



State of North Carolina

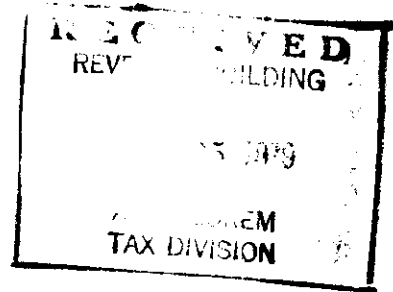
Department of Justice

P. O. Box 629

RALEIGH  
27602

RUFUS L. EDMISTEN  
ATTORNEY GENERAL

24 January 1979



MEMORANDUM

TO: D. R. Holbrook, Director  
Ad Valorem Tax Division

FROM: Myron C. Banks  
Special Deputy Attorney General

RE: Property ownership - Cadastral Mapping

With reference to your inquiry of 24 January 1979:

1. If title is in dispute, the property should be listed in the name of the occupant, if there is one, and if not, in the name of "unknown owner". G.S. 105-302(12). I should think that the abstract should also show the name of the occupant, if any, and the names of the claimants and their addresses. Tax bills should be sent to occupant, if any, and if none, to "unknown owner" in care of as many claimants as are known.
2. I should think it advisable for the county to proceed only under G.S. 105-374 in the case of unknown owners, or disputed claims. Parties under G.S. 105-374 would be occupant, if any, and if none, "unknown owner", and all other claimants known. To proceed under G.S. 105-375 would seem to me to prompt due process arguments.
3. Neither. I should think that absent a survey, acreage should be calculated from the description in the deed, which would control over "so many acres, more or less".
4. Yes, particularly if it is in substantial agreement with a metes and bounds description in a deed.
5. It is difficult to formulate a full answer to your question.
  - a. In every instance where the so-called "right of way" is owned by the State in fee simple, it should be excluded.

b. Where someone owns in fee to the center line, even though subject to a road right of way, the property should be included in the calculation of the owners total acreage, but if an appraisal is made on an acreage basis, obviously the value of land in the right of way should be greatly dissimilar from the value of unencumbered acreage. For example, if I own 100 acres, and ten acres is subject to the right of way of I-95, the value of my encumbered fee should be virtually zero, since there is almost no likelihood of the abandonment of that right of way. It seems to me that any approach to value would necessarily take that encumbrance into consideration.

6. The absence of a recorded easement should make no difference since many existing rights of way were obtained by user and prescription.

What is "cadastral"?

MCB:ceh

January 24, 1979

**MEMORANDUM**

**TO:** Mr. Myron C. Banks  
Special Deputy Attorney General

**FROM:** D. R. Halbrook, Director  
Ad Valorem Tax Division

**SUBJECT:** Property Ownership - Cadastral Mapping

We are assisting in the preparation of specifications for property ownership maps to be used by the counties to contract for mapping work. A number of questions have arisen in the course of this work on which we would like an opinion from you.

1. What should be the legal position of the county in cases where more than one person claims ownership of the same property?
2. Will the fact that the county has made a diligent effort to determine the ownership of an "unknown property" satisfy the legal requirements of G. S. 105-374 and 105-375 if the county attempts to foreclose its lien on the property.
3. In the absence of a survey, which of the following should be given greater weight in determining the acreage of a tract of land?
  - a. Acreage set forth in deed
  - b. Acreage calculated from property lines on map.
4. As a general statement, is a recent survey the best instrument for determining acreage?
5. Should the county exclude from its appraisals all property included in a highway right of way even though the deed states that the property line is the center of the road?
6. Would the answer be different if the State's right of way easement was not recorded in the county?

DWH:ml