State of North Carolina

Minutes

County of Madison

The Madison County Board of Commissioners met in special session on Tuesday, May 13, 2025, at 5:30 p.m. at the North Carolina Cooperative Extension-Madison County Center located at 258 Carolina Lane, Marshall, North Carolina.

In attendance were Chairman Matt Wechtel, Vice-Chairman Jeremy Hensley, Commissioner Bill Briggs, Commissioner Alan Wyatt, County Manager Rod Honeycutt, County Attorney Donny Laws, and Clerk Mandy Bradley. Commissioner Michael Garrison was not in attendance.

The meeting was called to order at 5:38 p.m. by Chairman Wechtel.

Item 1: Terri Moser et. al v. Madison County, File Number 24 CVS 322, Item 2: Legal Advice Regarding Building Inspections and Permitting, Item 3: Property Acquisition, Item 4: Legal Advice Regarding Potential Litigation of Classification Status Item

Upon motion by Commissioner Wyatt and second by Vice-Chairman Hensley, the Board voted unanimously to enter into closed session pursuant to N.C.G.S. 143-318.11 (a)(3) and N.C.G.S. 143-318.11 (a)(5) at 5:39 p.m.

Upon motion by Vice-Chairman Hensley and second by Commissioner Wyatt, the Board voted unanimously to return to open session at 6:40 p.m.

Upon motion by Vice-Chairman Hensley and second by Commissioner Wyatt, the Board voted unanimously to accept the compromise as provided by Attorney John Noor in reference to Terri Moser vs. Madison County. (Attachment 1.1)

Upon motion by Commissioner Wyatt and second by Chairman Wechtel, the Board voted unanimously to adjourn at 6:41 p.m.

This the 13th day of May 2025.

MADISON COUNTY

Matt Wechtel, Chairman
Board of Commissioners

ATTEST:

Mandy Bradley, Clerk

STATE OF NORTH CAROLINA

COUNTY OF MADISON

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (this "Agreement") is made and entered into this ____ day of April, 2025, by and between **Terri Moser, Percy L.D. Thackston, Jr. and Virginia Banales Thackston** (hereinafter "Applicant") and **Madison County** (hereinafter the "County"). Applicant and the County are each hereinafter known as a Party and collectively as the "Parties."

RECITALS:

WHEREAS, certain disputes between Applicant and the County have arisen related to the County's Zoning Board of Adjustment's ("BOA") denial of a variance application ("Variance") for a reduction in the setback requirement from a protected ridge for the construction of a house, ("Project") at 32 Hickory Ridge Dr. Lot 176, Weaverville, NC ("Site"). The denial of the Variance is hereinafter referred to as the "Permit Denial" or "Dispute"); and

WHEREAS, the Parties are involved in a pending appeal of the Permit Denial identified as *24 CVS 322*, Madison County Superior Court ("Superior Court Appeal"); and

WHEREAS, in order to avoid the high costs and expenses associated with the Superior Court Appeal, and the uncertainty of litigation, the Parties are desirous of settling the Dispute; and

NOW, THEREFORE, in consideration of the agreements and undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency

of which is hereby acknowledged, Applicant and the County agree to settle the Dispute and enter into this Release and Settlement Agreement, as follows:

1. **CONSENT ORDER** Contemporaneous with the execution of this Agreement, the Parties, by and through their authorized representatives, shall authorize the entry of the Order attached hereto as **Exhibit "A"**. The Exhibit "A" Order shall be presented to the Superior Court for consideration and approval on the Hearing Date. The "Hearing Date" is currently scheduled for _____ in Madison County, part of the 35th Judicial District. The Hearing Date may be rescheduled upon the consent of Applicant and the County or by the Court in its discretion. The purpose of the Order is to show the County's agreement with the reversal of the BOA's Permit Denial and to specifically authorize the BOA, upon remand, to approve the issuance of the Variance for the Project pursuant to the BOA Consent Order attached hereto as **Exhibit "B"** which shows a revised development proposal set forth on the site plan attached thereto as Exhibit "1" ("Revised Plan").

At the hearing on the Hearing Date, or at any other hearing addressing the merits of the Permit Denial, including any appeal therefrom to the appellate courts, the County, by and through its attorneys of record, shall represent substantially at each level before the appropriate tribunal the following: The County acknowledges that the BOA erred in the Permit Denial as stipulated to in the Exhibit "A" Order in light of applicable statutory provisions (N.C.G.S. §160D-705) and appellate court precedent. The County further acknowledges that the Variance as requested by the Applicant should have been issued in accordance with the original application in that

Applicant had made out before the BOA a *prima facie* case of entitlement to said permit and said permit should now be allowed to be issued for the Revised Plan shown in Exhibit 1 to the BOA Consent Order.

2. ISSUANCE OF VARIANCE. Unless otherwise enjoined, directed, instructed or ordered by a court of competent jurisdiction, the County shall cause the BOA to notice in and conduct a special, public meeting of the BOA during the month of May 2025 or as soon as practicable for the purposes of issuing the Variance for the Project consistent with the terms in Paragraph No. 1 above.

3. RELEASE OF CLAIMS. In exchange for the terms and conditions of this Agreement (except as provided below), Applicant, for itself and its managers, members, employees, agents, successors in interest and assigns, does hereby release and discharge the County, its commissioners, officers, employees, agents, attorneys, successors in interest and assigns from any and all claims, demands, damages, actions, causes of action, fees, expenses or costs, of any kind or nature, arising out of or connected with the Dispute, known or unknown, which were or could have been asserted related to same, except for specific enforcement of this Agreement, including the Orders specified above, and damages that may arise as a result of a breach.

The County, on behalf of itself and its commissioners, officers, employees, agents, successors in interest and assigns, does hereby release and discharge Applicant, and its managers, members, employees, agents, successors in interest and assigns, from any and all claims, demands, damages, actions, causes of action, fees, expenses or costs, of any kind or nature, arising out of or connected with the Dispute,

known or unknown, which were or could have been asserted related to same, except for specific enforcement of this Agreement, including the Orders specified above. The County does not release or discharge any other claims, demands, actions, causes of action, fees, expenses, or costs unrelated to the Dispute.

4. COSTS AND FEES. All Parties agree that they will bear their own attorney's fees, costs and expenses of any kind incurred in the Dispute.

5. CHOICE OF LAW; CHOICE OF FORUM. This Release and Settlement Agreement shall be governed by and interpreted in accordance with the laws of North Carolina. In the event of a dispute related to the terms or the enforceability of this Release and Settlement Agreement, Madison County, North Carolina shall be the exclusive venue for the resolution of such disputes.

6. MERGER. The Parties represent that they have read this Release and Settlement Agreement and acknowledge that no representation or promise of any kind, other than as contained herein, has been made by the Parties hereby released or anyone acting for them. The Parties have relied fully and completely on their own judgment and advice of their attorneys in executing this.

7. VOLITIONAL ACT. By signing this Release and Settlement Agreement, the Parties acknowledge they have done so voluntarily, having been advised by their attorneys as to its contents. Each Party hereto represents that it has carefully read and fully understands the terms, conditions, meaning and intent of this Release and Settlement Agreement, and that each Party has had an opportunity to discuss the terms, conditions and provisions with legal counsel prior to the

execution hereof. Each Party specifically hereby acknowledges receipt of a copy of this Release and Settlement Agreement before signing it and understands that each and every provision of this Release and Settlement Agreement is contractual, legally binding and not mere recitals. Each Party acknowledges that they are executing this Release and Settlement Agreement after having received from independent legal counsel of his, her or their own choosing, legal advice as to his, her or their rights hereunder and the legal effect thereof, to the extent each Party deemed appropriate. Each Party agrees to sign this Release and Settlement Agreement as his, her or their own voluntary act and deed, and represents that such execution was not the result of any duress, coercion or undue influence upon any of them.

8. MULTIPLE COUNTER-PARTS. This Release and Settlement Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof with respect to this Release and Settlement Agreement it will be necessary to produce only one copy hereof signed by the Party to be charged.

9. NO DRAFTING PRESUMPTIONS. This Release and Settlement Agreement has been drafted by the Parties and no presumptions or rules of construction related to drafters shall be applied in favor of one against the other.

10. FUTURE COOPERATION. The Parties agree to cooperate fully, to promptly execute any and all supplementary documents, and to promptly take all additional actions that may be necessary to give full force and effect to the terms of this Release and Settlement Agreement.

11. SUCCESSORS/ASSIGNS. This Release and Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto. The terms of this Release and Settlement Agreement are contractual and not a mere recital.

IN WITNESS WHEREOF, the Parties have executed this Release and Settlement Agreement as of the day and year first hereinabove set forth.

TERRI MOSER

_____

Terri Moser

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he/she is the _____ of **Brown Haven Homes, LLC** and that he/she, as _____, being authorized to do so, executed the foregoing instrument on behalf of **Brown Haven Homes, LLC.**

Date: _____

_____
Notary Public

PLACE NOTARY SEAL INSIDE THIS BOX ONLY!

_____
(Printed Name of Notary)

My Commission Expires:_____

_____

Percy L.D. Thackston, Jr.

_____

Virginia Banales Thackston

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that **Percy L.D. Thackston, Jr. and Virginia Banales Thackston** personally appeared before me this day, and being by me duly sworn, acknowledged that they executed the foregoing instrument.

Date: _____

_____

Notary Public

PLACE NOTARY SEAL INSIDE THIS BOX ONLY!

_____

(Printed Name of Notary)

My Commission Expires:_____

MADISON COUNTY

By: _____

Print Name: Matt Wechtel

Print Title: Chairman

STATE OF NC

COUNTY OF Madison

I, Kary A. Ledford, a Notary Public of the County and State aforesaid, certify that Matt Wechtel personally came before me this day and acknowledged that he/she is the Chairman of BOCC of **Madison County** and that he/she, as Chairman, being authorized to do so, executed the foregoing instrument on behalf of **Madison County.**

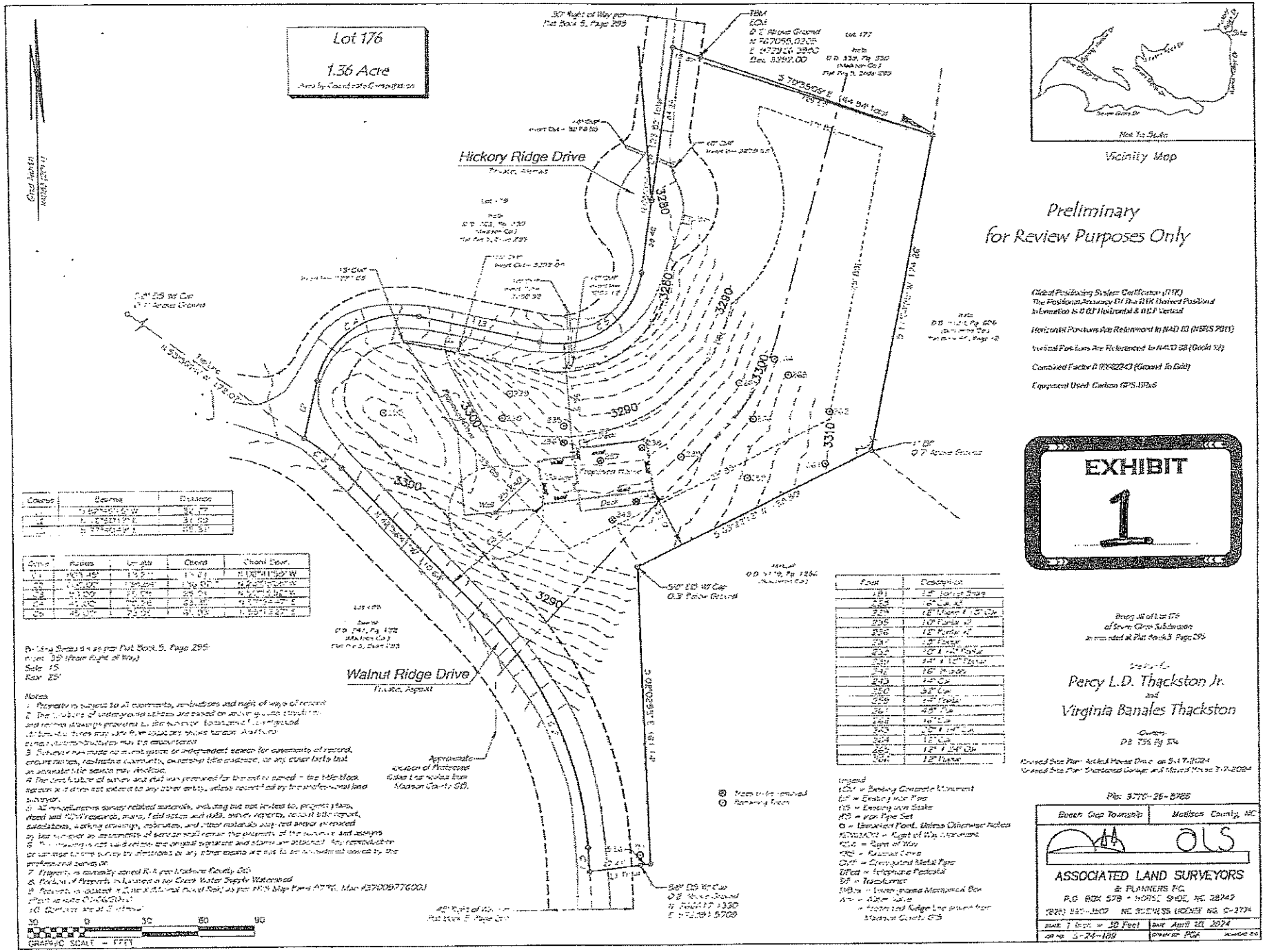
Date: 13 May '25

_____
Notary Public

17Dec29 Kary A. Ledford
(Printed Name of Notary)

My Commission Expires: 17Dec29

PLACE NOTARY SEAL INSIDE THIS BOX ONLY!


Lot 176
1.36 Acre
Hickory Ridge Drive
Walnut Ridge Drive
Preliminary
for Review Purposes Only
EXHIBIT
1
Vicinity Map
Not To Scale
Percy L.D. Thackston Jr.
and
Virginia Banales Thackston
ASSOCIATED LAND SURVEYORS
& PLANNERS P.C.
P.O. BOX 578 • HORSE SHOE, NC 28742
(828) 891-4607 NC BUSINESS LICENSE NO. C-2774
Beech Gap Township
Madison County, NC
April 22, 2024
Pin: 9776-26-8788