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March 20, 2026

Mr. Peter Offen, Chairman
City of Brevard, NC – Board of Adjustments (BOA)
95 West Main Street
Brevard, NC 28712

Care of Mr. Mack McKeller, City Attorney
and Mr. Brian Gulden, Attorney for the Brevard Board of Adjustment

RE: Robinson, Veal Driveway Appeal - Subpoena Request
Pursuant to NCGS 160D-406(g) and NCGS 160D-1402(c)

Dear Mr. Offen,

In response to Mr. McKeller's objection to our request for subpoenas we assert the following.

1. Mr. McKeller asserts that the driveway permit was denied "due to insufficient information contained in the application," however that has not been established and is the responsibility of the Board and the purpose of the hearing to determine, not the City's Attorney.

2. Further, there are no grounds to support Mr. McKeller's assertion that "evidence to be proffered" will be in any way "not relevant, reasonable in nature and scope, and not oppressive." We believe that his statement could not be further from the truth. As stated in our request, it is our desire to seek the truth, and in fact, his comment seems to be an admission that evidence will be proffered that sheds light on statements made in the Staff Report that may not be true.

3. It was clear from our prior hearing session that the city's information regarding the denial of driveway permits was sufficient (e.g., the city's understanding of where it thinks the right of way and bike trail are located prevents it from giving access from the properties in question to the right of way.) This fact was the subject of almost the entire hearing session. The city determined the location of the right of way and the bike trail. It defies logic that it would not know the location of the same.

4. The establishment of the right-of-way, where it is located, and the intent of its use are exactly on point regarding the appeal to grant driveway permits that would result in access to Mackey Ridge Road, which is located in the right-of-way.

5. Mr. McKeller's statement, "None of the parties who are requested, and none of the evidence forecast to be elicited is related to the matter," is certainly not made in the interest of determining actual facts as they relate to the denial of the permit applications. Mr. McKeller's assertion related to individuals' "recollections" being "oppressive and unreasonable" is baseless. As a reminder, the request includes document, emails, and other related materials which supersedes "recollections."

6. As such, testimony from the requested witnesses would be directly on point to this matter. Whether and how accurate the witnesses' memories may be is a matter for the trier of fact (the Board of Adjustment). Mr. McKeller does not get to determine the quality of the witnesses' memories, their credibility, or the weight of their potential testimony unilaterally.

7. The subject matter of the potential testimony is both relevant and within the scope of determining driveway permits that would allow vehicular access to Mackey Ridge Road. There is nothing inherently oppressive about asking questions regarding a public project that occurred twenty years ago. Memories regarding such events are frequently recalled better than what one ate for lunch yesterday.

8. It is imperative that the Board have access to all pertinent information regarding the blocking of access to the applicant's property and the denial of the driveway permits. That the City would object to the testimony of the requested persons, given their positions, responsibilities, and participation in the creation of the Preserve, the imposition of the easement across our properties, and the construction of the trails would obstruct the fundamental due process right to be heard, and the right to present relevant evidence. The City and the City's attorney should welcome the testimony to corroborate and substantiate the Summary Report.

Sincerely,



J. Elliott Dugger, Esq.
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