Meanwhile, the tax assessors had used the 1926 plat as a basis for improper assessment of taxes on the actual street area. On the assumption that it had acquired title thereto through delinquency in such taxes, the Everglades Drainage District executed a deed (under Section 298.46, Fla.Stat., F.S.A., on April 27, 1951) to Samuel B. Berger, purporting to convey the property according to the erroneous 1926 plat. Appellant claims as grantee of the said Samuel B. Berger, who is her son.

[*397] Appellant raises two questions as follows:

1. Where the Trustees of Internal Improvement Fund or the Board of Commissioners of the Everglades Drainage District issue a tax deed, does it constitute prima facie evidence of title in the grantee?
2. Does a grantee of a tax deed take the title free of any easements previously encumbering the land?

It is settled in this state that where [**3] land has been used as a highway by the general public for a period of twenty years, the public acquires an easement to the same by prescription and a dedication of the land for such use is unnecessary. *Zetrouer v. Zetrouer*, 89 Fla. 253, 103 So. 625; *Couture v. Dade County*, 93 Fla. 342, 112 So. 75; *Dade County v. Snyder*, 140 Fla. 135, 191 So. 185; *Downing v. Bird*, Fla.1958, 100 So.2d 57; 17A Am.Jur., *Easements*, § 66, page 677.

The record shows that the parcel in question has been the subject of public user for street purposes for more than thirty-six years. After having appeared as such on the 1911 plat, its use for street purposes continued after 1926 in spite of the fact that the 1926 Coral Gables plat was inaccurate and did not show the true location of the street.

Aside from other reasons, the established public easement takes priority over the tax deed on which appellant relies, because the deed was made subject to easements. The deed states on its face that the conveyance is "Subject to all easements existing on the date of this deed."

The defendant Dade County claims no right in the street, and is interested only in seeing it maintained as a city street because it [**4] furnishes access to a county thoroughfare.

The action of the chancellor in dismissing the cause with prejudice on final hearing was without error.

Affirmed.

HORTON and PEARSON, JJ., concur.

Service: LEXSEE®
Citation: 101 So.2d 396
View: Full
Date/Time: Wednesday, February 28, 2001 - 9:43 AM EST

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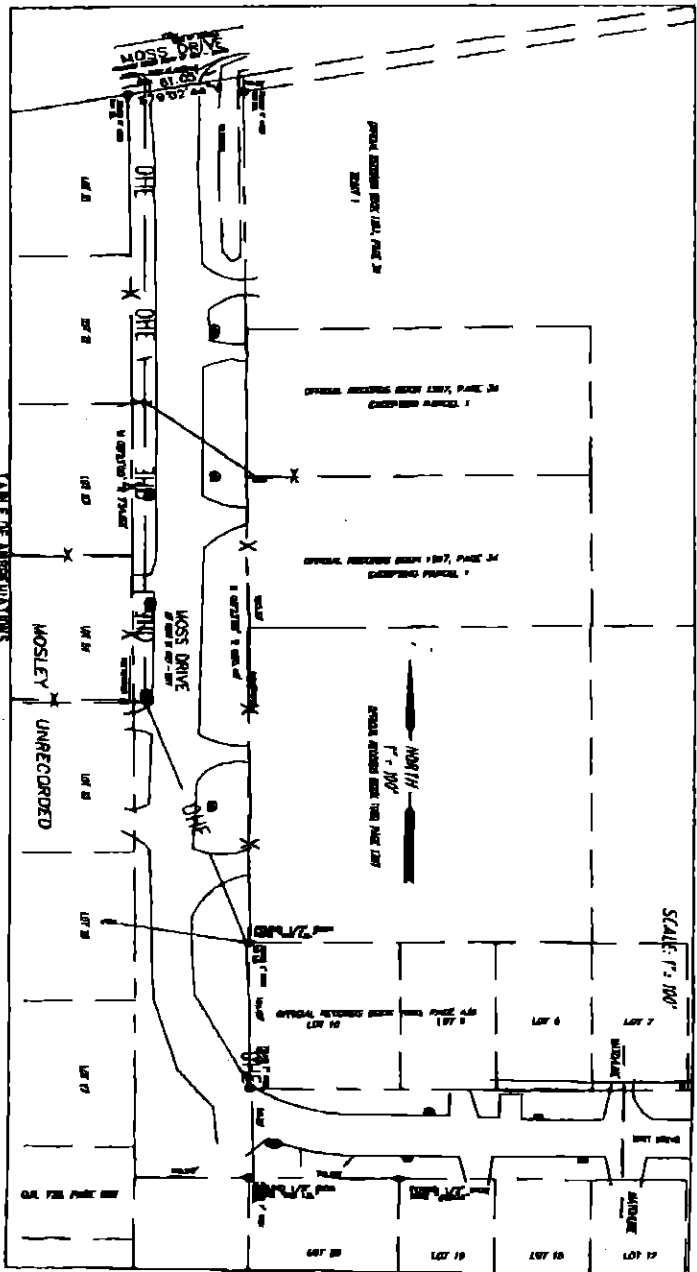
MOSS DRIVE HAS BEEN VESTED IN THE COUNTY IN ACCORDANCE WITH CHAPTER 95, F.S. (95.361) AS BY CERTIFIED BY:

ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS ST. JOHNS COUNTY CLERK OF COURTS

BOARD CHAIR CLERK

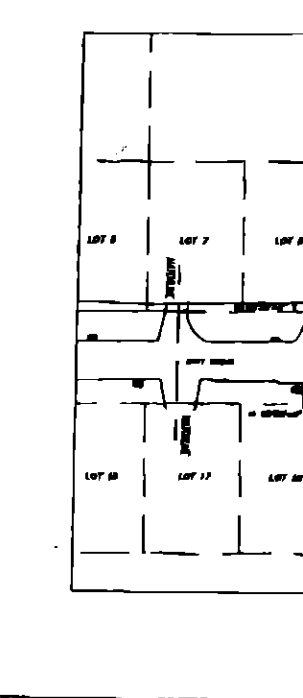
MAP SHOWING A SPECIFIC PURP SE SURVEY OF

A PORTION OF MOSS DRIVE
 SECTIONS 39, TOWNSHIP 6 SOUTH, RANGE 17 EAST,
 MAGDALENA SOLANA GRANT,
 ST. JOHNS COUNTY, FLORIDA



- TABLE OF ABBREVIATIONS**
- - BORN NUMBER FOUND OR IDENTIFICATION AS NOTED
 - - UT - UTILITY
 - - UT - BEAR STRIP AS NOTED
 - - CONCRETE FOUND OR IDENTIFICATION AS NOTED
 - - V-TK - CONCRETE FOUND SET P.S.M. 10241
 - - BARRIS POINT
 - - RIGHT OF WAY
 - - BALDWIN
 - - BARRIS
 - - GENERAL ANGLE
 - - CURB
 - - CURB SWAGING
 - - AIR LIFT
 - - POINT OF INTERSECTION
 - - POINT OF CURVATURE
 - - POINT OF TANGENCY
 - - POINT OF GEOMETRIC CURVATURE
 - - POINT OF REVERSE CURVATURE
 - - RADIAL LINE
 - - PLAT
 - - CALCULATED
 - - GROUND MEASURED
 - - OLD
 - - DIMENSION
 - - PERMANENT ERECTING INSTRUMENT
 - - PERMANENT CONTROL POINT
 - - FOUND CONCRETE FOUND
 - - TEMPORARY SURCHARGE
 - - CONCRETE FOUND
 - - TEMPORARY BEARING POINT

- - ROUND BORN POINT
- - FOUND BEAR
- - FOUND BULL POST
- - CONCRETE SURFACE
- - LIGHT POLE
- - FLAG POLE
- - LIGHT POLE FOR POWER SERVICE
- - UTILITY POLE FOR POWER SERVICE
- - PRIVATE POLE
- - GUY WIRE & ANCHOR
- - UTILITY POLE
- - WATER METER
- - WATER VALVE
- - CONCRETE PIPE

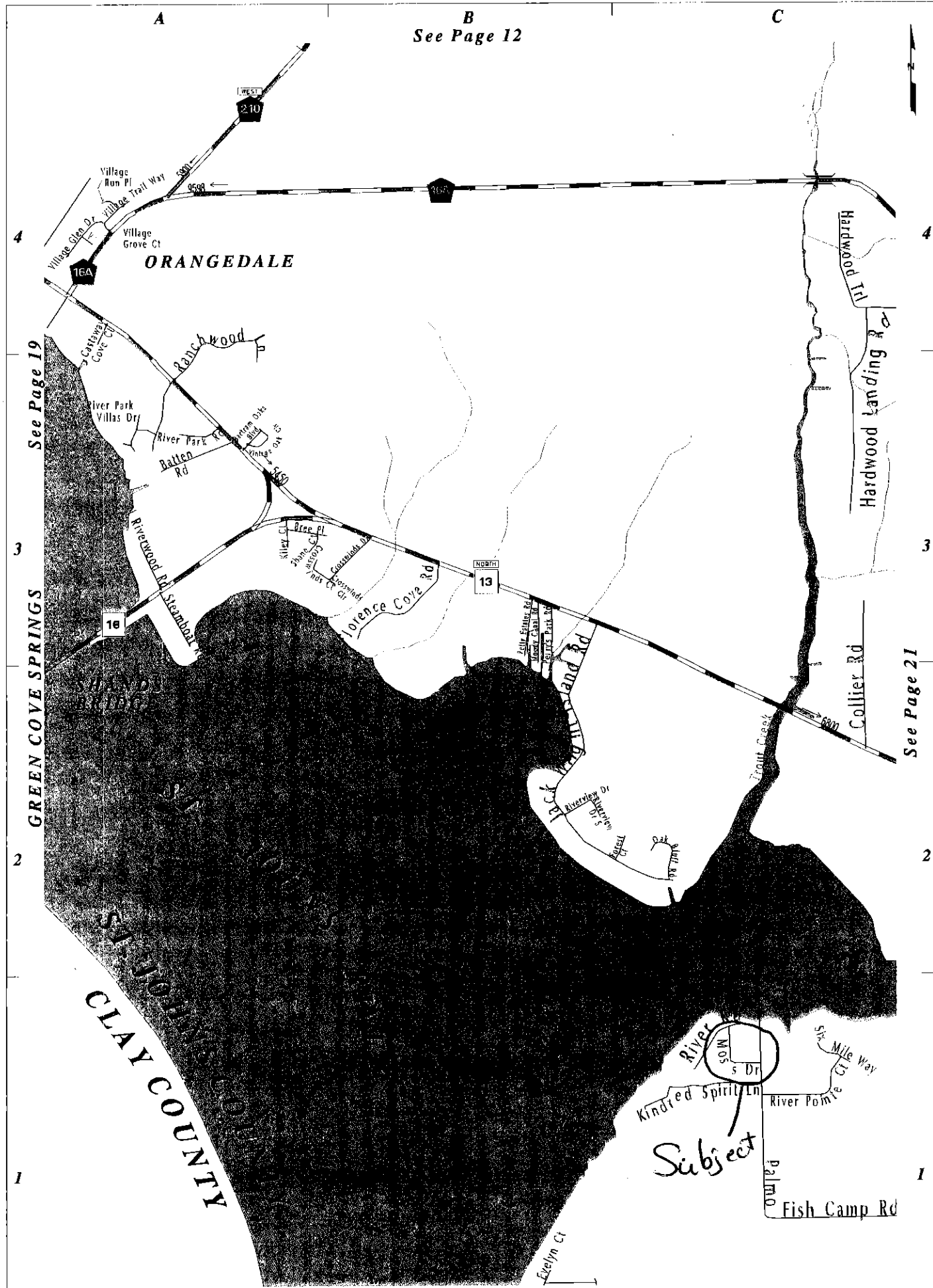


GENERAL NOTES:

1. BEARINGS ARE BASED ON THE WESTERLY LINE OF OFFICIAL RECORDS BOOK 1267, PAGE 34, PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, AS BEING NORTH 23° 30' W.
2. THIS IS A SPECIFIC PURPOSE SURVEY ONLY AND DOES NOT PURPORT ANY JURISDICTION OF ANY FEDERAL, STATE, COUNTY OR LOCAL AGENCY. THE PURPOSE OF THIS SURVEY IS TO ESTABLISH THE MAINTAINED RIGHT-OF-WAY OF MOSS DRIVE.
3. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF ABSTRACT OR TITLE EXAMINATION. THIS COMPANY BEARS NO RESPONSIBILITY TO ANY CLAIMS MADE BY SUCH INSTRUMENTS.
4. THIS SURVEY IS PREPARED AND CERTIFIED FOR THE EXCLUSIVE USE OF THE CLIENT NAMED HEREON AND IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL BASED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

I HEREBY CERTIFY that the map or plat hereby depicts the results of a field survey made under my responsible direction and complies with the United States National Standard for Surveying as promulgated by the Florida State Board of Professional Surveyors and Mappers, Chapter 4807-4, Florida Administrative Code, pursuant to Section 473.0271, Florida Statute, and I will enter and maintain the same as shown.

PRIVETT-NILES and ASSOCIATES, INC.
 SURVEYING AND MAPPING CONSULTANTS
 LICENSED BUSINESS # 6624
 3000 N. PONCE DE LEON BOULEVARD, SUITE "D"
 ST. AUGUSTINE, FLORIDA 32085 (904) 829-2591



See Page 19

GREEN COVE SPRINGS

ST. JOHN'S CEMETERY
CLAY COUNTY

See Page 21

EXHIBIT "C" TO RESOLUTION

MEMORANDUM

TO: Mary Ann Blount - Real Estate
FROM: Johnny Newsome - Road & Bridge Supervisor
DATE: May 17, 2001
SUBJECT: Moss Drive Maintenance



Moss Drive has been opened and used by the public for the past 20 years. It has also been the County's responsibility to maintain the road during this time. This includes road grading and stabilization. Approximately 50 loads of material have been used in the stabilization of this road.

Please call this office with any further questions you may have.