



JAN 26 2023

MEMORANDUM

TO: Mayor Gary Caldwell
FROM: Martha S. Bradley, Town Attorney
DATE: January 26, 2023
SUBJECT: Litigation concerning Westview Street

- On June 7, 1960, Ben Medford recorded a subdivision plat for several acres near East Street in Waynesville.
- A plat of the area was prepared by Kevin Ensley in 2019, and I've attached that to this memo with markings to orient you to the relevant section of Westview Street and the property owners involved.
- As you can see from the plat, Lowell Ball owns 2 lots adjacent to the top of Westview Street, which he intends to develop. Those lots can also be accessed via Grahl Street from the opposite direction, but Mr. Ball's intended use would require significant improvements to Grahl Street to meet our fire access standards.
- Dedication of the streets (including Westview Street) was accepted by the Town of Waynesville as demonstrated by this street's inclusion in our Powell Bill index and on several official street index maps going back to at least the 1970s.
- On June 30, 2022, Ann Hines Davis recorded a "DECLARATION OF WITHDRAWAL OF DEDICATION OF REAL PROPERTY FOR USE AS PUBLIC ROAD" on behalf of David and Janice Hall (40 Westview Street) and their neighbors, Douglas and Melissa Gosnell (142 Queen Street), closing the section of Westview Street marked in blue on the attached plat. (The lots owned by the Halls and the Gosnells are marked on the attached plat.)
- After receiving notice from Ms. Davis regarding the Declaration of Withdrawal, I researched the title to the various properties in question and looked at Town records to determine whether the street had been accepted by the Town.
- That research confirmed that Westview Street was accepted by the Town, and I provided Ms. Davis with copies of the documents demonstrating this fact.
- Despite numerous attempts to have the Halls and Gosnells withdraw the Declaration voluntarily and without any penalty, Ms. Davis never responded to any of my communications – not even to confirm whether she continued to represent them. (I am prohibited from speaking directly to a party who is represented by an attorney without the attorney's permission.)
- In August, I brought the issue to the Board in closed session to request the Board's consent in initiating a lawsuit against the Halls and Gosnells given their failure to voluntarily

withdraw the Declaration. The Board authorized proceeding with the litigation to have the document removed from the public record.

- The complaint requests that the court enter judgment that grants several forms of relief to the Town including the following:

(5) Pursuant to N.C. Gen. Stat. § 14-118.6(c), ordering the Register of Deeds of Haywood County to record the Court's order declaring the Declaration to be false;

(6) Pursuant to N.C. Gen. Stat. § 14-118.6(c), ordering the Register of Deeds of Haywood County to mark the first page of the Declaration with the following statement: "THE CLAIM ASSERTED IN THIS DOCUMENT IS FALSE AND IS NOT PROVIDED FOR BY THE GENERAL LAWS OF THIS STATE.";

- Because we are asking the court to order the Register of Deeds and the County's Land Records department to take action, I added the Register of Deeds and Haywood County as parties to the lawsuit only to avoid any technical issues regarding notice to those entities if a judge rules in our favor.
- We are not requesting any damages or attorney's fees from the Register of Deeds or the County. They are in the case solely so they can be ordered to remove the Declaration from the public record or mark it as false under the referenced statutes.

Please let me know if you have any questions.

Best,

Martha Sharpe Bradley

