

TO: The Grievance Committee
The North Carolina State Bar
PO Box 25908
Raleigh, NC 27611
Telephone: (919) 828-4620



NORTH CAROLINA
STATE BAR

NC State Bar Complaint Form (rev'd May 12, 2016)

I am filing a complaint against (Name of Lawyer) James Weaver Kirkpatrick III
(Lawyer's Address) 37 Banner Ave (City/County) Waynesville,
State NC (Zip) 28786

I am reporting alleged misconduct of the above-named lawyer. I agree to provide to the State Bar all pertinent information and records in my possession concerning the alleged misconduct. If a hearing or inquiry is ordered concerning the alleged misconduct of the lawyer, I will testify if requested. I understand that the immunity granted by N.C. General Statute 84-28.2 applies only to those statements made to the State Bar without malice.

- I understand that the North Carolina State Bar may reveal this information to the accused lawyer and to others pursuant to the Rules of the State Bar. Initial LH JF
- I understand that the State Bar cannot give me legal advice, cannot represent me or intervene on my behalf in a court proceeding, cannot remove a lawyer from a case, cannot determine whether a lawyer committed malpractice or is indebted to me, and cannot change court orders. I understand that if I believe I have suffered damages because of an act or omission of a lawyer, I should not wait for the State Bar's disposition of a complaint before pursuing any legal claim or seeking legal advice. Initial LH JF
- My electronic or physical signature below confirms that the information I am providing on this form is, to the best of my knowledge, accurate. Initial LH JF

Signature: Lois Hollis Date: 04/26/2022

MY NAME AND ADDRESS Joseph Lipari
Mr., Mrs., or (Ms.) Lois Hollis
Address: 156 Johnson Hill Dr City: Waynesville State: NC
Zip: 28786 Telephone: (928) 254 9552 Alternate Telephone: ()
Email: lois3hollis@gmail.com

DESCRIPTION OF THE COMPLAINT

Either in the space on the next page, or on a single attached page, tell us what the complaint is about. Include all the facts that you want the State Bar to consider, including names, dates and places.

Please attach any electronic documents that support the complaint to the email that will be generated when you click the "Submit via Email" button at the top of this page.

I will attach electronic documents that support the complaint to the email generated when I click the "Submit via Email" button at the top of this page.

I was unable to submit supporting documents electronically. The supporting documents will be sent by mail with a copy of this completed complaint form.

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NORTH CAROLINA
 STATE BAR

NC State Bar Complaint Form (rev'd May 12, 2016)

I am filing a complaint against (Name of Lawyer) David F. Sutton
 (Lawyer's Address) 285 N. MAIN ST. (City/County) Waynesville
 State NC (Zip) 28786

I am reporting alleged misconduct of the above-named lawyer. I agree to provide to the State Bar all pertinent information and records in my possession concerning the alleged misconduct. If a hearing or inquiry is ordered concerning the alleged misconduct of the lawyer, I will testify if requested. I understand that the immunity granted by N.C. General Statute 84-28.2 applies only to those statements made to the State Bar without malice.

- I understand that the North Carolina State Bar may reveal this information to the accused lawyer and to others pursuant to the Rules of the State Bar. Initial JL LH
- I understand that the State Bar cannot give me legal advice, cannot represent me or intervene on my behalf in a court proceeding, cannot remove a lawyer from a case, cannot determine whether a lawyer committed malpractice or is indebted to me, and cannot change court orders. I understand that if I believe I have suffered damages because of an act or omission of a lawyer, I should not wait for the State Bar's disposition of a complaint before pursuing any legal claim or seeking legal advice. Initial JL LH
- My electronic or physical signature below confirms that the information I am providing on this form is, to the best of my knowledge, accurate. Initial JL LH

Signature: Joseph Lipari
Lois Hollis

Date: 04/26/2022

MY NAME AND ADDRESS

Mr., Mrs., or (Ms) Lois Hollis
 Address: 156 Johnson Hill DR City: Waynesville NC
 Zip: 28786 Telephone: (928) 254 9552 Alternate Telephone: ()
 Email: _____

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The Grievance Committee
The North Carolina State Bar
217 E. Edenton St.
PO Box 25908
Raleigh, NC 27611
(919) 828-4620

APR 26 2022

Lois Hollis
Joseph Lipari
156 Johnson Hill Drive
Waynesville, NC 28786
lois3hollis@gmail.com
928 254 9552

April 26, 2022

I am filing a complaint against both:

Attorney James Weaver Kirkpatrick III

Bar ID 21711
37 Branner Avenue
Waynesville, NC 28786
kirk@jwklaw.net
<http://www.kirkpatricklawfirm.com>
828 452 0801

Attorney David F. Sutton Co-Counsel

Bar ID 34235
Office of Administrative Hearings
285 North Main St.
Suite 3300
Waynesville, NC 28786
david.sutton@OAH.nc.gov
828 454 6324

Superior Court Division case 08-CVS-1193

Attorney James Weaver Kirkpatrick III used Ensley's non legal survey done on non-original property markers and the coercion of his 60-year-old Lipari clients who were both physically and mentally handicapped, one a 70% disabled veteran, to win the court case not for his clients but for Pat Smathers the opposing lawyer.

Lipari's discovery of the fraud is October 7, 2021 with Davenport's survey. Fraud is a deception practiced in order to induce another to give up possession of property or surrender a right.

Attorney James Weaver Kirkpatrick III

is a real estate attorney and Haywood Commissioner since 2002. His real estate expertise brought him the following clients: Waynesville Housing Authority; Mountain View Housing; Maggie Valley Sanitary District.

Attorney James Weaver Kirkpatrick III is an APPROVED ATTORNEY

FOR: Lawyer's Title Insurance Corp.; Chicago Title Insurance Co.; Commonwealth Land Title Insurance Co.; Investors Title Insurance Co.; Stewart Title; Clyde Savings Bank; B. B. & T.; Ashville Federal Savings and Loan Assn.; PHH U.S. Mortgage Corporation; First Citizens Bank; Wachovia; Mountain Bank; RBC Centra; United Community Bank; Central Carolina Bank; State Employees Credit Union; Champion Credit Union; Blue Ridge Savings Bank; ABN Amro; Wells Fargo.

Attorney James Weaver Kirkpatrick III also advertises his expertise with Homeowners Association Issues, Landlord-Tenant Disputes, Foreclosures, Eminent Domain, Zooning, Land-Use, Building Permits, Title Disputes.

07/17/2009 Joseph and Eileen Lipari at 156 Johnson Hill Drive contacted James Weaver Kirkpatrick III to represent them in the false charges that their neighbors at 146 Johnson Hill Drive claimed. The Liparis bought their property in 2007. They, as well as former owners used their front door and the shared driveway with their neighbors at 146 Johnson Hill Drive.

Attorney James Weaver Kirkpatrick III had one brief meeting, maybe 20 min, with Joseph and Eileen Lipari at his office. He never viewed the 156 and 146 properties or asked for any documentation. Instead, Kirkpatrick sent David F. Sutton a new law graduate to 156 property who walked around the property without asking questions, surveys, or writing reports.

Attorney James Weaver Kirkpatrick III as advisor, advocate, negotiator, evaluator, and authentic expert in his real estate field, did not take into consideration that his clients Joseph and Eileen Lipari were not able to communicate or comprehend their legal real estate situation due to their severe mental and physical handicaps.

Joseph Lipari age 63 years, severe hearing loss, attention deficient, 70% PTSD disability, suicide risk, recovering from recent heart surgery, ongoing physical and psychological therapy with medication.

Eileen Lipari age 60 years, 313 pounds confined to a motorized wheelchair with muscular dystrophy, partial blindness, cancer, end stage kidney disease, and severe depression requiring ongoing physical and psychological therapy with several medications for her numerous disease states.

Marie Heinke age 83 years, Eileen's mother diagnosed with chronic schizophrenia, breast cancer, and long-term dementia.

Attorney James Weaver Kirkpatrick III violated his duties to act in the best interest to his clients. On the contrary Attorney Kirkpatrick acted in the best interest of his **opposing counsel**, Pat Smathers with the Ensley Survey. Kirkpatrick **took advantage** of the Liparis' emotional and physical handicaps to win the property case for Pat Smathers and Ensley.

Attorney James Weaver Kirkpatrick III violated his duties to accommodate the obvious needs of his clients. He failed to administer any professional judgement to accommodate the mental and physical impairment that was blatantly obvious.

Rule 1.14 Client (Joseph severe hearing loss, Eileen partial blindness, Marie was schizophrenic and long-term dementia) had obvious diminished capacity and their need to have protective action to include a competent family/friend to maintain communications and defensive investigation.

If a legal representative has not been appointed, the lawyer should consider the appointment of a guardian ad litem or guardian to protect his client.

Attorney James Weaver Kirkpatrick III without any further communication or protective support Kirkpatrick represented Joseph Lipari in court about one month later. **08/17/2009**

Joseph and Eileen were 100% physically and mentally incapable of adding to their defense. They relied solely on their Lawyer Attorney Kirkpatrick III and Attorney David F. Sutton co-counsel.

Attorney James Weaver Kirkpatrick III is an intelligent, experienced real estate lawyer and Haywood Commissioner. Common logic would tell him a house could not legally be built without a driveway or a door access. How could Ensley survey be correct when it differed from all surveys for 96 years? Would not a reliable, intelligent, dutiful lawyer at least investigate it? All lots in the Grandview division since 1913 had 50-foot lots until the Ensley survey changed 156 to 40 foot lot and 146 to a 60 foot lot.

Attorney James Weaver Kirkpatrick III violated his lawyer duties to his Lipari clients as a lawyer with the NC bar. He did not question the property change to no driveway or front door access, challenge Ensley survey, or research for his client Joseph Lipari's property over the years. Kirkpatrick even had the assistance of David F. Sutton to do research.

Attorney James Weaver Kirkpatrick III WITHELD important evidence from his clients, the court, and opposing attorney Pat Smathers. As a well-known, experienced real estate attorney, he did not investigate the history of 156 property or past surveys that would have seen that the Ensley survey was done with non-original or illegal markers. The Ensley survey is stamped NOT CERTIFIED. Kirkpatrick could have easily won the Liparis' case.

Kirkpatrick withheld **the Eminent Domain** public information accessible via public records that stated for **96 years** 146 and 156 Johnson Hill shared a driveway and each home had 50-foot lots. For **52 years**, 156 property owners used their front door, walkway between front door and the road, as well as their driveway entrance to Johnson Hill Road with 50-foot lots confirmed by surveys. These public records would support the Heron Survey and not allow the opposing counsel to verify Ensley survey that took away Lipari's driveway and front door access.

The following information is common knowledge readily available to anyone non the less by a Real Estate Attorney Expert such as Kirkpatrick.

Kirkpatrick with logic as well as his due diligence as a Real Estate Attorney would have known that Ensley survey 2009 was contrary to a 96 year history of surveys that never changed. Why????

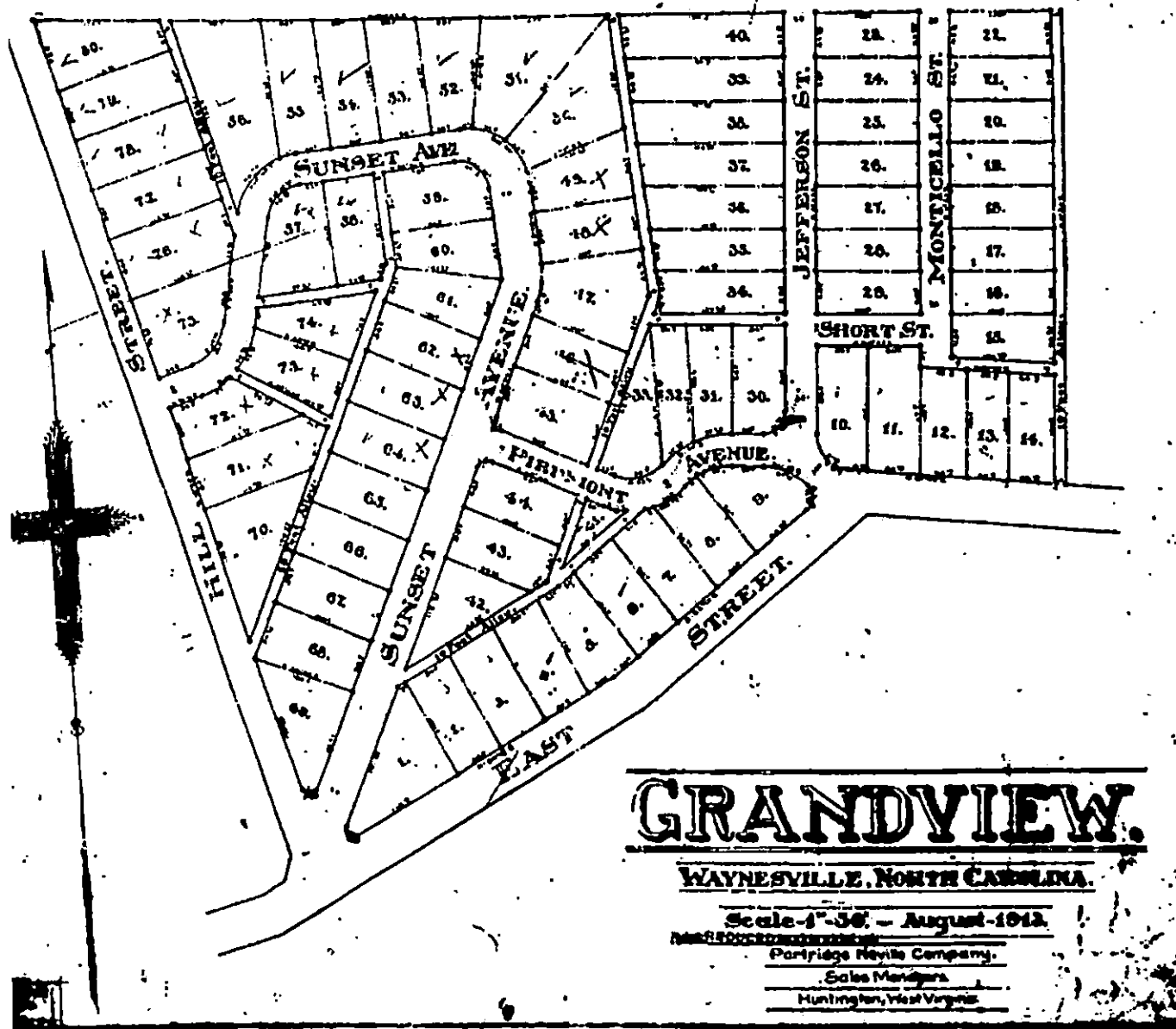
Attorney James Weaver Kirkpatrick III withheld evidence that the Ensley survey was done with non-original or moved property markers that took 10 feet from 156 and add 10 feet to 146 and was an illegal survey.

Kirkpatrick withholding evidence, no research or preparation conceded to the Ensley survey and Pat Smathers to take away the driveway and front door access, their **ONLY** entrance/exit door for his Lipari clients.

Kirkpatrick withheld evidence. As a real estate attorney, Kirkpatrick did not research the 156 property for the former surveys or challenge Ensley survey that disagreed with all surveys done for 96 years.

08/1913 all lots in Grandview, Johnson Hill Drive are 50-foot lots

185



Attorney James Weaver Kirkpatrick III used his attorney power to delivery an illegal, INHUMANE, UNCONSCIONABLE, acceptance to Pat Smathers and his Ensley survey that states "This map is not a cetified survey and has not been reviewed by a local Government Agency for complaine with any appliable Land Development Regulations."

Attorney James Weaver Kirkpatrick III acted with UNCONSCIONABLE and INHUMANE behavior to **COERCE** his Lipari clients with impaired mental processes to understand that they had no driveway or front door access to their home anymore, even though all residents prior to them did.

Attorney James Weaver Kirkpatrick III Honesty—a lawyer may not engage in illegal conduct. Attorney Kirkpatrick 111 participated and legalized an illegal survey.

Attorney James Weaver Kirkpatrick III violated disabled veteran abuse, elder abuse, and handicapped Federal Abuse Laws when he used his attorney power to doom Eileen and Joseph Lipari, and Mother Marie Heinke to a deadly living situation. Eileen weight 312 pounds, confined to a wheelchair with cancer and kidney disease under therapy with medication and partially blind, Joseph Lipari unable to walk distance or climb stairs with recent heart surgery, therapy with medication, hearing loss, and 70% veteran disability, and mother with schizophrenia and dementia were NOW without an entrance to their home or driveway to park their car.

Attorney James Weaver Kirkpatrick III Loyalty—which means avoiding conflicts between the lawyer's personal interests and the client's interests. Kirkpatrick needed to recluse himself from the case because of his conflict of interest with Ensley.

James Weaver Kirkpatrick 111 and Kevin Ensley work together since 2002 as Haywood County Commissioners. They act together on municipal projects and planning committees in Haywood County. Together they attend weekly commissioner meetings.

Attorney James Weaver Kirkpatrick III Criminal negligence conduct in which a person ignores a known or obvious risk or disregards the life and safety of others. Attorney Kirkpatrick 111 behavior significantly differed from a lawyer who abides with the acceptable standard practices as stated in the NC Bar to have the best interest to their client.

Attorney Kirkpatrick's violations with the Federal Disabled Veteran Abuse Law, Handicap Laws, and Elderly Abuse Laws adds to his disregard for his client's physical and mental impairment, lack of discovery on the Eminent Domain of his client's property, dutiful attention to why all 50 foot Johnson Hill Drive lots are 50 foot except 146 with 60 foot lot and 156 with a 40 foot lot. One would have to question Attorney Kirkpatrick 111 intention in this court case as he is a well-known expert in real estate and Haywood County commissioner who serves on planning and real estate boards.

Eminent Domain prior to **1998** Jimmy D. McElrath lived in 156 and used shared driveway and front door.

10/19/1998 Jimmy D. McElrath transferred 156 to Delta Trust Jimmy D. McElrath and wife Nancy T. McElrath used shared driveway and front door

7/29/2005 Theodore A. Baroody bought 156 from Jimmy D. McElrath 156 and 146 used the shared driveway with use of front door.

10/2007 Joseph and Eileen Lipari bought 156 from Theodore A. Baroody. 156 and 146 used the shared driveway with use of front door.

08/17/2009 Attorney James Weaver Kirkpatrick III coerced his Lipari clients with severe emotional and physical handicaps to believe that they do not have a driveway or access to their home. Kirkpatrick took advantage of their handicap to support Ensley.

Joseph Lipari age 63 years

01/09/2008 EMERGENCY heart surgery with 5 arteries repair.

Recovery contingent upon **no stress**. Advised reassessment for suicide risk.

PTDS medication needed

Service related 70% Disability PTSD and attention deficient

Navy Seal Underwater Demolition Team Honorable Discharge 08/11/1967

Agent orange Exposure

Bilateral severe hearing loss with tinnitus from diving damage

Arthritic right elbow broken right arm from naval boat

Broken right ribs

Work two hours a day maximum with other days no work possible

Shortness of breath with chest pain

Left lung with pleural effusion

Left lower lung has lobe disease

Eileen Lipari wife 313 pounds 5'2" Joseph lifted Eileen with motorized lift.

Age 60 years Died 8/2011

Severe Depression Partially blind left eye

Muscular dystrophy Confined to motorized wheelchair

Morbid Obesity Cushing Disease

Hypertension Breast Cancer

Asthma Spondylolisthesis

Fibromyalgia Respiratory Failure

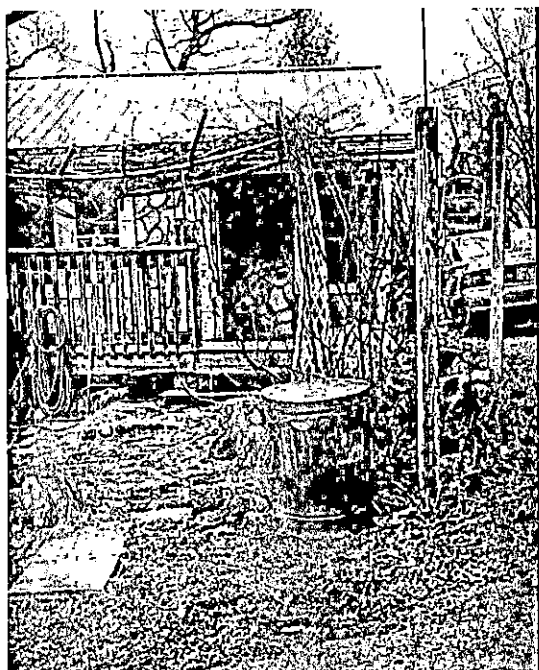
Osteoarthritis Diabetes with end organ damage

Chronic Kidney Disease Renal Failure

Anxiety loss of teeth related to grinding of the teeth

Marie Heinke, age 83 years Eileen Lipari's mother, lived with Eileen and Joseph Lipari when she was not in a mental health facility. Marie was diagnosed with **schizophrenia, breast cancer, and dementia**. Marie Heinke passed 2012.

During the next twelve years 146 renters came and left sharing their driveway with 156. Lois Hollis came to live with Joseph Lipari in 2011 after the deaths of Eileen Lipari and Marie Heinke. Joseph remodeled his front to make an additional parking space for \$10,000.



156

146



June 01,2021 Ed Smathers owner of 146 Johnson Hill Drive rented 146 to Sharon and Dennis Ramsey. Ed lives at 124 Johnson Hill Drive.

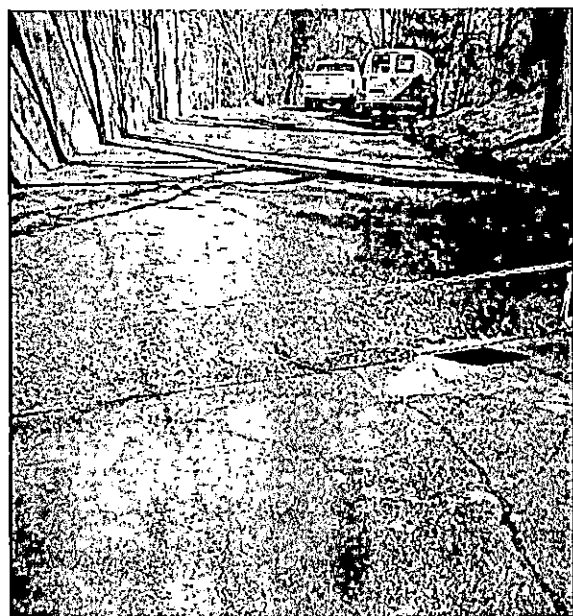
Immediately, Ed Smathers with the Ramseys placed a fence up against the 156 house wall, that blocked their front door access, their new remodeled parking space, and use of their road entrance to their home. The Ramsey's with Ed Smathers threw rocks at Joseph Lipari and Lois Hollis when they used their front door, screamed continuous abusive noises, loud music, communication threats, profanity with obscene gestures. Dennis Ramsey struts with a shotgun while screaming "what you gone a do when we come for you, HA HA." Reported 20 false criminal charges in 5 months against Joseph Lipari which were dismissed. Call police 32 times in 4 months against Joseph Lipari. Ed Smathers is now charged with assault against Lois Hollis.

Today, the Ramseys' and Ed Smathers continue their volatile, life-threatening, daily obnoxious abuse against Joseph and Lois with assault.

Attorney James Weaver Kirkpatrick III is still responsible for his ruling. Kirkpatrick knows that taking someone's driveway and front door access away from their home would put the Liparis in a dangerous living situation for years to come. The front door was the ONLY access to our home. The abuse, threats, and assault are created by the impossible living situation created by Kirkpatrick's failure to support his clients and withholding verifiable surveys.

The NC Board of Examiners for Engineers and Surveyors is investigating Kevin Ensley's 2009 146 survey that took away 156 Johnson Hill Drive shared driveway and front door access.

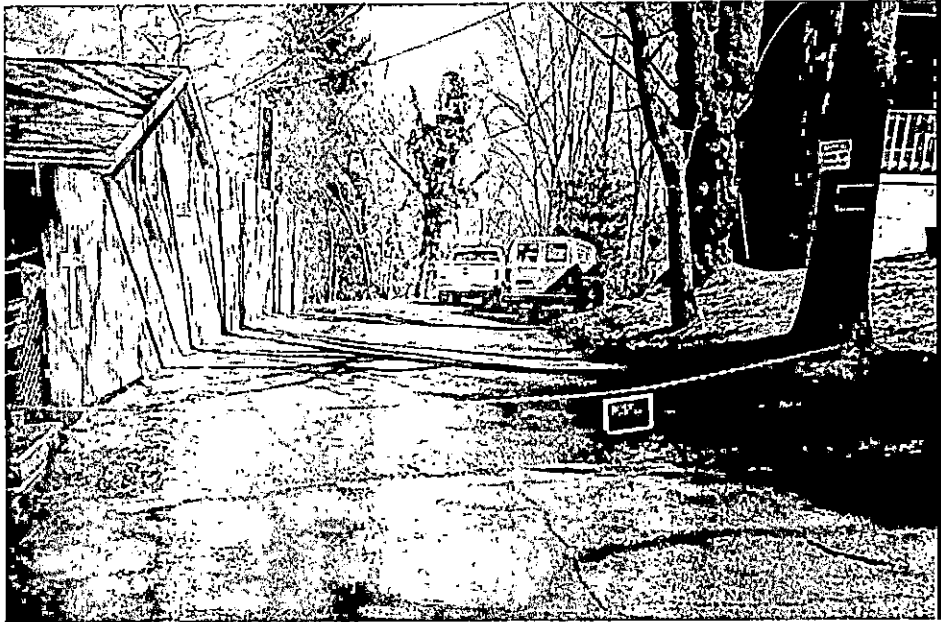
Green Roof 156 146 Spite illegal fence *Austin v. Bald II*, 658 S.E.2d 1 (N.C. 2008)



pink circle is driveway divider pin

156 green roof

146 chained driveway



Grandview 1913-present 2022 all lots and all surveys report 50-foot lots.

Ensley Survey 2009 state 156 has 40-foot lot and 146 60-foot lot.

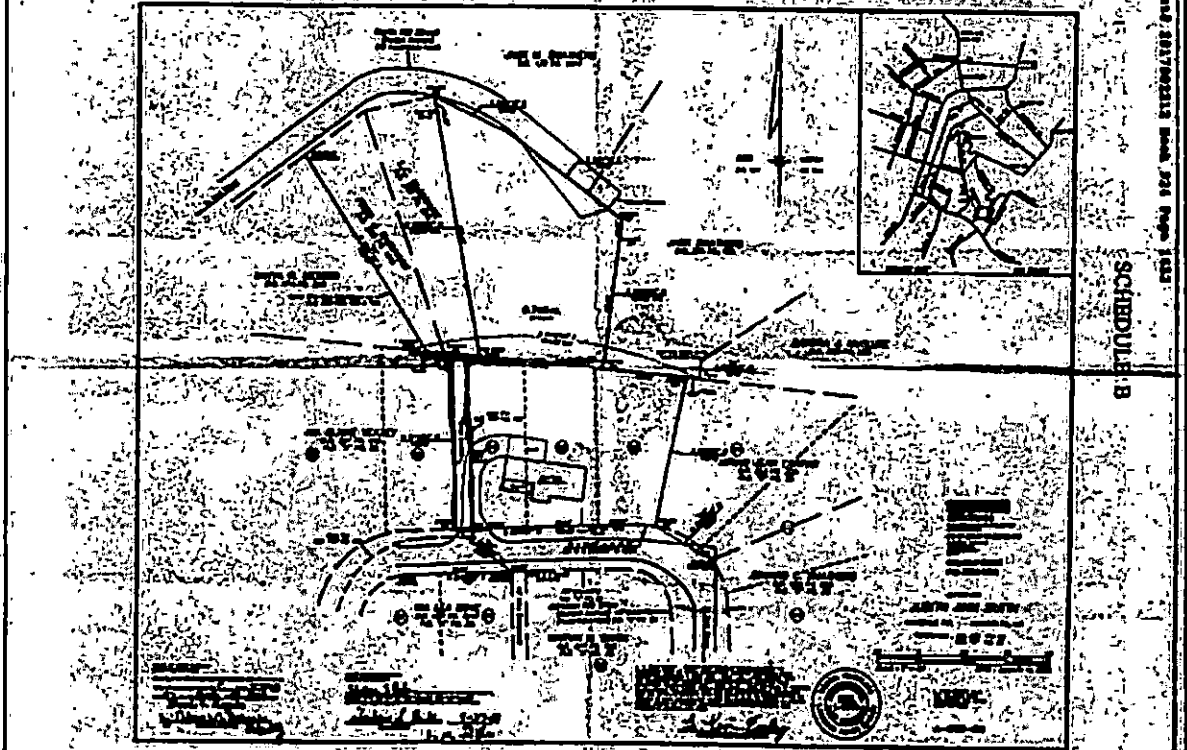
Davenport Survey 2021 illustrates 156 50-foot lot and 146 50-foot lot.

How could Attorney James Weaver Kirkpatrick III an expert real estate lawyer with the extra co-counsel of David F. Sutton not see this violation.

Judge Letts stated that Eileen Lipari and Marie Heinke had access to their home until they died. Judge Letts and Attorney Kirkpatrick did not include Joseph Lipari who was 64 year old, 70% disabled Vietnam Veteran Navy Seal which leads to disabled Veteran Abuse. Today Joseph Lipari is 77 and 70% disabled Veteran without a driveway or front door access to his home.

Attorney James Weaver Kirkpatrick III supported Ensley's survey not the original survey with 156 deed that had a shared driveway. Pink lines show the take away of 156 driveway and front door access. This map is not a certified survey and has not been reviewed by a local Government Agency for compliance with any applicable Land Development Regulations.

This map is not a certified Survey and has not been reviewed by a local Government Agency for compliance with any applicable Land Development Regulations.



Sincerely

Lois Hollis

Joseph Lipari

North Carolina
Haywood County

I, Betty S. Sims, a Notary Public
For said County and State, do hereby certify
That Lois Hollis & Joseph Lipari personally
appeared before me this day and acknowledged
The due execution of the foregoing instrument.

Witness my hand and official seal, this
the 26 day of April, 2022.

(Official Seal)

Notary Public

My Commission Expires 10-7, 22.

