LUMPKIN COUNTY
Board of Commissioners

Appeal Hearing Agenda

Commissioners Boardroom
99 Courthouse Hill
Dahlonega, GA 30533

November 7, 2023
4:30 PM

- **Call to Order**

- **Appeal Hearing**

  Appeal for Planning Commission Denial of Building Setback Lines Variance Request for a Tiny Home at 615 Laurel Point East

- **Adjournment**

Lumpkin County, Georgia

Planning

Date: November 7, 2023

Agenda Item: Appeal for Planning Commission Denial of Building Setback Lines Variance Request for a Tiny Home at 615 Laurel Point East

Item Description:

Facts & Historical Information:

Potential Courses Of Action:

Budget Impact:

Staff Recommendation:

Lumpkin County, Georgia

CASE NO.

Planning Department

342 COURTHOUSE HILL, DAHLONEGA, GEORGIA 30533 (706) 864-6894 FAX: (706) 867-7272

VARIANCE REQUEST FORM

Requested Action

[ ] Front Setback Variance of _____ feet.

[✓] Side Setback Variance of ~~35~~ 40' feet.

[ ] Mobile Home Variance

[ ] Other

[ ] Rear Setback Variance of _____ feet.

[ ] Lot Size Variance of _____ acres.

[ ] Appeal of a Administrative Decision

description: SIDE SET BACK VARIANCE DUE TO TOPO & IRREGULAR LOT

Land Use/Development Regulation: CHAPTER 26-253 (A) AND ASSIGN (B)(2,5). BUILDING SETBACK LINES

Please attach any maps, drawings, letters or any other information concerning this matter. The Planning Board will make their decision based on the information you provide.

Failure to provide adequate information will result in the application being rejected.

1) What exceptional conditions apply to this particular piece of property requiring the need for a variance from the established standards?

- [✓] Size: _____
- [✓] Shape: _____
- [✓] Topography (if slope a factor, a topographic map must be included) _____
- [✓] Other: UTI

2) Describe why granting this request would not be a detriment to the public good: PLEASE SEE ATTACHED EXPLANATION

3) Describe why the variance would not oppose the intent of the Ordinance: PLEASE SEE ATTACHED EXPLANATION

Please submit any other information you believe should be considered with this application and attach as many sheets as necessary

CASE NO.
☐-APPROVED ☐-DENIED
☐-MAP AMENDMENT
DATE:

Lumpkin County, Georgia

Planning Department

342 COURTHOUSE HILL, SUITE A, DAHLONEGA, GEORGIA 30533 (706) 864-6894 FAX: (706) 867-7272

REQUIRED INFORMATION FOR ALL APPLICATIONS

Property Owners Name: Angie Rink and Mario Boles

If applicant is "not" property owner, then Property Owner Authorization Form is required

Applicant's Name: Mario Boles and Angie Rink

Address: 615 Laurel Point E.

City: Dawsonville State: Georgia Zip Code: 30534 -

Phone: 678-361-3440

Description of Request:

See Attached Explanation

Existing Land Use: Residential

Proposed Land Use: Residential

Character Area: AP

Parcel No.: 035- 112

Property Size: 2.91 ac (s)

FOR MAP AMENDMENTS ONLY:

Requested amendment to Character Area Map Designation of property:

Office Use Only

Land Use of Surrounding Properties:

North: ROS South: Res

West: Res East: Res

REQUIRED ATTACHMENTS

✓ Proof of Ownership (Deed)

N/A Notarized authorization of owner, if not the applicant

✓ Survey or Map of the property (11" x 17" maximum size)

x Legal Description of the Property

x *Processing and review fee* (receipt)

x PROOF OF PAID TAXES

CASE NO.

I, Mario E. Boles, BY SUBMITTAL OF THIS APPLICATION
(print name)
hereby request an amendment to the land use plan and / or the future land use map or a variance to specific provisions of the land use code and / or a variance from certain requirements of the subdivision regulations or from specific provisions of other Lumpkin County regulations as described within this application. By signature below I attest that all information provided within and submitted with this application is true and correct to the best of my knowledge.

Signature: Mario E Boles Date: 08AUG23

STATE OF GEORGIA
COUNTY OF LUMPKIN

The foregoing instrument was acknowledged before me this 8-8-2023 **by**
(date)

Mario Boles, **who is personally known to me or who has produced**
(Name of Person Acknowledging)

Drivers Licens **as identification and did (did not) take an oath.**
(Type of Identification)

Donna Taylor **Notary Public, Commission No.** 2-27-26
(Signature)

Donna Taylor
(Name of Notary typed, printed or stamped)

DONNA TAYLOR NOTARY PUBLIC LUMPKIN COUNTY, GA

NOTE:

The Planning Commission and/or Board of Commissioners, as appropriate, shall consider the following standards in considering any proposal that would result in a special land use approval, variance to character area standards or changes to the Future Land Use Map, giving due weight or priority to those factors that are appropriate to the circumstances of each proposal. Additional and specific standards are also listed under each individual procedure.

- ❑ Is the proposed request consistent with the purpose and intent of the character area, village or corridor in which it is located or proposed to be located?
- ❑ Is the proposed request consistent with the purpose and intent of this Land Use Code?
- ❑ Will the proposed request cause a burden on County infrastructure?
- ❑ Is the proposed request compatible with surrounding land uses within the Character Area and adjacent properties?
- ❑ Is the proposed request consistent with goals, strategies and policies of the Comprehensive Plan?
- ❑ Is the proposed request required to adequately address new or changing conditions or to properly implement the Comprehensive Plan?
- ❑ Does the proposed request reasonably promote the public health, safety, morality or general welfare?

ARTICLE XIII. VARIANCES

Sec. 26-353. Purpose.

The purpose of a variance is to provide relief when a strict application of this chapter would impose unusual practical difficulties or unnecessary physical hardships on the applicant. Practical difficulties and unnecessary hardship may result from the size, shape or dimensions of a site or the location of existing structure thereon; from geographic, topographic, or other conditions on the site or in the immediate vicinity. No variance shall be granted to allow the use of property for a purpose not authorized or in a manner not authorized by this chapter. No variance may be granted for a self-imposed hardship.

(Res. No. 2002-44, 12-1-2002; Res. No. 2005-60, 10-21-2005; Res. No. 2005-61, 10-21-2005; Res. No. 2007-44, 9-20-2007; Res. No. 2007-55, 11-15-2007; Res. No. 2009-50, § 1200, 7-16-2009)

Sec. 26-354. Conditions.

Reasonable conditions may be imposed in connection with a variance as deemed necessary to protect the best interest of the surrounding property or neighborhood, and otherwise secure the purpose and requirements of this article and this chapter. Guarantees and evidence may be required that such conditions will be and are being compiled with.

(1) The planning commission is responsible for considering and making decisions on requests for variances.

(2) The variance must specify which requirements are to be varied from. It must specify alternative standards and requirements to be met.

(Res. No. 2002-44, 12-1-2002; Res. No. 2005-60, 10-21-2005; Res. No. 2005-61, 10-21-2005; Res. No. 2007-44, 9-20-2007; Res. No. 2007-55, 11-15-2007; Res. No. 2009-50, § 1201, 7-16-2009)

Sec. 26-355. Criteria for granting.

(a) Variances may be granted only if, on the basis of the application, investigation, and evidence submitted by the applicant, all four of the following expressly written findings are made:

(1) A strict or literal interpretation and enforcement of the specified standard or requirement would result in practical difficulty or unnecessary hardship.

(2) These are exceptional or extraordinary circumstances or conditions applicable to the property involved or to be the intended use of the property which do not apply generally.

(3) The granting of the variance will not be detrimental to the public health, safety, or welfare.

(4) The granting of the variance would support general objectives contained within this chapter.

(b) Variances in accordance with this article should not ordinarily be granted if the special circumstances on which the applicant relies are a result of the actions of the applicant or owner or previous owners.

(Res. No. 2002-44, 12-1-2002; Res. No. 2005-60, 10-21-2005; Res. No. 2005-61, 10-21-2005; Res. No. 2007-44, 9-20-2007; Res. No. 2007-55, 11-15-2007; Res. No. 2009-50, § 1202, 7-16-2009)

Sec. 26-357. Procedures.

The following procedures apply to variances:

(1) The planning commission will review the completed application and any investigation reports at a public hearing.

(2) The planning commission shall determine whether the evidence supports a finding that the criteria have been met and will either approve, approve with conditions, or deny the application accordingly.

(3) Application for variance shall be filed with the planning commission on the form prescribed by the county, with all required information by any person with a legal interest in the property.

(Res. No. 2002-44, 12-1-2002; Res. No. 2005-60, 10-21-2005; Res. No. 2005-61, 10-21-2005; Res. No. 2007-44, 9-20-2007; Res. No. 2007-55, 11-15-2007; Res. No. 2009-50, § 1204, 7-16-2009)

Sec. 26-253. Building setback lines.

(a) All building setbacks are measured from any portion of the structure to the property line and/or the nearest edge of the right-of-way. Fences and retaining walls are not required to meet setbacks.

(b) The minimum building setbacks shall be as follows:

(1) Within a new or existing subdivision that received approval through the planning commission the front setback shall be 30 feet from any right-of-way and/or the front property line, all other setbacks shall be 20 feet unless different setbacks are specified elsewhere in these regulations or this chapter.

(2) Any lot within a class I or class II subdivision or on an individual lot, not a part of a subdivision, the front setback shall be a minimum of 50 feet, all other setbacks shall be 20 feet.

(3) All lots adjacent to a state route must have a minimum of a 50-foot setback from the right-of-way.

(4) Corner lots and lots with road frontage on more than one street shall meet the front yard setback for that lot from the structure to every right-of-way.

(5) There is a minimum ten-foot setback from all recorded easements except ingress/egress easements. Ingress/egress easements shall be treated as right-of-way for the purpose of setback requirements. Setbacks from ingress/egress easements may be reduced to less then 50 feet by the planning director with just reason.

(6) Electric transmission lines where easements are not definitely established shall have a minimum building setback of no less than 60 feet for lines of 69 kV or less and 80 feet for lines of 70 kV or more measured from the nearest wire or pole or ten feet from the easement line where an easement is established.

(Res. No. 2002-44, 12-1-2002; Res. No. 2005-60, 10-21-2005; Res. No. 2005-61, 10-21-2005; Res. No. 2007-44, 9-20-2007; Res. No. 2007-55, 11-15-2007; Res. No. 2009-50, § 805, 7-16-2009)

DETAILED DESCRIPTION OF REQUEST:

The subject of our variance request application is over a never developed, ingress/egress easement (river access road) between Lot 34 & Lot 35. This undeveloped ingress/egress road authorizes current and future owners of Lot 34 and Lot 35, according to two of our legal instruments (subdivision plat, and land survey), exclusive legal rights to develop & use approximately a 530' long x 20' wide road from private road Laurel Point E. down to the very edge (bank) of the Etowah River.

Both lots of the undeveloped river access road are protected designated State trout streams, not to mention that the road would encroach on the 50' undisturbed buffer.

The original subdivision land surveyor (Michael Stewart Kelley, Precision Land Services, 706-864-7295) explained to our attorney (Alfred Chang, The Law Office of Alfred Chang, 706-867-3103) that the undeveloped ingress/egress easement was incorrectly recorded as "For use of Lot 34 & 35 only." The original intent was for the easement to be an access road to the river for the entire subdivision residents.

Since the undeveloped ingress/egress was incorrectly recorded on our legal instruments, and no other resident has legal access to it, the undeveloped ingress/egress road serves no necessary purpose and is overkill.

Especially since Lot 34 and Lot 35 are riverfront properties and both owners have reasonable access to the Etowah River. Lot 34 has 284' of riverfront property, Lot 35 has 200' of riverfront property.

The ingress/egress easement has never been developed because there is no need of use to access the river for the owners of Lot 34 and Lot 35. The ingress/egress easement is not needed to access either of the lots dwelling because each lot has its own driveway to the dwelling.

Therefore, for the County to impose such extreme setback regulation on an unnecessary and undeveloped ingress/egress easement that could be legally deemed terminated by Georgia State law is unfair and unjust and would clearly impose significant hardship on us (Lot #34).

Lot 35 Owners Agreement

On our Laurels on the Etowah subdivision plat and covenants (Exhibit C), between Lot # 34 & Lot #35, a 20' ingress/egress road easement is identified (10' on each side of the lots).

The plat states that the use of this ingress/egress road easement is "For use of Lot 34 & 35 only." We own Lot 34. The Survivorship Warranty Deed (Exhibit B dated February 7th, 1997) for the current owners (Grantees) of Lot 35 states:

"The Grantee herein recognizes that any and all means of ingress and egress to the property conveyed hereby which is provided by the Grantor herein are considered by the Planning Commission of Lumpkin County and the Governing Body of Lumpkin County to be private ways not maintainable by said Governing Body.

Therefore, Grantee herein hereby agrees that he will be responsible for his share of the upkeep and maintenance of said private way, holding completely harmless the Governing Body of Lumpkin County from any necessity for such upkeep and maintenance."

Additional Information

Easement acquired by grant not lost unless clear and unequivocal intention to abandon. - An easement of way acquired by a grant will not be lost by a nonuse for any length of time, unless there is clear and unequivocal evidence of an intention to abandon it; when such nonuse is accompanied by acts manifesting a clear intent to abandon, which destroy the object for which the easement was created or the means of its enjoyment, an abandonment will take place. Tietjen v. Meldrim, 169 Ga. 678, 151 S.E. 349 (1930), later appeal, 172 Ga. 814, 159 S.E. 231 (1931).

An easement of way acquired by a grant, will not be lost by a nonuse for any length of time, unless there is a clear and unequivocal evidence of an intention to abandon it. Gilbert v. Reynolds, 233 Ga. 488, 212 S.E.2d 332 (1975).

Exhibit D and Exhibit E will illustrate the condition of an undeveloped piece of land that is a so-called "ingress/egress easement" standing on the road Laurel Point E. facing the Etowah River.

We literally needed machetes to cut through the woods. Slightly over half way down the property line, towards the river,

Exhibit F illustrates more undeveloped easement with approximately a 6' drop/slope that would require substantial grading with heavy equipment to create a usable ingress/egress road easement.

It would also require a comprehensive erosion plan because part of the undeveloped easement is within 200' of the Etowah River. The owners of Lot 35 would also need to remove large mature trees that run approximately 200 LF on their side of the easement.

As of today, the side of the easement on Lot 35 is 100% UNUSABLE by us AND the owners of Lot 35. In other words, NO ONE can use Lot 35's easement side of the easement for its designated and intentioned purpose of ingress/egress. WE CAN'T EVEN WALK on the majority of Lot 35's easement.

Furthermore, and as additional proof of unequivocal intention of abandonment and nonuse, on May 2022, the owners of Lot 35 continued to demonstrate & support their unequivocal & intentional abandonment of the easement by installing approximately 100 LF feet of a 6' tall wire fence right on our property line, splitting right down the middle of the ingress/egress easement and denying us our legal right and access to their 10' side of the ingress/egress easement.

As proof that the owners of Lot 35 are aware of the easement going down all the way to the river please refer to Exhibit G.

A text message from October 2022 between me and the owners of Lot 35. In the text Lot 35 acknowledges the ingress/egress easement to the river and writes that he will remove the fence but it was a lie and a game for them.

It's been over 9 months and they have not removed the fence. To eliminate any doubt that the owners of Lot 35 knew they were intentionally denying us our right to the easement, Exhibit H illustrates the owner of Lot 35 himself, after harassing the land surveyors, decides to sit down to "double check" that they identified the property lines correctly.

Moving Forward...

We are applying for a 40' variance for the build of our 400sf tiny home that we will live in while we complete our primary 2000 SF residence which we have secured a permit from Lumpkin County for both.

As with the tiny home, we are self-financing our primary residence and need time to build. The purchase of our land, the grading, tree removal, utilities, road and driveway improvements were paid in cash by us.

Funding and building our home will take considerable time as we have designed it ourselves and will have our own crews and sub-contractors contributing to the build. In short, our 2000 SF residence will be our forever home.

After the completion of our primary residence, the tiny home will remain in place and will likely be utilized by my elderly mother, adult children for weekend and/or holiday visits.

Permitted Tiny Home

Prior to applying & receiving the tiny home permit (June 2023) we were given specific instructions by the planning department to check with the health department and to check on the setbacks of which we did both. In regards to the setback, we called and were told the side setback was 20'. We proceeded forward in good faith under the direction of the planning department, and executed several steps.

We ordered, and paid for materials to be delivered (e.g. pressure treated lumber, windows, a 10' sliding glass door, LVL beams, siding and roof sheathing, galvanized hardware, etc).

We are in the remodeling business and made some changes to our existing client schedule to have our crew on-site and start building. We dug our footings and requested a footings inspection of which the county inspected and passed.

We poured approximately 10,000lbs of concrete in nine footings and erected nine 8x8 posts. We framed a 20'x20' floor of 2x12x'20's w/double rim joists, installed a triple 2x12x20' beam underneath the joists, and installed premium subfloor panels. We also covered the 400sf underneath the structure with riprap. In all we're over $20,000.00 thus far.

Although we're mindful that we're all susceptible to mistakes, the setback confirmation by the county in this case, we have been placed in a very undesirable position to say the least.

Variance Request

As a result of the setback breakdown, and the limited and viable options for the tiny home location, we are seeking relief in order for us to continue with our build and completion.

We are indeed faced with unnecessary hardship if we are required to adhere to the 20' setback ordinance. The monetary and time loss will adversely impact our livelihood, but even more dire is the inability to build our tiny home anywhere on our land.

The topographic survey attached (Exhibit I) illustrates and demonstrates that the only viable option to build the tiny home runs along the undeveloped ingress/egress easement side of the land.

The land is essentially the side of a steep hill with a long driveway running on the lower right side (the Lot #35 side). The driveway starts on Laurel Point E. and ends at the 50' buffer by the river.

Going down the driveway on the left is the bulk of the land, on the right is the lower side of the steep hill.

From the right side of our driveway to Lot # 35's property line is only a distance of approximately 50' on average. Our tiny home is literally on the edge of the driveway (Exhibit J).

We would have to build the tiny home literally on the driveway to accommodate the undeveloped easement.

As you review the land survey, you will see two separate large sections are occupied by existing and secondary septic lines. Another side of the hill has a grade above 40%, which when looking at it, resembles a cliff.

A separate section has a grade of 35-40% which is just as bad and currently fenced off and occupied by our three mountain dogs. The primary residence will occupy the only setback-free area of the available 2.91 acres. Keeping the tiny home where it currently is partially built is consistent with the intent of ordinance because it is not obstructing the right-of-way of the undeveloped easement.

Public safety is not so much a factor in this case as the undeveloped ingress/egress easement is for private use between Lot 34 & Lot 35 exclusively. Both Lot 34 & Lot 35 can walk safely through the woods.

We feel we're achieving substantial justice for several reasons:

a) we're not blocking/obstructing the undeveloped easement

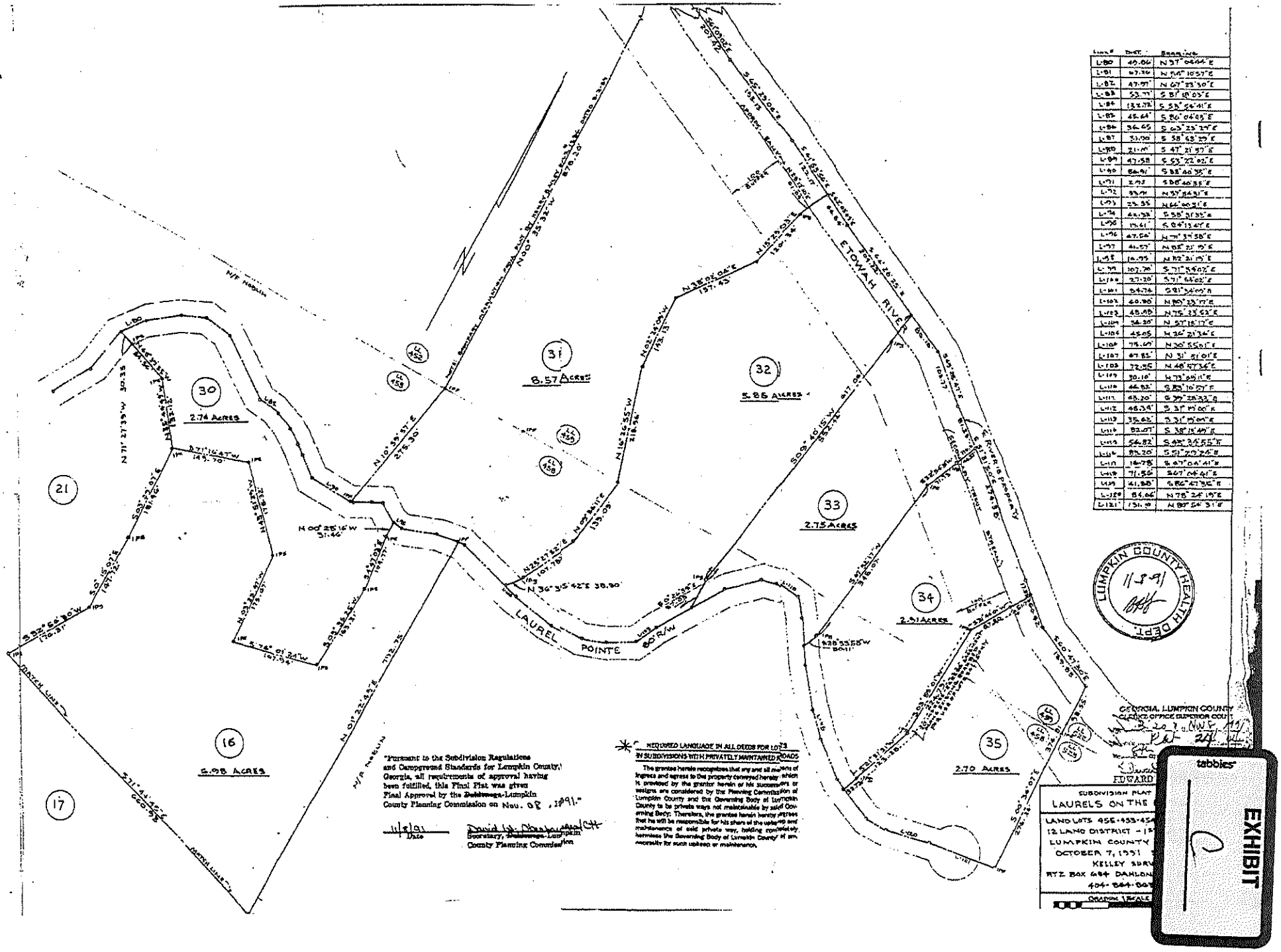
b) we're not encroaching not one inch onto the undeveloped easement

c) if said undeveloped easement is ever developed, the tiny home location will not impede future development.

d) the tiny home is of no physical detriment to Lot 35 and its owners

Thanking you in advance,

Mario & Angie Boles


ETOWAH RIVER
LAUREL POINTE
80' R/W
31
8.57 ACRES
32
5.86 ACRES
33
2.75 ACRES
34
2.51 ACRES
35
2.70 ACRES
30
2.74 ACRES
21
16
5.08 ACRES
17
"Pursuant to the Subdivision Regulations and Campground Standards for Lumpkin County, Georgia, all requirements of approval having been fulfilled, this Final Plat was given Final Approval by the Dahlonega-Lumpkin County Planning Commission on Nov. 08, 1991."
11/8/91
Date
Secretary, Dahlonega-Lumpkin County Planning Commission
REQUIRED LANGUAGE IN ALL DEEDS FOR LOTS IN SUBDIVISIONS WITH PRIVATELY MAINTAINED ROADS
The grantee herein recognizes that any and all rights of ingress and egress to the property conveyed hereby which is provided by the grantor herein or his successors or assigns are considered by the Planning Commission of Lumpkin County and the Governing Body of Lumpkin County to be private ways not maintainable by said Governing Body. Therefore, the grantee herein hereby states that he will be responsible for his share of the upkeep and maintenance of said private way, holding completely harmless the Governing Body of Lumpkin County of any necessity for such upkeep or maintenance.
SUBDIVISION PLAT
LAUREL ON THE
LAND LOTS 455-453-45
12 LAND DISTRICT - 15
LUMPKIN COUNTY
OCTOBER 7, 1991
KELLEY SURV
RT2 BOX 484 DAHLON
404-864-8
GRAPHIC SCALE
LUMPKIN COUNTY HEALTH DEPT.
11-8-91
OFFICIAL LUMPKIN COUNTY
CLERK OF SUPERIOR COURT
FILED
EXHIBIT

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Reserved for Clerk of Superior Court

ABBREVIATION LEGEND:

AE	= access easement
CB	= catch basin
CL	= centerline
CMF	= concrete monument found
CMP	= corrugated metal pipe
CO	= clean out
CT	= crimp top pipe
CP	= communication pedestal
DE	= drainage easement
DI	= drop inlet
DIP	= ductile iron pipe
DWCB	= dbl. wing catch basin
FH	= fire hydrant
GI	= grate inlet
GW	= guy wire
HW	= head wall
IPS	= iron pin set
JB	= junction box
INV	= invert
L.L.L.	= land lot line
LP	= light pole
MH	= manhole (sanitary sewer)
OCS	= outlet control structure
OT	= open top pipe
PI	= pedestal inlet
PL	= property line
POL	= point on line
PP	= power pole
RB	= reinforcing bar
RCP	= reinforced concrete pipe
R/W	= right-of-way
SSE	= sanitary sewer easement
SWCB	= single wing catch basin
TSP	= traffic signal pole
TSB	= traffic signal box
TP	= telephone pole
TSP	= traffic signal pole
WM	= water meter
WV	= water valve
YI	= yard inlet

SYMBOL LEGEND:

- double wing catch basin
- fire hydrant
- guy wire
- light pole
- power pole
- sanitary sewer manhole
- clean out
- transformer
- water meter
- single wing catch basin
- grate inlet
- junction box
- head wall
- buffer
- bldg setback
- fence
- OHE — overhead electric
- UGE — underground electric
- W — water line
- SS — sanitary line
- GAS — gas line
- computed point

REFERENCES:

1. Limited Warranty Deed to Scott W. Trantham recorded in Deed Book 1260, Page 683-684.
2. Subdivision Plat of Laurels on the Etowah, recorded in Plat Book 24, Page 2-4.
3. Declaration of Protective and Restrictive Covenants, Grant of Easement and Road Maintenance Agreement for the Laurels on the Etowah recorded in Deed Book L10, Page 96.

SURVEY NOTES:

1. Certain interior improvements may not be shown hereon, i.e. fence lines, guy wires, etc.
2. Matters of record not shown hereon are excepted.
3. Bearing basis derived from 2 control points set with Leica GS14 GPS System and SmartNet network
4. Measurements shown are US Survey Feet (ground).
5. Field angles and linear distances measured using a Topcon PS-103A or Leica TS 12P Robotic Total Station.
6. The field data upon which this plat is based has a field closure of one foot in 34,760 feet and an angular error of 4 seconds per angle point and was adjusted using Compass Rule. Fieldwork Completed on 9/20/20.
7. Property corners marked IPS (Iron Pin Set) are 1/2" x 18" rebar with blue plastic cap (E303 LSF #1121) unless otherwise indicated. Unless indicated as set, monumentation shown was found.
8. No evidence of human burials or cemeteries was observed on site during the course of the fieldwork.
9. Riparian boundaries subject to change due to natural forces and may not represent the actual limit of title.
10. This plat has been calculated for closure and is found to be accurate within one foot in 89,545 feet.

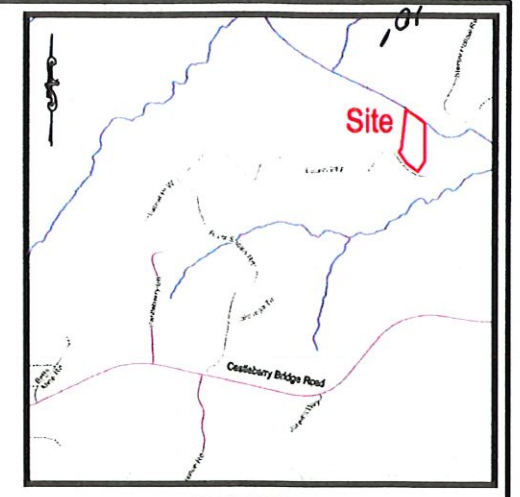
Grid (GA West)

ENVIRONMENTAL NOTES:

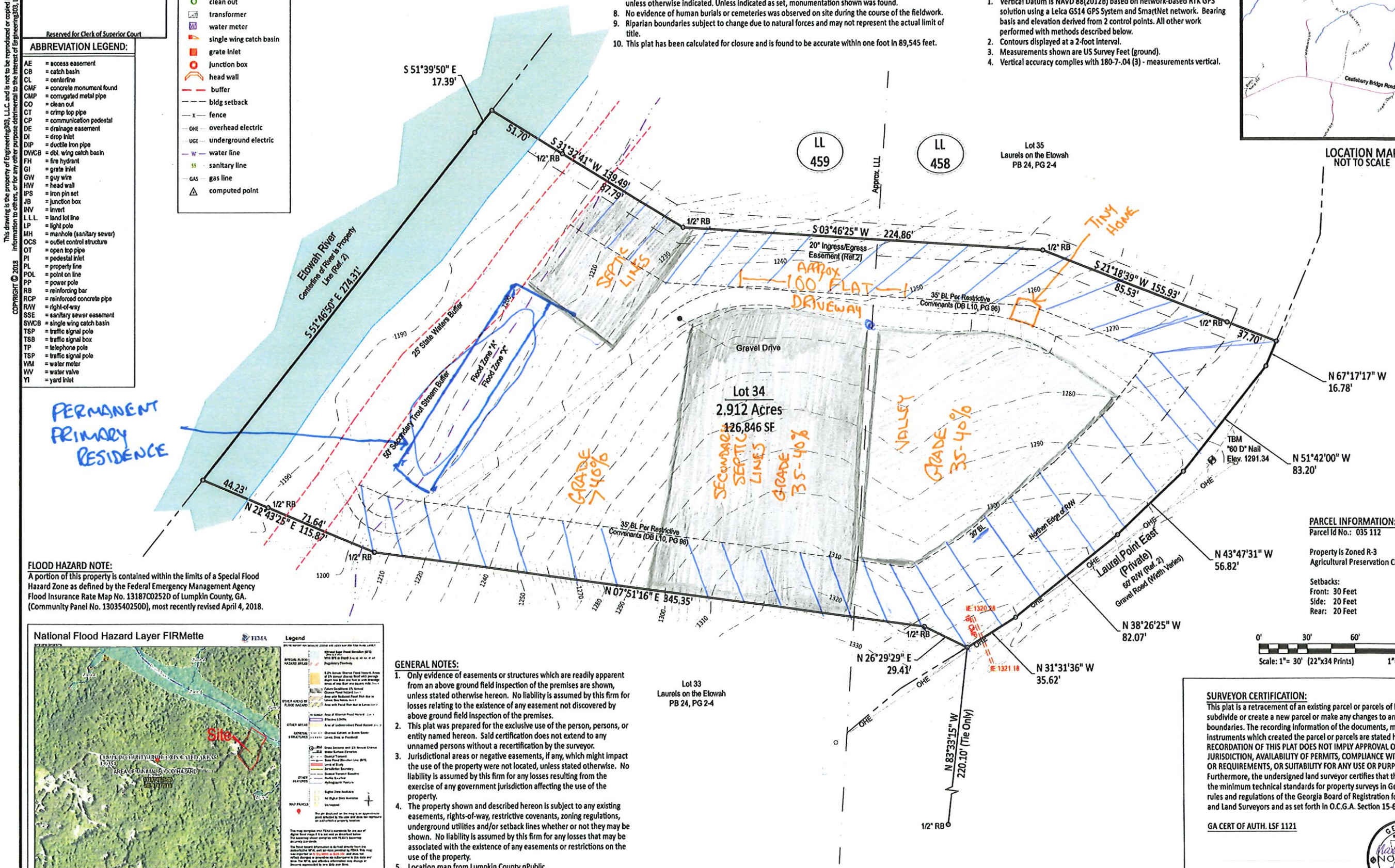
1. Stream Buffers shown as required by The State of Georgia.
2. No attempt was made by this firm to determine presence of wetlands.

TOPOGRAPHIC SURVEY NOTES:

1. Vertical Datum is NAVD 88(2012B) based on network-based RTK GPS solution using a Leica GS14 GPS System and SmartNet network. Bearing basis and elevation derived from 2 control points. All other work performed with methods described below.
2. Contours displayed at a 2-foot interval.
3. Measurements shown are US Survey Feet (ground).
4. Vertical accuracy complies with 180-7-.04 (3) - measurements vertical.



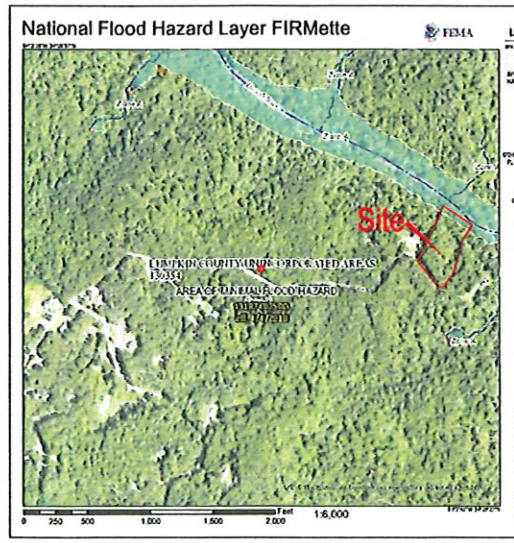
LOCATION MAP
NOT TO SCALE



FLOOD HAZARD NOTE:

A portion of this property is contained within the limits of a Special Flood Hazard Zone as defined by the Federal Emergency Management Agency Flood Insurance Rate Map No. 13187C0252D of Lumpkin County, GA. (Community Panel No. 13035402500D), most recently revised April 4, 2018.

National Flood Hazard Layer FIRMette



PARCEL INFORMATION:

Parcel Id No.: 035 112

Property is Zoned R-3
Agricultural Preservation Character Area

Setbacks:
Front: 30 Feet
Side: 20 Feet
Rear: 20 Feet

0' 30' 60' 90' 120'
Scale: 1"= 30' (22"x34 Prints) 1"= 60' (11"x17" Prints)

GENERAL NOTES:

1. Only evidence of easements or structures which are readily apparent from an above ground field inspection of the premises are shown, unless stated otherwise hereon. No liability is assumed by this firm for losses relating to the existence of any easement not discovered by above ground field inspection of the premises.
2. This plat was prepared for the exclusive use of the person, persons, or entity named hereon. Said certification does not extend to any unnamed persons without a recertification by the surveyor.
3. Jurisdictional areas or negative easements, if any, which might impact the use of the property were not located, unless stated otherwise. No liability is assumed by this firm for any losses resulting from the exercise of any government jurisdiction affecting the use of the property.
4. The property shown and described hereon is subject to any existing easements, rights-of-way, restrictive covenants, zoning regulations, underground utilities and/or setback lines whether or not they may be shown. No liability is assumed by this firm for any losses that may be associated with the existence of any easements or restrictions on the use of the property.
5. Location map from Lumpkin County qPublic.
6. Only Surface Observable Utilities were located. Prior to any digging or construction, contact Georgia One Call (811) for utilities marking.

SURVEYOR CERTIFICATION:

This plat is a retracement of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated hereon.
RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

GA CERT OF AUTH. LSF 1121

GEORGIA REGISTERED NO. 2721 LAND SURVEYOR MARIO G. FORTE
Mario G. Forte 9/24/20

Engineering 303

Boundary and Topographic Survey of:
Parcel Number 035 112, Lot 34 of the Laurels on the Etowah
Mario Boles
UNINCORPORATED
12th District, 1st Section
Lumpkin County, Georgia
Land Lot 458 & 459

GA Cert. of Auth. LSF 1121

Civil Engineering, Land Surveying, Stream and Wetland Restoration
108 Allen Street Cumming, Georgia 30040
Phone: 770-442-0500 www.engineering303.com

Drawn: KFT
Date: 9/24/20
Sheet
1 of 1
Project Number
20-4721

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Reserved for Clerk of Superior Court

ABBREVIATION LEGEND:

AE	= access easement
CB	= catch basin
CL	= centerline
CMF	= concrete monument found
CMP	= corrugated metal pipe
CO	= clean out
CT	= crimp top pipe
CP	= communication pedestal
DE	= drainage easement
DI	= drop inlet
DIP	= ductile iron pipe
DWCB	= dbl. wing catch basin
FH	= fire hydrant
GI	= grate inlet
GW	= guy wire
HW	= head wall
IPS	= iron pin set
JB	= junction box
INV	= invert
L.L.L.	= land lot line
LP	= light pole
MH	= manhole (sanitary sewer)
OCS	= outlet control structure
OT	= open top pipe
PI	= pedestal inlet
PL	= property line
POL	= point on line
PP	= power pole
RB	= reinforcing bar
RCP	= reinforced concrete pipe
R/W	= right-of-way
SSE	= sanitary sewer easement
SWCB	= single wing catch basin
TSP	= traffic signal pole
TSB	= traffic signal box
TP	= telephone pole
TSP	= traffic signal pole
WM	= water meter
WV	= water valve
YI	= yard inlet

SYMBOL LEGEND:

- double wing catch basin
- fire hydrant
- guy wire
- light pole
- power pole
- sanitary sewer manhole
- clean out
- transformer
- water meter
- single wing catch basin
- grate inlet
- junction box
- head wall
- buffer
- bldg setback
- fence
- overhead electric
- underground electric
- water line
- sanitary line
- gas line
- computed point

REFERENCES:

1. Limited Warranty Deed to Scott W. Trantham recorded in Deed Book 1260, Page 683-684.
2. Subdivision Plat of Laurels on the Etowah, recorded in Plat Book 24, Page 2-4.
3. Declaration of Protective and Restrictive Covenants, Grant of Easement and Road Maintenance Agreement for the Laurels on the Etowah recorded in Deed Book L10, Page 96.

SURVEY NOTES:

1. Certain interior improvements may not be shown hereon, i.e. fence lines, guy wires, etc.
2. Matters of record not shown hereon are excepted.
3. Bearing basis derived from 2 control points set with Leica GS14 GPS System and SmartNet network
4. Measurements shown are US Survey Feet (ground).
5. Field angles and linear distances measured using a Topcon PS-103A or Leica TS 12P Robotic Total Station.
6. The field data upon which this plat is based has a field closure of one foot in 34,760 feet and an angular error of 4 seconds per angle point and was adjusted using Compass Rule. Fieldwork Completed on 9/20/20.
7. Property corners marked IPS (Iron Pin Set) are 1/2" x 18" rebar with blue plastic cap (E303 LSF #1121) unless otherwise indicated. Unless indicated as set, monumentation shown was found.
8. No evidence of human burials or cemeteries was observed on site during the course of the fieldwork.
9. Riparian boundaries subject to change due to natural forces and may not represent the actual limit of title.
10. This plat has been calculated for closure and is found to be accurate within one foot in 89,545 feet.

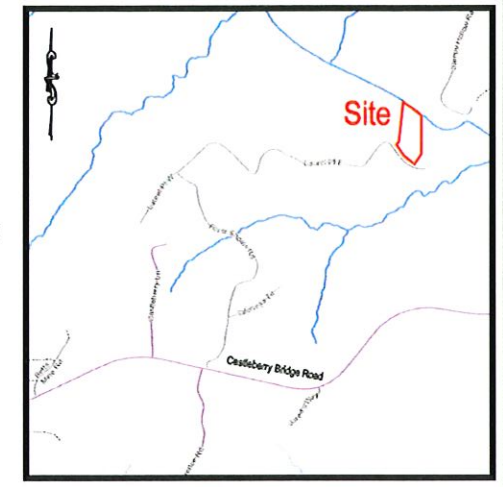
Grid (GA West)

ENVIRONMENTAL NOTES:

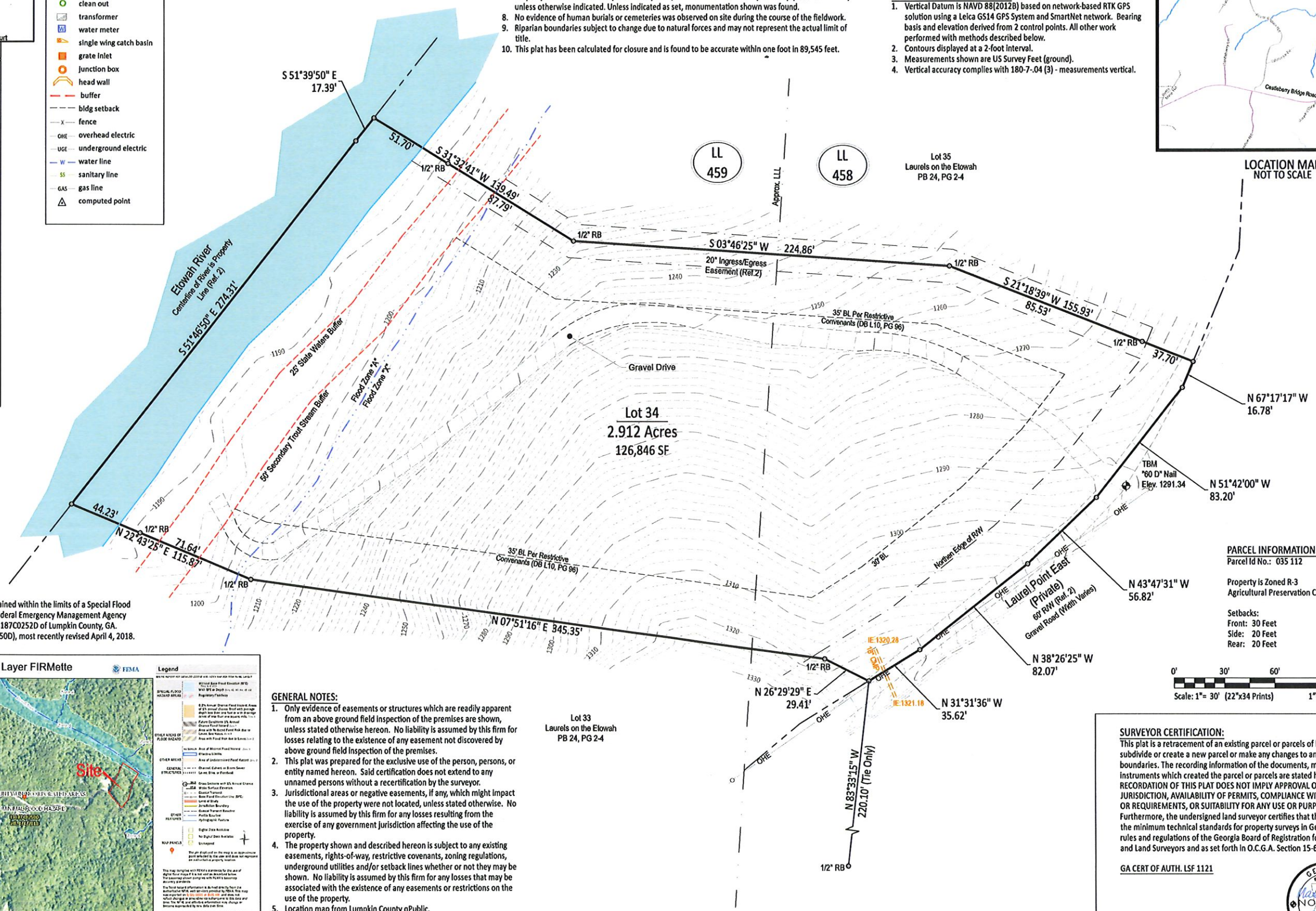
1. Stream Buffers shown as required by The State of Georgia.
2. No attempt was made by this firm to determine presence of wetlands.

TOPOGRAPHIC SURVEY NOTES:

1. Vertical Datum is NAVD 88(2012B) based on network-based RTK GPS solution using a Leica GS14 GPS System and SmartNet network. Bearing basis and elevation derived from 2 control points. All other work performed with methods described below.
2. Contours displayed at a 2-foot interval.
3. Measurements shown are US Survey Feet (ground).
4. Vertical accuracy complies with 180-7-.04 (3) - measurements vertical.



LOCATION MAP
NOT TO SCALE



PARCEL INFORMATION:

Parcel Id No.: 035 112

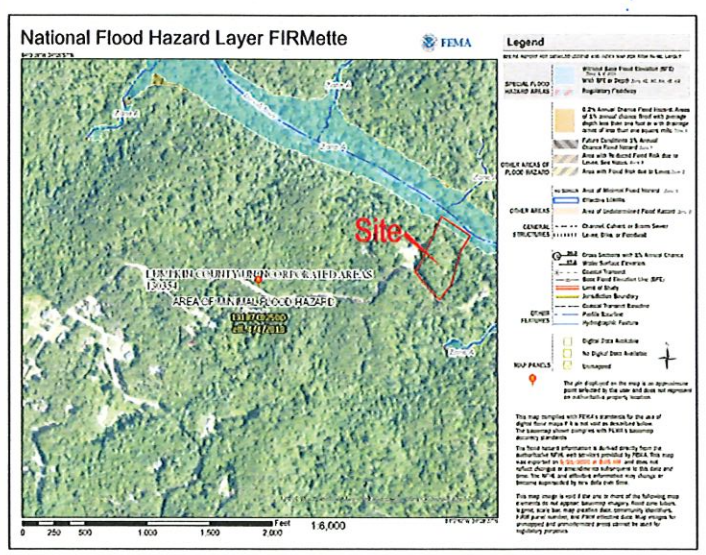
Property is Zoned R-3
Agricultural Preservation Character Area

Setbacks:
Front: 30 Feet
Side: 20 Feet
Rear: 20 Feet

0' 30' 60' 90' 120'
Scale: 1"= 30' (22"x34 Prints) 1"= 60' (11"x17" Prints)

FLOOD HAZARD NOTE:

A portion of this property is contained within the limits of a Special Flood Hazard Zone as defined by the Federal Emergency Management Agency Flood Insurance Rate Map No. 13187C0252D of Lumpkin County, GA. (Community Panel No. 1303540250D), most recently revised April 4, 2018.



GENERAL NOTES:

1. Only evidence of easements or structures which are readily apparent from an above ground field inspection of the premises are shown, unless stated otherwise hereon. No liability is assumed by this firm for losses relating to the existence of any easement not discovered by above ground field inspection of the premises.
2. This plat was prepared for the exclusive use of the person, persons, or entity named hereon. Said certification does not extend to any unnamed persons without a recertification by the surveyor.
3. Jurisdictional areas or negative easements, if any, which might impact the use of the property were not located, unless stated otherwise. No liability is assumed by this firm for any losses resulting from the exercise of any government jurisdiction affecting the use of the property.
4. The property shown and described hereon is subject to any existing easements, rights-of-way, restrictive covenants, zoning regulations, underground utilities and/or setback lines whether or not they may be shown. No liability is assumed by this firm for any losses that may be associated with the existence of any easements or restrictions on the use of the property.
5. Location map from Lumpkin County qPublic.
6. Only Surface Observable Utilities were located. Prior to any digging or construction, contact Georgia One Call (811) for utilities marking.

SURVEYOR CERTIFICATION:

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GA CERT OF AUTH. LSF 1121

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Drawn: KFT
Date: 9/24/20
Sheet 1 of 1
Project Number 20-4721

EDGE of
DRIVEWAY

EXHIBIT D

PICTURE TAKEN JULY 2020

EXHIBIT E

FACING ETOWAH RIVER

PICTURE TAKEN JULY 2020
LAUREL POINT E.

EXHIBIT F

PICTURE TAKE AUGUST 2023

EXHIBIT G.

10:12 70° 96%

Deanne, Jeff

Good morning, according to the property pins your fence is on our property or are you wanting to do away w/the easement?

10:22 AM • MMS

Wednesday, Oct 26 • 12:02 PM

Jeff (Land Neighbor)

My apologies, you are right. The easement does go all the way to the river. I will move my fence.

Text message

EXHIBIT H

LAND SURVEYOR

HIS FENCE IS IN THE MIDDLE OF THE EASMENT

PICTURE TAKEN MAY 2023

Lumpkin County, GA

Summary

Parcel Number	035 112
Location Address	LAUREL POINT EAST
Legal Description	LAURELS ON THE ETOWAH S/D #34 LL 458 LD 12-1 (Note: Not to be used on legal documents)
Class	R3-Residential (Note: This is for tax purposes only. Not to be used for zoning.)
Character Area	Agricultural Preservation
Tax District	County (District 01)
Millage Rate	24.757
Acres	2.91
Neighborhood	LAURELS ON ETOWAH (00091)
Homestead Exemption	No (S0)
Landlot/District	458 / 12

View Map

Map

Owner

RINK ANGIE & BOLES MARIO
PO BOX 313
452 HWY 53 E
DAWSONVILLE, GA 30534

Land

Type	Description	Calculation Method	Square Footage	Frontage	Depth	Acres	Lots
Residential	LAURELS ON ETOWAH	Acres	126,760	0	0	2.91	0

Accessory Information

Description	Year Built	Dimensions/Units	Identical Units	Value
Shed Good	2022	10x20 / 0	1	$1,940
Deck Wood-Elevated	2022	18x18 / 0	1	$2,860

Permits

Permit Date	Permit Number	Type	Description
06/07/2023	16577	SINGLE FAMILY	
07/22/2022	15941	SINGLE FAMILY	LOT 34

Sale Date	Deed Book / Page	Plat Book / Page	Sale Price	Reason	Grantor	Grantee
9/8/2020	1481 409	24 2	$84,000	Land Market	TRANTHAM SCOTT W	RINK ANGIE & BOLES MARIO
10/8/2013	1260 683	24 2	$70,000	Land Market	HAMLIN ALICE M	TRANTHAM SCOTT W
10/8/2013	1260 681		$0	Legal	HAMLIN ROBERT F	HAMLIN ALICE M
12/20/1991	O10 289	24 2	$18,700	Land Market		HAMLIN F ROBERT

Area Sales Report

Sale date range:

From:

08/10/2020

To:

08/10/2023

Sales by Neighborhood

Sales by Area

1500

Feet

Sales by Distance

Valuation

		2023	2022	2021	2020	2019	2018
	Previous Value	$64,380	$64,380	$64,380	$64,380	$64,380	$64,380
	Land Value	$64,380	$64,380	$64,380	$64,380	$64,380	$64,380
+	Improvement Value	$0	$0	$0	$0	$0	$0
+	Accessory Value	$4,800	$0	$0	$0	$0	$0
=	**Current Value**	**$69,180**	**$64,380**	**$64,380**	**$64,380**	**$64,380**	**$64,380**

Tax Collector

Tax Collector Website

Photos

Return to:
Coats & Cordle Attorneys at Law, Inc
12419 Veterans Memorial Hwy Douglasville, GA 30134 Ph 770-577-7155
File # RC200427

DOC# 005351
FILED IN OFF
11/10/2020
BK:1481 PG:
RITA HARKINS
CLERK OF COU
LUMPKIN COUNTY

EXHIBIT
A

STATE OF GEORGIA
COUNTY OF DOUGLAS

REAL ESTATE TRANSFER
TAX PAID: $84.00

LIMITED WARRANTY DEED

PT-61 093-2020-002171

THIS INDENTURE, made on **September 8th, 2020**, between

SCOTT W. TRANTHAM,

(hereinafter referred to as "Grantor") and

ANGIE RINK and MARIO BOLES,
as Joint Tenants with Rights of Survivorship
(hereinafter referred to as "Grantee"), the words "Grantor" and "Grantee" to include the heirs, executors, legal representatives, successors and assigns of said parties where the context requires or permits; WITNESSETH:

THAT Grantor, for and in consideration of the sum of TEN DOLLARS ($10.00) AND OTHER GOOD AND VALUABLE CONSIDERATIONS, in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged by Grantor, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto Grantee,

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 458 AND 459, 12TH DISTRICT, 1ST SECTION, LUMPKIN COUNTY, GEORGIA AND BEING FULLY DESCRIBED BY PLAT PREPARED BY MICHAEL STEWART KELLEY, GEORGIA REGISTERED LAND SURVEYOR, DATED NOVEMBER 6, 1991; AND AS PER PLAT, THE PROPERTY CONTAINS 2.91 ACRES, MORE OR LESS, BEING LOT 34 OF LAURELS ON THE ETOWAH. THE SUBJECT PLAT BEING OF RECORD IN PLAT BOOK 24, PAGES 2-4, LUMPKINS COUNTY RECORDS SAID PLAT IS HEREBY INCORPORATED BY REFERENCE

THIS CONVEYANCE IS MADE SUBJECT TO THAT CERTAIN DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS, GRANT OF EASEMENT AND ROAD MAINTENANCE AGREEMENT FOR THE LAURELS ON THE ETOWAH AS RECORDED IN DEED BOOK L-10, PAGES 96-102, LUMPKIN COUNTY RECORDS.

THIS CONVEYANCE IS MADE TOGETHER WITH AND SUBJECT TO EASEMENTS FOR PUBLIC ROADS AND UTILITIES NOW IN USE

THIS CONVEYANCE IS MADE TOGETHER WITH AND SUBJECT TO ANY EASEMENTS OF RECORDS OR EASEMENTS LOCATED ON THE PROPERTY ABOVE DESCRIBED.

Tax ID#: 035-112

Subject to any Easements or Restrictions of Record
This Deed is given subject to all easements and restrictions of record.

TOGETHER WITH all and singular the rights, members and appurtenances thereto, to the same being, belonging, or in anywise appertaining (hereinafter collectively referred to as the "Premises")

TO HAVE AND TO HOLD the Premises, subject to the Exceptions, to the only proper use, benefit and behoof of Grantee, forever, in FEE SIMPLE, and Grantor will, subject to the Exceptions, warrant and forever defend the right and title to the Premises unto Grantee against the claims of all person claiming by, through or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed this instrument under seal, as of the date first above written.

Signed, sealed, and delivered
in the presence of:

Witness

SCOTT W. TRANTHAM (Seal)

Notary Public 12-8-20
Commission expires:

LESLIE WILLIAMS
NOTARY PUBLIC
EXP. DEC. 8, 2020
HOUSTON COUNTY, GA

EXHIBIT

B

RETURN TO: ANGELA GRANT CLARK
3738 S. CHERTATEE, STE. D
DAHLONEGA, GA 30533

970864

000061

GEORGIA, LUMPKIN COUNTY
REAL ESTATE TRANSFER TAX
PAID 18.00
DATE 02-26-97
EDWARD E. TUCKER
CLERK OF SUPERIOR COURT

SURVIVORSHIP WARRANTY DEED

STATE OF GEORGIA
COUNTY OF LUMPKIN

THIS INDENTURE, made this 17th day of February in the Year of Our Lord One Thousand Nine Hundred and Ninety Seven between **Norman Adams, Tony Anderson, Z.V. Major, and William W. Woody** of the State of Georgia and County of Lumpkin of the First Part, and **Jeffry L. McWaters and Joy Deanne Freeman** of the State of Georgia and County of Lumpkin of the Second Part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten Dollars and other good and valuable consideration, in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargains, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said parties of the second part as tenants in common, for and during their joint lives, and , upon the death of either of them, then to the survivor of them, in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor, the following described property:

All that tract or parcel of land lying and being in Land Lots 458 and 459 of the 12th District and 1st Section of Lumpkin County, Georgia, consisting of 2.70 acres, more or less, and being more particularly set out as Lot 35, Laurels on the Etowah Subdivision , plat of survey dated October 7, 1991, revised November 6, 1991, and prepared by Michael Stewart Kelly, Georgia registered land surveyor. This plat is recorded in Plat. Book 24, Page 2-4, Lumpkin County Records, and is by reference incorporated herein for a more detailed description.

This property is conveyed subject to a certain Declaration of Protective and Restrictive Covenants, Grant of Easement and Road Maintenance Agreement for the Laurels on the Etowah Subdivision dated November 7, 1991, and recorded in Deed Book L-10, Pages 96-102, Lumpkin County Records.

The Grantee herein recognizes that any and all means of ingress and egress to the property conveyed hereby which is provided by the Grantor herein are considered by the Planning Commission of Lumpkin County and the Governing Body of Lumpkin County to be private ways not maintainable by said Governing Body. Therefore, Grantee herein hereby agrees that he will be responsible for his share of the upkeep and maintenance of said private way, holding completely harmless the Governing Body of Lumpkin County from any necessity for such upkeep and maintenance.

This property is conveyed subject to all easements in use or of record.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said parties of the second part, as tenants in common, for and during their joint lives, and upon the death of either of them, then to the survivor of them in fee

000062

simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor.

AND THE SAID party of the first part, for their heirs, executors, and administrators, will warranty and forever defend the right and title to the above described property, unto the said parties of the second part, as hereinabove provided, against the claims of all person whomsoever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set hand and seal, this 7th day of February, 1997.

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Norman Adams (SEAL)

Notary Public
State of Georgia
MY COMMISSION EXPIRES OCT. 19, 1999

ANGELA G. CLARK NOTARY PUBLIC HALL COUNTY, GA

Unofficial Witness

Tony Anderson (SEAL)
Tony Anderson

Notary Public
State of Georgia
MY COMMISSION EXPIRES OCT. 19, 1999

ANGELA G. CLARK NOTARY PUBLIC HALL COUNTY, GA

Unofficial Witness

Z.Y. Major (SEAL)

Notary Public
State of Georgia
MY COMMISSION EXPIRES OCT. 19, 1999

ANGELA G. CLARK NOTARY PUBLIC HALL COUNTY, GA

Unofficial Witness

William W. Woody (SEAL)

Notary Public
State of Georgia
MY COMMISSION EXPIRES OCT. 19, 1999

ANGELA G. CLARK NOTARY PUBLIC HALL COUNTY, GA

GEORGIA, LUMPKIN COUNTY
CLERK'S OFFICE SUPERIOR COURT
Rec'd 12:00 P. 2-17-97
Recorded in Deed Book 17, Page 61-62
This 17th day of Feb., 1997
EDWARD E. TUCKER, CLERK

2022 Property Tax Statement

Mike Young
Lumpkin County Tax Commissioner
99 COURT HOUSE HILL, SUITE E
DAHLONEGA, GA 30533

Bill No.	Due Date	TOTAL DUE
2022-13342		.00

27

Map : 035 112
Last payment made on: 12/08/2022
Printed: 08/10/2023
Location: LAUREL POINT EAST

MAKE CHECK OR MONEY ORDER PAYABLE TO:
Lumpkin County Tax Commissioner

Dear Taxpayer:

Thank You for the Honor of being your current Tax Commissioner of Lumpkin County. Our office looks forward to serving you.

Mike Young
Tax Commissioner

Please note the due date!

Please visit our website at
www.lumpkincountytax.com
to pay online.

*

RINK ANGIE & BOLES MARIO
PO BOX 313
452 HWY 53 E
DAWSONVILLE, GA 30534

RETURN THIS PORTION WITH PAYMENT
(Interest will be added per month if not paid by due date)

Mike Young
Lumpkin County Tax Commissioner
99 COURT HOUSE HILL, SUITE E
DAHLONEGA, GA 30533

Tax Payer: RINK ANGIE & BOLES MARIO
Map Code: 035 112 REAL
Description: LAURELS ON THE ETOWAH S/D #34
Location: LAUREL POINT EAST
Bill No: 2022-13342
District: 001 LUMPKIN CO UNINCORP.

Phone: (706) 864-2666 Fax: (706) 867-6010

Building Value	Land Value	Acres	Fair Market Value	Due Date	Billing Date	Payment Good Through	Exemptions
0	64,380	2.9100	64,380				

Entity	Adjusted FMV	Net Assessment	Exemptions	Taxable Value	Millage Rate	Gross Tax	Credit	Net Tax
STATE TAX	64,380	25,752		25,752	.0000			.00
COUNTY M&O	64,380	25,752		25,752	14.2890	367.97		241.79
SALES TAX CREDIT				25,752	-3.0080		-77.46	
INSURANCE PREMIUM CREDIT				25,752	-1.8920		-48.72	
COUNTY SCHOOL M&O	64,380	25,752		25,752	14.7100	378.81		378.81
PLANNING DEPARTMENT	64,380	25,752		25,752	.4520	11.64		11.64
RESERVOIR	64,380	25,752		25,752	.2060	5.30		5.30
TOTALS					24.7570	763.72	-126.18	637.54

This gradual reduction and elimination of the state property tax millage rate is the result of property tax relief passed by the Governor and the House of Representatives and the Georgia State Senate.

Each resident of Lumpkin County is eligible for a Homestead exemption on the property they own and occupy as their permanent residence on January 1st of the taxable year. Homestead exemption applications are accepted year round by the Tax Assessors office, however your application must be made before April 1st to apply for the taxable year. All returns are filed with the Lumpkin County Tax Assessors office between January 1st and April 1st of the taxable year. For questions about your homestead exemption or filing a tax return, you may reach the Tax Assessors office at (706)864-2433.

Current Due	637.54
Penalty	0.00
Interest	0.00
Other Fees	0.00
Previous Payments	637.54
Back taxes	0.00
TOTAL DUE	.00

Printed: 08/10/2023

Transaction Receipt

Merchant:	Lumpkin County Planning - (Dahlonega, GA)
Date/Time:	08/10/2023 10:47:01 AM EDT
Transaction ID:	8614500072
Transaction Type:	Card Sale
Entry Method:	Keyed
Amount:	$255.00

Credit Card Information

CC Type:	Mastercard
CC Number:	**********5147
Auth. Code:	114773
Processor:	LUMPKIN COUNTY PLANNING

Billing Information	Shipping Information
US	US

Order Information

Order ID:	Boles Variance

LUMPKIN COUNTY
Planning Commission
Planning Commission Agenda
Kelley Building Conference Room
342 Courthouse Hill
Dahlonega, GA 30533

September 11, 2023
5:30 PM

CALL TO ORDER

Barbara Bosanko called the meeting to order at 5:30pm. Barbara Bosanko acknowledged it was September 11th and asked to take a moment of silence for those that were involved in or effected by the tragedy.

CONSIDERATION OF AGENDA

Barbara Bosanko asked if there was a motion to approve the agenda. David Woodward made a motion to approve the agenda. Chris Adams second the motion. The motion was passed unanimously.

NEW BUSINESS

Barbara Bosanko asked if there were any nominations for Vice Chair. Robin Hall made a motion to nominate David Woodward. Chris second the motion. The motion was passed unanimously. Barbara Bosanko asked if there was a recommendation for Chair. Staff explained that they had asked the Planning Commission for a slate of officers, and that all three members that were present [Robin Hall, Chris Adams and David Woodward] stated that they would volunteer to serve as Vice Chairman. Staff also explained that there were no other nominations for Chair. Barbara Bosanko asked if there was a motion to nominate herself as Chair. David Woodward made a motion to nominate Barbara Bosanko. Chris Adams second the motion. The motion was passed unanimously.

CONSIDERATION OF MINUTES

Barbara Bosanko asked if there was a motion to approve the August 14, 2023 Planning Commission meeting minutes. Robin Hall made a motion to approve. Chris Adams second the motion. The motion was passed unanimously.

APPROVALS

- Request for approval per Chapter 26 sec. 26-68 (2) to subdivide two parcels that were created as an exempt divide located off Ridge Point Dr., Tax Parcels 114 047 and 114 046, and is in Agricultural Preservation.

Staff explained that the applicant did 3 exempt divides last march. Planning staff received an updated survey moving the line dividing two of the exempt divides south, going from two six acre lots to one 8.5 acre lot to the north, and one 3.6 acre lot to the south. Tonight the applicant is applying for planning commission approval to do a minor subdivide on the 8.5 acre lot and on the 3.6 acre lot. Any further division of exempt divides are required to gain planning commission approval. The applicant was not present at the meeting, however, his partner was present to

take the podium. The applicant's representative explained that they are requesting the additional divides because they had made a decision to build four cabins instead of two. Barbara Bosanko asked if he had the Bison yet, and the applicant's representative said no, the Bison aren't in yet. Staff asked the Planning Commission to refer to the screen in order to understand the chain of events that had already taken place with the exempt divide. Staff pointed out the original dividing line between the two 6 acre lots that had moved south, and the two new proposed divides. Barbara Bosanko asked where the venue is, and the applicant's representative said it wasn't on the plat that was being shown on the screen, and that it was off of a private road that goes through the property. David Woodward asked if the parcels were in Agricultural Preservation, and the applicant's representative said yes. David Woodward said this is an attempt to put it [the parcel] into residential, and the applicant's representative said that was a correct statement. Robin Hall summarized that the applicant started out with one piece of land and now has four. Robin Hall stated that usually this would be regarded as a Class II subdivision, and that since these parcels are in Agricultural Preservation, there is a three acre minimum lot size requirement. The applicant's representative stated he has no experience with this [subdividing land or the Planning Commission process], however, what he can explain is that he and his partner [the applicant] are trying to accomplish a quality, high end venue with overnight accommodations that will enhance the wedding guest/party experience, as well as keep people safe from long late night drives, especially where drinking [alcohol] is usually a factor. Barbara Bosanko asked Robin Hall if the applicant's representative answered his question, and Robin Hall said he did, up to a point. Robin Hall explained that he was struggling to accept the approach that the applicant had taken to work around the requirements of Agricultural Preservation. Barbara Bosanko said the applicant would be removed from Agricultural Preservation, and the applicant's representative said that that was a correct statement. Staff interjected and stated that this was not a character area amendment, that these parcels would remain Agricultural Preservation, and residential is allowed in Agricultural Preservation. Barbara Bosanko clarified that that [Agricultural Preservation] would remain. Staff said yes. Danny Clark asked if we had a character area map to get a 50,000 ft view of what it [the property in Agricultural Preservation] looks like [in comparison to the surrounding properties]. Staff pulled the parcel up on qpublic and displayed on the screen. Staff explained that what Robin Hall was referencing, was the chart of performance standards in which when you have 3 or more lots, each lot must maintain at least 3 or more acres. Staff further explained that this is not a Class I subdivision, it's two minor subdivides on two separate lots and that is why there is no variance request for the 3 acre minimum. David Woodward asked if the northern most point of the north lot would remain vacant, and the applicant's representative said yes. The applicant's representative stated they might develop that area years out from now if everything is going well for the Bison wedding venue, but it is unlikely at this point. Robin Hall said that their website says there are six lodges coming soon. The applicant's representative said that was a dream, before reality hit with the expenses of the current plan. The applicant's representative further explained that more than 4 lodges, at the current time, does not make sense given the topography and expense vs. the revenue that they projected the extra two lodges would generate for the business. Danny Clark asked what road this parcel was off of and suggested McMorrough. Danny Clark said he wanted to make sure he was looking at the right parcel. Staff explained that the parent parcel was McMorrough, but that these two parcels we are currently talking about are off of Ridge Point Drive. Danny Clark wanted to clarify for himself that the current use was Agricultural Preservation, but that the proposed use was short term rental. Danny Clark asked if short term rentals were an allowable use in Agricultural Preservation. Staff explained that the planning department would permit the residential structures as single family homes, that the applicant would then need to have a short term rental license under their business license for each residential structure. Staff further explained that there is nothing that prohibits short term renting on the tract of land in question. Barbara Bosanko asked if there was a motion. One of the Planning Commission members said that we hadn't asked if there were any public comments yet. A citizen remained in the audience and asked the applicant's representative what the problem was with honoring the three acre minimum if they have 12 acres. Staff explained that the code only requires 3 acre minimum with Class I and above, and that this is two minor divides. Another citizen remained in the audience and reiterated what staff had just explained. Robin Hall said that since the applicant took the exempt divide approach, that there was actually a minimum of 5 acres requirement. Staff explained that they approved the applicant to move the lot line south. Barbara Bosanko asked if there were any other comments from the audience. Barbara Bosanko asked if there was a motion. Robin Hall said that he was not happy with how this had all been laid out. He asked the applicant's representative that if they approved the divides, contingent upon reworking the layout to respect the three acre requirement for Agricultural Preservation, would he [the applicant's representative] do that? The applicant's representative said that they had already done the architectural work for the proposed divides and that they would really like to stick with what is being presented; that changing the design would cause them to have to go back and alter their plans. The applicant's representative further explained that the proposed layout takes the most advantage of the views available for the single family homes. Danny Clark asked if all four proposed cabins will use

one driveway, and added that he thought at some point a certain number of homes cannot share one driveway. Staff explained that once you exceed 3 homes on one driveway, it becomes a named private road. Robin Hall made a motion to deny the proposal as presented and request a revision using the entire property. Danny Clark stated that he didn't hear the motion, and Robin Hall rephrased the motion. Staff asked that if this is the motion that passes, would it be alright for staff to approve the revisions, as long as each lot has a minimum of 3 acres. Robin Hall said that he would be satisfied with that [staff's suggestion]. David Woodward seconded the motion. Robin Hall denied the motion. The motion was passed by majority vote.

VARIANCE REQUESTS

- Variance request per Ch. 26-253 (a) & (b) (2), (5) – Building setback lines. The setback requirement from an ingress/egress easement is 50 ft. The request is for a reduction to 10 ft. The property is located at 615 Laurel Point East and is in Agricultural Preservation character area.

Staff explained that the applicant has already obtained a building permit and started the building process of their secondary tiny home. They used minimum side setbacks of 20ft. It has been brought to the planning staff's attention that there is an ingress/egress easement down the property line, which triggers a 50ft setback. The applicants can offer the planning commission further context to explain why side setbacks were used. Attorney Alfred Chang introduced himself as the official representation for the applicant and asked if there were any ground rules before he began, the Planning Commission said no. Alfred Chang said that there were two issues had hand; the first being where do you measure setbacks; from the edge of the property line, or the edge of the easement. Alfred Chang said that the purpose of setbacks is to ensure nobody builds too close to another house. Alfred Chang explained that there already is a buffer in place from where the tiny house is being built, and the question is, would an extra ten or twelve feet make a difference with some of the people that will be stating their objection. Alfred Chang stated that the second issue is whether or not the easement in question is abandoned or not. The applicant passed out some paperwork while Alfred Chang stated that the Planning Commission will see that the easement in question is overgrown with trees and shrubbery. Alfred Chang stated that Michael Kelly was here to speak since he was part of the development, but went on to say that Nicholas Pender's intent when he created the subdivision was for lots 34 and 35 to share the easement as access to the river. Alfred Chang said that the easement has never been used by either party, and it is the subject of ongoing litigation, and that the defendants had been recently served with a law suit asking for a declaratory judgement as to where the lines begin. Alfred Chang said that even the county's own maps show that the easement in question is a heavily wooded vegetation. Alfred Chang said that the only people who are affected [by the build of the tiny home] are the neighbors, and they have every right to say whether they like it or don't like it, but that he assumed they would say they don't like it. Alfred Chang said that where the tiny home was being built would have no effect on the rest of the subdivision. Alfred Chang explained that when it comes to land use, it's like football, typically you see folks on one team or the other. Alfred Chang explained that each lot that the easement serves, already has their own separate access down to the river. Alfred Chang explained that there is a fence down the center of the easement [that belongs to the other party], which further confirms abandonment. Alfred Chang said that he wanted to point out that the county had no problems with this [building a tiny home 28 ft off the property line] until the neighbors began having a problem with it. Alfred concluded with stating approving the variance would not adversely affect the adjacent property or other neighbors in the community. Barbara Bosanko asked if the easement was recorded. Alfred Chang said yes, but not in a sense that there is a met and bounds survey that granted the easement from one party to the other…[trails off] when Barbara Bosanko interjected stating kudzu can grow overnight and the fact that there are bushes everywhere does not void the easement. Barbara Bosanko asked Alfred Chang if her assumption was correct, and he said not exactly. Barbara Bosanko restated her question if an overgrown easement with bushes, etc. would void it. Alfred Chang said this is why we brought the issue before a judge – to make a decision. Barbara Bosanko once again said just because it has bushes, does not mean the easement is void. Alfred Chang said not automatically. An unknown person asked Mike Kelly, who was in the audience, if the easement was recorded. Mike Kelly said he didn't know if there was a deed, but it is recorded on the plat. Alfred Chang said that there is not a legal document in terms of a deed recording, just on the plat. Alfred Chang said there may be a reference of the easement, but there is no official conveyance from the developer to the owners that spells it out, which is the distinction. Alfred Chang explained that there is a plat showing the easement, but there is not a conveyance from a developer or association convey the easement to whomever the grantee is. Robin Hall asked where the lawsuit and declaratory state of the easement from the judge stands. Alfred Chang said that they [defendants/adjacent property] have just been served this week, so therefore we are months away from a

hearing. Alfred Chang said that there are two separate issues; one being the HOA and the other being the governmental agency. Barbara Bosanko recapped that there is litigation, a recorded easement whether it's got bushes or not, and that those are the two things she is concerned about. The applicant/homeowner stepped in and said this is beyond overgrown bushes. The applicant explained that the topography also prevents use of the easement to begin with. The applicant said that the intention was ingress/egress, but you can't even do that. The applicant said for all these reasons, they are trying to get the easement abandoned, not to mention there is a fence in the middle of it. Barbara Bosanko said well, that can be dealt with and whoever the fence belongs to can move it. The applicant said the fence was installed in May 2022 and the text that was shown on the board was sent in October 2022. The applicant said that the easement area drops off substantially and not only can you not drive a car down the easement, but you cannot even walk. The applicant reiterated that additionally to it not being usable, even if it was, only lot 34 and 35 can use it. Barbara Bosanko said whether or not it's usable is not relevant. Chris Adams said was the terrain the same when the easement was established? The applicant said it was. Chris Adams said then the developer had to have taken that into consideration when they established the easement. Barbara Bosanko said that Alfred Knows as an attorney, when something is recorded, that is in concrete. Alfred Chang said the law is never in concrete, it's what the judge says. Alfred Chang said that regardless, they can still make a decision on whether or not the variance being requested is still reasonable. The applicant said whether or not the easement stays is not what we are discussing, the point is that the tiny house is being built 28 ft from the property line, which is not a threat to public safety, the house is not in the way, and it creates a hardship because they have no other place to put the tiny home. The applicant said that they already had approval to move forward and started to build the structure, therefore it's existing. The applicant said all they are asking for is the 18 ft reduction so that they can move forward with what they have already started. David Woodward asked if the neighbor uses the driveway and the applicant said no, their driveway is exclusive to them. The applicant went to the screen where the property was laid out and showed the Planning Commission how there were no other options on where to put the tiny home because of various factors such as topography challenges, their primary home, septic and their well. The applicant explained that because of all these factors, there is a hardship. The applicant said that there is no threat to public safety because it is not open to the public and that they are meeting the criteria for a hardship variance. Robin Hall asked if he was actually building in the easement. The applicant said no, they are 28 ft from the property line, and 8 ft from the easement. Barbara Bosanko asked if the adjacent lot owner was here, and they identified themselves. The applicant said that this is their forever home and the tiny home will be for his mother in law, that the tiny home has no other intentions, such as short term rentals, behind it. Barbara Bosanko asked if he had a camper on the property. The applicant said that he does, which was fine until the neighbor had a problem with it, and then the county suggested he build a tiny home. Barbara Bosanko re confirmed that the county said he could build a tiny home. The applicant said yes. Alfred Chang said that at this point, the planning commission would probably would like to hear from the other side. A citizen identified himself as one of the surveyors that designed this community 32 years ago. He said when he and Nick put that easement there, they knew exactly what they were doing. The easement was for lots 34 and 35 only and it was for access to the river. The citizen and surveyor asked what the county's setbacks from easements were 32 years ago. The citizen and Barbara Bosanko began talking over one another, with Barbara Bosanko saying we don't need to go back that far and we are talking about now, and the citizen reiterating his question of what the setback was in 1991. Barbara Bosanko said that we would have staff look into that, and staff said that the code goes back to 2002 and we probably did not have land use regulations in 1991. The citizen said that was all he could say, and that he was there when the subdivision was done, that he in fact drew the plat that was on display on his kitchen table. Barbara Bosanko asked if it was recorded. The citizen said he did not know if there was a deed recording the easement, but it's on the plat and the plat was recorded. Attorney Matthew Dominick took podium to introduce himself as the adjacent lot owners' attorney. Matthew Dominick said that he was hearing a lot about the easement, but wanted to verify that the agenda item is actually a variance for the side setback from the easement. Matthew Dominick said that the applicant is looking to violate not only the county's setbacks, but also the neighborhood HOA covenants. Matthew Dominick said that whether or not the easement is going to be abandoned, will be a court decision. Matthew Dominick said that Ms. Bosanko was correct, that mere non use never constitutes abandonment. Matthew Dominick said that he and his clients have told the applicants that it is not abandoned, and they will tell the judge it is not abandoned. Matthew Dominick said we heard Mr. Chang talk about several things – "the county told me I could do it" – Matthew Dominick said that does not matter, that there are not only county codes, but also covenants in place for the HOA that the applicants have actually been siting to his clients during their litigation. Matthew Dominick said everyone should have knowledge of the county and HOA covenants and codes, that the applicants just chose not to follow them. Matthew Dominick compared the tiny home to when the applicants were living in a camper that partially straddled his client's property line, and painted a picture that the applicants are the type of people who just don't care, that they applied for this variance

after full knowledge of both HOA covenants and county codes. Matthew Dominick said that there is no hardship, that the applicants are claiming it's a hardship because they can't put their house where they want it, even though they have several acres. Matthew Dominick said that if the Planning Commission approves the variance, it will only expand and intensify the litigation that they are already in. Matthew Dominick said that he didn't believe the easement will be deemed abandoned, but either way, they would have to tell the judge that the tiny home should not be there, but the Planning Commission approved the variance, and that would actually encourage litigation. Matthew Dominick said that the applicants have no hardship, that they have violated their neighbor's property rights, and they would ask that the Planning Commission deny the variance because they should have never built the tiny home where they did in the first place. Matthew Dominick asked anyone who was present at the meeting that was against the variance request to raise their hand. Danny Clark asked what the HOA setbacks are, and Matthew Dominick said 35 ft from the property line. Danny Clark asked if the applicants would have received a copy of the covenants at closing. Matthew Dominick said typically they do, but either way, the law charges the applicants with knowledge of the covenants because they are recorded in their chain of title. Barbara Bosanko asked if there was anyone present to speak in favor of the applicant. One person took podium stating he did the applicant's driveway and that the neighbor's property is nowhere near the driveway [where the tiny home is]. The citizen said that not only does the fence run down the easement, but it actually goes into the subdivision road. The citizen said that the neighbor ripped his head off…[trailed]…when Barbara Bosanko interjected stating we are not getting personal. The citizen continued to explain that he wasn't trying to get personal, he was trying to explain that the neighbor had a fence blocking a subdivision area as if it were his property …[trailed]…when Barbara Bosanko repeated that we are not getting personal. The citizen said never mind and left the podium when Alfred Chang further explained the fence that was in the subdivision road. Barbara Bosanko said this is why we don't get personal, and we will not get personal. Barbara Bosanko asked if there was anyone there in opposition. Quite a few citizens took podium to express their opposition, with the first citizen sharing a very lengthy letter that he had prepared explaining his background with the community and how approving the variance would affect the community negatively. A lot of the common themes were that the rest of the citizens have to follow the rules, so therefor the applicant should. Alfred Chang took podium to state that his clients did in fact do due diligence, otherwise they wouldn't have an approved permit. Alfred Chang also stated that he has 17 homeowners in the community who have signed a petition to revoke the covenants. Alfred Chang said that most of the residents do not abide by the covenants, which will be address in superior court. The applicant brought the conversation back full circle to state that the variance is for a setback to the easement, which has nothing to do with the HOA. The applicant said of course he knew there was an easement there, that he's never acted like he didn't know that. The applicant said at the end of the day, he has asking to be 28 feet off the property line, a 32 ft reduction. The applicant said that one of the citizens said that there were other places he could go, and that was not true. The applicant said that if you [the Planning Commission] have been to the property, you would see that he is on a ridge, and there is no place to put another home because you have complications with the septic tank. The applicant said that he has answered the four key questions to obtain a hardship variance. The applicant said that there was a lot of opposition, but he did not hear in any of the opposition how their tiny home would adversely affect them, especially those that spoke up that do not even live near his property. Barbara Bosanko said do not get personal. Barbara Bosanko said to wind it up. The applicant continued to speak, and Barbara Bosanko said wind it up. Barbara Bosanko said so we have litigation, so we have easement. Barbara Bosanko asked if they found proof of the easement recording. Alfred Chang said he did not understand that question. Staff said that the planning department has a copy of the recorded plat that was also included in the agenda packet. Barbara Bosanko said so the covenants are trying to be rescinded. A citizen asked if the setbacks were stated on the building permit. Staff said that front and side setbacks were noted, but not easement. The citizen asked if the county approved it. The applicant said he called and asked Donna for the setbacks. Staff explained that if the question was what are side setbacks, then the correct answer was 20 ft, that the staff would not have known to give easement setbacks if the question was positioned as a side setback. Barbara Bosanko said it's hard. The applicant said just to be clear, Jeff Smith, who is our building inspector, knew about this easement. Barbara Bosanko said that was hearsay. The applicant said that everything that has been said at all has been hearsay. Barbara Bosanko asked if Jeff Smith was present. The applicant said he invited him, but he is not here. Danny Clark said it doesn't matter what someone told you, you have documents that say easement very clearly. The applicant said that they aren't disputing the easement, that they are asking for a setback of 18 ft. Danny Clark asked if the contractor pulled the setbacks, and the applicant said he was building it himself. Danny Clark explained that it was his responsibility as the homeowner to find out and follow the setbacks. Danny Clark said that he did things out of order, he should have applied for a variance before he started building. Barbara Bosanko asked what the applicant does for a living. The applicant said he is a small business owner – a contractor, but not licensed. The applicant said regardless of what order he should have done, he would be in the same spot – asking for a variance. The

applicant reiterated the four points that he meets in the code for a hardship. Barbara Bosanko interjected asking if he was a licensed contractor, and the applicant said no. Barbara Bosanko and the applicant were going back and forth talking over one another about whether or not it matters that he started the project before he applied for the variance, which potentially could cost him money. The applicant clarified that he isn't asking for a financial hardship, it's geographical – he has no place to build his tiny home. The applicant reiterated he meets the requirements to qualify for a hardship. Barbara Bosanko asked if there was motion. David Woodward made a motion to deny. Chris Adams Seconded the motion. The motion was passed unanimously.

- Variance request per Chapter 26 section 252 – Panhandle or flag lots. The proposed minor subdivide will result in an additional flag pole length exceeding 250ft. The location of the proposed minor subdivide is off of Auraria Road, tax parcel 047 570, Commerce Corridor Character area.

Staff explained that the applicant is requesting the variance due to the existing shape of the parcel, already being a flag lot with a pole exceeding 250ft. The applicant took the podium stating that it was a 2.27 acre lot and they need to split it. The applicant said they need the variance to build the two houses. Barbara Bosanko asked if it was one driveway and the applicant said yes. Robin Hall asked the total length of the flag pole, and Chris Adams said 352 ft. Barbara Bosanko asked once again if there was one driveway, and once again the applicant said yes. Barbara Bosanko asked if they were doing two homes. The applicant said yes. Chris Adams asked how the driveway would be shaped, and the applicant said there really wouldn't be any choice because the lot is narrow in that area. Chris Adams asked if they were doing two flag poles because of the 30ft requirement, and staff explained the 30ft requirement would only apply to Class I subdivisions and above. Barbara Bosanko asked if there were any comments from the public. Barbara Bosanko asked if the board had any other questions. Barbara Bosanko asked if there was a motion. David Woodward made a motion to approve. Chris Adams seconded the motion. The motion was passed unanimously.

- Request for three (3) variances; The first (1st) variance is section 26-61 – Class III subdivision – a tract of land into ten parcels or more. The proposed class III subdivision will be created from a partial tract of land. The second (2nd) variance is that the proposed Class III will have nine lots vs. the required ten. The third (3rd) variance is per Chapter 27 section 2.2.3 – Chart of Performance Standards – Developments in Agricultural Preservation Character area require 3 or more acres.

Staff explained that the applicant is requesting three variances in order to be able to build a class III subdivision on a tract of land that is not large enough for 10 lots due to the existing structures already on the land, and is in agricultural preservation. The applicant introduced himself stating he was a local homebuilder and long term resident. The applicant said he has almost 20 acres of land on Yahoola Rd. The applicant said that the tract of land he's looking to develop is three parcels. The applicant explained that he is looking to build high end homes. The applicant said that people that come to his office are looking to a nice custom home that is not too big. The applicant said he would only have nine lots and each land owner would have access to the national forest, and each lot would have around two acres. The applicant said that the road would be paved and turned over to the county. Barbara Bosanko asked if there were existing homes. The applicant that he lived on the property and part of his request is to be able to have outparcels for his house and a duplex he owns. Staff explained that the applicant submitted a response to each of the requirements to obtain a variance in their packet. Robin Hall said it was no problem to do 9 lots instead of ten, however, the problem is that this is Agricultural Preservation, which has a three acre minimum. The applicant said that that was part of his variance request. The applicant said that the land just won't be able to be developed with three acres – that he does not have the land and the numbers would not make sense. The applicant said that other applicants have gotten around requirements by doing driveways off of county roads galore. Barbara Bosanko asked if there was a motion. A citizen in the audience said whoa, we haven't asked for public comments. That citizen took the podium to express their desire for the Planning Commission to deny the request, specifically regarding the three acre minimum. Barbara Bosanko asked if there were any comments in favor of the variance. A citizen took the podium to express support for the variance, stating that the applicant does quality work and it would be a good thing for the county. Staff read and email received from a citizen opposing the variance, on the basis of keeping our character areas [Agricultural Preservation] in tact and the fact that there is no hardship. Robin Hall made a motion to deny the variances. A citizen spoke from the audience stating that they

had met with the county on this plan and the county said it looked good – that the county alerted them of Agricultural Preservation after they had already designed the subdivision and they were told it looked good – however, he did not want to throw anyone under the bus. The citizen said that because this is already three separate tracts, that all they have to do is a minor subdivide on each one and get essentially the same or worse result. Danny Clark said he didn't like what the citizen was proposing, that he liked what was being proposed better. Chris Adams said he liked everything they presented, except that it doesn't follow the land use code of Agricultural Preservation. Barbara Bosanko said well, he is here because he has already invested money. Danny Clark asked if they are at a deadlock. Barbara Bosanko said we needed a motion. Danny Clark asked what of? Staff said the three variance requests. The applicant said that if he can't do less than three acres, then just go ahead and deny all of them. Danny Clark made a motion to approve. David Woodward seconded the motion. Robin Hall denied. The motion was passed by majority vote.

PRELIMINARY PLAT APPROVAL

- Request for Preliminary Plat approval of a Class III Subdivision per Chapter 26 sec. 135-161

Staff explained that the applicant that just got the variances needs a preliminary plat approval. Robin Hall made a motion to approve. Chris Adams seconded the motion. The motion was passed unanimously.

OLD BUSINESS

Staff explained that the two setback variances from August will both be appealing. Steve Sylvester's request will not have a quorum, therefore he will have to appeal to the superior court. Jarrod Hatcher will have a hearing in October with the Board of Commissioners.

ADJOURN

Barbara Bosanko asked for a motion to adjourn the meeting. Chris Adams made a motion. David Woodward seconded the motion. The motion was passed unanimously.

Members present:

_____ _____

Barbara Bosanko (Chairman) *Danny Clark*

_____ _____

Robin Hall *David Woodward*

_____

Chris Adams

Staff present: Rebecca Mincey
Jenna Ritter
Other: Michelle Charriez, Environmental Health

Law Offices of
George E. Butler II, LLC

132 Hawkins Street
Dahlonega, GA 30533

E-MAIL: geb@lawyers.com
WEB gebutlerlaw.com

OFFICE 706-864-3200 or 404-873-2544
FAX 706-864-3206 or 404-875-5130
CELL 404-735-6054

September 21, 2023

Ms. Rebecca A. Mincey
Executive Director
Lumpkin County Community
& Economic Development
Lumpkin County Planning Department
342 Courthouse Hill, Suite A
Dahlonega, Georgia 30533

BY HAND &
***VIA* EMAIL:** rebecca.mincey@lumpkincounty.gov

RECEIVED 9-21-2023

RE: **NOTICE OF APPEAL BY ANGIE RINK AND MARIO BOLES FROM THE SEPTEMBER 11, 2023, DECISION BY THE LUMPKIN COUNTY PLANNING COMMISSION TO DENY THEIR SETBACK VARIANCE REQUEST *VIS-À-VIS* CHAPTER 26-253(A) & (B) WITH RESPECT TO LUMPKIN COUNTY TAX PARCEL NO. 035 112**

Dear Director Mincey:

I am representing Angie Rink and Mario Boles; and, as referenced above, I hereby notify you pursuant to Section 26-446(b) of the County Code that my clients are appealing the adverse decision taken by the Planning Commission on September 11, 2023 *vis-à-vis* their above-referenced Variance Application pursuant to Section 26-253(a) & (b).

In that connection I would like to make the following observations:

1. It is my understanding that both the Planning Department and the Planning Commission took the position that the 20-foot Ingress-Egress Easement between Lots 34 & 35 of the Laurels on the Etowah Subdivision, as shown on the applicable Subdivision Plat recorded at Plat Book 24, Page 4, of the Lumpkin County, Georgia, records, which was expressly stated to be "FOR USE OF LOTS 34 AND 35 ONLY," was sufficient to trigger the normal setback requirement from ingress/egress easements as stated in Section 26-253(b). But I do not understand why it was assumed by the County that the normal

setback requirement here should be 50 feet, even assuming that the ingress-egress easement in this case is the same sort of ingress/egress easement contemplated by Section 253. The normal front setback is 30 feet; and the normal side setback is 20 feet. We're talking here about a side setback. It is true that subsection (b)(2) refers to a front setback of 50 feet in "a class I or class II subdivision or on an individual lot, not part of a subdivision," but it does not appear that any of those criteria apply here—and even under subsection (b)(2) it goes on to say that even in those cases "all other setbacks shall be 20 feet." So we do not understand why the normal 20-foot side setback requirement did not apply here. And, ironically, as per Section 26-253(b)(5) the normal side setback off a recorded easement is only 10 feet. Here the proposed "tiny house" is more than 20 feet from the side lot line and more than 10 feet from the easement.

2. My clients also argue that the 20-foot ingress-egress easement depicted on the Subdivision Plat is not the same type of "ingress/egress easement" contemplated by Chapter 26, which establishes special "frontage" setback requirements in Section 26-253—even if we were talking about a frontage setback here and not, as argued above, a side setback. In particular, Section 26-191(c) provides that the sort of "ingress/egress easements" referred to in that Chapter "must be a minimum width of forty feet and must be cleared a full twenty feet to provide easy access for emergency vehicles." And since Class III subdivisions may be accessed from "an easement," Section 26-62 provides that "[a]ll lots within a class III subdivision must front on the newly created subdivision road." In short, as previously emphasized, the focus on "ingress/egress easements" in Chapter 26 is clearly on easements or private roads that are being used for access to the front of the subdivision lots. That implied focus on ingress/egress easements along the frontage of subdivision lots is made expressly clear in Section 26-191 ("Easements"), where subsection (e) provides as follows:

> An easement in existence prior to the adoption of the resolution from which this section is derived may remain as a nonconforming use, but may not be extended except in conformance with these regulations. However, any owner subdividing property on a nonconforming ingress/egress easement must, as part of the property subdivision, provide a conforming easement over and through their property.

And, to repeat, Section 26-191(c) provides that: "[i]ngress/egress easements must be of a minimum width of 40 feet and must be cleared a full 20 feet to provide easy access for emergency vehicles." So clearly this uncleared 20-foot ingress-egress easement along the side and not the front of Lots 34 & 35 is not the sort of ingress/egress easement contemplated by Chapter 26.

3. Attached hereto as Exhibit "A" is an official publication by Lumpkin County which appears to provide categorically that in subdivisions like the Laurels on the

Etowah the side setback is 20 feet. In this case, as was explained at the hearing before the Planning Commission, despite the Variance Application for a 40-foot variance, the proposed "tiny house" is 28 feet from the side lot line and 18 feet from the side of the easement.

4. Assuming arguendo that the 50-foot setback requirement referred to in Section 26-253(b) applies here, notwithstanding the fact that this is a side setback and not a front setback and that the ingress-egress easement here is not the sort of ingress/egress easement contemplated by Chapter 26, subsection (b)(5) provides that required "[s]etbacks from ingress/egress easements may be reduced to less than 50 feet by the planning director with just reason." In this case Appellants contend that Building Inspector Jeff Smith, exercising apparent delegated authority from the Director, assured Appellants that he had the administrative authority pursuant to that subsection to allow them the necessary variance from the applicable setback requirement. That discretion was vested in the Planning Director, and Appellants assert that the discretion claimed and attempted to be exercised by Mr. Smith was consistent with prior administrative interpretations of that Section. Instead, it appears that by erroneous reference to the limitation on administrative discretion found in Chapter 27, *i.e.*, Section 27-8.1.2(5)A.I, the Planning Department takes the position that any administrative variance from setback requirements "shall be less than 25% of the originally required setback." It is an abuse of administrative discretion for an administrator not to realize he or she enjoys such discretion. The Chapter 27 limitation applies only to traditional setbacks off property lines—and not off alleged ingress/egress easements as per the requirements of Chapter 26.

5. And, moreover, Jeff Smith assured Appellants of his administrative interpretation that the 20-foot ingress-egress easement shown on their plat was <u>not</u> the sort of frontage road ingress/egress easement contemplated by Chapter 26, which as indicated is supposed to have a 40-foot width and at least a graded 20-foot roadbed, but on the contrary was an unbuildable and abandoned ingress-egress easement as to which no special setback requirements apply. While the subdivision plat suggests that the ingress-egress easement in question follows an existing roadbed, in the process of the final survey of the subdivision the actual centerline of the ingress/egress easement—as Mr. Smith observed—was moved in an easterly direction so as to be in the middle of a steep and unbuildable slope; and, as for abandonment, Mr. Smith observed that Appellants' neighbor on Lot 35 built his privacy fence down the middle of the alleged easement, which he had no right to do if he was claiming that it was still a valid and enforceable easement. Accordingly, Appellants were affirmatively encouraged by the Planning Department to place their so-called "tiny house," being erected for their in-laws, in the location for which it is now claimed Appellants require a variance.

6. Section 26-166(3)l provides that any subdivision final plats should show the "[m]inimum setbacks, front, rear, and side"; whereas, the Laurels on the Etowah Subdivision Plat shows no setback requirements off the twenty-foot ingress-egress easement in question.

7. Based on the foregoing and Appellants' presentation to the Planning Commission it is clear that either your Appellants did not require a variance or they received the administrative variance they required or they satisfied the criteria for granting the requested variance, as set forth in Article XIII of Chapter 26.

Respectfully submitted,

Sincerely,

George E. Butler II

GEB/cr

Enclosures???

cc: Ms. Jenna Ritter (***VIA* EMAIL:** jenna.ritter@lumpkincounty.gov)
Ms. Angie Rink (***VIA* EMAIL:** angiefayerink@gmail.com)
Mr. Mario Boles (***VIA* EMAIL:** marioeboles@gmail.com)

10:55 81%

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What are the building setbacks in Lumpkin County?

Setbacks in Lumpkin County are 20 feet on side and rear property lines and 50 feet from any road or easement not located in a subdivision in the front. Inside subdivisions, the setback is 30 feet from the roads and easements.

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6. **Can I disturb the land within the stream buffers?**
7. **Do I need a sign permit?**
8. **What and when can I burn?**
9. **What are the building setbacks in Lumpkin County?**
10. **Does Lumpkin County have zoning?**

EXHIBIT A

(PAGE 1 OF 1)

From: geb@lawyers.com
To: Rebecca Mincey
Cc: Jenna Ritter; "Angie Rink"; "Mario Boles"; Client File
Subject: Hearing on Appeal by Angie Rink & Mario Boles
Date: Thursday, September 28, 2023 10:47:37 AM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png
image007.png
image008.png

Rebecca—

Thanks for the prompt response. And, yes, sometime relatively shortly after 4 on November 7 for the appeal hearing works for my clients and me; and we'll be there with bells on!

All the best to you and your staff.

George

George E. Butler II
Law Offices of George E. Butler II, LLC
132 Hawkins Street
Dahlonega, GA 30533

geb@lawyers.com

TEL 706-864-3200 (or 404-873-2544)
FAX 706-864-3206 (or 404-875-5130)
CELL 404-735-6054

https://www.gebutlerlaw.com/

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From: Rebecca Mincey <rebecca.mincey@lumpkincounty.gov>
Sent: Thursday, September 28, 2023 10:30 AM
To: geb@lawyers.com
Cc: Jenna Ritter <jenna.ritter@lumpkincounty.gov>; 'Angie Rink' <angiefayerink@gmail.com>; 'Mario Boles' <marioeboles@gmail.com>; Client File <pixier@mindspring.com>
Subject: RE: Yesterday's Appeal by Angie Rink & Mario Boles

Hi George,
The BOC would like to set the appeal hearing on Tuesday, November 7th, immediately following the first work session. The work session begins at 4:00. Will this work for you all? Thank you for confirming so we can publish the notice.

Rebecca A. Mincey
Community & Economic Development Director
Lumpkin County
342 Courthouse Hill
Dahlonega, GA 30533
Office: 706.482.2648

Lumpkin County Government
Development Authority of Lumpkin County

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From: geb@lawyers.com <geb@lawyers.com>
Sent: Friday, September 22, 2023 9:16 AM
To: Rebecca Mincey <rebecca.mincey@lumpkincounty.gov>
Cc: Jenna Ritter <jenna.ritter@lumpkincounty.gov>; 'Angie Rink' <angiefayerink@gmail.com>; 'Mario Boles' <marioeboles@gmail.com>; Client File <pixier@mindspring.com>
Subject: Yesterday's Appeal by Angie Rink & Mario Boles

Rebecca—

Got your confirmation. Thanks.

George

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Law Offices of George E. Butler II, LLC
132 Hawkins Street
Dahlonega, GA 30533

geb@lawyers.com

TEL 706-864-3200 (or 404-873-2544)
FAX 706-864-3206 (or 404-875-5130)
CELL 404-735-6054

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From: Rebecca Mincey <rebecca.mincey@lumpkincounty.gov>
Sent: Friday, September 22, 2023 8:03 AM
To: geb@lawyers.com
Cc: Jenna Ritter <jenna.ritter@lumpkincounty.gov>; Angie Rink <angiefayerink@gmail.com>; Mario Boles <marioeboles@gmail.com>; Client File <pixier@mindspring.com>
Subject: RE: Today's Timely Appeal by Angie Rink & Mario Boles

Thanks, George.
The appeal has been received and we will be in touch with the group on a proposed hearing date.
Thanks.

Rebecca A. Mincey
Community & Economic Development Director
Lumpkin County
342 Courthouse Hill
Dahlonega, GA 30533
Office: 706.482.2648

Lumpkin County Government
Development Authority of Lumpkin County

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Sent: Thursday, September 21, 2023 5:33 PM
To: Rebecca Mincey <rebecca.mincey@lumpkincounty.gov>
Cc: Jenna Ritter <jenna.ritter@lumpkincounty.gov>; Angie Rink <angiefayerink@gmail.com>; Mario Boles <marioeboles@gmail.com>; Client File <pixier@mindspring.com>
Subject: Today's Timely Appeal by Angie Rink & Mario Boles
Importance: High

Rebecca—

Hey. It was pleasure getting to hand deliver the attached appeal to you this afternoon—and to be able to congratulate you on your impressive new title and challenging job.

I could not help but note your uncertainty as to the timeliness of the appeal, though you seemed to accept my explanation. Nonetheless, I thought I'd provide you with the attached comparison of several Computation of Time provisions in Georgia. Suffice it to day, the universal rule in Georgia—as illustrated by the rule in the Georgia Code that applies statewide to all state judicial and administrative proceedings—is that the day of the decision (which after all, as here, could come very late in the day) is not counted but the last is counted unless it falls on a weekend or holiday.

Alternatively, some few jurisdictions like Butts County provide that either the first or the last day should not be counted—which of course give you the exact same, universally-accepted result.

Hence my clients' appeal today was timely.

Whoever drafted your Ordinance tried to follow the basic Butts County format, but instead of saying **the first or last day shall not be counted,** the draftsman unfortunately ad-libbed and came up with the thoroughly nonsensical **only the first and last day shall be counted.** If that is so, then my clients still had at least 9 more days to file. In fact, using that formula the allotted 10 days for appeal would never run out.

I suggest that issue be clarified by the County in due course.

In any case, I look forward to working with you and your staff on this matter and on others in the future—though I do try to keep my local land use activities to a minimum, since "zoning" cases tend to be controversial and I prefer not to stir things up locally, where I now reside.

All the best.

George

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132 Hawkins Street
Dahlonega, GA 30533

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