THE ERWIN BOARD OF COMMISSIONERS APRIL 2023 REGULAR WORKSHOP MONDAY, APRIL 24, 2023 @ 6:00 P.M. ERWIN MUNICIPAL BUILDING BOARDROOM

AGENDA

1	MEETING	CALLED	TO ORDE	R
1.				4.

- A. Invocation
- B. Pledge of Allegiance

2. AGENDA ADJUSTMENTS /APPROVAL OF AGENDA

3. **OLD BUSINESS**

A. West K Street (Page 2)

4. **NEW BUSINESS**

- A. Town Owned IPads Policy (Page 3)
- B. The Use of Tobacco Products In Municipal Buildings and On Municipal Grounds (Page 7)
- C. Notary Procedure Policy (Page 10)
- D. East L Street (Page 11)
- E. BOA 2023-04 (Page 24)
- F. BOA 2023-05 (Page 26)
- G. ZT-2023-002 (Page 28)
- H. SU-2023-002 (Page 35)

5. **CLOSED SESSION**

A. Pursuant to General Statute 143-318.11(a) (6) for the Purpose of Discussing Personnel

6. MANAGER'S REPORT

7. **GOVERNING COMMENTS**

8. **ADJOURNMENT**

Erwin Board of Commissioners

REQUEST FOR CONSIDERATION

To: The Honorable Mayor and Board of Commissioners

From: Snow Bowden, Town Manager

Date: April 24, 2023

Subject: West K Street

We are trying to get bids for a project located off of West K Street. This is a large washout that needs to be addressed before the road is washed out. We are working on getting multiple quotes and a signed easement from the property owner at the moment.



TOWN OF ERWIN

P.O. Box 459 • Erwin, NC 28339 Ph: 910-897-5140 • Fax: 910-897-5543 www.erwin-nc.org Mayor
Randy L. Baker
Mayor Pro Tem
Ricky W. Blackmon
Commissioners
Alvester L. McKoy
Timothy D. Marbell
Charles L. Byrd
David L. Nelson
William R. Turnage

Town of Erwin Policy with regard to the use of Town-owned IPads used by the Town Board of Commissioners

Section 1: Purpose

The Erwin Board of Commissioners acknowledges and agrees that the provision and use of Apple IPads will assist the Board and staff in the efficient performance of their duties and thereby improve their service to the public. The use of IPads will also reduce paper and photocopying costs.

The explicit privileges outlined in this policy do not attempt to cover every situation that may arise in connection with the use of this new form of electronic communication. The Erwin Board of Commissioners acknowledges, understands, and respects the underlying IPad, Internet, and usage philosophy that forms the basis of this policy, including the understanding that the Town email account will primarily be used to conduct town business. Erwin Board of Commissioners who choose to use a personal e-mail account does so with the full knowledge that the content of that account is a public record and would be subject to North Carolina public records law. Board Members will be permitted to use the IPad for public and private purposes.

Section 2: Receipt of Apple IPad

The Town Manager, or their designee, will issue the Board Members the IPads and accessories. Any additional IPad accessories not originally provided by the Town shall be at the individual expense of the Board Member and shall remain the property of the Town at the end of the Board Member's term. The Erwin Board of Commissioner Members will each receive a separate e-mail

account that shall be used to send/receive official Town documents including without limitation: agendas, staff reports, packets, and the like as well as emails and correspondence relating to town business. Before being authorized to access and utilize the IPad equipment for Internet and e-mail communications, the Board Member shall sign the Town of Erwin IPad Policy acknowledging receipt and understanding of such.

Section 3: Responsibility and Care of the IPad

The Town of Erwin Board of Commissioners are responsible for the general care of the IPad issued by the Town. IPads that are broken or fail to work properly must be taken to the Town Manager, or their designee, for an evaluation of the equipment. IPads that have been lost, stolen, or damaged from misuse, neglect, or are accidentally damaged, in the sole and exclusive judgment of the Town Manager, will be replaced or repaired by the Town, with the cost borne by the Board Member. IPads should remain free of any writing, drawing, stickers, or labels that are not the property of the Town. Only a soft cloth should be used to clean the screen.

Section 4: Software on the IPad

Software and applications installed by the Town must remain on the IPad in usable condition and readily accessible at all times. From time to time, the Town may add or upgrade software applications for use by Town Board, such that the Board Members may be required to check in their IPads with the Town Manager, or their designee, for periodic updates and syncing.

Section 5: Acceptable Use

All of the Town's computer systems and devices, including the IPads, are considered to be public property. All documents, files, and e-mail messages created, received, stored in, or sent from any Town IPads are considered public records, subject to disclosure to the public pursuant to the North Carolina Public Records laws (with only limited exceptions as provided by law). Any request for records related to communications on the IPads must be made to the Town Clerk. All existing Town

policies will continue to apply to conduct by Town Board on computer devices, the internet, and in the use of e-mail, including but not limited to those that deal with the code of ethics, misuse of Town resources, sexual harassment, electronic communications, information and data security, and confidentiality. The use of the Town of Erwin information systems to access, transmit, store and display, or request obscene, pornographic, erotic, profane, racist, sexist, libelous, other offensive or abusive material (including messages, images, video, or sound) is prohibited.

Town Board Member shall not use the IPad, computers, or communications devices in any way so as to violate the Open Meetings law requirements, applicable governing laws, or ethical conduct and principles of an elected public official or a public employee.

Section 6: Return of the IPad

Town Board Members may return their IPads to the Town Manager, or their designee when their term and service have ended. When the IPad is returned to the Town, the Town will retrieve any appropriate backup files in accordance with the Public Records and Retention laws. The IPad will be wiped clean of any and all information at the end of the Town Board Member's term.

Section 8: Compliance with Policy

The Town reserves the right to inspect any and all files stored on the IPads that are the property of the Town in order to ensure compliance with this policy. Town Board Member should not presume to have any personal privacy right in any matter created, received, stored in, or sent from any Town-issued IPad.

TOWN OF ERWIN, NC ACKNOWLEDGEMENT OF APPLE IPAD POLICY AND RECEIPT OF TOWN-ISSUED IPAD, CASE, AND ACCESSORIES

I the undersigned Erwin Board of Commissioners Member have been provided a copy of the Town of Erwin Apple IPad Policy and understand its contents fully. I accept and understand the terms of the policy and agree to abide by all terms contained in it. I have taken possession of a Town IPad with case and accessories and I hereby acknowledge receipt of the property, will accept financial responsibility, and indemnify the Town from any fees, expenses, or damage incurred as a result of my misuse or negligence of the Town computer systems and electronic devices, including but not limited to IPads. In the event I leave office, I may return the IPad and accessories mentioned in the policy referred to above.

	Town Councilor
	Signature
	Date
Witness:	
Lauren Evans, Town Clerk	
Signature	
Samsung Model Device Serial Number	Town Asset Sticker Number
Bluetooth Keyboard model Device Serial Number	er Town Asset Number
Micro USB Connector	



TOWN OF ERWIN

P.O. Box 459 · Erwin, NC 28339 Ph: 910-897-5140 · Fax: 910-897-5543 www.erwin-nc.org

A RESOLUTION ADOPTING POLICY TO RESTRICT SMOKING AND THE USE OF TOBACCO PRODUCTS IN MUNICIPAL BUILDINGS AND ON MUNICIPAL GROUNDS

2022-2023-004

Mayor
Randy L. Baker
Mayor Pro Tem
Ricky W. Blackmon
Commissioners
Alvester L. McKoy
Timothy D. Marbell
Charles L. Byrd
David L. Nelson
William R. Turnage

WHEREAS, according to the Centers for Disease Control and Prevention (CDC), tobacco use and second hand smoke exposure are leading preventable causes of illness and premature death in North Carolina and the nation; and

WHEREAS, on January 2, 2010, "An Act To Prohibit Smoking In Certain Public Places And Certain Places of Employment", North Carolina Session Law 2009-27, became effective, authorizing local governments to adopt and enforce ordinances "that are more restrictive than State law" and that apply in local government buildings and on local government grounds, among other things; and

WHEREAS, in 2006, a report issued by the United States Surgeon General stated that the scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke, and that secondhand smoke has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers; and

WHEREAS, the health risks associated with the use of tobacco products include myocardial infarction, stroke, and adverse reproductive outcomes; and

WHEREAS, the Town of Erwin (hereinafter referred to sometimes as "the Municipality") is committed to providing a safe and healthy workplace in all municipal facilities for its employees and the visiting public; and

WHEREAS, the Town of Erwin wishes to minimize the harmful effects of tobacco use among municipal employees and eliminate secondhand smoke exposure for employees and the public in and on those buildings and grounds controlled by the Municipality; and

WHEREAS, this Board finds and declares that, in order to protect the public health and welfare, it is in the bests interests of the citizens of the Municipality to adopt a policy restricting smoking and the use of tobacco products in all municipal buildings and on all municipal grounds within twenty-five linear feet of any municipal building entrance or exit;

NOW THEREFORE, BE IT RESOLVED by the Erwin Board of Commissioners of the Erwin, North Carolina and pursuant to North Carolina General Statute §130A-498, that it is in the public interest to prohibit smoking and the use of tobacco products in all municipal buildings and on all municipal grounds within twenty-five linear feet of any municipal building entrance or exit; and

RESOLVED, smoking and the use of tobacco products are prohibited in any building owned, leased, or occupied by the Municipality and on any grounds that are owned, leased, or occupied by the Municipality within twenty-five linear feet of any municipal building entrance or exit owned, leased, or occupied by the Municipality; and

RESOLVED, for purposes of this policy, the term "Municipal building" shall mean a building owned, leased as lessor, or the area leased as lessee and occupied by the Municipality; and

RESOLVED, for the purposes of this policy, the term "Grounds" shall mean an unenclosed area owned, leased, or occupied by the Municipality; and

RESOLVED, for the purposes of this policy, the term "Smoking" means the use of a lighted cigarette, or any other lighted tobacco product; and

RESOLVED, for the purposes of this policy, the term "Tobacco product" means any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component part or accessory of a tobacco product, including but not limited to cigarettes, cigars, chewing tobacco, snuff, and any other items containing or reasonably resembling tobacco or tobacco products; and

RESOLVED, that the Town Manager or his designee shall post signs in and around Municipal buildings in a manner and location that adequately notify employees and visitors that the use of tobacco products by any person is prohibited at all times in Mu buildings and on any grounds within twenty-five linear feet of any municipal building entrance or exit; and

RESOLVED, the Town Manager or his designee shall remove all ashtrays and other smoking receptacles intended for use from Municipal buildings and grounds within twenty-five linear feet of any municipal building entrance or exit; and

RESOLVED, that the Town Manager or his designee shall ensure that notice of this policy is provided to employees and the public; and

RESOLVED, that employees of the Municipality who want to quit the use of tobacco products are encouraged to talk to their health care provider about quitting; and

RESOLVED, that employees of the Munipality who violate this policy shall be subject to disciplinary action; and

RESOLVED, that this policy is effective immediately.

Duly Adopted , this the 4 th day of May 2023.		
Randy Baker Mayor		
	ATTEST:	
	Lauren Evans	
	Town Clerk	



TOWN OF ERWIN

P.O. Box 459 · Erwin, NC 28339 Ph: 910-897-5140 · Fax: 910-897-5543 www.erwin-nc.org

TOWN OF ERWIN NOTARY PROCEDURE POLICY

Mayor
Randy L. Baker
Mayor Pro Tem
Ricky W. Blackmon
Commissioners
Alvester L. McKoy
Timothy D. Marbell
Charles L. Byrd
David L. Nelson
William R. Turnage

Purpose: The purpose of this policy is to provide guidance and establish rules regarding managing the Town of Erwin's Notary Workforce.

The basic role of the Notary is to prevent fraud; this is crucial to a Municipality's success. Employing Notaries puts you on the frontline in the battle against identity theft, forgeries, and other scams and deceits. Appointed by their states, Notaries serve as impartial witnesses to certify certain facts about the signing of documents. The official process they perform renders documents worthy of the public's trust. This offers assurance that a document is authentic, its signature is genuine, and its signer acted willingly and intended the terms of the document to be in full force and effect.

All Notary Publics employed by the Town of Erwin will follow the guidelines below:

- 1. Must be professionally trained.
- 2. Must give precedence to complying with the laws, regulations, and professional standards of practice for Notaries.
- 3. Must keep a journal of official acts and use an official seal of office.
- 4. Must only notarize Town Official Business during business hours.

Duly Adopted , this the 4 th day of May 2023.		
Randy Baker Mayor		
	ATTEST:	
	Lauren Evans Town Clerk	

Erwin Board of Commissioners

REQUEST FOR CONSIDERATION

To: The Honorable Mayor and Board of Commissioners

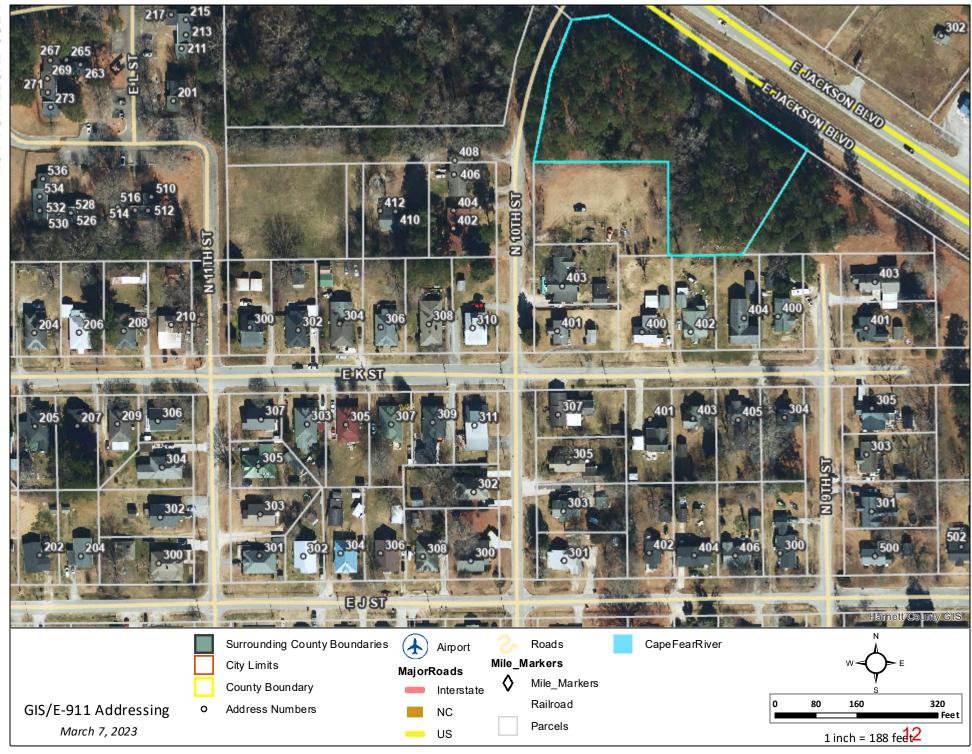
From: Snow Bowden, Town Manager

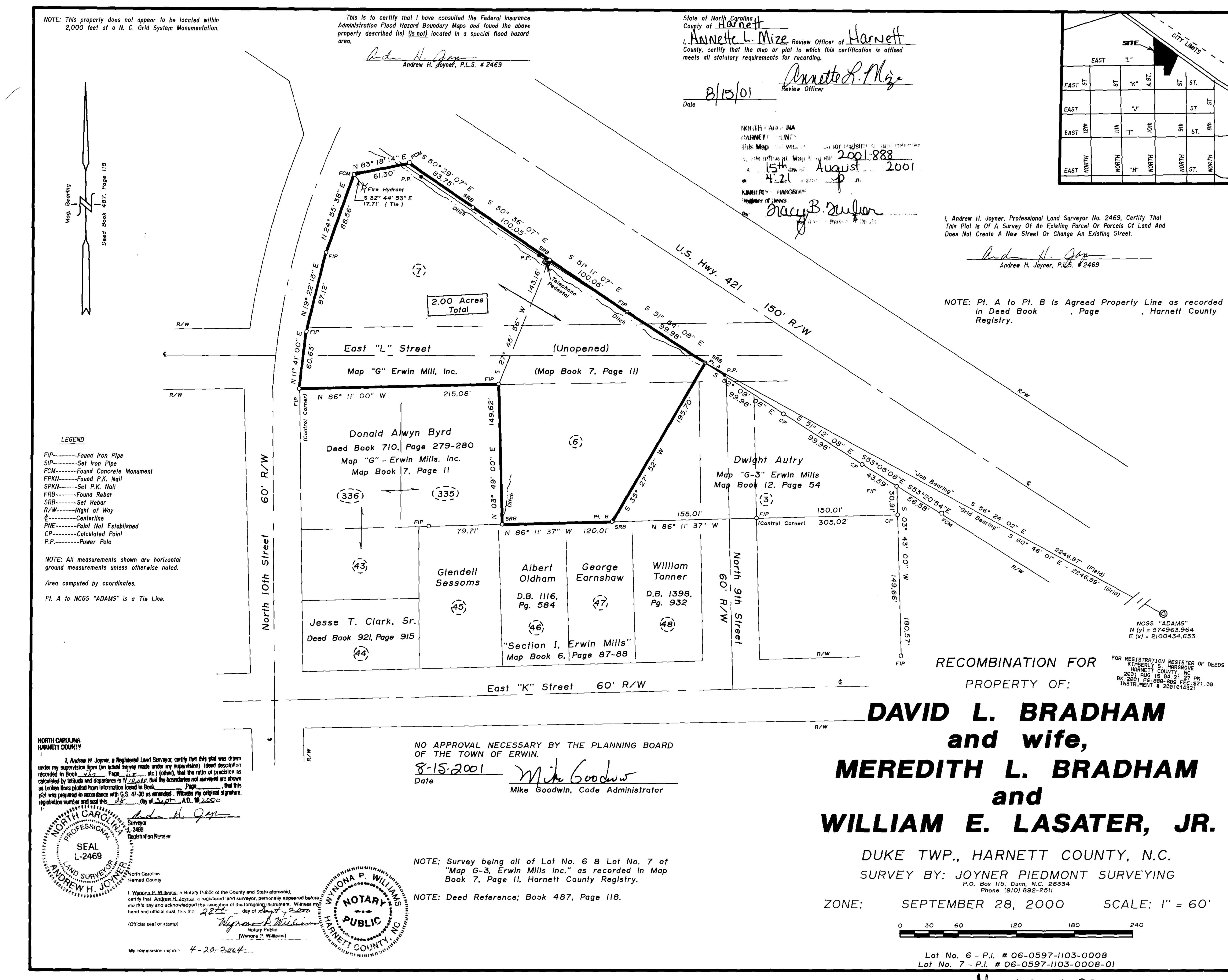
Date: April 24, 2023 Subject: East L Street

I have been approached by a property owner in Town with a request to have an unopen street formerly closed. This is an odd situation. The unopened street is not listed on the original plat of the Town, and it is only shown on a few surveys for this property. It is not shown on every survey associated with the property. The proposed road would connect to HWY 421. I highly doubt NCDOT would approve this connection. This matter has been discussed back in 2000. There was a public hearing held to discuss closing this road but the item was tabled and never brought back up for discussion.

In order to start this process the Town Board has to adopt a resolution to close the unopened portion of the street (East L Street) and have a public hearing to discuss the matter. The resolution has to be published four weeks prior to the hearing, and the adjacent property owners must be notified.

Harnett GIS





Mar# 2001-888



KIMBERLY S. HARGROVE REGISTER OF DEEDS, HARNETT COURTHOUSE P.O. BOX 279 LILLINGTON, NC 27546

Filed For Registration:

08/15/2001 04:21:27 PM

Book:

PLAT 2001 Page: 888-889

Document No.:

2001014321

MAP 2 PGS \$21.00

Recorder:

FRUDI C SMITH

State of North Carolina, County of Harnett

KIMBERLY S. HARGROVE, REGISTER OF DEEDS By:

Deputy/Assistant Register of Deeds

2001014321

2001014321

CITY COUNCIL MEETING MINUTES TUESDAY DECEMBER 12, 2000 ERWIN, NORTH CAROLINA

The Board of Commissioners for the Town of Erwin with Mayor James E. Glover presiding held a special meeting in the town hall on Tuesday, December 12, 2000 at 7:00 PM, in Erwin, North Carolina.

Board members present were Commissioners Benny Hall, Thurman E. Whitman, W. N. Porter, David A. Faircloth, and Ricky W. Blackmon.

Board member absent was Commissioner Robert A. Wilson, Jr. Wilson.

Town Manager Chuck Simmons, and Town Clerk Joan W. Weeks were present.

Mayor Glover called the meeting to order at 7:00 PM.

Commissioner Faircloth had the opening prayer.

Those present gave the Pledge of Allegiance

NEW BUSINESS

CONSIDERATION OF RESOLUTION DECLARING INTENT TO CLOSE UNOPENED PORTION OF EAST L STREET

informed the Board that the Simmons first item consideration of a resolution declaring its intent to close an unopened portion of East L Street. He further stated that Attorney Billy Godwin represents Dr. David Bradham, his wife Meredith Bradham and William E. Lasater. He said that it was his understanding that they were the new owners of the property in question, which is located at the corner of North 10th Street and Jackson Blvd. The plans are to put a chiropractic office on that property and he has not seen the plans for the office but they are in the process of being drawn up. Mr. Godwin has asked that the Town Board consider closing the unopened portion of East L Street and it is designated as 60.63-foot right of way. If the Board chooses to do that, the General Statutes spell out the procedures that it has to undergo and the first step is to approve a resolution declaring your intent to close the unopened portion of East L Street and immediately following passage of the resolution, the Town would be obligated to publish a notice in the newspaper for four consecutive weeks of our intent to close the street and we would also be establishing a public hearing. hearing for this issue has been established for January 4, 2001, which is our next regular Town Board meeting, and at that meeting citizens would have an opportunity to come forward and indicate how they could be possibly impacted by this proposal. The way the Statutes read the articles would have to be made up regarding how the closure of this street right of way would be adverse to the public interest or how an individual property owner would be denied ingress and egress to or from their property. He did not

feel that in this particular situation that this was going to be the case however, because when you look at that map this is a corner lot and all the adjacent property owners can access their property from other streets.

Commissioner Porter made a motion to approve the resolution declaring intent to close unopened portion of East L Street and was seconded by Commissioner Faircloth. The Board voted 5 for 1 absent (Wilson).

(PAGE 6114)

PRESENTATION OF FY 99-00 TOWN OF ERWIN AUDIT-GILES, STRICKLAND AND ASSOCIATES

Mr. Simmons informed the Board that the next item was presentation of the 1999-2000 Town of Erwin audit and Mr. Joes Giles is present at this time to make this presentation.

Mr. Joe Giles came forward and talked with the Board concerning the audit for fiscal year 1999-2000. He said that it was his pleasure to be able to meet with you tonight and present the audit He said that he was not going to spend a lot of time on this because there is not anything to tell you that is not good as far as the numbers for the last year are concerned. He did want to bring particular attention to the management letter. explained that a management latter was not a report card and that it is nothing more than where the CPA goes in and looks at the systems and if he finds things that he thinks could improve the internal control structure they are suppose to tell you about it. The management letter this year basically has the segregation of duties problems because we still don't have enough employees that we can separate everything like we really need to do to be able to depend on internal control by itself. He said that it does not mean that there is a problem and it will probably be there for a while longer. The only thing that we had was a small problem between two funds where some money did not get transferred between one fund and another all inside the Town of Erwin and that is the only thing that we could find and the audit was as clean as it has ever been from that standpoint. He felt that management should get some high accolades because we have had some pretty serious management letters in some of our earlier training years. He said that he was real proud of the Town's staff for doing such a good job because we do look at it pretty thoroughly. He then explained the grafts that showed how this year related to the previous year. He then went to the audit report and explained some of the schedules that were in the report. He said that the total assets this year were 1.5 million this year versus 1.8 million last year and the liabilities were about the same as last year. The total fund balance this year was 1.3 million and it was 1.679 million last year. He said that we spent \$355,160 dollars of fund balance



TOWN OF ERWIN

RECENTLY VOTED #1 SANDHILLS COMMUNITY

P.O. Box 459 Erwin, North Carolina 28339 (910) 897-5140 Fax (910) 897-5543

TOWN OF ERWIN RESOLUTION DECLARING INTENT TO CLOSE UNOPENED PORTION OF EAST L STREET

WHEREAS, the Erwin Town Board is authorized by G.S. 160A-299 to permanently close unopened municipal street rights-of-way with its jurisdiction, if it is determined that said street closure is not found to be contrary to the public interest and will not deprive any property owner in the vicinity of the street closure reasonable means of ingress and egress to his/her property; and,

WHEREAS, a request has been made of the Erwin Town Board to consider permanently closing the unused portion of East L Street, that extends from North 10th Street to U.S. 421, and traverses the property of David L. Bradham, Meredith L. Bradham, and William E. Lasater, Jr.

NOW THEREFORE BE IT RESOLVED, that it is the intent of the Erwin Town Board to permanently close the unopened portion of East L Street as previously described, and it hereby establishes a public hearing to be held on January 4, 2001, at 7:00 p.m. in the Erwin Municipal Building Board Room; and,

BE IT FURTHER RESOLVED, that the purpose of the public hearing will be to determine if the unopened portion of East L Street being requested for permanent closure would be detrimental to the public interest, or to the property rights of any individual.

DULY ADOPTED, this the 12th day of December, 2000.

James E. Glover, Mayor

ATTEST:

Joan W. Weeks, CMC

CITY COUNCIL MEETING MINUTES THURSDAY JANUARY 4, 2001 ERWIN, NORTH CAROLINA

The Board of Commissioners for the Town of Erwin with Mayor James E. Glover presiding held its regular meeting in the town hall on Thursday, January 4, 2001 at 7:00 PM, in Erwin, North Carolina.

Board members present were Commissioners Benny Hall, Thurman E. Whitman, W. N. Porter, Commissioner Robert A. Wilson, Jr., David A. Faircloth, and Ricky W. Blackmon.

Commissioner Porter came in late.

Town Manager Chuck Simmons, Town Clerk Joan W. Weeks, and Town Attorney Vernon K. Stewart were present.

Mayor Glover called the meeting to order at 7:00 PM.

Commissioner Wilson had the opening prayer.

Those present gave the Pledge of Allegiance.

APPROVAL OF MINUTES OF NOVEMBER 20, 2000 MEETING

Commissioner Hall made a motion to approve the minutes for the November 20, 2000 meeting as stated and was seconded by Commissioner Blackmon. The Board voted 5 for 1 absent (Porter).

CITIZENS ADDRESSES TO THE TOWN BOARD REGARDING AGENDA ITEMS, WHICH POTENTIALLY AFFECT THEM

No one came forward at this time.

Commissioner Blackmon made a motion to close the regular meeting to go into a public hearing at 7:03 PM and was seconded by Commissioner Hall. The Board voted 5 for 1 absent (Porter).

PUBLIC HEARING

RESOLUTION OF INTENT TO CLOSE UNOPENED PORTION OF EAST L STREET

Mr. Simmons informed the Board that the next item was a public hearing. This resolution was passed on December 12, 2000 that indicated its intent to close an unopened portion of East I Street. He further stated that this was a 60-foot right of way, which runs off of North 10th Street and runs at an angle until it merges with US 421. The street has never been opened. The petitioners that initially made this request are David L. Bradham and wife Meredith L. Bradham and William G. Lasater, Jr. Once the Town Board adopted the resolution of intent to close this street, included in that resolution was this date for the public hearing established and the notification requirements were initiated. The

notification requirements are that this issue had to be advertised for four consecutive weeks in a local newspaper and also we are required to send certified mail to all adjacent property owners and the property has to be posted in two conspicuous places and all of this has been done. He had been contacted by at least one property owner, other than the petitioners, that is interested in the closure of the property how the resulting property or land would be divided. He said that all he could refer that individual to was the General Statutes. The General Statutes make reference to that fact in saying that if the right of way is closed that the property rights would go to those individuals owning lots or parcels of land adjacent to the street or alley. The title for such adjoining land would go to the owners for the width of the abutting land owned they would get half of the right of way on either side of the street.

Mr. William G. Lasater, Jr. came forward and asked that this issue be tabled at this time. He said that some information had come to his attention that needed to be addressed because if they could not use the property for a medical facility there would be no need to close the right of way.

When no one else came forward Commissioner Hall made a motion to close the public hearing and go back into the regular meeting at 7:09 PM and was seconded by Commissioner Blackmon. The Board voted 6 for 0 against.

UNFINISHED BUSINESS

CONSIDERATION OF RESOLUTION ORDERING PERMANENT CLOSURE OF UNOPENED PORTION OF EAST L STREET

Mr. Simmons informed the Board that the next item was consideration of resolution ordering permanent closure of unopened portion of East L Street. He also informed the Board that they could now consider Mr. Lasater's request.

Commissioner Hall made a motion to table this issue until a later date and was seconded by Commissioner Blackmon. The Board voted 6 for 0 against.

CONSIDERATION OF PROPOSED AMENDMENTS TO MINIMUM HOUSING CODE

Mr. Simmons informed the Board the next item was consideration of proposed amendments to the minimum housing code. He said that at our last meeting we had a public hearing on this issue whereby a number of amendments are being proposed by our building inspector. He further stated that there are not any major departures from our existing minimum housing code. He explained to the Board that there was one significant change that he felt was necessary and

ERASING THE PAPER STREET

By David A. Bennington

(Published February 23, 1998 in North Carolina Lawyers Weekly)

Access is essential to the development and use of real property and it is a fundamental concern when examining title. Considerable effort by the closing attorney is often necessary to establish record access in order to market property. On occasion, however, the closing attorney is faced with the prospect of terminating existing rights of way because they interfere with the intended use or development of the property. The termination of record access can be as critical an issue in the completion of a closing as the establishment of access in the more typical transaction.

There are three statutory procedures available to the closing attorney which provide a mechanism to terminate access rights of way which have been previously established on the public record. Usually, the rights of way have never existed in fact, but are disclosed only in the record title by deed, easement or plat. They exist on paper only.

The termination of "paper streets" usually has two objectives. First, there is the termination of the rights of others to utilize the easements as rights of way. Second, is the resolution of the question of fee ownership of the land over which the easement was established.

Closure by Private Action

N.C. Gen. Stat. § 136-96 provides the attorney a procedure by which, under appropriate circumstances, rights of way can be withdrawn by private action of interested parties. The statute applies to "[e]very strip, piece or parcel of land" which has been dedicated to public use "as a road, highway, street, avenue, or for any other purpose" and which has not been opened and used within 15 years from and after the dedication.

In such circumstances, the "dedication" is conclusively presumed to have been abandoned by the public. Upon the filing of a declaration of withdrawal in the Office of the Register of Deeds by the dedicator or "some one or more of those claiming under him," all claims of public and private rights in the withdrawn area are effectively terminated. It must be noted that with respect to the private rights of individuals, the statute does not apply where the "continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway."

The primary purpose of the statute is the withdrawal of easement rights. The filing of a declaration under the statute does not affect the fee ownership of the underlying land within the dedicated area except in the single instance where the original dedicator was a corporation which at the time of withdrawal no longer exists. In such case, the title to the land within the right of way is "conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent thereto."

Governmental Closings

Two additional statutes provide procedures for the closing of streets and rights of way by governmental action. N.C. Gen. Stat. § 160A-299 applies to streets within municipalities and their extra territorial jurisdiction and N.C. Gen. Stat. § 153A-241 deals with roads within counties. These are essentially companion statutes with similar requirements and results.

Under N.C. Gen. Stat. § 160A-299, a city council may permanently close any street or public alley which has been irrevocably dedicated to public use, including streets which have not actually been opened. The statute requires the council to adopt a resolution of intent to close the designated street. The resolution and notice of public hearing must be published for four weeks prior to the hearing. Additionally, the notice must be sent by registered or certified mail to all property owners adjoining the right of way and posted in at least two places along the affected street.

After public hearing, during which interested parties may be heard, the council may determine that the public interest is served by the closing and an order to that effect issued. The order must then be recorded in the Office of the Register of Deeds. Any aggrieved party may appeal the entry of the order pursuant to the statute within thirty (30) days of its adoption.

Once entered, and subject to any appeal, the order has the effect of vacating public rights within the street and vesting title in adjoining lot owners to the centerline of the closed street. It should be noted that the closing of any street maintained and controlled by the Department of Transportation is not complete unless and until that department consents. Also, any utilities either public or franchised private concerns may be reserved by the city. Any such reservation shall be set forth in the order vacating the street.

County governments are afforded comparable authority to close "paper streets" in their jurisdiction through N.C. Gen. Stat. § 153A-241, which enables a county via the board of commissioners to permanently close any public road located within the county which is not under the control of the Department of Transportation or a municipality in its extra-territorial jurisdiction. The procedure outlined by the statute is similar to that of N.C. Gen. Stat. § 160A-299 and includes the following steps:

- 1. Adoption of a resolution of intent to close street and setting of a public hearing;
- Publication of the resolution for each of four successive weeks;
- 3. Notice to all adjoining property owners via registered or certified mail; and
- 4. Posting of the resolution in at least two places along the subject street.

Upon hearing, the commissioners may adopt an order closing the street which shall be filed with the register of deeds and is subject to appeal for a period of thirty (30) days. Tracking the result of N.C. Gen. Stat. § 160A-299, the effect of such an order is to vest title in adjoining property owners to the center line of the closed street subject to any easements for utilities existing prior to the closing.

Comparison of the Statutes

The procedures outlined by each statute are straightforward but additional attention should be directed to the application and result of those procedures, since a determination of which statute applies in a given situation will effect different results as to the fee title. N.C. Gen. Stat. § 136-96

refers to streets which have been "at any time dedicated to public use" while § 160A-299 by its terms applies to any street which has been "irrevocably dedicated to the public, without regard to whether it has actually been opened." Section 153A-241 simply references any public road or easement.

The use of the term "dedication" in § 136-96 may be misplaced. The most technical use of the term indicates both an offer of dedication to the public at large <u>and</u> acceptance of that offer by recognizable act. This is clearly not the situation that the statute is designed to address. By its terms the statute deals with streets and easements which have not actually been opened, and therefore have never been accepted.

The cases construing § 136-96 make it clear that the statute does not apply when there has been an actual use (acceptance) by the public. Russell v. Coggin, 232 N.C. 674, 62 S.E.2d 70 (1950); Janicki v. Lorek, 255 N.C. 53, 120 S.E.2d 413 (1961). Under § 136-96, the use of the term dedication implies an offer of declaration only. Conversely, the authorities construing N.C. Gen. Stat. § 160A-299 and N.C. Gen. Stat. § 153A-241 indicate that actual public use or acceptance is a prerequisite to the application of the statutes. In re Easement of Right of Way, 90 N.C. App. 303, 368 S.E.2d 639 (1988).

As previously mentioned, withdrawal under N.C. Gen. Stat. § 136-96 serves only to terminate easement rights and leaves the underlying fee in the original dedicator, his heirs or assigns, save only the cases involving now defunct corporations. Sections 160A-299 and 153A-241 establish presumptions of ownership in adjoining property owners whether corporate or individuals. But for the provisions of § 160A-299 relating to unopened streets, the distinguishing factor appears to be the creation of public rights in streets which are thereafter vacated. Although the city or county never acquires fee title via dedication, the logical extension of these two statutes is that acceptance and use by the public serves to terminate private ownership in the underlying fee. Nevertheless, it is difficult to reconcile § 160A-299(d).

None of these statutes discussed is a "cure all." While each can be extremely useful in the appropriate situation, the closing attorney must carefully examine and analyze the nature of the streets or rights of way he is attempting to terminate and then carefully adhere to the statutory procedures.

For a more in depth and scholarly treatment of N.C. Gen. Stat. § 160A-299 and other issues relating to municipal rights of way, the author highly recommends *Property Interests in North Carolina City Streets* by David M. Lawrence, Institute of Government, The University of North Carolina, Chapel Hill, 1985.



TOWN OF ERWIN

P.O. Box 459 · Erwin, NC 28339 Ph: 910-897-5140 · Fax: 910-897-5543 www.erwin-nc.org

TOWN OF ERWIN RESOLUTION DECLARING INTENT TO CLOSE UNOPENED PORTION OF EAST L STREET 2022-2023—005

Mayor
Randy L. Baker
Mayor Pro Tem
Ricky W. Blackmon
Commissioners
Alvester L. McKoy
Timothy D. Marbell
Charles L. Byrd
David L. Nelson
William R. Turnage

WHEREAS, the Erwin Town Board is authorized by G.S. 160A-299 to permanently close unopened municipal street rights-of-way with its jurisdiction, if it is determined that said street closure is not found to be contrary to the public interest and will not deprive any property owner in the vicinity of the street closure reasonable means of ingress and egress to his/her property; and,

WHEREAS, a request has been made of the Erwin Town Board to consider permanently closing the unused portion of East L Street, that extends from North 10th Street to U.S. 421, and trayerses the property of David L. Bradham, Meredith L. Bradham, and William E. Lasater, Jr.

NOW THEREFORE BE IT RESOLVED, that it is the intent of the Erwin Town Board to permanently close the unopened portion of East L Street as previously described, and it hereby establishes a public hearing to be held on June 1, 2023 at 7:00 p.m. in the Erwin Municipal Building Board Room; and,

BE IT FURTHER RESOLVED, that the purpose of the public hearing will be to determine if the unopened portion of East L Street being requested for permanent closure would be detrimental to the public interest, or to the property rights of any individual.

DULY ADOPTED, this the 4th day of May, 2023.

Randy Baker	_	
Mayor		
•	ATTEST:	
	Lauren Evans	
	Town Clerk	

Erwin Board of Commissioners

REQUEST FOR CONSIDERATION

To: The Honorable Mayor and Board of Commissioners

From: Snow Bowden, Town Manager

Date: April 24, 2023 Subject: BOA 2023-04

This budget amendment will balance out the budget for the Erwin Public Library. This year we were a part of the library consolidation with Harnett County. The transition has gone well. We have heard a lot of positive feedback on this project. The process was delayed a month. This requested amendment will help balance our budget.

BUDGET ORDINANCE AMENDMENT BOA 2023 – 04 FISCAL YEAR 2022-2023

BE IT ORDAINED by the Governing Board of the Town of Erwin, North Carolina that the following amendments are made to the annual budget ordinance for the fiscal year ending June 30, 2023.

Section 1. This Budget Ordinance Amendment seeks to Increase Revenues and Increase Expenditures by \$10,228.00. This will recognize additional revenues for Harnett County Ad Valorem 2022 Taxes and unanticipated Library Expenses, keeping the budget in balance.

Section 2. To amend the General Fund: The revenues are to be changed as follows:

Account	Description	Current Approp.	Increase/Decrease	Amended Appropriation
10-3010-022	Ad Valorem 2022	\$1,480,186.00	(+) \$10,228.00	\$1,490,414.00

Section 3. To amend the General Fund: The Expenditures are to be changed as follows:

Account	Description	Current Approp.	Increase/Decrease	Amended Appropriation
10-6300-020	Salaries	-0-	(+) \$4,892.00	\$4,891.00
10-6300-050	FICA Exp	-0-	(+) \$ 375.00	\$ 375.00
10-6300-060	Group Ins.	-0-	(+) \$ 635.00	\$ 635.00
10-6300-070	Retirement	-0-	(+) \$ 581.00	\$ 581.00
10-6300-071	401K Contribution	-0-	(+) \$ 245.00	\$ 245.00
10-6300-130	Utilities	-0-	(+) \$ 3,500.00	\$3,500.00

Section 4. Copies of this budget amendment shall be furnished to the Clerk, the Governing Board, the Budget Officer and the Finance Director for their direction.

Adopted this 4th day of May 2023.		
	Randy L. Baker, Mayor	
ATTEST:		
Lauren Evans, Town Clerk		

Erwin Board of Commissioners

REQUEST FOR CONSIDERATION

To: The Honorable Mayor and Board of Commissioners

From: Snow Bowden, Town Manager

Date: April 24, 2023 Subject: BOA 2023-05

At the moment, our Sales Tax revenues have exceeded what I thought they would. This request is to take some of the additional revenue, and add it to our Storm Water budget. This proposed request would help cover improving our ditch near the Erwin Elementary School site. The estimated cost of the project is \$18,332.00.

BUDGET ORDINANCE AMENDMENT BOA 2023 – 05 FISCAL YEAR 2022-2023

BE IT ORDAINED by the Governing Board of the Town of Erwin, North Carolina that the following amendments are made to the annual budget ordinance for the fiscal year ending June 30, 2023.

Section 1. This Budget Ordinance Amendment seeks to Increase Revenues and Increase Expenditures by \$40,000. This will recognize additional revenues for Harnett County Ad Valorem 2022 Taxes and additional Sales and Use Tax revenues, and also recognizing unanticipated Public Works: Storm Water Expenses, keeping the budget in balance.

Section 2. To amend the General Fund: The revenues are to be changed as follows:

Account	Description	Current Approp.	Increase/Decrease	Amended Appropriation
10-3010-022	Ad Valorem 2022	\$1,490,414	(+) \$17,268	\$1,507,682
10-3450-000	Sales/Use Tax	\$750,000	(+) \$22,732	\$ 772,732

Section 3. To amend the General Fund: The Expenditures are to be changed as follows:

Account	Description	Current Approp.	Increase/Decrease	Amended Appropriation
10-5900-450	Contracted Serv.	-0-	(+) 40,000	\$40,000

Section 4. Copies of this budget amendment shall be furnished to the Clerk, the Governing Board, the Budget Officer and the Finance Director for their direction.

Adopted this 4th day of May 2023.		
ATTEST:	Randy L. Baker, Mayor	
Lauren Evans, Town Clerk		

Erwin Board of Commissioners

REQUEST FOR CONSIDERATION

To: The Honorable Mayor and Board of Commissioners

From: Snow Bowden, Town Manager

Date: April 24, 2023 Subject: ZT-2023-002

The Town of Erwin has received an application with a rezoning request. The request is to have the parcel at 306 Masonic Road rezoned from R-10 (residential) to B-2 (Highway Business). There is an existing residential structure on the property at the moment. The parcel is located at the corner of HWY 421 and Masonic Road. The parcel is adjacent to a B-2 Zoning District. The parcel is also located adjacent to a B-1 Zoning District (Neighborhood Business). The property owner has requested this rezoning to make the property more marketable. The Planning Board recommended that this rezoning request be approved.

13-6

Apr. 103.06.00

Revised 9-19-2014



3.30	Application for an
WH OF FR	Amendment To The Official Zoning Map
(P) Z	of Erwin, NC
903~1967	Staff Only: Zoning Case # Z-2023 - ODZ Fee: Check # MO Cash PB Recommendation: A D A/W Conditions BOC Date: (1/2) Decision: A D T A/W Conditions
Print Applicant Name	BRUCE MARTIN
Name of Legal Proper	THE OWNER SUNDANG RENOVATIONS INC
Please Circle One of	the Following: Eess than one Acres One to 4.99 Acres Five or more Acres
Zoning change reques If Conditional Distric Harnett County Tax M	sted from Res R-10 to B-Z
Se atthe	
 Submit names a rezoning area (a street(s) and ide Attach a metes a lots in an approx This application least 25 days be without penalty 	nd addresses of property owners immediately adjacent to the proposed and properties within 100 feet of proposed rezoning area) and across any ntify on an area map and bounds description, deed drawing of the area involved or a reference to wed subdivision on the entire property requested for change must be filed with the Town Hall by 4:00 p.m. on the Friday which is at fore the meeting at which it is to be considered and may be withdrawn no later than 19 days prior to the public hearing
Whenever an applicate Board, such application year after the previous	tion requesting an amendment has been acted on and denied by the Town on, or one substantially similar shall not be reconsidered sooner than one s denial.
subsequently amende	the undersigned that the Zoning Map, as originally adopted and as d, is presumed by the Town to be appropriate to the property involved and proof for a zoning amendment rests with the applicant. Applicant is as the Proposed Zoning Amendment with Affected Property Owners.
MV	910-891-8569
Signature of A	Applicant Contact Number
P.D. Box	
1 20000	Mailing Address of Applicant



REZONING MAP REQUEST STAFF REPORT

Case: <u>ZT-2023-002</u>
Snow Bowden, Town Manager townmanager@erwin-nc.org

Phone: (910) 591-4200 Fax: (910) 897-5543

Planning Board:	04/17/2023	Town 05/04/2023 Commissioners:
Masonic Ro	oad. The parcel is curr	ent to one parcel located at 306 rently zoned R-10 and the applicant oned to Highway Business (B-2)
Applicant	Information	
		Applicant:
Owner of Rec	cord:	
Name: Sun Dawg Renovations, INC.		Name: Sun Dawg Properties
Address: PO Box 2474		Address: PO Box 2474
City/State/Zip:	: Dunn, NC 28335	City/State/Zip: Dunn, NC 28335
City/State/Zip:	: _ <u>Dunn, NC 28335</u>	City/State/Zip: Dunn, NC 28335

Property Description

Address- 306 Masonic Road Harnett County Tax PIN 1507-14-0672.00 Acres .73 Zoning District- Residential (R-10)

Vicinity Map

- See Attached Harnett County GIS Image with zoning districts
- See Attached Harnett County GIS Image without zoning districts

Physical Characteristics

Site Description: This site has an existing home located on it. The site is .43 acres and is located at the corner of HWY 421 and Masonic Road.

Surrounding Land Uses: There is a vacant parcel adjacent to this property. There are commercial uses across the street. There are residential uses adjacent to the rear side of the property but those homes front North 6th Street.

Services Available

- Harnett County Regional Water
- Duke Energy would provide electricity
- CenturyLink is the telephone provider

Staff Evaluation

Town Staff would recommend this rezoning request be evaluated for feasibility.

Staff Evaluation

X Yes No The IMPACT to the adjacent property owners and the surrounding community is reasonable, and the benefits of the rezoning outweigh any potential inconvenience or harm to the community

• **Reasoning:** This parcel is adjacent to a four land highway (HWY 421). It is located at the corner of two NCDOT roads. The parcel would be accessed from Masonic Road which is a NCDOT road. The impact to the community would be reasonable.

X Yes No The requested zoning district is COMPATIBLE with the existing Land Use Classification.

• **Reasoning:** This parcel is located in an area identified for High Intensity Growth in our 2014 Land Use Plan. This classification is intended for commercial uses that have a more regional draw and may serve residents outside of the immediate area.

X Yes No The proposal does ENHANCE or maintain the public health, safety and general welfare.

• **Reasoning:** This parcel is located at the corner of two NCDOT roads. It would provide a site for future development to serve our residents.

X Yes No The request is for a SMALL SCALE REZONING and should be evaluated for reasonableness.

• **Reasoning:** This request is for one parcel that is .73 acres

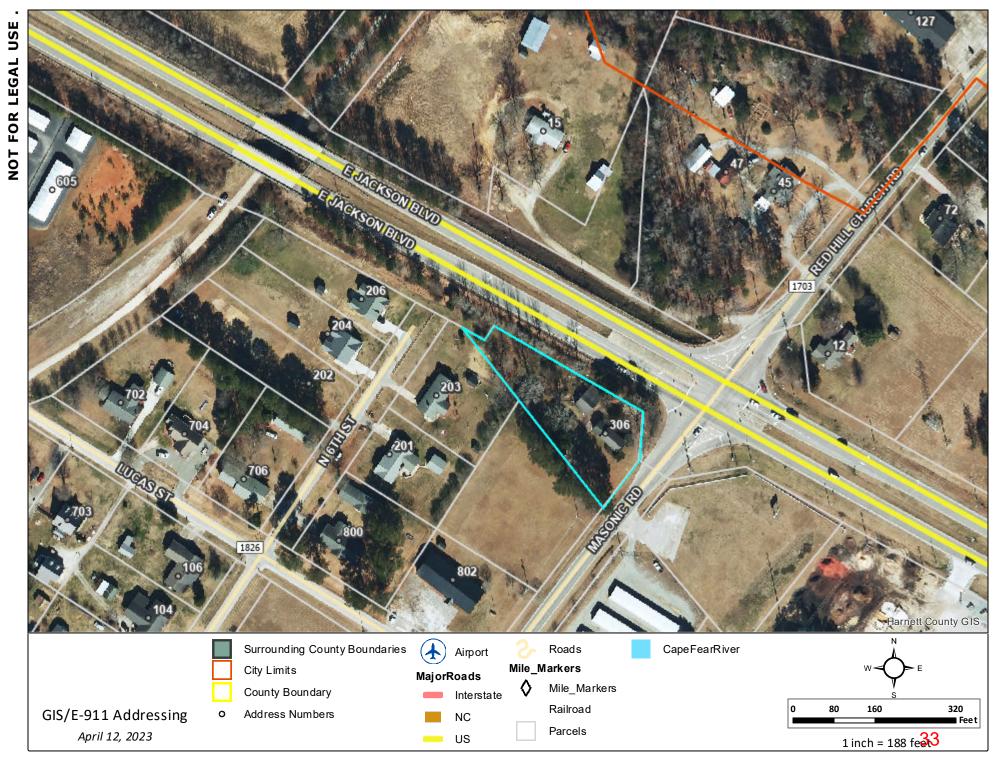
There is convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest and not merely in the interest of an individual or small group. YES	This parcel is adjacent to other commercial land uses and all of the permitted uses in our Highway Business district would be appropriate at this site.
There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change. (When a new district designation is assigned, any use permitted in the district is allowable, so long as it meets district requirements, and not merely uses which applicants state they intend to make of the property involved.) YES	This parcel is adjacent to other commercial land uses and all of the permitted uses in our Highway Business district would be appropriate at this site.
There is convincing demonstration that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed change. YES.	This parcel is located at the corner of two NCDOT roads. There are commercial land uses
The proposed change is in accord with the Land Development Plan and sound planning principles. YES	This parcel is located in an area identified for High Intensity Growth.

Statement of Consistency

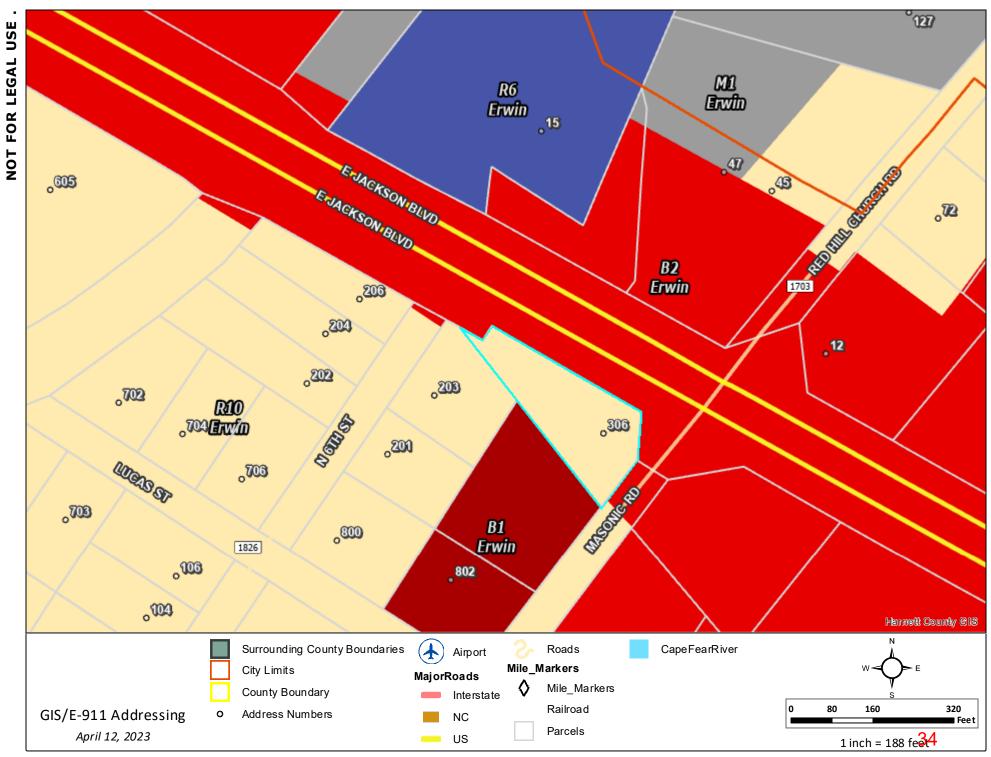
The requested rezoning Highway Business (B-2) is compatible with all of the Town of Erwin's regulatory documents and would not only have an positive impact on the surrounding community, but would enhance the public health, safety, and general welfare as stated in the evaluation. It is recommended that this rezoning request be **Approved**.

Attachments:

- ZT-2023-002 Application
- Harnett County GIS Image with zoning districts
- Harnett County GIS Image without zoning districts
- Property owners notified



Harnett GIS



Erwin Board of Commissioners

REQUEST FOR CONSIDERATION

To: The Honorable Mayor and Board of Commissioners

From: Snow Bowden, Town Manager

Date: April 24, 2023 Subject: SU-2023-002

The property owner at 129 Bumpas Creek Access has submitted a Special Use Application permit to the Town of Erwin to operate a Customary Home Occupation inside their home. The occupation would be operating an online sales business from their home office.