

LAW OFFICES

PAXSON, SMITH, GILLIAM & SCOTT

A PROFESSIONAL CORPORATION

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418 EAST WATER STREET

C. ARMONDE PAXSON
(1905-1976)

WILLIAM MASSIE SMITH
GEORGE HARRISON GILLIAM
WILLIAM MASSIE SMITH, JR.
W. STEPHEN SCOTT
JAMES E. SKEEN
CHRISTINE C. CHAPMAN
ROBERT J. KRONER

July 2, 1986

M. Clifton McClure, Esq.
415 Fourth Street, N.E.
Charlottesville, Virginia 22901

Re: Kindrick
with
Earlsville Forest Land Trust

Dear Clif:

Daley Craig and I have spent a great deal of time trying to determine how best to handle the alleged easement from the Kindrick property over the Trust's land. Daley wants very much to be a good neighbor and has examined (and discussed with Alan) a number of alternatives.

Because of the difficulty in arranging sufficient locations for septic fields, to grant an easement along the Lot 138/139 line would be impractical.

Alan has staked what he believes the easement route to be; the location of Alan's stakes is approximately as shown on the enclosed copy of a subdivision plat. As discussed, there is some evidence of an old way at that location, and this conforms with the approximate route shown on the County tax map. Daley would be willing to make an express grant of an easement, four feet either side of the center line of the route shown, to the extent such route is on the Trust's property.

As I read the law, easements may arise in several different ways: (a) by express grant, but there is no evidence which I have found of an express grant here; (b) by necessity, but Alan has access to a state road by another route; (c) by being continuous and apparent, though there are 30-40 year old trees in the route staked off by Alan. I think everyone

PAXSON, SMITH, GILLIAM & SCOTT

M. Clifton McClure, Esq.

July 2, 1935

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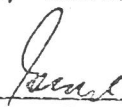
concerned would be well served by resolving this situation as proposed.

Best personal regards.

Sincerely,

PAXSON, SMITH, GILLIAM & SCOTT

By



George H. Gilliam

GHG:J
Enclosure

cc: Mr. S. Daley Craig

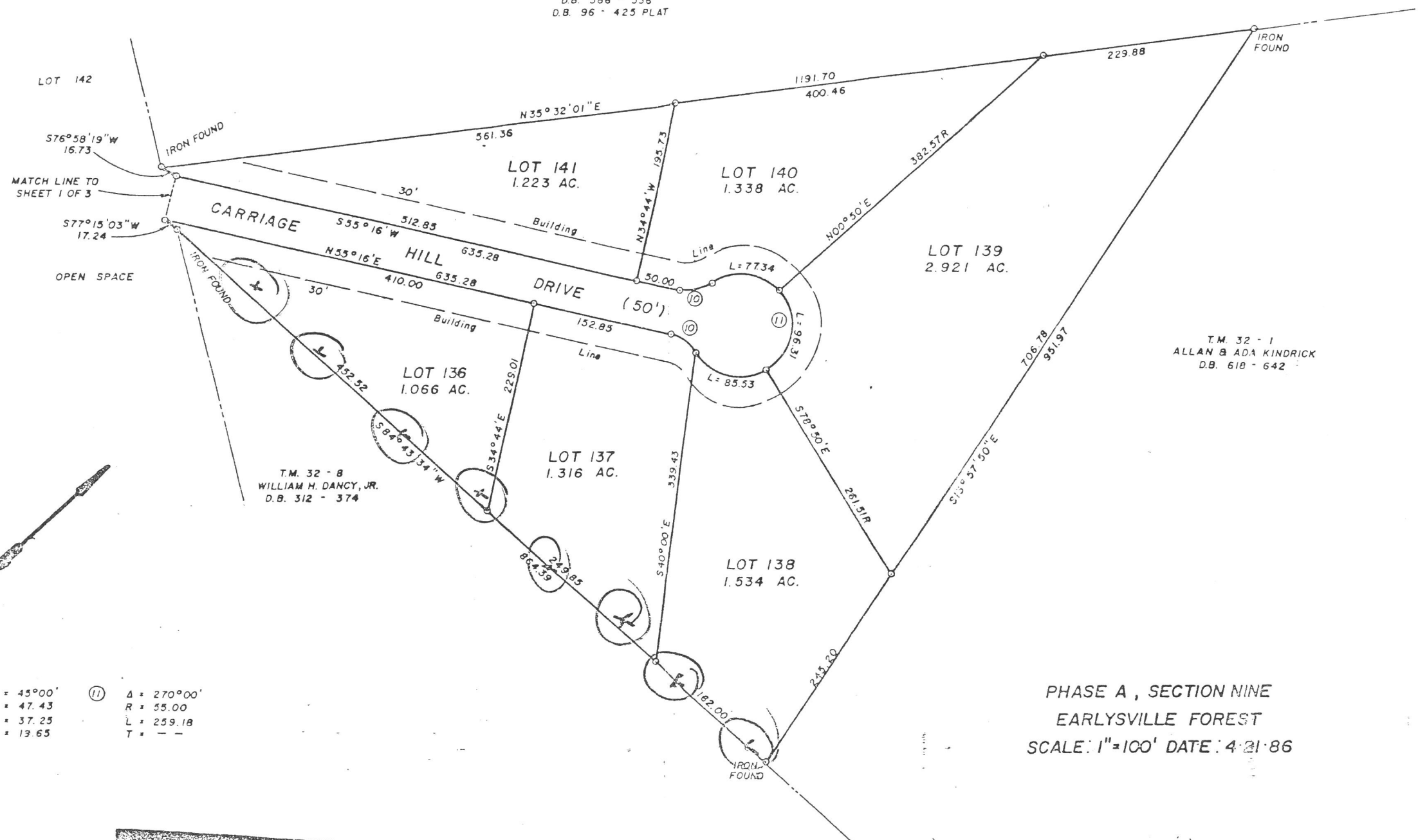
T.M. 31 - 45
LUNSFORD L. AYRES
D.B. 586 - 536
D.B. 96 - 425 PLAT

T.M. 32 - 1
ALLAN & ADA KINDRICK
D.B. 618 - 642

T.M. 32 - B
WILLIAM H. DANCY, JR.
D.B. 312 - 374

PHASE A, SECTION NINE
EARLYSVILLE FOREST
SCALE: 1"=100' DATE: 4-21-86

- ⑩ Δ = 45°00'
R = 47.43
L = 37.25
T = 13.65
- ⑪ Δ = 270°00'
R = 55.00
L = 259.18
T = - -



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008891

AGREEMENT, made this 15th day of September, 1986, by and between GEORGE HARRISON GILLIAM, TRUSTEE FOR EARLYSVILLE FOREST LAND TRUST ("Land Trust"), party of the first part, whose mailing address is Post Office Box 2737, Charlottesville, Virginia 22902, and ^{AK}ALAN KINDRICK and ADA KINDRICK ("Kindrick"), parties of the second part, whose mailing address is Jacob's Run Farm, State Route 743, Earlysville, Virginia 22936.

Background.

1. Land Trust owns a certain tract or parcel of land situated near Earlysville in the Rivanna District of Albemarle County, Virginia, containing 119 acres, more or less, which Land Trust acquired by deed dated May 22, 1986, of record in the office of the Clerk of the Circuit Court of Albemarle County, Virginia in Deed Book 879, page 350.
2. Kindrick owns an adjoining tract or parcel of land, containing 254.41 acres, more or less, which Kindrick acquired by deed dated April 12, 1977, of record in such Clerk's office in Deed Book 618, page 642.
3. By deed dated November 1, 1886, of record in such Clerk's office in Deed Book 87, page 175, a right-of-way was reserved over a 10 acre parcel of land, being a part of Land Trust's 119 acre parcel of land, for the use and benefit of Kindrick's land.
4. Land Trust and Kindrick disagree as to the exact location and extent of such right-of-way, and have agreed to resolve their differences by specifically defining Kindrick's

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right-of-way across Land Trust's property, in exchange for which Kindrick has agreed to release any and all claims to any other rights-of-way or easements across any property, wherever located, now or formerly owned by Land Trust.

Agreement.

NOW, THEREFORE, WITNESSETH, that for and in consideration of the premises and of the sum of Ten Dollars (\$10.00) cash in hand paid, the sufficiency and receipt of which is hereby acknowledged, Land Trust and Kindrick mutually covenant and agree as follows:

1. Land Trust and Kindrick agree that there is an easement of right-of-way over and across that certain tract or parcel of land containing 10 acres, more or less, situated in the Rivanna District of Albemarle County, and being the same 10 acre tract of land conveyed to Keith B. Wiley and Mary Hosmer Wiley by deed dated March 7, 1943, of record in such Clerk's office in Deed Book 256, page 46. Said easement is situated at and along the southern boundary of such 10 acre parcel, being the common boundary between such 10 acre parcel and a parcel of land now owned by William H. Dancy, Jr., and being also the southern boundary of Lots 136, 137 and 138 of Phase A, Section Nine, Earlysville Forest Subdivision as the same is shown on the subdivision map thereof, of record in such Clerk's office in Deed Book 888, page 489. The easement hereby granted and

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conveyed shall be fifteen (15) feet in width all along such boundary line with such line constituting the southern boundary of the easement.

2. Kindrick hereby releases and quitclaims any and all other easements or rights-of-way across any of the properties now or formerly owned by Land Trust.

3. Land Trust hereby grants and conveys to Kindrick, subject to the conditions set forth in items 4 and 5 of this agreement, a permanent, non-exclusive easement of right-of-way over and across the fifty (50) foot easement reserved by Land Trust in that certain deed dated August 1, 1985, of record in such Clerk's office in Deed Book 849, page 295, together with non-exclusive cut and fill rights for future road construction as reserved in such deed. Such easement of right-of-way is shown on that certain subdivision plat of Section Seven of Earlysville Forest which is of record in such Clerk's office in Deed Book 849, page 301. Land Trust or its successor in title, upon request by Kindrick or their successor in title, agree to sign any and all documents necessary to dedicate such easement to public use.

4. Upon the first use by Kindrick of such fifty (50) foot easement described in item 3, the easement granted and conveyed in item 1 shall terminate and Kindrick agrees to promptly execute and deliver to Land Trust a deed of abandonment whereby Kindrick will abandon, release and quitclaim all right, title and interest in and to such easement.

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5. Upon use by Kindrick of such fifty (50) foot easement described in item 3 for any purpose other than as a personal driveway or farm road serving not more than one residence house and associated farm buildings, Kindrick agrees to undertake, at Kindrick's sole cost and expense, all work then required by the Virginia Department of Highways and Transportation to upgrade the roads in the Earlysville Forest Subdivision due to the additional traffic generated over such roads upon the use by Kindrick of the fifty (50) foot easement to gain access to such roads.

6. The easements conveyed and the covenants and conditions contained in this agreement are, and shall be deemed to be, covenants running with the land and shall bind and inure to the benefit of the respective assigns of and successors in interest to Land Trust and Kindrick.

7. In the event Land Trust (or any entity owned more than 50% by S. Daley Craig) acquires the property now owned by Dancey identified on T. M. 31, Parcel 46, Kindrick shall be entitled to have a 50' easement across said land (upon the same terms and conditions set forth in item 3 above) at a location which will not interfere unreasonably with said Craig's use of said land.

WITNESS the following signatures and seals as of the day and date first above written.



GEORGE HARRISON GILLIAM, Trustee
for Earlysville Forest Land Trust

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Alan B Kindrick (SEAL)
ALAN KINDRICK
Attor

Ada Kindrick (SEAL)
ADA KINDRICK

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE, to-wit:

The foregoing instrument was acknowledged before me this 22nd day of September, 1986 by George Harrison Gilliam, Trustee for Earlysville Forest Land Trust.

My commission expires: January 26, 1987

Paula A. Hunter
Notary Public

COMMONWEALTH OF VIRGINIA
County ALbemarle
CITY OF CHARLOTTESVILLE, to-wit:

The foregoing instrument was acknowledged before me this 19th day of September, 1986 by Alan Kindrick and Ada Kindrick.

My commission expires: August 3, 1987

Clarence Chant
Notary Public

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0000

INSTRUMENT NUMBER _____

VIRGINIA: IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF ALBEMARLE COUNTY:

THIS DEED WAS PRESENTED, AND WITH CERTIFICATE ANNEXED, ADMITTED TO RECORD

ON October 10, 1986, at 10:29 O'CLOCK A M.

STATE TAX	\$ _____	(039)
LOCAL TAX	\$ _____	(218)
TRANSFER FEE	\$ _____	(212)
CLERK'S FEE	\$ <u>11.00</u>	(301)
PLAT	\$ _____	
SEC. 58.1-802	\$ _____	
STATE TAX	\$ _____	(038)
LOCAL TAX	\$ _____	(220)
LOCAL TAX	\$ _____	(223)
TOTAL	\$ <u>11.00</u>	

TESTE: SHELBY J. MARSHALL, CLERK

BY: Pamela C. Gibson
DEPUTY CLERK

Deed Book 81 page 117
 past John W. Marshall trustee for his fair wife and his children as appears
 to record past and his Drury Wood of the third part. Witnesseth that for
 the consideration of the sum of twelve hundred and forty eight dollars (\$1248)
 purchase money for said tract or parcel of land, and the further sum of ten
 (\$10) the fee for drawing the deed, he the said Thos. J. Wood, Commissioner
 appeared with the consent & approbation of said Drury Wood Receiver as affe
 swornly his legal & executing the deed, hath bargained & sold and by the
 presents doth bargain sell & convey unto said John W. Marshall
 as a present & paid above described ten (\$10) tract or parcels of land, ac
 cordingly described in the preamble to this deed. To have and to hold to
 the said Thos. J. Wood or heirs of law and all the buildings & improvements
 thereto & fixtures also all the profits and appurtenances thereunto in
 law & equity belonging unto him said John W. Marshall trustee as a
 fee for the exclusive use and benefit of the wife and children of said John
 W. Marshall as herebefore named. And the same shall always
 hold free and discharged of all legal liabilities, mortgages & debts
 due John W. Marshall, past, present or future.

Witness the following signatures & seals
 Drury Wood (Seal)
 Thos. J. Wood Com. (Seal)

State of Virginia
 Albemarle County, to-wit
 I, R. H. Wood a Notary Public for the County of Albemarle &
 State of Virginia do hereby certify that Drury Wood & Thomas J. Wood
 have appeared before me to execute said deed dated December 7th 1885 and
 acknowledge the same before me in my County aforesaid.
 Given under my hand this 8th December 1885
 R. H. Wood Not.

In the Clerk's Office of Albemarle County Court, November 2nd 1886.
 This Deed was presented to me in said Office and with the certificate
 annexed admitted to record.
 Teste - J. W. Page Clk. for
 H. B. Burnley Clk.

J. G. Breshaw
 Wm. Johnson
 See 123
 Dec 10
 1885
 1886

This Deed read and entered into this 11th day of November 1886 before
 J. G. Breshaw and his wife Lucy G. Breshaw of the one part
 Wm. Johnson of the other part. Witnesseth, the said J. G. B. &
 Lucy G. Breshaw & wife Lucy G. Breshaw have this day sold, granted &
 conveyed to the said Wm. Johnson one lot of land lying in the County
 Albemarle, containing ten acres by more or less survey by J. P. Ferry
 for the sum of one hundred and fifty five dollars, which amount
 paid by said Wm. Johnson to said J. G. B. Breshaw. The said J. G.
 Breshaw reserves the right to keep open the road now running
 said lot along J. W. Breshaw's line to J. P. Early's line.
 The said lot of land is bounded as follows: Beginning at a well
 known line, thence S 82° W 50.88 poles to small pine pointed corner

LOW INFO 1 Nov 1886

11/14/57
Return Tome
W. W. Brewshaw
J. B. Brewshaw

I. D. Early, thence with his line on 33 1/2° E 727 poles to a steel of brass then a new line
J. W. E. S. S. poles to the beginning
Witness the following signatures and seals
Detailed on page 1 before us
J. G. B. Brewshaw God
Lucy C. Brewshaw God

In the County Office of Albemarle County, Virginia, November 3rd 1886
This Deed was presented to me in said office and acknowledged by J. G. B. Brewshaw and Lucy C. Brewshaw the wife of J. G. B. Brewshaw whose names are signed to said deed dated November 1st 1886 made in personal appearance before me in said office and being examined by me privately and apart from her husband and having said deed fully explained to her she the said Lucy C. Brewshaw acknowledged said deed to be her act and deed that she had collected accounts the same and does not wish to retract it and said deed was admitted to record
Witness my hand and seal of office for
H. B. Bradley Clerk

11/12/86
J. P. Jones
to J. W. Dolin
J. W. Dolin trustee
for
Mary E. Jones
See 1.57
for 2.00
for 3.50
J. W. Dolin
at 2.03
Witnessed by
J. W. Dolin
11/11/86

This Deed made this 27th Sept 1886 between J. P. Jones the one part and J. W. Dolin trustee of the other part Witnessed that J. P. Jones in consideration of the National Loan & Affair the said Jones bears his wife Mary E. Jones and children & of the consideration of Ten Dollars cash in hand paid to the said Dolin trustee the receipt whereof is hereby acknowledged the said J. P. Jones grants bargain, sells, releases, confirms & conveys to the said J. W. Dolin trustee all real estate or interest in real estate which the said Jones possessed or by reason of the death of the late J. W. Jones his father and money, furniture, personally or interests in personal property which the said Jones shall be entitled to as his share of the personal estate of the late J. P. Jones his father also all real estate or interest in real estate which he may have as his share of the estate of the late J. P. Jones together to have and hold unto him the said J. W. Dolin trustee his successors assigns forever In trust nevertheless for the following uses and purposes and more to wit that the said trustee shall collect all the funds arising from the lands above conveyed & apply a part of it to the fifteen hundred dollars more or less according as the trustee may under the circumstances deem fit to the purchase of a house & lot to be held as a home for the said Mary E. Jones and her children born or to be born the balance of the said J. P. Jones and the balance of the funds aforesaid shall be invested by said trustee in bonds secured by first mortgages or real estate and the value the amount of the bond The trustee is however empowered to apply any of said balance of the funds aforesaid above what is required for the purchase of a home if he deems it more expedient than investing in bonds and mortgages as aforesaid directed to a stock purchase or to purchase and constitute a business which shall be carried on in the name of the said J. P. Jones & for his benefit and the interest, rent & profits of the same shall be collected & applied to the maintenance of the said Mary E. Jones & of her children as aforesaid & that of the children aforesaid