

June 4, 2019

Mr. Steve Marshall  
Alabama Attorney General  
P.O. Box 300152  
Montgomery, AL 36130-0152

**RE: Request for Attorney General's Opinion  
by the Baldwin County Commission**

Dear Mr. Marshall:

I am writing this letter on behalf of the Baldwin County Commission regarding whether the Town of Elberta has the authority or responsibility to maintain Bluewater Drive and Pine Drive which were annexed into the municipal limits of the Town of Elberta in 2005.

**GOVERNING LAW**

Section 11-49-80, *Code of Alabama*, 1975, relates to the authority over or responsibility for streets and roads within a municipality maintained by the county. Subsection (c) of § 11-49-80 provides that:

the annexation of unincorporated territory into a municipality, after July 7, 1995, shall result in the municipality assuming responsibility for all public streets lying within the territory annexed, provided the public streets were **county-maintained streets** for a period of one year prior to the effective date of the annexation. (emphasis added).

Section 11-49-80, *Code of Alabama*, was amended in 2015 and the amendment provided the following definition of what constitutes a "County-maintained street":

(1) COUNTY-MAINTAINED STREET. A public street, road, or bridge that the county commission has the **authority or responsibility** to control, manage, supervise, regulate, repair, maintain, or improve. (emphasis added).

Ala. Code § 11-49-80(a)(1).

## **FACTUAL BACKGROUND**

Bluewater Drive and Pine Drive are roads wholly located within the corporate limits of the Town of Elberta in Baldwin County, Alabama. The Town of Elberta was incorporated in or around 1952. The Town of Elberta annexed the area around and including Bluewater Drive and Pine Drive in 2005.

### **PRE-ANNEXATION.**

1. In December 1987, Baldwin County (the “County”) was conveyed a “right-of-way easement for the purposes of a public road” over and across Bluewater Drive and Pine Drive (the “Right-of-Way Easement”). Said easement is recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Real Property Book 307, Page 809, and a copy is attached hereto as Exhibit “A”.
2. In 1996, upon the request of neighboring residents, the County performed a one-time maintenance on Bluewater Road to grade, pull ditches and cut back the right-of-way. (See copy of Minutes of Meeting of Baldwin County Commission attached hereto as Exhibit “B”).
3. As of May 7, 1996, the County had not accepted Bluewater Drive or Pine Drive for maintenance per its Acceptance for Maintenance Policy. (See copy of Maintenance Policy and Minutes of Meeting of Baldwin County Commission attached hereto as Exhibit “C” and Exhibit “B”, respectively).

### **ANNEXATION INTO THE TOWN OF ELBERTA.**

By Ordinance of the Town of Elberta dated October 18, 2005, Bluewater Drive and Pine Drive were annexed into the corporate limits of the Town of Elberta. (A copy of the annexation ordinance is attached hereto as Exhibit “D”).

### **POST-ANNEXATION.**

**County Grants Licenses for Others to Maintain and Improve.** In 2013-2014, the County entered into two License Agreements with a neighboring developer and property owners granting them a revocable, non-exclusive, temporary license to maintain Bluewater Drive and Pine Drive and to install certain improvements. Both of these license agreements are still active.

1. License Agreement No. 13003 (Bluewater Drive and Pine Drive):
  - On February 27, 2013, the County entered into License Agreement No. 13003 granting the developer of The Hammock-Phase 2 Subdivision, which was to abut Bluewater Drive, and its property owners a revocable, non-exclusive, temporary license to maintain Bluewater Drive and Pine Drive

and to construct a turnout on Bluewater Drive for the subdivision, and to also install a stop sign at the intersection of Bluewater Drive and Yucatan Lane.

- The County entered into License Agreement No. 13003 at the request of neighboring property owners after the Town of Elberta would not approve their subdivision since it was not accessed by a right-of-way that was up to the County's or the Town of Elberta's specifications. (See February 5, 2013 letter to County from Schlinkert (developer of The Hammock Phase 2 Subdivision)).
- In License Agreement No. 13003, the County reserved all powers and rights to regulate use of Bluewater Drive and Pine Drive and the property owners acknowledged that Bluewater Drive and Pine Drive remained public property and that The License Agreement was for a one-year term with annual renewals.
- The License Agreement contained the following provision:

20. Licensor not Responsible for Maintenance. The licensor has not accepted, or undertaken to maintain, the Property or any streets, roadways or improvements constructed thereon, and the Licensor expressly states that it will not be responsible for the maintenance of the Property, or any streets, roadways or improvements constructed thereon. Furthermore, nothing set forth in this Agreement shall be construed or interpreted by any party as the Licensor accepting, or undertaking, to maintain the Property or any streets, roadways or improvements constructed thereon.

- A copy of License Agreement No. 13003 is attached hereto as Exhibit "E".
- On the Plat of The Hammock Phase 2 Subdivision, recorded on Slide 2497-C in the Office of the Judge of Probate of Baldwin County, Alabama, on December 4, 2013, it states that Bluewater Drive and Pine Drive are "NOT CURRENTLY MAINTAINED BY THE TOWN OF ELBERTA OR BALDWIN COUNTY." A copy of said plat is attached hereto as Exhibit "F".

2. License Agreement No. 14003 (Pine Drive):

- On April 22, 2014, the County entered into License Agreement No. 14003 permitting Priority One, LLC a revocable, non-exclusive, temporary license to install on Pine Drive a residential turnout with a 24" culvert and to install erosion control and to maintain the same following installation of said improvements.
- In the License Agreement, Priority One, LLC acknowledged that Pine Drive and the improvements it installed thereon to be public property.

- The License Agreement provides that the County is the owner of Pine Drive and refers to it as a “non-maintained right-of-way”.
- This License Agreement does NOT contain Paragraph 20 quoted above.
- A copy of License Agreement No. 14003 is attached hereto as Exhibit “G”.

**County Denial of Permit to Locate Facilities.** On August 28, 2018, the County failed to approve Baldwin County Sewer Service’s request for a permit to locate its facilities, specifically sewer force mains (SFM) and SFM extensions, across or along Bluewater Drive and Pine Drive. The County’s reason for failing to approve the permit was that Bluewater Drive and Pine Drive were located within the municipal limits of the Town of Elberta and should be maintained by the Town of Elberta pursuant to Ala. Code § 11-49-80.

### **SPECIFIC QUESTIONS**

1. Pursuant to the 2015 amendment of Ala. Code § 11-49-80, are Bluewater Drive and Pine Drive “county-maintained streets” within the meaning of Ala. Code § 11-49-80(a)(1) because the County had the “authority or responsibility to control, manage, supervise, regulate, repair, maintain, or improve” Bluewater Drive and Pine Drive during the one-year period preceding their annexation into the Town of Elberta?
2. If the answer to the foregoing is in the affirmative, is the Town of Elberta required to assume responsibility of Bluewater Drive and Pine Drive because they are within the municipal limits of the Town of Elberta and they were “County maintained streets” for the one-year period preceding their annexation into the Town of Elberta?
3. In the event that the 2015 amendment of Ala. Code § 11-49-80 is inapplicable, is the Town of Elberta still required to assume responsibility of Bluewater Drive and Pine Drive because the County did control, manage, supervise, regulate, repair, maintain, and improve Bluewater Drive and Pine Drive for a period of one year prior to the effective date of the annexation?

Your assistance in answering these questions will be greatly appreciated. If you need any additional information, or if we can be of any further assistance, please let us know.

Sincerely,

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Charles F. Gruber, Chairman  
Baldwin County Commission