#### IN THE CHANCERY COURT OF MARION COUNTY, TENNESSEE

THUNDER AIR, INC.,	ş		FILED
Plaintiff,	s S		CHANCERY COURT
υ.	§ Cas	e No.: 8424	APR 1 9 2024
JOE E. BLEVINS, JR., and	9 §		TIME 1:55 BY PLL
RONNIE KENNEDY, Defendant.	9 § 8		
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#### DEFENDANT JOE E. BLEVINS, JR.'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO DISMISS AND TENN. CODE ANN. § 20-17-104(a) PETITION TO DISMISS THE PLAINTIFF'S COMPLAINT PURSUANT TO THE TENNESSEE PUBLIC PARTICIPATION ACT

#### **I. INTRODUCTION**

This is a performative Strategic Lawsuit Against Public Participation—better known as a "SLAPP suit"<sup>1</sup>—filed by a real estate developer against the leading critics of the Plaintiff's poorly-conceived development. As the Tennessee Court of Appeals has explained, "[t]he paradigm SLAPP suit is 'one filed by developers, unhappy with public protest over a proposed development, filed against leading critics in order to silence criticism of the proposed development." *Nandigam Neurology, PLC*, 639 S.W.3d at 658 (cleaned up). This case is that "paradigm SLAPP suit." *Id*.

Plaintiff Thunder Air, Inc. is a well-known real estate development company that seeks to develop Aetna Mountain, a historic coal mining mountain in southern Tennessee.

<sup>&</sup>lt;sup>1</sup> See Nandigam Neurology, PLC v. Beavers, No. M2020-00553-COA-R3-CV, 2021 WL 2494935, at \*3 (Tenn. Ct. App. June 18, 2021) ("The term 'SLAPP' stands for 'strategic lawsuits against public participation,' meaning lawsuits which might be viewed as 'discouraging the exercise of constitutional rights, often intended to silence speech in opposition to monied interests rather than to vindicate a plaintiff's right." (citing Todd Hambidge, et al., Speak Up. Tennessee's New Anti-SLAPP Statute Provides Extra Protections to Constitutional Rights, 55 TENN. B.J. 14, 15 (Sept. 2019))), no app. filed.

As a longtime resident of the area, Defendant Joe E. Blevins has serious concerns about the development, which presents a matter of obvious public concern. Specifically, Mr. Blevins has voiced concerns about the danger of constructing a large-scale residential development on top of a mountain that is pocked with abandoned underground coal mines.

The statements over which Mr. Blevins has been sued—which the Plaintiff has neglected to attach (and has refused to attach) to its Complaint in contravention of elementary procedural requirements—are facially inactionable. Despite suing Mr. Blevins for "Libel of Title," the Plaintiff has not even *alleged* that Mr. Blevins said anything to call the Plaintiff's "title" to its property on Aetna Mountain into question. Instead, the Plaintiff has sued Mr. Blevins for accurately recounting that the Plaintiff's property on Aetna Mountain is riddled with abandoned underground coal mines and for expressing his opinion about the potential danger of building homes on top of them.

Such statements are not even theoretically actionable. They are also firmly protected by the First Amendment, which protects both Mr. Blevins' truthful speech and his critical opinions about matters of public concern—even if a no-good, very-bad real estate developer who has shamelessly abused the legal system would prefer otherwise.

For these reasons, Mr. Blevins' Motion and Tennessee Public Participation Act Petition to dismiss the Plaintiff's Complaint should be **GRANTED**. Afterward, the Defendant should be awarded his reasonable attorney's fees, costs, and expenses. *See* Tenn. Code Ann. § 20-17-107(a)(1); *see also Finch v. Raymer*, No. W2012-00974-COA-R3-CV, 2013 WL 1896323, at \*15, n.25 (Tenn. Ct. App. May 6, 2013) ("'Litigants who successfully defend a libel of title action may recover reasonable expenses incurred in defending that suit,' including attorney's fees.") (quoting *Brooks v. Brake*, No. 01A01–

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9508–CH–00365, 1996 WL 252322, at \*3 (Tenn. Ct. App. May 15, 1996)). Further, "to deter repetition of" the Plaintiff's misconduct here, the Plaintiff should be sanctioned in an amount equivalent to 3% of its net worth. *See* Tenn. Code Ann. § 20-17-107(a)(2).

#### **II. LEGAL STANDARDS**

#### A. THE DEFENDANT'S MOTION TO DISMISS

"A motion to dismiss a complaint for failure to state a claim pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure asserts that the allegations in the complaint, accepted as true, fail to establish a cause of action for which relief can be granted." Conley v. State, 141 S.W.3d 591, 594 (Tenn. 2004). Generally, a motion to dismiss is resolved by examining the pleadings alone. Leggett v. Duke Energy Corp., 308 S.W.3d 843, 851 (Tenn. 2010) (citing Cook ex rel. Uithoven v. Spinnaker's of Rivergate, Inc., 878 S.W.2d 934, 938 (Tenn. 1994)). This Court, however, may also consider "items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned . . . without converting the motion into one for summary judgment." W. Exp., Inc. v. Brentwood Servs., Inc., No. M2008-02227-COA-R3-CV, 2009 WL 3448747, at \*3 (Tenn. Ct. App. Oct. 26, 2009) (quoting Ind. State Dist. Council of Laborers v. Brukardt, No. M2007-02271-COA-R3-CV, 2009 WL 426237, at \*8 (Tenn. Ct. App. Feb. 19, 2009) (quoting WRIGHT & MILLER, FED. PRAC. & PROC., CIV. § 1357, at 376 (3d ed. 2004), app. denied (Tenn. Aug. 24, 2009))), no app. filed. Thereafter, when-as here-"the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief[,]" a defendant's motion to dismiss for failure to state a claim must be granted. See Crews v. Buckman Labs. Int'l, Inc., 78 S.W.3d 852, 857 (Tenn. 2002).

#### **B.** THE TENNESSEE PUBLIC PARTICIPATION ACT

The Tennessee Public Participation Act ("TPPA")—which Tennessee enacted in 2019 to deter, expediently resolve, and punish SLAPP-suits like this one—provides that "[i]f a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action" subject to the specialized provisions of Tennessee Code Annotated §§ 20-17-104 and 20-17-105. *See* Tenn. Code Ann. § 20-17-104(a). The TPPA "provide[s] an additional substantive remedy to protect the constitutional rights of parties" that "supplement[s] any remedies which are otherwise available . . . under the Tennessee Rules of Civil Procedure." Tenn. Code Ann. § 20-17-109. As such, nothing in the Act "[a]ffects, limits, or precludes the right of any party to assert any defense, remedy, immunity, or privilege otherwise authorized by law[.]" *See* Tenn. Code Ann. § 20-17-108(4).

In enacting the TPPA, the Tennessee General Assembly forcefully established that:

The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law and, at the same time, protect the rights of persons to file meritorious lawsuits for demonstrable injury. This chapter is consistent with and necessary to implement the rights protected by Article I, §§ 19 and 23, of the Constitution of Tennessee, as well as by the First Amendment to the United States Constitution, and shall be construed broadly to effectuate its purposes and intent.

Tenn. Code Ann. § 20-17-102. Substantively, the TPPA also provides, among other things, that:

1. When a party has been sued in response to the party's exercise of the right of free speech or the right to petition, he or she "may petition the court to dismiss the legal action" pursuant to Tennessee Code Annotated § 20-17-104(a);

2. "All discovery in the legal action is stayed" automatically by statute "until

the entry of an order ruling on the petition" pursuant to § 20-17-104(d); and

3. "The court's order dismissing or refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to the court of appeals." *See* Tenn. Code Ann. § 20-17-106.

A TPPA petition to dismiss "may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court's discretion, at any later time that the court deems proper." *See* Tenn. Code Ann. § 20-17-104(b). Under the TPPA, "[t]he petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." *See* Tenn. Code Ann. § 20-17-105(a). Thereafter, the Court "shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action." *See* Tenn. Code Ann. § 20-17-105(b). Separately, "[n]otwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action." *See* Tenn. Code Ann. § 20-17-105(c). "If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice." *See* Tenn. Code Ann. § 20-17-105(e).

#### **III. FACTS**

For purposes of the Defendant's Motion to Dismiss only—but not for purposes of his TPPA Petition—the allegations set forth in the Plaintiff's Complaint are accepted as true. *See Conley*, 141 S.W.3d 591 at 594.

Thunder Air, Inc.-the Plaintiff here-is a company headquartered in Guild,

Tennessee.<sup>2</sup> It is owned and controlled by John "Thunder" Thornton, a wealthy and highprofile real estate developer and public figure who has been covered extensively by local and national media, including Forbes,<sup>3</sup> for many years. According to Thornton's University of Tennessee profile, Thornton:

[H]as served on the UT Board of Trustees, as chair of the UT Athletics Facilities Capital Campaign, as chair of the UT Development Council, and as cochair of the women's athletics Development Campaign. He has also served on boards at UT Chattanooga and is an active civic leader in Chattanooga. The Thornton Athletics Student Life Center is named for him.

Volopedia, John Thornton, <u>https://volopedia.lib.utk.edu/entries/john-thornton/</u> (last accessed Apr. 17, 2024).

The Plaintiff "owns a large parcel of real property in Marion County, Tennessee, known as River Gorge Ranch."<sup>4</sup> The Plaintiff is in the midst of developing the property, which "currently includes more than 350 platted home sites" and "will include some 2,000 home sites" once complete.<sup>5</sup> The "development of River Gorge Ranch" sits "on Aetna Mountain."<sup>6</sup>

Aetna Mountain is pocked with underground coal mines—an inarguably true fact that the Plaintiff's representatives acknowledged repeatedly during a recent County Commission hearing about the Plaintiff's proposed development.<sup>7</sup> Notably, even the Plaintiff's Complaint does not contest that Aetna Mountain has abandoned underground

<sup>&</sup>lt;sup>2</sup> Compl. at ¶ 1.

<sup>&</sup>lt;sup>3</sup> Master Bluffer, FORBES (Oct. 13, 1997), https://www.forbes.com/forbes/1997/1013/6008050a.html?sh=98cf14d72acb.

<sup>4</sup> Compl. at ¶ 5.

<sup>5</sup> Id.

<sup>&</sup>lt;sup>6</sup> Compl. at ¶ 23.

<sup>&</sup>lt;sup>7</sup> See, e.g., **Ex. 1**, Mar. 25, 2024 Marion County Commission Meeting, at 21:11–13 ("Are you saying there is no mines on Aetna Mountain?" [Plaintiff's Representative]: "No."); *id.* at 40:19–21 ("we would use the records, the available records for the mines. They're not always -- they weren't always recorded well."); *id.* at 41:3–5 ("what we're saying, is yes, there could be more mines there, but we reviewed all the ones we could, based on the data available.").

mines; instead, the Plaintiff's Complaint maintains that there is "no evidence of underground mines that would threaten planned residential development at River Gorge Ranch."<sup>8</sup>

The Plaintiff's Complaint also acknowledges that its study about underground mines on Aetna Mountain only evaluated "the initial phase" of the proposed development,<sup>9</sup> rather than reviewing the entire area, which "consists of more than 7,500 acres[.]"<sup>10</sup> During a recent public hearing, the Plaintiff's representatives acknowledged further that "there could be more mines there"<sup>11</sup> and that "mass grading and/or extensive blasting in the sandstone formations would likely increase the risk of future distress related to underlying mines."<sup>12</sup>

What the Plaintiff's study concluded about mining on Aetna Mountain is also quite different from the Plaintiff's Complaint's characterization of it. The study acknowledged that it was limited to the "first phase" of the planned River Gorge Ranch Development,<sup>13</sup> which includes only about 370 lots of the eventual "2,000 home sites[.]"<sup>14</sup> The study's authors also specifically "note[d] orange surface water in an [...] area [that] was outside the proposed area of development[,]" the source of which they "did not attempt to observe" despite the fact that "the orange staining is an indicator of iron leachate from likely open mine sources or spoils."<sup>15</sup> The study's authors further advised that they "recommend limiting the undercutting of mine spoils, where possible, as the mine spoils

<sup>&</sup>lt;sup>8</sup> Compl. at ¶ 7 (emphasis added).

<sup>9</sup> *Id*. at ¶ 6.

<sup>&</sup>lt;sup>10</sup> *Id*. at ¶ 5.

<sup>&</sup>lt;sup>11</sup> **Ex. 1** at 41:3–5 ("what we're saying, is yes, there could be more mines there, but we reviewed all the ones we could, based on the data available.").

<sup>&</sup>lt;sup>12</sup> *Id*. at 43:22–25.

<sup>&</sup>lt;sup>13</sup> **Ex. 2**, UES Study, at 1.

<sup>&</sup>lt;sup>14</sup> Compl. at ¶ 5.

<sup>&</sup>lt;sup>15</sup> **Ex. 2** at 7.

were likely not placed in any controlled manner" and, thus, "earthwork cuts into [those] mine spoils will have a high risk of encountering unstable materials unsuitable for benched/sloped excavations (i.e. [they] anticipate[d] any cut slopes in mine spoils may become unstable quickly)."<sup>16</sup> Further still, as to some of the proposed lots, the study noted they were "underlain by abundant mine spoils."<sup>17</sup>

The Plaintiff's study focused primarily on the potential "risk of subsidence" from previous strip mines.<sup>18</sup> It also acknowledged, however, that "during the early to mid-20<sup>th</sup> century horizontal mining was extended further into the mountain to increase coal yield."<sup>19</sup> This indicates that "more mines" than are shown on a publicly available map of abandoned mines "likely existed at one point in time."<sup>20</sup> Thus, especially when combined with the limited area surveyed, the Plaintiff's acknowledged failure to investigate the source of water that indicates open mines<sup>21</sup> and the authors' own conclusion that "information regarding the existence, continuity, and length of any abandoned mines is not known"<sup>22</sup> make the limitations of the Plaintiff's study clear when it comes to assessing the safety risks of the Plaintiff's proposed development.

To address concerns about the mines on Aetna Mountain, the Plaintiff's contractor offered three "highly recommend[ed]" courses of action: "A) undercut existing mine spoils, B) abandon[][sic] residential development in the 4-6 [affected] lots, or C) consider alternate use for the area."<sup>23</sup> It also acknowledged that appropriate "remediation would

- <sup>18</sup> *Id.* at 21.
- <sup>19</sup> *Id.* at 20.
- <sup>20</sup> Id.
- <sup>21</sup> *Id*. at 7. <sup>22</sup> *Id*. at 21.
- <sup>22</sup> *Id.* at 21. <sup>23</sup> *Id.* at 19.

<sup>&</sup>lt;sup>16</sup> *Id.* at 19.

<sup>17</sup> Id.

be dependent on the proposed development and acceptable cost-risk analysis."<sup>24</sup> Though the study did not address in detail what such a cost-risk analysis would involve, it concluded "based on [the authors'] experience the additional alternatives typically utilized in this type of environment are likely cost prohibitive for residential development."<sup>25</sup> The study then qualified its findings by concluding that "mass grading and/or extensive blasting in the sandstone formations would likely increase the risk of future distress related to underlying mines."<sup>26</sup>

Defendant Joe E. Blevins, for his part, is a longtime resident of the Aetna Mountain area and Guild, Tennessee.<sup>27</sup> He is also an engaged citizen who cares deeply about the safety and well-being of his community.<sup>28</sup> Based on his valid and understandable concerns about the safety of the Plaintiff's proposed development, Mr. Blevins has been sued for one count of "Libel of Title" for allegedly making the following eight statements:

- 1. "Aetna Mountain has abandoned underground mines. Lots of them."
- 2. "Lots of abandoned underground coal mines up there."
- 3. "Anyone building on a possible underground coal mine need[s] to think about this. Aetna Mountain has numerous abandoned underground mines. Not just strip mines, but the more dangerous underground mines. I hope people realize what this possibly means."
- 4. "Numerous abandoned underground mines[.]"
- 5. "[U]nderground fires" that are a "possible threat[.]"
- 6. "'[N]ever ends" in response to an article "stat[ing] that the developer of

<sup>&</sup>lt;sup>24</sup> Id.

<sup>&</sup>lt;sup>25</sup> Id.

<sup>&</sup>lt;sup>26</sup> *Id.* at 21.

<sup>&</sup>lt;sup>27</sup> **Ex. 3**, Declaration of Joe E. Blevins, at ¶ 3.

<sup>&</sup>lt;sup>28</sup> Id.

[another] development is John 'Thunder' Thornton, Plaintiff's Chairman and CEO."

- 7. "'It takes a 'special' person to [do] this[]" along with a "photo of the progress being made on the River Gorge Ranch development[.]"
- 8. "Gag[.]"

*See* Compl. at ¶¶ 9–11; 19–21.

Every statement that Mr. Blevins has made about the Plaintiff's proposed development has been based on information he received from credible and trusted sources, including co-Defendant Ronnie Kennedy and government officials who recounted firsthand knowledge of the mountain.<sup>29</sup> Mr. Blevins has never called the Plaintiff's title to the parcel that it owns on Aetna Mountain into question.<sup>30</sup> Mr. Blevins has never filed a lien on the property the Plaintiff owns on Aetna Mountain or claimed to claimed that he owns the Plaintiff's property.<sup>31</sup> Mr. Blevins has never made any statement that challenges the Plaintiff's legal rights to the property, clouds the Plaintiff's title to the property, or calls the rights of the Plaintiff into doubt, either.<sup>32</sup>

#### **IV. ARGUMENT**

#### A. THE PLAINTIFF'S COMPLAINT FAILS TO STATE A COGNIZABLE CLAIM FOR RELIEF.

"[Defamation] of title is a form of the tort of injurious falsehood that protects a person's property interest against words or conduct which bring or tend to bring validity of that interest into question." 53 C.J.S. Libel and Slander; Injurious Falsehood § 310. The Tennessee Court of Appeals has thus "characterized '[defamation] of title' as an

<sup>&</sup>lt;sup>29</sup> **Ex. 3**, at ¶ 8.

<sup>&</sup>lt;sup>30</sup> *Id*. at ¶ 9.

<sup>&</sup>lt;sup>31</sup> *Id.* at ¶¶ 11–12.

<sup>&</sup>lt;sup>32</sup> *Id*. at ¶ 10.

"unusual" cause of action that applies when a person **asserts title** 'in bad faith and without probable cause to the injury of another." *Robinson v. Mahaffey*, No. M2021-01068-COA-R3-CV, 2022 WL 12242765, at \*13 (Tenn. Ct. App. Oct. 21, 2022) (emphasis added) (cleaned up). Put another way:

Libel of title occurs where a person,

without privilege to do so, willfully records or publishes matter which is untrue and disparaging **to another's property rights in land** as would lead a reasonable person to foresee that the conduct of a third party purchaser *might* be determined by the publication, or maliciously **records a document which clouds another's title to real estate**.

*Holder v. Serodino*, No. M2014-00533-COA-R3-CV, 2015 WL 5458377, at \*12 (Tenn. Ct. App. Sept. 16, 2015) (emphases added) (quoting *Phillips v. Woods*, No. E2007-00697-COA-R3-CV, 2008 WL 836161, at \*7 (Tenn. Ct. App. Mar. 31, 2008) (in turn quoting 53 C.J.S. Libel and Slander § 310 (2005)); *see also Kinzel Springs P'ship v. King*, No. E2008-01555-COA-R3-CV, 2009 WL 2341546, at \*15 (Tenn. Ct. App. July 30, 2009) ("'[O]ne may become liable for libel of title **by asserting title** in bad faith and without probable cause to the injury of another.'") (emphasis added) (quoting *Smith v. Gernt*, 2 Tenn. Civ. App. 65, 80 (1911)).

With this framework in mind, a Plaintiff who asserts a claim for libel of title must prove four elements: "(1) that it has an interest in the property, (2) that the defendant published false statements **about the title** to the property, (3) that the defendant was acting maliciously, and (4) that the false statements proximately caused the plaintiff a pecuniary loss." *Cowart v. Hammontree*, No. E2013-00416-COA-R3-CV, 2013 WL 6211463, at \*13 (Tenn. Ct. App. Nov. 27, 2013) (emphasis added) (quoting *Harmon v. Shell*, No. 01-A-01-9211CH00451, 1994 WL 148663, at \*4 (Tenn. Ct. App. Apr. 27, 1994)); *see also Phillips v. Woods*, No. E2007-00697-COA-R3-CV, 2008 WL 836161, at \*7 (Tenn. Ct. App. Mar. 31, 2008) (citing *Brooks v. Lambert*, 15 S.W.3d 482, 484 (Tenn. Ct. App. 1999) (same)); *Holder v. Serodino*, No. M2014-00533-COA-R3-CV, 2015 WL 5458377, at \*12 (Tenn. Ct. App. Sept. 16, 2015) (same).

Here, the Plaintiff's Complaint fails to state a claim upon which relief can be granted against Mr. Blevins for the simple reason that no statement that Mr. Blevins is alleged to have made about the Plaintiff's property concerns the Plaintiff's "title" to it. *See generally* Compl. Instead, the Plaintiff has sued Mr. Blevins for criticizing the Plaintiff's proposed development and for recounting the inarguably true (and admitted) fact that Aetna Mountain has abandoned underground mines. *See* Compl. at ¶¶ 9–11; 19–21. Identifying mines as a "possible threat" to the development of Aetna Mountain or otherwise discussing the Plaintiff's plan to build residential homes on top of abandoned underground mines, however, is materially different from falsely asserting *title* to the Plaintiff's property; publishing false statements about *the title* to the Plaintiff's property; calling into question the Plaintiff's *right to* the property; or otherwise clouding the Plaintiff's *title* to its property in some way.

For these reasons, Mr. Blevins' motion to dismiss should be granted for failure to state a claim. Afterward, Mr. Blevins should be granted his attorney's fees on multiple bases. *See Finch*, 2013 WL 1896323, at \*15, n.25 ("Litigants who successfully defend a libel of title action may recover reasonable expenses incurred in defending that suit,' including attorney's fees.") (quoting *Brooks*, 1996 WL 252322, at \*3); *see also* Tenn. Code Ann. § 20-12-119(c)(1) ("where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief may be granted, the court shall award the party or parties against whom the dismissed

claims were pending at the time the successful motion to dismiss was granted the costs and reasonable and necessary attorney's fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties.").

## **B.** THE PLAINTIFF HAS FAILED—AND REFUSED—TO PRESENT THE STATEMENTS OVER WHICH IT IS SUING EITHER AS EXHIBITS TO ITS COMPLAINT OR IN CONTEXT AS REQUIRED.

Rule 10.03 of the Tennessee Rules of Civil Procedure provides that "[w]henever a claim or defense is founded upon a written instrument other than a policy of insurance, a copy of such instrument or the pertinent parts thereof shall be attached to the pleading as an exhibit" absent exceptions not present here. *Id.* Although dismissal as a sanction for noncompliance with Rule 10.03 is not mandatory, the Court of Appeals has "note[d] that Rule 41.02(1) provides that a plaintiff's complaint may be dismissed if the plaintiff fails to comply with the rules set forth in the Tennessee Rules of Civil Procedure." *See Clear Water Partners, LLC v. Benson*, No. E2016-00442-COA-R3-CV, 2017 WL 376391, at \*8 (Tenn. Ct. App. Jan. 26, 2017) (citing Tenn. R. Civ. P. 41.02(1)), *no app. filed*.

In the same vein, Tennessee law instructs that "[a]llegedly defamatory statements should be judged within the context in which they are made." *See Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000); *cf. Evans v. Nashville Banner Pub. Co.*, No. 87-164-II, 1988 WL 105718, at \*5 (Tenn. Ct. App. Oct. 12, 1988) ("All parts of a published article should be construed as a whole. . . . Thus, we must view the photograph and its cutline in the context of the entire article." (citing *Black v. Nashville Banner Pub. Co.*, 141 S.W.2d 908, 912 (Tenn. 1939))), *no app. filed*. Selectively quoting statements, quoting only portions of a statement, or removing the context in which a statement is made does not permit this analysis. Thus, without required context, a reviewing court cannot determine whether the statements a plaintiff alleges are defamatory are "reasonably

capable of the meaning the plaintiff ascribes to them." *See Moman v. M.M. Corp.*, No. 02A01-9608-CV00182, 1997 WL 167210, at \*3 (Tenn. Ct. App. Apr. 10, 1997) ("If the [allegedly defamatory] words are not reasonably capable of the meaning the plaintiff ascribes to them, the court must disregard the latter interpretation." (citing *Stones River Motors, Inc. v. Mid-S. Pub. Co.*, 651 S.W.2d 713, 719 (Tenn. Ct. App. 1983), *abrogated on other grounds by Zius v. Shelton*, No. E1999-01157-COA-R3-CV, 2000 WL 739466, at \*3 (Tenn. Ct. App. June 6, 2000), *no app. filed*)), *no app. filed*.; *see also Loftis v. Rayburn*, No. M2017-01502-COA-R3-CV, 2018 WL 1895842, at \*6 (Tenn. Ct. App. Apr. 20, 2018) ("We find as a matter of law that the statements in Mr. Myers' article cannot reasonably be construed as implying facts that are not true[.] . . . We are not bound by Mr. Loftis's interpretation of the statements because we find they do not reasonably have the meaning he ascribes to them." (citing *Grant v. Com. Appeal*, No. W2015-00208-COA-R3-CV, 2015 WL 5772524, at \*11 (Tenn. Ct. App. Sept. 18, 2015), *no app. filed, abrogated on other grounds by Funk v. Scripps Media, Inc.*, 570 S.W.3d 205 (Tenn. 2019))), *no app. filed*.

The Plaintiff has violated these rules. It has also done so intentionally, "choos[ing] not to" cure the observed deficiencies deliberately. *See* Collective **Ex. 4**, Apr. 2, 2024 Letter from Pl.'s Counsel and Resp., at 1–2. Further, despite offering to "send . . . copies of" Mr. Blevins' alleged posts in response to the Defendant's observation that the Plaintiff's Complaint is deficient and then having that offer accepted, *see id.* at 2–3, the Plaintiff has declined to do so before the Parties' agreed filing deadline.

This noncompliance merits dismissal. The Plaintiff has willfully refused to comply with straightforward procedural rules that are designed to enable meaningful review of its Complaint. The only coherent explanation for the Plaintiff's refusal is that doing so increases the Defendant's litigation expenses. Dismissal for procedural noncompliance under Rule 41.02(1) is warranted accordingly. *See Clear Water Partners, LLC*, 2017 WL 376391, at \*8.

#### C. THE PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED UNDER THE TENNESSEE PUBLIC PARTICIPATION ACT.

The Tennessee Public Participation Act (TPPA) governs the Plaintiff's libel of title claim against Mr. Blevins. Further, as detailed below, the TPPA mandates that the Plaintiff's libel of title claim against Mr. Blevins be dismissed with prejudice. The Plaintiff should also be ordered to pay Mr. Blevins's attorney's fees and costs, and this Court should assess severe sanctions against the Plaintiff to deter repetition of its abusive conduct.

#### 1. <u>Applicability of the Tennessee Public Participation Act</u>

The Tennessee Public Participation Act—Tennessee's still-relatively-new anti-SLAPP statute—provides that "[i]f a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action" subject to the TPPA's specialized provisions. *See* Tenn. Code Ann. § 20-17-104(a).<sup>33</sup> Under Tennessee Code Annotated § 20-17-103(3), ""[e]xercise of the right of free speech' means a communication made in connection with a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution." In turn, Tennessee Code Annotated § 20-17-103(6) provides that:

"Matter of public concern" includes an issue related to:

(A) Health or safety;

- (B) Environmental, economic, or community well-being;
- (C) The government;
- (D) A public official or **public figure**;

<sup>&</sup>lt;sup>33</sup> The petition "may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court's discretion, at any later time that the court deems proper." Tenn. Code Ann. § 20-17-104(b). As a consequence, having been filed within sixty (60) days of service, Mr. Blevins's TPPA petition to dismiss this action is timely filed. *See id*.

(E) A good, product, or **service in the marketplace**;

(F) A literary, musical, artistic, political, theatrical, or audiovisual work; or

## (G) Any other matter deemed by a court to involve a matter of public concern[.]

Id. (emphases added). "[M]atters of public concern are 'broadly defined' under the

statute." Doe v. Roe, 638 S.W.3d 614, 618 (Tenn. Ct. App. 2021) (quoting Todd

Hambridge et al., Speak Up. Tennessee's New Anti-SLAPP Statute Provides Extra

Protections to Constitutional Rights, 55 TENN. B.J. 14, 15 (2019)).

With respect to the right to petition, Tennessee Code Annotated § 20-17-103(4)

separately provides that:

"Exercise of the right to petition" means a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and:

(A) Is intended to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body; or

(B) Is intended to enlist public participation in an effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body[.]

#### Id.

The statements over which Mr. Blevins has been sued qualify for protection under the TPPA as both an exercise of Mr. Blevins' "right of free speech" and an exercise of his "right to petition." In a TPPA case, "[t]he petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." Tenn. Code Ann. § 20-17-105(a). Here, the Plaintiff's lawsuit was filed in response to eight Facebook posts or comments alleged to have been made by Mr. Blevins regarding, among other things: (1) the safety of the public figure-Plaintiff's proposed real estate development, (2) the proposed development's impact on Aetna Mountain, and (3) the proposed development's effect on community well-being. The statements also were intended to (and did, *see* **Ex. 1**) enlist public participation in an effort to effect consideration of the safety of the Plaintiff's proposed development by a local governmental body. The statements concerned a development that requires government approval and came before local government bodies for consideration, too. *See id*.

For these reasons, the Plaintiff's legal action against Mr. Blevins was filed in response to Mr. Blevins' "exercise of the right of free speech" and his "right to petition" in several independent respects. See Tenn. Code Ann. § 20-17-103(3); Tenn. Code Ann. § 20-17-103(6)(A), (B), (C), (D), (E), (G); Tenn. Code Ann. § 20-17-103(4); see also Charles v. McQueen, No. M2021-00878-COA-R3-CV, 2022 WL 4490980, at \*11 (Tenn. Ct. App. Sept. 28, 2022), appeal granted, No. M2021-00878-SC-R11-CV, 2023 WL 2470285 (Tenn. Mar. 9, 2023) (a statement "concern[ing] a large residential community and purported changes and miscommunications that were occurring[...] are such that they are of a concern to a larger community and thus constitute a matter of public concern."); Nandigam Neurology, PLC, 639 S.W.3d at 658 ("[t]he paradigm SLAPP suit is 'one filed by developers, unhappy with public protest over a proposed development, filed against leading critics in order to silence criticism of the proposed development.") (cleaned up). Thus, having established that the Tennessee Public Participation Act applies to the statements over which the Plaintiff has sued Mr. Blevins, the burden shifts to the Plaintiff to "establish[] a prima facie case for each essential element of the claim in the legal action." Tenn. Code Ann. § 20-17-105(b).

#### 2. <u>Valid defenses preclude the Plaintiff's libel of title claim against</u> <u>Mr. Blevins.</u>

"Notwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action." *See* Tenn. Code Ann. § 20-17-105(c). Here, several valid defenses preclude the Plaintiff's libel of title claim against Mr. Blevins.

#### i. <u>Mr. Blevins has never called the Plaintiff's title into question.</u>

A claim for libel *of title* requires a defendant, at minimum, to have published a defamatory statement "*about the title* to the property." *See Cowart*, 2013 WL 6211463, at \*13 (emphasis added); *see also supra* at 10–13. Mr. Blevins has never made a statement that calls into doubt the Plaintiff's title to the property at issue or otherwise clouded the Plaintiff's title, though.<sup>34</sup> Thus, Mr. Blevins has established a valid defense to liability. In particular, the Plaintiff cannot establish an essential element of its libel of title claim, and, thus, it cannot state a claim upon which relief can be granted. The Plaintiff's earlier-asserted argument that the Plaintiff's Complaint should be dismissed for failure to state a claim is incorporated here by reference. *See* Tenn. Code Ann. § 20-17-109 (the TPPA is intended "to supplement any remedies which are otherwise available to those parties under common law, statutory law, or constitutional law or under the Tennessee Rules of Civil Procedure.").

#### ii. <u>Mr. Blevins was not "acting maliciously</u>."

A libel of title claim requires proof that "the defendant was acting maliciously." *Brooks*, 15 S.W.3d at 484. "Statements made with a reckless disregard of the rights of the property owner or with reckless disregard as to whether the statements are false may be found to be malicious within the scope of an action for libel of title." *Phillips*, 2008 WL

<sup>&</sup>lt;sup>34</sup> See Ex. 3 at ¶¶ 9–12.

836161, at \*7 (citing *Brooks*, 15 S.W.3d at 484). To establish malice, "the plaintiff must allege 'malice … in express terms or [by] any such showing of facts as would give rise to a reasonable inference that [the defendant acted maliciously.]" *Brooks*, 15 S.W.3d at 484 (quoting *Waterhouse v. McPheeters*, 145 S.W.2d 766, 767 (Tenn. 1940)).

Here, every statement that Mr. Blevins has made about the Plaintiff's proposed development has been based on information he received from credible and trusted sources, including co-Defendant Ronnie Kennedy and government officials who recounted firsthand knowledge of the mountain.<sup>35</sup> Of note, these facts would preclude liability even if Mr. Blevins had made a false statement about the Plaintiff's property, though he has not. As the Tennessee Court of Appeals has explained, as long as a defendant does not subjectively entertain doubts about the truth of another's claims, a defendant's mere "belie[f]" in the credibility of a statement conveyed by another-even if *erroneous*—precludes a finding of actual malice and prevents a claimed defamation from being actionable. See, e.g., Finney v. Jefferson, No. M2019-00326-COA-R3-CV, 2020 WL 5666698, at \*6 (Tenn. Ct. App. Sept. 23, 2020) ("The statements by school staff members to the Jeffersons about Ms. Finney's conduct are relevant even if they are not true. What matters for purposes of actual malice-a subjective standard that 'focuses on the defendant's state of mind'—is what the Jeffersons thought was true, even if it was not actually true.") (citation omitted); id. ("Not only are those statements not hearsay, but they establish, as a matter of law, that the Jeffersons did not act with actual malice. The Jeffersons stated in their affidavits that, based on their experience, they found the school staff members who told them about Ms. Finney's alleged conduct to be honest people.

<sup>&</sup>lt;sup>35</sup> **Ex. 3** at ¶ 8.

They had no reason to disbelieve them."); *see also Elsten v. Coker*, No. M2019-00034-COA-R3-CV, 2019 WL 4899759, at \*3 (Tenn. Ct. App. Oct. 4, 2019) ("Reckless disregard to the truth means the defendant had a 'high degree of awareness of . . . probable falsity.' . . . In other words, reckless disregard is 'the purposeful avoidance of the truth.'") (quoting *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989) (in turn quoting *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964))); *Kauffman v. Forsythe*, No. E2019-02196-COA-R3-CV, 2021 WL 2102910, at \*3 (Tenn. Ct. App. May 25, 2021) ("Actual malice is a term of art. . . . In other words, the defendant must have acted with purposeful avoidance of the truth.") (cleaned up).

As importantly, Mr. Blevins has never called the Plaintiff's title to the parcel that it owns on Aetna Mountain into question at all.<sup>36</sup> Neither has Mr. Blevins made any statement that challenges the Plaintiff's legal rights to the property, that clouds the Plaintiff's title to it, or that otherwise calls the rights of the Plaintiff into doubt.<sup>37</sup> Thus, having made no statements about the Plaintiff's title to its property *at all*, it is impossible for Mr. Blevins to have made any such statement *maliciously*. For all of these reasons, the Plaintiff cannot establish that Mr. Blevins acted maliciously, and its Complaint must be dismissed on that ground as well.

## iii. <u>The Plaintiff has suffered no demonstrable pecuniary loss as a result of an</u> <u>injury to its title.</u>

In a libel of title claim, "the element of pecuniary loss can be met by proving the litigation expenses incurred **to remove the doubt cast upon the property** by the publication of false statements." *Phillips*, 2008 WL 836161, at \*7 (emphasis added)

<sup>&</sup>lt;sup>36</sup> **Ex. 3** at ¶ 9.

<sup>&</sup>lt;sup>37</sup> *Id*. at ¶ 10.

(citing *Ezell v. Graves*, 807 S.W.2d 700, 704 (Tenn. Ct. App. 1990), and *Brooks*, 15 S.W.3d at 485). Here, given that Mr. Blevins has never cast doubt on the Plaintiff's title or called the Plaintiff's title to its property into question,<sup>38</sup> the Plaintiff's voluntarily-incurred litigation expenses for wholly unrelated purposes (namely, abusing the legal system in a shameless attempt to intimidate critics) do not qualify as a compensable pecuniary loss.

The Plaintiff visibly confuses the legal foundations of its claim by asserting that "Defendant Blevins' written statements were disparaging to Plaintiff's property in River Gorge Ranch and to the value of Plaintiff's property rights therein."<sup>39</sup> But only "one's title to real property" can be libeled; property itself cannot be. *See Desgranges v. Meyer*, No. E2003-02006-COA-R3-CV, 2004 WL 1056603, at \*9 (Tenn. Ct. App. May 11, 2004) ("[T]he gravamen of the libel of title action is that communicated facts have disparaged one's title to real property."). Thus, the Plaintiff's libel of title claim against Mr. Blevins fails separately for want of any cognizable pecuniary loss.

#### iv. <u>The First Amendment protects Mr. Blevins' statements.</u>

Though it is not entirely clear from the Plaintiff's Complaint what, specifically, the Plaintiff is even alleging Mr. Blevins falsely asserted, the statements over which Mr. Blevins has been sued fall into two distinct categories: (1) true statements; and (2) statements of opinion. Neither one is actionable, as the First Amendment protects both categories.

#### a. Mr. Blevins' truthful statements are inactionable.

"Truth is an absolute defense to a claim for defamation when the otherwise defamatory meaning of the words used turns out to be true." *Sullivan v. Wilson Cty.*, No.

<sup>&</sup>lt;sup>38</sup> See Ex. 3 at ¶¶ 9–12.

<sup>&</sup>lt;sup>39</sup> Compl. at ¶ 26.

M2011-00217-COA-R3-CV, 2012 WL 1868292, at \*12 (Tenn. Ct. App. May 22, 2012), *app. denied* (Tenn. Sept. 18, 2012) (citing *Memphis Pub. Co. v. Nichols*, 569 S.W.2d 412, 420 (Tenn. 1978)). Tennessee also recognizes "the substantial truth doctrine" in defamation cases. *See Isbell v. Travis Elec. Co.*, No. M1999-00052-COA-R3-CV, 2000 WL 1817252, at \*5 (Tenn. Ct. App. Dec. 13, 2000). As such, defamation claims that are premised upon inaccurate but insignificant distinctions are categorically inactionable: a result that the United States Supreme Court has compelled as a matter of constitutional law. *See id.; see also Spicer v. Thompson*, No. M2002-03110-COA-R3-CV, 2004 WL 1531431, at \*7 (July 7, 2004), *app. denied* (Tenn. Dec. 20, 2004).

Here, the inarguable truth of the Defendant's statements precludes the Plaintiff's libel of title claim without even needing to reach the broader substantial truth doctrine. As the Plaintiff's own study and the Plaintiff's own representatives have acknowledged, it is true that "Aetna Mountain has abandoned underground mines. Lots of them."<sup>40</sup> It is also true that there are "[1]ots of abandoned underground coal mines up there" on Aetna Mountain.<sup>41</sup> By the same token, it is true that there are "[n]umerous abandoned underground mines" on the Plaintiff's proposed development and that there are not yet any amenities there, "just old mines right now."<sup>42</sup>

Because these statements are true, the First Amendment protects them, and they are privileged from liability as a matter of law. *See Sullivan*, 2012 WL 1868292, at \*12 (""Truth is an absolute defense to a claim for defamation when the otherwise defamatory meaning of the words used turns out to be true."); *see also Cowart*, 2013 WL 6211463, at \*13 (a defamation of title claim requires "false statements"). As a result, the Plaintiff's

<sup>&</sup>lt;sup>40</sup> See **Ex. 2** at 19–21; **Ex. 1** at 21:11–13; *id.* at 40:19–21; *id.* at 41:3–5.

 $<sup>^{41}</sup>$  *Id*.

<sup>&</sup>lt;sup>42</sup> Id.

libel of title claim fails for lack of any false statement.

b. Mr. Blevins' opinions are inactionable.

The remaining statements over which Mr. Blevins has been sued are inactionable statements of opinion. None is "objectively capable of proof or disproof." See Moses v. Roland, No. W2019-00902-COA-R3-CV, 2021 WL 1140273, at \*11 (Tenn. Ct. App. Mar. 25, 2021) ("[I]n determining whether a statement is capable of being defamatory in this context we should look to 'the degree to which the statements are verifiable, whether the statement is objectively capable of proof or disproof[.]" (quoting *Patton Wallcoverings*, Inc. v. Kseri, No. 15-10407, 2015 WL 3915916, at \*5 (E.D. Mich. June 25, 2015) (citing Jolliff v. N.L.R.B., 513 F.3d 600, 611-12 (6th Cir. 2008)))), no app. filed.; cf. Clark v. Viacom Int'l Inc., 617 F. App'x 495, 508 (6th Cir. 2015) ("[T]he falsity requirement is met only if the statement in question makes an assertion of fact-that is, an assertion that is capable of being proved objectively incorrect."). As such, none of the remaining statements over which Mr. Blevins has been sued is capable of conveying a defamatory meaning. See, e.g., Davis v. Covenant Presbyterian Church of Nashville, No. M2014-02400-COA-R9-CV, 2015 WL 5766685, at \*3 (Tenn. Ct. App. Sept. 30, 2015) ("[C]omments upon true and nondefamatory published facts are not actionable, even though [the comments] are stated in strong or abusive terms.") (cleaned up); Weidlich v. Rung, No. M2017-00045-COA-R3-CV, 2017 WL 4862068, at \*6 (holding that "[a] writer's comments upon true and nondefamatory published facts are not actionable" as a matter of law).

Insisting otherwise, the Plaintiff apparently believes that Mr. Blevins may be sued for "falsely" asserting that "homesites within River Gorge Ranch are dangerous because of coal mines . . . ." *See* Compl. at ¶ 8. Not so. Abundant authority makes clear that characterizing a subject as "dangerous" is a protected statement of opinion. See, e.g., Krasner v. Arnold, No. W2011-00580-COA-R3-CV, 2011 WL 6885349, at \*5 (Tenn. Ct. App. Dec. 28, 2011) (holding that a description of the plaintiff as "dangerous" was a statement of opinion); Albert v. Loksen, 239 F.3d 256, 268 (2d Cir. 2001) ("Statements . . . that a co-employee's work is dangerous and his employment should therefore be terminated, if articulated as an evaluation of his performance, would likely be protected as a statement of opinion."); Alexander v. Strong, No. A20-1614, 2021 WL 2645516, at \*4 (Minn. Ct. App. June 28, 2021) (affirming trial court's finding that referring to plaintiffs as "dangerous people" was non-actionable statement of opinion); Wolberg v. IAI N. Am., Inc., 77 N.Y.S.3d 348, 351 (NY App. Div. 2018) (holding that "[t]he alleged statements that plaintiff was 'dangerous' and had 'chutzpah' are expressions of opinion"); Speck v. Fed. Land Bank of Omaha, 494 N.W.2d 628, 632 (S.D. 1993) (holding that alleged statements by court-appointed receiver that borrower was "dangerous" or "could be dangerous" were not slanderous as they were statements of opinion); Hale v. City of Billings, Police Dep't, 986 P.2d 413, 418 (Mont. 1999) (holding that a district court erred in determining that "the information broadcast by TCI, namely the references to 'may be armed and dangerous,' 'most wanted,' and 'fugitive,' if not entirely accurate were, nevertheless, constitutionally protected under First Amendment analysis as statements of 'opinion as opposed to factual assertions,' and therefore could not, as a matter of law, be deemed defamatory").

It goes without saying—or should—that describing the Plaintiff's proposed Aetna Mountain development as something that caused Mr. Blevins to "gag" cannot reasonably be understood as communicating a statement of fact, either. Such a statement can only be described as obvious and constitutionally protected rhetorical hyperbole. *See, e.g.,*  Seaton v. TripAdvisor LLC, 728 F.3d 592, 598 (6th Cir. 2013) ("Dirtiest' is a loose, hyperbolic term because it is the superlative of an adjective that conveys an inherently subjective concept," and thus, "no reader of TripAdvisor's list would understand Grand Resort to be, objectively, the dirtiest hotel in all the Americas, the North American continent, or even the United States."); see also id. ("[S]tatements that cannot 'reasonably [be] interpreted as stating actual facts about an individual because they are expressed in 'loose, figurative or hyperbolic language,' and/or the content and tenor of the statements 'negate the impression that the author seriously is maintaining an assertion of actual fact' about the plaintiff are not provably false and, as such, will not provide a legal basis for defamation.") (quoting Hibdon v. Grabowski, 195 S.W.3d 48, 63 (Tenn. Ct. App. 2005) (in turn quoting Milkovich v. Lorain J. Co., 497 U.S. 1, 21, 110 S.Ct. 2695 (1990))); see also Moses, 2021 WL 1140273, at \*11 (a county commissioner who stated that a private citizen was "threatening everybody" during a discussion about security changes at various county buildings in a public meeting was engaged in "rhetorical hyperbole intended to make a point[.]"); McCluen v. Roane Cnty. Times, Inc., 936 S.W.2d 936, 941 (Tenn. Ct. App. 1996) (recognizing terms such as "pure highway robbery" and "rip-off" as constitutionally protected rhetorical hyperbole).

For these reasons, the remaining statements over which Mr. Blevins has been sued are inactionable opinions that the First Amendment privileges from liability as well.

#### V. COSTS, ATTORNEY'S FEES, & SANCTIONS

Under Tennessee Code Annotated § 20-17-107(a):

If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party:

(1) Court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition;

and

(2) Any additional relief, including sanctions, that the court determines necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated.

Id.

Here, the Plaintiff's prosecution of this nakedly retaliatory action merits costs, fees, and severe sanctions. Considering the numerous categorical bars to the Plaintiff's claims, no litigant or attorney acting in good faith could reasonably believe that the Plaintiff's claims in this lawsuit have merit. Instead, the Plaintiff's lawsuit is a transparent attempt "to intimidate a citizen into silence regarding an issue of public concern"—intentional misbehavior that Tennessee's judiciary properly characterizes as "evil[.]" *See Residents Against Indus. Landfill Expansion, Inc. (RAILE) v. Diversified Sys., Inc.*, No. 03A01-9703-CV-00102, 1998 WL 18201, at \*3 & n.6 (Tenn. Ct. App. Jan. 21, 1998).

For these reasons, to deter future misconduct by the Plaintiff and others similarly situated, the Plaintiff should be ordered to pay mandatory costs and attorney's fees in addition to sanctions of not less than 3% of the Plaintiff's net worth. Because considerations including the impact of the litigation on the Defendant, the Plaintiff's degree of vindictiveness (including implementing an outrageous media strategy based on this comically bogus lawsuit), and the length of time the Plaintiff has burdened the court system with a SLAPP-suit all factor into the appropriate sanctions calculus, though, *see Foreman v. Rosenberg*, Davidson Cnty. Cir. Ct. Case No. 23C891, Order (Dec. 4, 2023) (citing *Landry's*, *Inc. v. Animal Legal Def. Fund*, 566 S.W.3d 41, 71–72 (Tex. App. 2018), *aff'd in part, rev'd in part on other grounds*, 631 S.W.3d 40 (Tex. 2021)), after the Court grants the Defendant's TPPA Petition here, the Defendant requests the opportunity to provide the Court with supplemental briefing detailing the appropriate amount of

sanctions to issue.

#### VI. CONCLUSION

For the foregoing reasons, the Defendant's Tennessee Public Participation Act Petition to dismiss this action should be **GRANTED**; the Plaintiff should be ordered to pay the Defendant's court costs, reasonable attorney's fees, and discretionary costs pursuant to Tenn. Code Ann. § 20-12-119(c), Tennessee common law, and § 20-17-107(a)(1); and this Court should assess severe sanctions against the Plaintiff as necessary to deter repetition of its conduct pursuant to Tenn. Code Ann. § 20-17-107(a)(2).

Respectfully submitted,

By: /s/ Daniel A. Horwitz DANIEL A. HORWITZ, BPR #032176 MELISSA K. DIX, BPR #038535 HORWITZ LAW, PLLC 4016 WESTLAWN DR. NASHVILLE, TN 37209 daniel@horwitz.law melissa@horwitz.law (615) 739-2888

Counsel for Defendant Joe E. Blevins

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this the 19th day of April, 2024, a copy of the foregoing was sent via USPS mail, postage prepaid, or via email to the following parties:

Harold L. North, Jr. (BPR # 7022) Frederick L. Hitchcock (BPR # 5960) Peter A. Newman (BPR # 40524) CHAMBLISS, BAHNER & STOPHEL, P.C. 605 Chestnut Street, Suite 1700 Chattanooga, TN 37450 (423) 756-3000 hnorth@chamblisslaw.com fhitchcock@chamblisslaw.com pnewman@chamblisslaw.com

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Counsel for Defendant Kennedy

By: <u>/s/ Daniel A. Horwitz</u> DANIEL A. HORWITZ, BPR #032176

# Exhibit #1

#### Transcript of

#### MARION COUNTY COMMISSION MEETING

Monday, March 25, 2024

Lawson Building 300 Ridley Drive Jasper, TN 37347

Transcribed from a digital file by:

Laurie McClain 531-893-1438 lauriemcclainmusic@gmail.com



1	APPEARANCES
2	Chairperson Linda Mason
3	Commissioner Joanie Spangler
-	Commissioner Don Adkins, Jr.
4	Commissioner Donald Blansett
5	Commissioner Peggy Thompson
6	Commissioner Chris Morrison
7	Commissioner Dennis Rollins
1	Commissioner Jimmy Cantrell
8	Commissioner Ruric Brandt
9	Commissioner Paul Schafer
10	Commissioner Sherry Van Allman
	Commissioner Gene Hargis
11	Commissioner Cory Pickett
12	Commissioner Steven Franklin
13	Commissioner Dennis Rollins
1 1	Commissioner David Abbott
14	William L. Gouger Jr.
15	Ms. Jamie Quick
16	Mr. Clarence Howard Mr. John Thornton
17	Mr. Dane Bradshaw
	Director Mark Griffith
18	Mayor Jason Turner
19	Mr. Thomas Morgan
20	Steve Lamb
21	Sheriff Bo Burnett
22	
23	
24	
25	

CHAIRPERSON MADSON: Commissioner Rollins, would
 you [indiscernible].

3 COMMISSIONER ROLLINS: Both kind and gracious 4 Heavenly Father, Lord, we come in prayer this evening just 5 as humble as we can tonight, oh, Lord, unworthy tonight, 6 Lord, to call out on your name, but through your grace and 7 through your mercy, we have that ability tonight.

8 Lord, we thank you for this day that you gave. 9 Oh, Lord, we're thankful for each one that's came tonight to 10 our meeting. Oh, Lord, help us tonight, Lord, to conduct 11 the meeting in a Godly way, in the way that you'd have us to 12 do it tonight, Lord, and make wise decisions for our county 13 tonight.

Lord, I pray you just touch our county, touch our state. Lord, touch our country tonight. Lord, help us return to you, Lord, to serve you. Lord, touch each one that serves tonight. Lord, bless them, keep them safe. Go with us, each one, Lord, we pray, in Jesus' we -- name we ask. Amen.

20[Participants say "Amen."]21[Participants say The Pledge22of Allegiance.]23CHAIRPERSON MASON: Thanks.

24 Can we get a roll call?

25 MS. J. QUICK: Yes, ma'am.

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1 Commissioner Abbott?

2 COMMISSIONER ABBOTT: Here. 3 MS. J. QUICK: Commissioner Adkins? 4 COMMISSIONER ABBOTT: Here. 5 MS. J. QUICK: Commissioner Blansett? COMMISSIONER BLANSETT: Here. 6 7 MS. J. QUICK: Commissioner Brandt? COMMISSIONER BRANDT: Here. 8 9 MS. J. QUICK: Commissioner Campbell? 10 [No Audible response.] MS. J. QUICK: Commissioner Cantrell? 11 12 COMMISSIONER CANTRELL: Here. 13 MS. J. QUICK: Commissioner Franklin? 14 COMMISSIONER FRANKLIN: Here. 15 MS. J. QUICK: Commissioner Hargis: 16 COMMISSIONER HARGIS: Here. 17 MS. J. QUICK: Chairperson Mason? 18 CHAIRPERSON MASON: Chairwoman. 19 MS. J. QUICK: Chairwoman? 20 CHAIRPERSON MASON: Chair holder? I'm sorry. I 21 just couldn't help it. 22 Yes, I'm here. 23 CHAIRPERSON MASON: Commissioner Morrison? 24 COMMISSIONER MORRISON: Here. 25 CHAIRPERSON MASON: Commissioner Nunley?

1 [No response.] CHAIRPERSON MASON: Commissioner Rollins? 2 3 COMMISSIONER ROLLINS: Here. CHAIRPERSON MASON: Commissioner Schafer? 4 5 COMMISSIONER SCHAFER: Here. 6 CHAIRPERSON MASON: Commissioner Thompson? 7 COMMISSIONER THOMPSON: Here. 8 CHAIRPERSON MASON: Commissioner Van Allman? 9 COMMISSIONER VAN ALLMAN: Here. 10 MS. J. QUICK: All right. 11 CHAIRPERSON MASON: Approval of the minutes. 12 Do we have any discussion on that? 13 Did you have a chance to read them? 14 COMMISSIONER BRANDT: Motion --15 COMMISSIONER FRANKLIN: I'll make a motion to 16 approve. 17 COMMISSIONER BRANDT: Second. 18 CHAIRPERSON MASON: We have a motion and a second. 19 All in favor? 20 [Commissioners say "Aye."] 21 CHAIRPERSON MASON: Opposed? 22 [No audible response.] 23 CHAIRPERSON MASON: Recognition of the Marion 24 County Wrestlers.

25 MAYOR D. JACKSON: Thank you, Madame Chairman.

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1 I'd like to welcome three young men to -- to the 2 front if you're here. Mason Shrum, Josh Ramirez, and 3 Wyatt Davis. 4 Ya'll come up front. 5 [Applause.] MAYOR D. JACKSON: That's fine. 6 7 These three young men -- Mason is not with us tonight -- but these are -- these three young men were the 8 9 first men to have made it to the State Wrestling Tournament 10 in -Nashville or Murfreesboro? 11 12 COMMISSIONER HARGIS: Franklin. 13 MAYOR D. JACKSON: Murfreesboro. 14 COMMISSIONER HARGIS: Franklin. 15 MAYOR D. JACKSON: Franklin? Ok. So we're going 16 to take this opportunity --17 [Laughter.] 18 MAYOR D. JACKSON: It was somewhere, right. 19 We have a certificate here, and it reads, 20 In Recognition on Monday, March 25th, 2024, the 21 Marion County Commission recognizes these three young men, 22 two from Marion County High School, and one from 23 Whitwell High School, for their accomplishments of 24 qualifying for the 2024 State Wrestling Tournament. You 25 made Marion County Proud. You know we appreciate y'all.

1 Thank you.

2	[Applause.]
3	COMMISSIONER SCHAFER: Sorry.
4	[Indiscernible voices.]
5	CHAIRPERSON MASON: Commissioner Gene Hargis?
6	COMMISSIONER HARGIS: Right.
7	CHAIRPERSON MASON: A motion [indiscernible].
8	COMMISSIONER HARGIS: Chayce [indiscernible].
9	Okay. I appreciate everybody coming out. This is
10	Chayce Ladd. And I'm going to read his proclamation.
11	"So whereas on Sunday, February the 4th, 2024, an
12	inmate at the Sequatchie County Jail was being treated for a
13	medical issue at the Erlanger Sequatchie Emergency room in
14	Dunlap. He was under the supervision of a corrections
15	officer from Sequatchie Valley Sheriffs Department.
16	When the inmate's treatment was complete and he
17	was released from medical care, the corrections officer was
18	attempting to reposition the inmate's shackles for transport
19	back to Sequatchie County Jail when the inmate attacked the
20	officer and attempted to remove his duty weapon from its
21	holster.
22	While this altercation was unfolding, Christian
23	"Chayce" Ladd, an off-duty officer deputy with the
24	Marion County Sheriff's Department, was in the waiting room
25	at the medical facility when he heard the corrections

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1 officer and staff members yelling for help.

2 Without regard for his own safety, Deputy Ladd 3 immediately ran into the room where the altercation was 4 taking place, where he found a corrections officer and the 5 inmate struggling over the officer's duty weapon.

6 Deputy Ladd joined the corrections officer in the 7 struggle with an inmate over the weapon. And again they was 8 able -- they were able to gain control of the weapon and the 9 inmate, but not before the inmate managed to fire the weapon 10 through the wall of the exam room in which the altercation 11 took place.

Fortunately both Deputy Ladd and the Sequatchie County Corrections officer sustained only minor injuries from the discharge of the weapon, to his hand. No staff member or patient was -- sustained any injuries.

Deputy Ladd demonstrated extreme bravery and commitment to protect the people of Marion and Sequatchie Counties, in the state of Tennessee. And his actions like -- likely saved the lives of the corrections officer, medical staff, and the patients at the emergency room facility.

Whereas the Proclamation of Valor is the highest honor awarded to any law enforcement officer who distinguished themselves by conspicuous bravery and hero -heroism beyond the normal demands of police service.

1 To be awarded a Proclamation of Valor, an officer 2 must perform an act displaying extreme courage while 3 conscientiously facing imminent peril. 4 Deputy Christian "Chayce" Ladd of the Marion 5 County Sheriffs Department did such on 6 Sunday, February the 4th, 2024. And he is hereby awarded 7 the Proclamation for his actions. 8 [indiscernible] Chayce. 9 [Applause.] 10 [Indiscernible voices.] 11 CHAIRPERSON MASON: Emily Bradford, for Tennessee 12 Recovery and Monitoring. 13 MS. BILLIE ARNOLD: Hi. My name is actually 14 Billie Arnold. I'm -- I'm here for Emily this evening. 15 We're Tennessee Recovery and Monitoring. I was here about a 16 year ago to discuss the indigent fund that the State used to 17 offer for the counties, so now they are actually giving it 18 to the county to perform on their own, for folks that need 19 ankle monitors. 20 I was in court today for a gentlemen that -- that 21 greatly needed this indigent fund and could not -- could not 22 get it, because the -- Marion County has not opted in for this program. 23 24 I've got some information for it. It's part of

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the budget. It's something that you would have to budget

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for. And it's -- it's a great savings for Marion County, as far as putting - taking indigent offenders out of the jail. It's costing the total of \$2.83 a day for each of them if you were to opt in for this fund. Whereas what -- it's probably anywhere from \$50 to \$70 to incarcerate, now.

6 There is a new law in effect through the State as 7 well, that -- it requires indigent -- or -- it requires 8 anyone with a DUI, third and above, to have a transdermal 9 alcohol monitor. This would be a huge help for folks that 10 can't afford the monitors.

11 So I just wanted to be here to answer any 12 questions that you might have, or if you -- there's any 13 interest by the Board to possibly look into utilizing this 14 fund again?

15 CHAIRPERSON MASON: Anyone have any questions? 16 MS. BILLIE ARNOLD: Well, I'll just leave some 17 information, then, for you. And then if -- if this comes 18 into effect, just let me know, and I'm here to help.

19 UNIDENTIFIED MALE: Thank you.

20 MS. BILLIE ARNOLD: Thank you. Thank you.

21 UNIDENTIFIED MALE: Thank you so much.

22 UNIDENTIFIED MALE: [indiscernible].

CHAIRPERSON MASON: Okay. There is a sign-in sheet for anyone wanting to make a public comment regarding anything that's on the agenda. We wanted to move that to

1 the beginning of the agenda, so that you could have your 2 comments made prior to any decisions that are being made. 3 There was no one that signed up, so I would think 4 that there was nobody wanting to make any public comments 5 regarding anything on the agenda. Any budget amendments? Anything? 6 7 Go ahead, then. MAYOR D. JACKSON: Thank you, Madame Chairman. 8 9 You have a copy of that in front of you. First 10 thing, you'll to see a decrease in fund balance by 39 thou -- or 3,900, \$719,716.34. And then you'll see a 11 12 \$1,060 in reserve for sexual offense registration. 13 And then you'll go down and look at Expenditures. 14 [indiscernible] \$1,000, Social Security \$30, retirement 15 [indiscernible] \$30. And that's the sex - sex offenders 16 registry. Need to make that budget need, because they're a 17 little short on that. 18 And then other charges \$522,500 is a check made to

19 911. And then \$197,264.34 is some money that we paid out on 20 the fire equipment, where we -- kind of like a grant, we 21 received for the fire departments. That's only for fire 22 equipment.

And now on the second page, we'll send \$1,893,972.13, and that's a decrease from the American Rescue Plan. We moved that into the 401 camp, so

1	we can write that check at a million \$1,893,962.13.
2	CHAIRPERSON MASON: Anyone have any questions?
3	COMMISSIONER ROLLINS: Motion to approve.
4	CHAIRPERSON MADSON: We have a motion.
5	COMMISSIONER FRANKLIN: Second.
6	CHAIRPERSON MADSON: Okay.
7	All in favor?
8	[Commissioners say, "Aye."]
9	CHAIRPERSON MADSON: Opposed?
10	COMMISSIONER HARGIS: Abstain.
11	I take care of the Sex Offender Registry, and I
12	don't think it'd be prudent for me to vote on that.
13	CHAIRPERSON MADSON: Okay. Any budget amendments
14	for the Marion County Board of Education?
15	Dr. Griffith?
16	DIRECTOR GRIFFITH: Yes, ma'am, Madame Chair.
17	If you all would look at we've got two we're
18	up to three in there. But we've got a Number 3, dated
19	January 22nd, 2024. We've got a Number 1, that's
20	February 26th, 2024.
21	And then a Number 2-A. Those are monthly
22	financials, those need no action. Those are just for
23	information only, the basic categories.
24	MAYOR D. JACKSON: When I look, Dr. Griffith, two
25	of those amendments are from last month's packet when the

1 doctor couldn't be here. So that's -- they're not in this 2 packet. They were in last month's packet. 3 DIRECTOR GRIFFITH: Thank you, Mr. Mayor. I'm --4 I'm sorry about that. I didn't really [indiscernible] hands 5 on [indiscernible]. 6 MAYOR D. JACKSON: No. We're good. 7 DIRECTOR GRIFFITH: Discussion [indiscernible]. That brings me to the Number 1A. That is 8 9 basically adjusting the innovative school grants to more of 10 our needs. Basically it's \$31,750, which you can see, it 11 does not increase. The -- the County has made some effort 12 on that. 13 And I thought the packet would carry over, so I'm 14 -- I apologize. 15 So you got a Number 3? Is that the only one that 16 you all have? 17 COMMISSIONER BRANDT: 2A. 18 DIRECTOR GRIFFITH: Yeah. 19 MAYOR D. JACKSON: 2-A? 20 DIRECTOR GRIFFITH: 2-A? 21 UNIDENTIFIED COMMISSIONER: 2-A. 22 [indiscernible] --23 DIRECTOR GRIFFITH: That's the one we --

24 UNIDENTIFIED COMMISSIONER: Right.

25 DIRECTOR GRIFFITH: -- spoke about earlier today?

1 That's -- that's just [indiscernible]. 2 UNIDENTIFIED COMMISSIONER: It's on the other one, 3 not that one. 4 UNIDENTIFIED COMMISSIONER: Motion to approve 1-A. 5 UNIDENTIFIED MALE: Second. CHAIRPERSON MASON: We have a motion and a second. 6 7 All in favor? [Commissioners say "Aye."] 8 9 CHAIRPERSON MASON: Opposed? 10 DIRECTOR GRIFFITH: Mr. Mayor, can I assume that 11 those others passed? MAYOR D. JACKSON: Well, we -- they tabled this 12 13 month. They did not take a look last month, because you 14 were not here. 15 DIRECTOR GRIFFITH: Yes, sir. 16 MAYOR D. JACKSON: We just stick them back in this 17 month's packet. This [indiscernible] I'll just take one 18 [indiscernible]. 19 DIRECTOR GRIFFITH: All right. No -- no problem. 20 Thank you all. 21 You all have any more questions for me? 22 All right. Thank you all. 23 CHAIRPERSON MASON: Thank you. 24 MAYOR D. JACKSON: Thank you. COMMISSIONER SCHAFER: Thank you. 25

1 CHAIRPERSON MASON: Okay. Budget amendments for 2 Marion County Highway Department? 3 UNIDENTIFIED MALE: [indiscernible]. 4 [Indiscernible voices.] CHAIRPERSON MASON: Clarence Howard? Aetna 5 6 Mountain coal mines and septics. 7 MR. CLARENCE HOWARD: Madame Chairman, Commissioners, I'd like to discuss matters that were brought 8 9 up, but on the last of January, the last week there, 10 inserted. [indiscernible] read [indiscernible] it really shouldn't take more than 15, 20 minutes. 11 12 But I also have engineers [indiscernible] 13 Technical Engineer, Derek Kilday [indiscernible] 14 [indiscernible] President Dane Bradshaw, though, would like 15 to speak to more technical issues there. So you know... 16 I'm a lifelong resident of Marion County. I grew 17 up here. Surveyor for 20 years. And all over every 18 mountain around here is -- we all know coal mining was a way 19 of life and a [indiscernible] for Marion County. All the 20 way up to Sequatchie Valley into Bledsoe, Rhea County, all 21 the way back down Signal Mountain, Walden's Ridge. 22 So you know, a lot of communities spring up from coal mining, such as Orme. And you know and -- they're 23 24 under -- about every mountain has been touched by the 25 coal mining industry.

1 You know, they're out there from Cumberland to 2 Sewanee, which lie above Orem where Commissioner Brandt has 3 stated he owns property. 4 Also the valid floor here is on a karst geology, 5 same coals. We have a large concentration of cages in this 6 Tennessee, Alabama, Georgia area. 7 So you know, and a lot of you have lived here all your lives. And I would like to ask you, with the exception 8 9 of Commissioner Schafer and Commissioner Brandt, they've 10 stated before "we're not from here," so they -- they don't 11 know. 12 Have any of you all ever have -- have any 13 knowledge of a house falling in a coal mine? [No audible response.] 14 15 MR. CLARENCE HOWARD: No. Neither do I. Well, you know, we -- we spent, to 16 17 date, \$3.1 million in engineering fees, environmental 18 consultants, permits, civil engineers. This is -- you know, 19 we've done due diligence because we know. 20 And -- and I've -- I'd also like to correct some 21 statements made by Mr. Ronnie Kennedy at the last commission 22 meeting. 23 I did take pride in all the touring of the mountain. We toured around and looked at some 24

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[indiscernible] baseball fields, doctors offices, travel aid

And I was supposed to pick Ronnie up for a second tour of the mountain, but he had some kind of medical emergency, and we never made that scheduled meeting.

stuff that supposedly existed on Aetna [indiscernible].

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6 However, I have run into Ronnie several times 7 here -- about every commission meeting. I've met him and 8 around we'd go off to look at some issues that he had there 9 with our property -- you know, with [indiscernible].

Never once did he mention taking another tour at Aetna Mountain, or any coal mines. He also stated that he was -- tried to donate those mountains to us, but it -that's not true. He offered to sell those to us, because that was his retirement.

I -- I did, however, get two small books from him for a donation of \$80 at Quayside Memories, which are from the Sequatchie Valley [indiscernible] which existed early in the 1900s. These were basically the talk around town, the columns that were printed out, and the books.

He also states there were coal seams 15 feet high on a mountain. That's probably a coal miner's dream. A large one up there averages 36 inches. So you know, that's just due to the geology of it.

He also stated there are current coal seams burning on Aetna Mountain. That's -- that's not true. I

have no knowledge of any on Aetna Mountain or any anywhere
 in Marion County.

3 So -- there was one on Aetna. It was 4 extinguished, I think, 16 years ago. Adam Driver, our civil 5 engineer, just happened to work on that -- the reclamation. 6 If there was another one, it could be extinguished just like 7 the previous ones.

8 Bulldozers sinking in mine shafts, that was 9 brought up too. That could have been the result of driving 10 through one of the silt-filled mud holes that were created 11 by off-road cow trucks. I mean, those things are pretty 12 deep. The D3 that the Forestry Service utilizes weighs about 13 17,000 pounds. It's a small dozer. Has a ground PSI of 14 about 4.6.

We ran 42,000 pound dozers. We have 90,000 to 16 100,000 pounds excavators, and trucks that fully loaded 17 gross 120,000 pounds. We have yet to have one suddenly fall 18 in the ground. And we can ground them everywhere there.

And -- and also Commissioner Schafer, in his introduction to this, mentioned concerns over second fields, and having sandstone and overflow. Second fields cannot be hammered out of sandstone.

They -- if there is not [indiscernible] it doesn't work. If you have to hammer on the -- anything out, it's the septic tank, which is a small intracted area.

There's very little exposed rock on the top of Aetna, and then mostly around the bluff areas, unlike Signal Mountain and other areas, where you have the soil on Aetna, according to our soil scientists, averages 40-48 inches, our typical sand [indiscernible]. And all lots are tested and

7 And -- and Commissioner Brandt and 8 Commissioner Schafer have also stated several residents have 9 contacted them on several issues -- not only this. But all 10 their issues that they've brought before this commission 11 always seem to be outside their district. And I don't --12 why aren't they contacting their commissioners? That's what 13 I would do.

approved by TDEC Ground Water Division prior to being sold.

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Commissioner Schafer, you brought up a complaint, a question, at the Planning Commission: What could be done to remedy the looks of the construction at the River Gorge Ranch entrance.

18 Commissioner Schafer lives on Jasper Highlands.
19 At one time, it was like that. But nature has a way of
20 growing back. The trees and grass that are...

A strange thing that I'm noticing -- it may just be an incident -- most of the issues that they bring up before this commission an incident are typically preceded on social media comments. And maybe that's where giggling and gestalt are a safe thing to do. But...

1 And I'd also like to ask Commissioner Brandt and 2 Commissioner Schafer about a statement that was made in the 3 first article of the Nashville Scene. It switched states. 4 Before the February 26th meeting, three 5 commissioners grouped to introduce Signal Mountain as an 6 agenda item, allowing Kennedy to speak. 7 I know who two are. I wondered who that third 8 commissioner was. 9 COMMISSIONER BRANDT: I have no idea. 10 MR. CLARENCE HOWARD: Well, okay. So I -- I guess 11 a lot of misinformation came out through -- I guess you two met prior to the meeting and discussed that. 12 13 COMMISSIONER BRANDT: No -- well --14 MR. CLARENCE HOWARD: Well, we're -- the papers 15 are wrong, then. Are --16 COMMISSIONER BRANDT: Well, as a matter of fact, I 17 think what actually took place is we went to the agenda 18 meeting, which was on a Friday. And the topic came up -- as a matter of fact, you were at the agenda meeting. 19 20 COMMISSIONER SCHAFER: Yes. I brought up the 21 topic of life safety on it -- a mountain. And I talked to 22 Johnny Gallagher about putting it on the agenda. 23 And for some reason it didn't get on the agenda 24 after I left the meeting. But it was brought up there, and 25 we briefly discussed Aetna Mountain. And some of the

1 information that was given out there that I didn't know
2 before.

MR. CLARENCE HOWARD: Bringing up public safety, I'd -- I'd like to introduce Derek Kilday. He's with UES, and does all our geological studies. I'll let him address things.

7 COMMISSIONER BRANDT: Could I ask you one question
8 before you go?

9 MR. CLARENCE HOWARD: [Nods.]

10 COMMISSIONER BRANDT: I've never been on 11 Aetna Mountain. Don't have a dog in that fight. Are you 12 saying there is no mines on Aetna Mountain?

MR. CLARENCE HOWARD: No. That's -- there are mines on every mountain. I mean, there are mines below [indiscernible] --

16 COMMISSIONER BRANDT: Yeah, I'm sure there is. I 17 -- and --

18 MR. CLARENCE HOWARD: Okay.

19 COMMISSIONER BRANDT: Okay. That -- that's the 20 only thing I'm -

21 MR. CLARENCE HOWARD: Never say [indiscernible] --22 COMMISSIONER BRANDT: The only thing I've asked 23 is it -- is there any mines? Okay.

24 UNIDENTIFIED MALE: Yes, there's -

25 COMMISSIONER BRANDT: So there is, but they've

been -- I - I read this report. I questioned whether or not the County even has the ability to interpret this, as far as understand this geophysical report.

I asked Council whether it's something that even the County would approve, because I would think the burden of proof is on the developer for the suitability of the property that it's built upon.

8 So I didn't even know why you would need approval 9 from the County on this report. And maybe the Council can 10 explain: I mean, do they really need to come to the County 11 for this?

12 MR. W. GOUGER: Well, the -- I think, no, 13 Commissioner Brandt, I'm sure that's why they're here, is 14 seeking approval. But the report - I think that report was 15 provided -- and I'll defer to Mr. Howard to correct me if 16 I'm wrong -- but I think that report was provided in 17 response to issues raised at the last commission meeting 18 about public safety or life safety issues pertaining to the 19 old mine at Jim Hill Mountain.

20 So -- I -- I -- correct me if I'm wrong, but I 21 think that's why they were provided, basically in that 22 response to a request from the county government.

23 So I don't think any approval of that report is 24 actually necessary. I think it's more for information 25 purposes.

1 MR. CLARENCE HOWARD: I'm -- I'm not here 2 seeking approval. I'm just looking to correct some 3 statements -4 COMMISSIONER BRANDT: Okay. 5 MR. CLARENCE HOWARD: -- that were 6 [indiscernible] --7 COMMISSIONER SCHAFER: One of my concerns was, under Tennessee law a developer does not have to disclose 8 9 anything on undeveloped property. Once a person purchased 10 that property, and puts a structure on that property, and 11 goes to sell it, they then have to make the disclosure. 12 So I think that law is kind of backwards. And 13 that's one of my concerns, because people are buying 14 something unbeknownst of what their buying and what's 15 underneath them. 16 MR. CLARENCE HOWARD: Yeah. So here in the 17 valley, would you -- everybody should just disclose that 18 their house has a possibility to be - be sitting over a 19 cave? 20 There's actually a cave below your house there, 21 too, Commissioner Schafer -22 COMMISSIONER SCHAFER: Yeah. 23 MR. CLARENCE HOWARD: -- so -24 COMMISSIONER HARGIS: There's caves under 25 everybody's houses.

1 MR. CLARENCE HOWARD: Sure. 2 COMMISSIONER HARGIS: That is my point. I'm the one that actually brought up the -- the fire out there. But 3 4 in the -- in the Nashville article, it didn't relate to 5 that. I was talking about 1989. 6 MR. CLARENCE HOWARD: Oh, jeez. 7 COMMISSIONER HARGIS: Okay? MR. CLARENCE HOWARD: Yeah. 8 9 COMMISSIONER HARGIS: But as I said in the last 10 meeting, we're sitting on caves and water tables. And 11 sinkholes fall out in the valley everywhere up and down the 12 valley all the time. That was my whole point to that. 13 So I was -- just as a correction, I was the one 14 that said, off -- off the cuff, about the fire. But that 15 was in 1989, 1990. That's long gone. 16 MR. CLARENCE HOWARD: Okay. I guarantee -17 COMMISSIONER HARGIS: And that was on the back 18 side of the mountain. 19 MR. CLARENCE HOWARD: I guarantee you every 20 mountain around here has a coal mine on it -21 COMMISSIONER HARGIS: I think I -- I actually gave 22 you the -23 MR. CLARENCE HOWARD: -- whether there's a 24 concentration of them or simple pre-1950 dog holes. 25 COMMISSIONER SCHAFER: I had stated that if the

1 developer knew there was mines in there that there was a
2 likelihood they would have put the lots away from where the
3 mines were at.

Indiscernible voices.]
UNIDENTIFIED MALE: [indiscernible] you said.
COMMISSIONER SCHAFER: That's what I said.
MR. CLARENCE HOWARD: I can let Derek here -- it
-- he's -- he's a professional expert, so...

9 MR. DEREK KILDAY: Mayor Jackson, Commissioners, 10 thank you so much for giving me the opportunity to speak 11 today. My name is Derek Kilday. I'm Principal Engineer and 12 Vice President of UES. We're a geotechnical and 13 environmental consulting firm.

14 I'm from Tennessee. I went to the University of 15 Tennessee. And I started my career in 2006 in 16 upper-East Tennessee, in Sevier County. I have a lot of --17 because of that, I have a lot of experience with mountaintop 18 development.

A little bit about UES. We're a nationwide firm. We have approximately 4,000 employees. And like I said, we're cost-to-coast. So we have a lot of resources to tackle situations such as this.

In addition to that, I've been in the Chattanooga area since 10 thou -- 2010. A lot of that time has been spent working on projects in Marion County. We've helped

individual homeowners on Suck Creek Road with colluvial
 issues so that they could develop those properties
 successfully.

We've worked with individual lot owners in Jasper Highlands so that they could build closer to the bluff safely.

7 We've also been fortunate enough to work with the 8 Lodge Distribution Warehouse. And although not in Marion 9 County, we were involved in the Upper River Gorge Road, 10 getting to the top of the mountain, as far as reconnaissance 11 services.

In 2022, we were contracted by Thunder Enterprises to perform two tasks. One, we performed a geotechnical exploration on the site. So we came in. We did some floorings and helped determine the most successful way to develop those roadways so that we have safe slopes; and other issues associated with the mountaintop construction.

18 The second phase of that was that we performed 19 geophysical work. That's the report that has been provided 20 to you. The reasoning for that is we were the design team 21 and our team were aware of the past mining at the site.

22 So we took the available mine maps and information 23 that we had, the available geology maps that we had. We 24 walked the property. And then we did confirmation 25 geophysical testing.

1 What that was able to do was to identify any 2 concerns that we may have where remedial efforts would have 3 to be made, or where we would have to change the planned 4 development to avoid any such issues.

5 Based on our review of the historical information, 6 the geology, and our geophysical testing, we do not feel 7 like there's any concerns with the planned development.

8 In addition to what we've done to date, we've been 9 asked to do geophysical testing only as confirmation of --10 in future phases of the development as they become 11 available.

I'm sure that you guys may have some questions for me. What I'd like to do, just so everybody gets the opportunity to speak is to let the -- this remainder of the team speak, and the I will -- I'll be available for any questions that you might have.

17 UNIDENTIFIED MALE: Thank you.

18 MR. DEREK KILDAY: Thank you.

MR. ADAM DRIVER: My name is Adam Driver. I'm with A.D. Engineering. I'm here with Bud Hargis. And we're the civil engineers for the project.

I want to thank Mayor Jackson and all the commissioners for taking time with us today.

A.D. Engineering has been fortunate to work inMarion County for many years on some great projects, like

the Lodge Distribution Warehouse in New Hope, to be working with Derek Kilday on them very success -- successfully: The Marion County Chattanooga State campus in Kimball, the Jasper Highlands, the Kimball Baptist Church, the new one, after the old one got hit by the tornado.

And we love working in Marion County. We like the people. Everyone is easy to work with. And we want to do a good job.

9 For this development, we've prepared a civil 10 engineering plans, including a roadway design, storm water 11 systems, drinking water systems, and erosion controls.

12 These plans are reviewed by the local planner, as 13 well as the Tennessee Department of Environment and 14 Conservation, TDEC.

More importantly, for this conversation, our plans are reviewed by Derek Kilday and the geotechnical company UES. Now we've worked with Derek for many years on a lot of projects, and we've had zero issues with their geotechnical engineering or their structural stability analysis. We expect the same thing here. They do a great job.

There was another question raised about an underground coal fire. And interestingly enough, we had extinguished that fire in 2008.

I've got some photos for the commissioners.Mike, would you hand those out?

1 So these show the area of the coal mine tailings, 2 as well as the work to put them out. And as an after --3 after-thought, I was --4 UNIDENTIFIED FEMALE: Thank you. 5 MR. ADAM DRIVER: There were no flames or anything like that. It was more like smoldering -6 7 Sulfur. UNIDENTIFIED MALE: MR: ADAM DRIVER: -- sulfur and charcoal. And we 8 9 worked with two great regulators at TDEC, Jim Bentley 10 [phonetic] in the Mining Division, and Dr. Urban [phonetic], from Water Connection. They helped me develop a plan to 11 12 methodically put it out. 13 So basically what the contractor did -- who was 14 Jody Mc -- Jody McDonald -- is he took an excavator and dug 15 into the edge of the burning coals, and then poured in large 16 amounts of water. He took the tender truck because the fire 17 sat on the mountain, dumped that in there and mixed it, put 18 that area out, then just kept rooting into the burning coals 19 until they were all put out. 20 Once it was quickly put out, he leveled the area, 21 spread topsoil, seeded it, grassed it. It has not been an 22 issue since that time. Besides the underground fire, I'm 23 not aware of any others, before or after. And as Clarence

24 said, they're certainly not burning now.

25

One last item that was brought up were the septic

1 systems on the mountain.

2	[Indiscernible voices.]
3	MR. ADAM DRIVER: I talked with David Myers, who's
4	the soil scientist on the project. He said that Aetna
5	Mountain had some very good deep soils for a mountaintop.
6	It's not like you're in the valley, but said, in general,
7	when you walk around up there, you do not see a lot of
8	exposed rock. The soils, he said, were much better than,
9	say, Signal Mountain, for example, where you see exposed
10	rock everywhere.
11	So regarding the question, could the septic
12	systems damage the sandstone, he said that he has never seen
13	that in all of his years, thinks that would be very
14	unlikely.
15	So I'll let Dane speak. Happy to answer any
16	questions after that.
17	MR. DANE BRADSHAW: Thank you, Adam. And this is,
18	in light of the introduction, my name is Dane Bradshaw,
19	President of Thunder Enterprises.
20	I've had the privilege of working for our
21	developer, John Thornton, since 2008. And I'm proud the say
22	the reason River Gorge Ranch has been so successful early
23	on, within the first two years, is based on our developer's
24	track record of doing things the right way. We've sold over
25	400 lots now in less than two years because of what we do

1 as develop - as a developer, not what we don't do.

Again, grateful for the opportunity to speak. The publication that put out this negative media failed to return our multiple calls from our PR firm. So as you can imagine, it's a little frustrating when you don't get your side of the story heard. And I appreciate the forum to do so here.

8 As our experts have alluded to, of course we take 9 into account any soil issues or coal tailing, mine tailings 10 that would be on the mountain. And we have some maps in the 11 back if anybody's interested.

As a developer, when you build a road, you've got to grade the road with the gravel face on. You've got to pave it. You've got conduit. You've got water lines. You've got electric. You've got fiber. A lot of money.

16 So when you're building that road, you want lots 17 on this side of the road and that side of the road.

Everybody follow me? That makes sense, right? Well, what happens is, when you have bad soil on one side of the road, or old mine tailings on one side of the road, you can't develop that area.

And guess what? Tough luck for the developer. That's it. The consumer doesn't lose; the developer loses. And we have instances like that on our mountain because we have professional soil testing and

1 environmentalists that go out there and say, Here's what you
2 can and can't do on this property.

And until they give us that clean bill of health and we take it to TDEC and they inspect the soils as well, and they verify it, we won't sell it. The Planning Commission can't approve it unless those soils have gone through the correct protocol.

8 And there's many times we'd lose lots that we 9 thought we might have. We might have a five-acre lot you 10 say, Wow, why did Thunder make that lot so big? It's 11 because the soils weren't great, and it made the lot bigger 12 to -- you know, the -- to give the correct subject.

But that's the nature of our development, and why so many people love buying property from us, is it's not cookie-cutter on a sewer. You get that variety. And so of course we take those things into account.

I heard somebody once say -- maybe some of you guys are fans of this man, too, I don't know, Charles Barker, one of the funniest guys out there. He said early in his MBA career when he was getting criticism he'd get so mad. And everything that came out in the media against him he just immediately would want to fight that reporter, get mad at him.

And his mentor, Dr. Jay, told me, he said, Chuck, the first thing you've got to do before you get mad is ask

yourself, is it true? Is it fair criticism? And I've
 always remembered that.

And so with John Thornton being a public develop -- public figure as a developer, we can take shots online, things like that. Well, you've got to take a step back and say, all right, is this fair? Is this true?

And in this case, absolutely not. Would we have
done anything differently? That answer is no. Do we plan
to do anything differently? That answer is no.

10 We've heard from our homeowner reports, Jennifer 11 Hines [phonetic] saw some things and criticisms, and why 12 didn't you do this, and maybe we could try this. And we've 13 made adjustments where we can. We're going to get better 14 too.

But this PR and this -- this hit piece that -that came out, and these guys are -- they can talk more professionally maybe than I can. Because there's the elephant in the room, too.

This is the second time I've been here in about, I don't know, seven, eight months. Which means when you have the first meeting and then a followup meeting, I'd say about four out of the last eight County Commission meetings have been a circus.

And it's because of two commissioners,Ruric Brandt and Paul Schafer, that are putting their own

1 personal interests, their own personal agenda ahead of the 2 County's best interest. Now they're hiding behind that 3 public safety. 4 But let's be clear: Y'all are on one mission, 5 your personal agenda and personal vendetta, for whatever 6 reason it might be. 7 UNIDENTIFIED MALE: Bullshit. UNIDENTIFIED MALE: And no matter how much you 8 9 love Marion County --UNIDENTIFIED MALE: Bull. 10 11 UNIDENTIFIED MALE: Bull. 12 [Indiscernible voices.] 13 UNIDENTIFIED MALE: -- you will [indiscernible] --14 UNIDENTIFIED MALE: Bullshit. 15 [Indiscernible voices.] 16 CHAIRPERSON MADSON: No. No. Everybody will 17 leave this room. I'm not going to listen to it. 18 [Indiscernible voices.] 19 CHAIRPERSON MADSON: Not today. 20 [Indiscernible voices.] 21 CHAIRPERSON MADSON: Am --22 UNIDENTIFIED MALE: So --23 CHAIRPERSON MADSON: -- I clear? 24 Thank you. 25 Carry on.

1 MR. DANE BRADSHAW: Because the tone and the mood, 2 the consistency, the fact that media covered that last 3 commission meeting without us being present or knowing 4 anything about it -- say what you want, but the elephant in 5 the room - and everybody knows it whether they'll say it or not -- and from my view, both of you should offer your 6 7 resignation as county commissioners. But --8 UNIDENTIFIED MALE: No. 9 UNIDENTIFIED MALE: No. 10 [Indiscernible voices.] 11 MR. DANE BRADSHAW: -- I'll move on to the topics. 12 If anybody has questions for our experts, we're happy to 13 answer those. 14 Unless John, would you like to say something? 15 COMMISSIONER SCHAFER: I'd like to ask you a 16 question. 17 What is my special interest against you? 18 MR. DANE BRADSHAW: You'll have to tell me, 19 Commissioner Schafer. 20 COMMISSIONER SCHAFER: Well, you made -21 MR. DANE BRADSHAW: And it's the second time -22 COMMISSIONER SCHAFER: -- the charge. 23 MR. DANE BRADSHAW: -- I've been here. 24 COMMISSIONER SCHAFER: You've made the charge that 25 I have a special interest. What is it?

1 MR. DANE BRADSHAW: Are you mad about your 2 culvert? 3 COMMISSIONER SCHAFER: No. 4 [Indiscernible voices.] 5 COMMISSIONER SCHAFER: I mean, yes, you could 6 have good -7 [Laughter.] COMMISSIONER SCHAFER: Excuse me. 8 9 [Indiscernible voices.] COMMISSIONER SCHAFER: Yes. And you know that you 10 11 were in the wrong, because you were out there to try and fix 12 it, weren't you? 13 CHAIRPERSON MADSON: Okay. We're not --14 UNIDENTIFIED MALE: You're out of order. 15 CHAIRPERSON MADSON: -- going to talk -16 COMMISSIONER FRANKLIN: It's not right to bring [indiscernible]. 17 18 UNIDENTIFIED FEMALE: It's personal. 19 UNIDENTIFIED MALE: Personal [indiscernible]. 20 CHAIRPERSON MASON: I don't think we need to really 21 talk about that -22 [Indiscernible voices.] 23 CHAIRPERSON MASON: -- you know, the -24 UNIDENTIFIED FEMALE: That's personal. 25 CHAIRPERSON MASON: That's personal.

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1 UNIDENTIFIED MALE: Wow. 2 [Indiscernible voices.] 3 CHAIRPERSON MADSON: Does anybody have any 4 questions for these gentlemen right here? 5 MR. W. GOUGER: The geotechnical guy, can I just ask him some questions? 6 7 MR. DEREK KILDAY: Yes, sir. 8 MR. W. GOUGER: I didn't realize that -- when I 9 read the report, I really -- I just had some things I wanted 10 to ask. 11 MR. DEREK KILDAY: Of course. MR. W. GOUGER: Being that it was brought up under 12 13 "Life and Safety," I figured, okay. 14 So if we can go to Page 7 -15 MR. DEREK KILDAY: Yes. 16 MR. W. GOUGER: -- Paragraph 2. 17 [Indiscernible voices.] 18 MR. W. GOUGER: If you'd be willing to read that, 19 since you wrote it. 20 MR. DEREK KILDAY: To -- page -- to be clear, I 21 did not write the document, but I confirmed it, so... 22 MR. W. GOUGER: Oh, okay. MR. DEREK KILDAY: But I would agree -23

24 MR. W. GOUGER: So if you agreed to it, that'd be 25 great.

1 MR. DEREK KILDAY: Yeah. Furthermore, during our 2 desktop research and review of the publicly available 3 geologic maps in the area, it appears multiple abandoned 4 adits were noted on site, generally dating to the 1950s. An 5 "adit" is defined as a horizontal passage leading into a 6 mine.

For easier review, we have included a geologic map with both the proposed site development and the published approximate location of abandoned adits.

He should know that GEOservices personnel attempted to hide and observe multiple adit locations, and that were found. Based on the existing site conditions, it appears likely that any adits have since collapsed or have been buried.

We note orange surface water in an isolated area -- area, generally on the southern edge of the proposed development, somewhat in the vicinity of Adits Number 29 and 30, was observed.

19 The area was outside the proposed area of 20 development, therefore GEOservices did not attempt to 21 observe the source of the orange-stained water. It should 22 be noted that the orange staining is an indicator of iron 23 leaching from likely open mine sources or swirls. 24 COMMISSIONER BRANDT: Okay. I -- I'm not 25 qualified, really, to ask too, you know -

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MR. DEREK KILDAY: Uh-huh.

2 COMMISSIONER BRANDT: -- technical questions, 3 because this isn't my bailiwick. So could -- if you can 4 work with me on this. 5 MR. DEREK KILDAY: Of course. 6 COMMISSIONER BRANDT: Can we agree that orange 7 surface water is something that needs immediate attention? 8 MR. DEREK KILDAY: I mean, I -- I'm not an environmental consultant. I -- I can't -- I -- I don't 9 10 -- not from the scope of our investigation, no, sir. COMMISSIONER BRANDT: Well, I -- I just noticed 11 12 that you put it in here, so I would assume that it was 13 important for it to be in there. That's -- that's why I 14 asked the question. 15 MR. DEREK KILDAY: Sure. No, we -- we did note 16 it, that it was present. But -- and from our standpoint, 17 not present like -- so we're going to note this because it 18 builds the case that there was mining. 19 Right? Like we found the lap - maps that had the 20 adits on it. 21 COMMISSIONER BRANDT: Uh-huh. 22 MR. DEREK KILDAY: We -- we found this -- this is like bullet point 2. Also we have this staining that we see 23 24 from the water, which is often seen around mine areas. 25 COMMISSIONER BRANDT: Okay. All right.

1 So my next question -- and I promise I'll make this guick -- if you can go out to the -- on Page 21, it's 2 3 abandoned adits. 4 Is that how you say it? Adits? 5 And that's the entrance to mines -6 MR. DEREK KILDAY: Sure. 7 COMMISSIONER BRANDT: -- and/or horizontal mine 8 entrances. 9 MR. DEREK KILDAY: That's correct. COMMISSIONER BRANDT: I think the -- the area that 10 11 -- so you don't have to read the whole thing -- we have provided map detail in publicly available locations of 12 13 abandoned mines. However, we anticipate more mines likely 14 to exist at one point in time. 15 So is that -- am I to understand that, as a 16 layman, that there is old mines there? Is that what you're 17 saying? Or there's -18 MR. DEREK KILDAY: What -- what we're saying is 19 that we would use the records, the available records for the 20 mines. They're not always -- they weren't always recorded 21 well. Right? 22 COMMISSIONER BRANDT: Uh-huh. 23 MR. DEREK KILDAY: Especially as far back as some 24 of the mining goes in Marion County. So essentially, we

25 can't -- we have to talk a little bit in general --

generalities as an engineer, because if we don't have specific data, we have to do that.

3 So what we're saying, is yes, there could be more 4 mines there, but we reviewed all the ones we could, based on 5 the data available.

COMMISSIONER BRANDT: If you could pick up again
where it says, "However," please, as mentioned previously.
MR. DEREK KILDAY: Okay. In that top paragraph?
COMMISSIONER BRANDT: Yes, yes.

10 "However, as mentioned previously, we did 11 observe" --

12 MR. DEREK KILDAY: On Page 21, sir?

13 COMMISSIONER BRANDT: Yes -- 20.

14 MR. DEREK KILDAY: 20. I'm sorry.

15 [indiscernible].

16 "However, as I've mentioned previously, we did 17 observe free water with iron standing in one portion of the 18 sod, which it would indicate some amount of ground water 19 flow through either mining -- pay mining or mine -- mine 20 spoils.

21 Do you want me to continue?

22 COMMISSIONER BRANDT: Okay. So this water, again, 23 what -- you've mentioned it twice in the report. Normally 24 when I see something multiple times I think there's a reason 25 why someone puts it in there.

1 MR. DEREK KILDAY: Sure. 2 COMMISSIONER BRANDT: So again, you have staining water. What -- what's -- it -- is there -- should there be 3 4 a level of concern about that water, being that it's orange? 5 You -- you said it was orange, correct? MR. DEREK KILDAY: Of course, it is -- it is --6 7 well, not Hi-C orange, but it -- it has some color to it, 8 yes, sir. 9 UNIDENTIFIED MALE: Like rust. 10 MR. DEREK KILDAY: Like rust. 11 COMMISSIONER BRANDT: Like rust? 12 MR. DEREK KILDAY: It's iron -13 COMMISSIONER BRANDT: Okay. 14 MR. DEREK KILDAY: -- [indiscernible] --COMMISSIONER BRANDT: Okay. 15 16 MR. DEREK KILDAY: -- like what you get in a pipe 17 at your house, that's what we're talking about. 18 COMMISSIONER BRANDT: And -- and in your opinion there's nothing -- there's no problem with that; is that 19 20 correct? 21 MR. DEREK KILDAY: Not as it relates to the 22 development. And I'd -- like as it relates to the water itself, I'd leave that to the environmental consultant. 23 24 COMMISSIONER BRANDT: Okay. Okay. 25 MR. DEREK KILDAY: And from -

1 COMMISSIONER BRANDT: Are --2 MR. DEREK KILDAY: -- from -- from our 3 standpoint, we put it in twice, just to [indiscernible] --4 COMMISSIONER BRANDT: And again, when you said --5 MR. DEREK KILDAY: -- [indiscernible]. 6 COMMISSIONER BRANDT: -- you're not an 7 environmentalist, you're just --8 [Indiscernible voices.] 9 MR. DEREK KILDAY: You're -- I -- correct. We're 10 structural geology, stability [indiscernible]. 11 COMMISSIONER BRANDT: Okay. 12 The -- the -- the last question. I --13 MR. DEREK KILDAY: Yes, sir? 14 COMMISSIONER BRANDT: -- apologize. 15 You have a -- Page 21. It seems to say everything 16 is cool with the mountain. But you do make a "however," 17 again. I saw that "however" again. 18 MR. DEREK KILDAY: Sure. 19 COMMISSIONER BRANDT: So if you'd read "however" 20 again, please. 21 MR. DEREK KILDAY: Absolutely. 22 "However, mass grading and/or extensive blasting in the sandstone formations would likely increase 23 24 the risk of future distress related to underlying 25 mines."

1 COMMISSIONER BRANDT: Okay. And I think I heard 2 Mr. Howard say that you -- you did this report -- I -- in 3 fact, you've conducted blasting since this report, is that 4 -- that's correct, I -5 MR. DEREK KILDAY: Cor -- for the -- that would for the -- that would be correct. 6 7 MR. DEREK KILDAY: Right. COMMISSIONER BRANDT: Okay. 8 9 MR. DEREK KILDAY: But we'll -- we'll quit right 10 away. 11 COMMISSIONER BRANDT: Since -- since the --12 since October 25th of 2022, you've done blasting. Okay. And I would assume -- I thought I heard somebody 13 14 just say that they were going to do some more reporting, 15 geophysical. Will you be conducting a post-blast and 16 geophysical report to address, you know, any changes? 17 MR. DEREK KILDAY: So two things about the blasting and the mass grading: There's -- there's a reason 18 19 we talk about that in here. 20 One is, a lot of times we'll come out, we'll do 21 this report. Unbeknownst to us, the developer doesn't 22 retain our services through construction. They get with their civil engineer. They change the grading plan. 23 24 their civil engineer. They change the grading plan. So 25 what used to sit here, they take 40 feet out of. And so

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everything we tested is gone.

2 So we have to have some sort of disclaimer from --3 for -- from our standpoint, for liability protection. That's what this is. 4 5 And if -- if they came in and they drastically 6 changed the grading plan, we have to have some -- you know, 7 some liability protection. 8 COMMISSIONER BRANDT: Okay. 9 MR. DEREK KILDAY: That's -- that's what this statement is. We are --10 11 COMMISSIONER BRANDT: Okay. MR. DEREK KILDAY: -- conducting additional 12 13 geophysical surveys now for future development areas, as we 14 speak. We were out last week. 15 COMMISSIONER BRANDT: Okay. 16 My last question is actually for Mr. Clarence Howard, if I can ask him. 17 18 MR. DEREK KILDAY: Sure. 19 COMMISSIONER BRANDT: This is just so I understand 20 your mediation, what you're planning on doing. 21 What white lines -- which are also based on 22 roads, so forgive me. What white lines and guardrails are you putting in place to make sure your buyers are protected? 23 24 MR. CLARENCE HOWARD: What -- we're -- white 25 lines, as far as striping the roads?

1 COMMISSIONER BRANDT: No. 2 MR. CLARENCE HOWARD: I don't --3 COMMISSIONER BRANDT: That's --4 MR. CLARENCE HOWARD: Oh. 5 COMMISSIONER BRANDT: -- a metaphor. MR. CLARENCE HOWARD: Okay. 6 7 COMMISSIONER BRANDT: Okay. MR. CLARENCE HOWARD: Yeah. Well, for one thing, 8 9 we're [indiscernible] they start putting in, so we can control it. 10 It's -- and there's no need for it, this mass-11 12 grading or blasting on residential sites. So you're not 13 going to do that for residential. 14 Mass grading, it says to 30, 40 feet, 20 feet, you 15 know. If we go in and change the topography, if we had 16 sooner, yes, we could do that. We could change the whole 17 face of it. 18 But because we're on septic, those fields for that septic have to be protected. The only place that you could 19 20 really grade is your driveway to your house size. 21 And you have to protect that primary septic field 22 and that secondary backup. 23 COMMISSIONER BRANDT: Yeah, the plat for your 24 development was plated for -25 MR. CLARENCE HOWARD: Correct.

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1 COMMISSIONER BRANDT: -- septic and wells. Is 2 that correct? 3 MR. CLARENCE HOWARD: Yeah, that's true. COMMISSIONER BRANDT: Is -- can that mountain 4 5 handle that many -- you're going to get water, I'm assuming, 6 right? That's the goal? 7 MR. CLARENCE HOWARD: Yes. We've got to. COMMISSIONER BRANDT: Okay. 8 9 MR. CLARENCE HOWARD: Yeah, we're working on it. 10 COMMISSIONER BRANDT: All right. Thank you so 11 much. I appreciate it. 12 MR. CLARENCE HOWARD: Thank you, Sir. 13 [Indiscernible voices.] 14 MR. JOHN THORNTON: Extremely breakable. 15 My name's John Thornton. I'm a developer. Ι 16 bought the mountain in September of '21. And I -- I think I 17 have an unblemished record for development. 18 I live only 25 miles from here, born and raised in 19 East Tennessee. And I'm not a South Florida developer from 20 Australia or -- I've been honest and open and transparent. 21 I'm going to do things the right way. And I have. And I 22 think Jasper Highlands is evidence of that. 23 We've got 1,300 home sites with a wonderful community -- almost 500 homes there. 24

25 It was \$27,000 a year in property taxes when I

bought that 9,000-acre piece. And how it's generating well over a million. In a build-out it'll generate well over

3 \$3 million in taxes.

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The River Gorge Ranch will -- will generate more than 5 million. Now, our customers, for the most part, are retired. They don't have school-age children -- for the most part. 95 percent of them don't. They're not putting a strain on county services. It is a massive windfall for Marion County.

10 But that doesn't give me the right to do anything 11 wrong. And I'm not going to. We are going to do it right. 12 I don't have a budget.

With these engineers, with Derek, or Adam, or anybody in there -- the environmental engineers, they are placed on that mountain to do a job, and to do it --

16 UNIDENTIFIED MALE: Yeah.

MR. JOHN THORNTON: -- with their -- with their professional expertise. If they say, "Thunder, we can't develop here. You got mine tailings and -- and -- and it's not appropriate," we know, and so does Tennessee Department of Environment and Conservation. They'll back that up.

What Derek found out -- this is probably the bottom line -- from the structure standpoint, there's 120 feet of sandstone in between the average lot up on -- on River Gorge Ranch. A foundation of 120 feet of sandstone --

1 you could build the Empire State Building and probably the 2 World Trade Center up there if you wanted to. 3 UNIDENTIFIED FEMALE: No [indiscernible]. 4 MR. JOHN THORNTON: Well, I'm not building either 5 one. But I'll tell you what I am going to build. I'm going 6 to build the talk of Tennessee, the greatest restaurant. 7 It's going to be a fabulous \$12 million restaurant. It's going to be open to the whole public. It'll be the beacon 8 9 of Marion County. 10 And I'm proud to develop in Marion County. I love 11 this county, the natural resources, great people. 12 And thank you all very much. 13 [Applause.] 14 CHAIRPERSON MADSON: Commissioner Pickett, Marion 15 County Highway Department Surplus Property. 16 [Indiscernible voices.] 17 COMMISSIONER PICKETT: I'm just here tonight to 18 make you all aware we are going to have an auction on 19 March 30th, 9:00 a.m. on our premises. And I respectfully 20 request permission to dispose of those items. 21 You probably have them in your packets. I can 22 probably read them all off, if you want. 23 UNIDENTIFIED MALE: That's okay. We're getting 24 [indiscernible] --25 UNIDENTIFIED FEMALE: All within the same period.

1 CHAIRPERSON MASON: I don't think that's 2 necessary. 3 COMMISSIONER PICKETT: Good. 4 COMMISSIONER BRANDT: I'll make a motion. But I 5 -- I -- but I have a question. 6 Now we was low of snowplows. We don't have 7 snowplows. 8 COMMISSIONER PICKETT: Yes. 9 COMMISSIONER BRANDT: We've got snowplows out here 10 that we need to get rid of. 11 COMMISSIONER PICKETT: Yeah [indiscernible] 12 snowplows are just there. They don't fit any trucks. The 13 trucks have been sold long ago. They don't fit anything. 14 So we get the money. 15 The -- the whole goal of this auction is to buy 16 another truck with a plow, which we did last year. That'd 17 give us two working plows. That's the -- if we leave those 18 up there, they're just sitting there. They only fit the 19 International trucks. 20 COMMISSIONER BRANDT: Get yard art. 21 COMMISSIONER PICKETT: What? 22 COMMISSIONER BRANDT: Yard art. 23 COMMISSIONER PICKETT: I've seen it. Yeah, I've 24 seen it. 25 Also while I'm up here, we get a lot of our

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1 State aid, starts next month, I found out from our 2 distributor today, the 15th. That's when we got 3 [indiscernible]. 4 We're going to Hancock Road, and Aqua Road, to 5 Enid, and then Rivervale, Wild Cavalry Road [all phonetic]. 6 Then when the year flips, we'll go another two 7 miles of Moulton's [phonetic] Cove, then three miles of Francis Spring, from State aid this year, so... 8 9 And then a bunch of small roads in hills 10 [indiscernible] mining. 11 CHAIRPERSON MADSON: There is -- I was looking --12 I was just out riding. 13 COMMISSIONER PICKETT: Uh-huh. 14 CHAIRPERSON MADSON: On -- I guess, yeah, on 15 Francis Springs, McClain Rd -16 CHAIRPERSON MADSON: Yes. 17 CHAIRPERSON MADSON: It looks like that it was 18 just paved. I mean -19 COMMISSIONER PICKETT: Just paved about four years 20 ago, probably. 21 CHAIRPERSON MADSON: Well, not the whole thing. 22 COMMISSIONER PICKETT: Kind of partial, it was. 23 CHAIRPERSON MADSON: It there was a huge pothole. COMMISSIONER PICKETT: The back part's not paved, 24 25 of it.

1 CHAIRPERSON MADSON: Yeah. It was huge. 2 COMMISSIONER PICKETT: Yeah. 3 CHAIRPERSON MADSON: [indiscernible]. 4 COMMISSIONER PICKETT: Yeah, it makes it 5 interesting, though. CHAIRPERSON MADSON: Yeah. 6 7 COMMISSIONER FRANKLIN: If I may, back to Number 12, the 2017 New Holland [indiscernible] --8 9 COMMISSIONER PICKETT: We -- that -- that's 10 not --11 COMMISSIONER FRANKLIN: Oh, it's not --12 COMMISSIONER PICKETT: -- on our street -- we took 13 that one off due to -14 COMMISSIONER FRANKLIN: Did you take it off? 15 COMMISSIONER PICKETT: We got a problem with it. 16 We don't really know what it is, if it's failed, or what. 17 We actually sent it to Chattanooga Tractor, to let them see 18 what's going on with it. 19 COMMISSIONER FRANKLIN: Maybe a second opinion 20 what it's worth [indiscernible]. 21 COMMISSIONER PICKETT: It's too good a --22 COMMISSIONER FRANKLIN: Oh. 23 COMMISSIONER PICKETT: -- piece of equipment to 24 get rid of. 25 COMMISSIONER FRANKLIN: Okav.

1 UNIDENTIFIED MALE: Thank you. 2 [Indiscernible voices.] 3 UNIDENTIFIED MALE: I have a motion. 4 CHAIRPERSON MADSON: Okay. I have a motion. 5 UNIDENTIFIED MALE: Second. CHAIRPERSON MADSON: And a second. 6 7 All in favor? [Commissioners say, "Aye."] 8 9 CHAIRPERSON MADSON: Opposed? 10 Thank you, sir. 11 COMMISSIONER PICKETT: Thank you. 12 CHAIRPERSON MADSON: Thomas Morgan? 13 Thomas Morgan? 14 Resolution for approval of the TOSHA Safety Plan. 15 UNIDENTIFIED MALE: Skip. 16 UNIDENTIFIED MALE: Skip. UNIDENTIFIED COMMISSIONER: I'll def --17 18 definitely --19 [Indiscernible voices.] 20 MR. W. GOUGER: I'll [indiscernible] I'll address 21 Number 17. 22 Madame Chair, it's a resolution that the -- the County - all of the governments are required to have -23 24 all of including the county, are required to have the 25 State's plan approved through TOSHA.

It's the Occupational Safety Health Agency. It has to be
 updated every seven years.

3 COMMISSIONER ADKINS: Yep. 4 MR. W. GOUGER: The last one was done in 2017. So 5 this is the updated version. Not -- not much has changed on 6 it. Basically it's identifying the employees or officers or 7 officials in County government who are responsible for 8 implementing a safety plan, and for reporting the necessary 9 required information to TOSHA on an annual basis. 10 And I recommend approval for the requested 11 [indiscernible]. 12 COMMISSIONER FRANKLIN: Do we need a motion for 13 that? 14 COMMISSIONER ADKINS: Yes, sir. 15 COMMISSIONER FRANKLIN: I'll make a motion. 16 COMMISSIONER CANTRELL: Second. 17 CHAIRPERSON MASON: I have a motion and a second. 18 COMMISSIONER SCHAFER: Question. 19 COMMISSIONER PICKETT: Yes, sir? 20 COMMISSIONER SCHAFER: How many people are we 21 going to hire for this position -- for this department? 22 COMMISSIONER PICKETT: No one. It's -- it -- it's existing personnel, Commissioner Schafer. 23 24 COMMISSIONER SCHAFER: It's an existing personnel. 25 Okay.

1	COMMISSIONER PICKETT: Yes, sir.
2	COMMISSIONER SCHAFER: No new people are going to
3	be hired.
4	COMMISSIONER PICKETT: That's correct.
5	COMMISSIONER SCHAFER: Okay.
6	CHAIRPERSON MASON: May I have a second?
7	COMMISSIONER CANTRELL: Second.
8	CHAIRPERSON MADSON: Cantrell, second.
9	COMMISSIONER CANTRELL: Yeah. I got
10	[indiscernible]. I'll second it.
11	CHAIRPERSON MADSON: All in favor?
12	[Commissioners say, "Aye."]
13	CHAIRPERSON MADSON: Opposed?
14	Opioid Fund Distribution to D.A.R.E. Program.
15	MAYOR D. JACKSON: Thank you, Madame Chairman.
16	The Opioid Council's regular council has
17	recommended that we give up to \$9,500 to the D.A.R.E.
18	Program, to send some of the SROs back for training in the
19	[indiscernible] service for the kids.
20	[Indiscernible voices.]
21	COMMISSIONER FRANKLIN: Question.
22	CHAIRPERSON MADSON: Commissioner Franklin?
23	COMMISSIONER FRANKLIN: Now, that's on the opioid
24	fund
25	MAYOR D. JACKSON: Yes, sir.

COMMISSIONER FRANKLIN: -- monies that we --MAYOR D. JACKSON: Yes.

3 COMMISSIONER FRANKLIN: -- talked about a couple 4 of meetings... 5 MAYOR D. JACKSON: Yes, sir. 6 COMMISSIONER FRANKLIN: Are we moving money from 7 one place to another, or are we [indiscernible] --8 MAYOR D. JACKSON: No. It was -- we're still 9 getting those contracts ready for the people to sign, that 10 y'all approved. 11 COMMISSIONER FRANKLIN: Okay. That's what I 12 wanted to... Yeah. Yeah. Not a problem. 13 COMMISSIONER SCHAFER: That one contract that we 14 didn't sign, is that money going to D.A.R.E.? 15 MAYOR D. JACKSON: No. It's going into the pot, 16 back into the pot. 17 COMMISSIONER SCHAFER: It's going back into the 18 pot. 19 MR. W. GOUGER: Yes, sir. 20 MAYOR D. JACKSON: Yeah. 21 COMMISSIONER SCHAFER: Okay. 22 MAYOR D. JACKSON: That's what they asked for [indiscernible]. 23 24 COMMISSIONER HARGIS: Has this years' money came 25 in yet?

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1 MR. W. GOUGER: Got some of it in, yeah. 2 COMMISSIONER HARGIS: How much have we got in so 3 far? 4 MAYOR D. JACKSON: Gee, I'll have to get back to 5 you on that. 6 COMMISSIONER HARGIS: Okay. 7 MAYOR D. JACKSON: But it's somewhere around 100,000 or so. 8 9 COMMISSIONER SCHAFER: So moved. 10 CHAIRPERSON MADSON: Okay. I have a motion. 11 COMMISSIONER ROLLINS: Second. 12 COMMISSIONER MORRISON: Second. 13 CHAIRPERSON MADSON: Second. Who's the second 14 over there? COMMISSIONER ROLLINS: Me. 15 16 CHAIRPERSON MADSON: Rollins. 17 COMMISSIONER MORRISON: He got it, yeah. 18 CHAIRPERSON MADSON: All in favor? 19 [Commissioners say, "Aye."] 20 CHAIRPERSON MADSON: Opposed? 21 [Indiscernible voices.] 22 CHAIRPERSON MADSON: Discussion on redundant 23 communication? 24 COMMISSIONER BRANDT: Yes, Chairperson. 25 I wanted to put the -- a scenario, because it

1 actually has happened here, where we've lost cellular signal 2 as well as internet at the same time. And I don't know how 3 many people in the audience still have a landline. But in 4 the event there was an actual emergency, how would we 5 contact the 28,000 people that are in this county? 6 So I wanted to identify if indeed people see that 7 as a - as a - something we need to remedy, and I think we need to have a workshop and/or a committee to actually come 8 9 up with a solution, which I do have some ideas for. 10 CHAIRPERSON MASON: Okay. 11 [Indiscernible voices.] 12 COMMISSIONER FRANKLIN: If I may, okay --13 CHAIRPERSON MADSON: Absolutely. 14 COMMISSIONER FRANKLIN: 911 has addressed this to 15 the point of if there was a major disaster in the area, they 16 have a way to -- have a backup with a trailer at this time, 17 if I'm not mistaken. But we've already started looking at 18 maybe a mobile home, or something more up-to=date, that this 19 would all, as far as I'm concerned, fall back to 911. 20 Am I correct there, Billy, as far as what this 21 redundantness, and --22 MR. W. GOUGER: I -- I think ultimately, Commissioner Franklin, they would be right. 23 24 Commissioner Schafer -- Commissioner Brandt, I'm

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sorry. And I talked briefly about this a couple weeks ago,

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I guess. Now if they make the appropriate forum for it, it
 would be a 911 Board meeting.

But I would encourage Commissioner Brandt to share his ideas with -- with the 911 Board. I know Steve Lamb is here, and he's getting made director. And I think sharing -- sharing those thoughts with them, I -- I understand. I understand what you're saying,

8 Commissioner Franklin.

9 I -- I think we may actually be talking about two 10 different things. I think Commissioner Brandt is talking 11 about the -- the digital versus analog type system, that 12 sort of thing, being able to communicate county-wise with 13 the entire system, as opposed to simply having an alternate 14 or backed up dispatch center, which is -- which was what you 15 always talked about --

16 COMMISSIONER FRANKLIN: That's what I'm talking 17 about.

18 MR. W. GOUGER: -- a 911 Board meeting.

19 COMMISSIONER FRANKLIN: Yes.

20 MR. W. GOUGER: Right. I think those things are 21 -- are good ideas.

But -- but I think that it does probably bear some discussion with the 911 Board, because they're the ones that are implemented the communication systems for the benefit of the county.

1 COMMISSIONER BRANDT: If you lose cellular and 2 internet and you don't have a radio, how to you communicate? 3 MR. W. GOUGER: Right. Yeah, that -- I think 4 that's a question --5 COMMISSIONER BRANDT: And I don't know what solution 911 has to address that. 6 7 MR. W. GOUGER: Right. COMMISSIONER BRANDT: Steve Lamb is here, I 8 9 believe; is he not? 10 [Indiscernible voices.] 11 COMMISSIONER BRANDT: Yeah, please. 12 [Indiscernible voices.] 13 MR. STEVE LAMB: Thank you. I'll -- I'll be 14 brief. I ain't quarantined this time. 15 But either way --16 CHAIRPERSON MASON: At least one of us gets 17 [indiscernible]. 18 MR. STEVE LAMB: Christopher Grammy [phonetic] 19 brought this to my attention right before the meeting. 20 And actually, Commissioner Franklin, there's two 21 separate things. Yes, we have redundant systems for our 22 communications with our public safety people. They do need 23 to be improved as well, and we're currently working on that. 24 But what Commissioner Brandt is talking about is 25 -- well, I think her, too, as -- a dark-sky event, black

1 sky event. And I've been through some scenarios with it. 2 And what he's talking about is: I can't call anybody in the 3 county. I can't put notice out to anybody. If we did that 4 right now -- no, we cannot. In fact, there's probably 5 6 very few counties that are. 7 Like I say, you just presented this today, but I think this is a good idea, because again, nobody has 8 9 landlines. And most of them don't work anyway. That's why 10 we gave ours up, had a lot of trouble with AT&T. 11 So there is no way to notify the people. And it's 12 a very diverse county. It's a very big county. And it 13 warrants a look. And I'll be happy to work with 14 Commissioner Brandt and with the 911 Board on this. So... 15 MR. W. GOUGER: Thank you for -16 MR. STEVE LAMB: Thank you. 17 COMMISSIONER BRANDT: And there is a technology 18 that is something that we've been looking at that we could 19 utilize. 20 UNIDENTIFIED MALE: Okay. 21 COMMISSIONER BRANDT: It's called a Meshtastic. 22 And it's a cheap [indiscernible] radio. 23 [Indiscernible voices.] 24 COMMISSIONER BRANDT: It -- with some 25 modifications we could actually make it so you could text.

1 And being that it's on a mesh-type network, it actually 2 repeats from one radio to the next radio. 3 We have a local vendor here that actually could 4 make us a very inexpensive -- well, when I say 5 "inexpensive," I quess that's relative. So let's just say, 6 you know, a \$60 or \$70 radio that everyone could get. 7 And then if there was an issue, and there was notices that needed to come out from the Mayor's Office, 8 9 what-have-you, we could get it out there. And they wouldn't 10 need a telephone, and they wouldn't need internet. 11 COMMISSIONER BLANSETT: Would that be about the 12 same thing, that it's a weather radio that you -- they got, 13 people sell? 14 COMMISSIONER BRANDT: Similar. But the difference 15 here is you'll actually be able to communicate. 16 COMMISSIONER BLANSETT: Oh, okay. 17 COMMISSIONER BRANDT: You'll be able to text 18 message. So --19 COMMISSIONER BLANSETT: That still needs to fall 20 under the 911 Board. UNIDENTIFIED FEMALE: I don't think -- well --21 22 COMMISSIONER BLANSETT: Yeah. 23 COMMISSIONER BRANDT: And why is that? 24 COMMISSIONER BLANSETT: Because that's what 25 they're handling, all that other communications. Why would

1 we want to start another committee, when they're already 2 working on it? 3 COMMISSIONER BRANDT: Okay. Thank you. 4 COMMISSIONER BLANSETT: I mean, I'm just a -- just 5 a -- I'm just one. I'm just one. 6 And I think Commissioner Franklin did a good job 7 getting it straightened out on that [indiscernible]. 8 [Indiscernible voices.] 9 CHAIRPERSON MADSON: Any more discussion? MR. BO BURNETT: Well, I'm -- I'm Chairman of the 10 11 Board, and I like to [indiscernible] meet and discuss this. 12 COMMISSIONER BLANSETT: Yeah. 13 MR. BO BURNETT: So that's -- no, I mean, actually, it's up above my pay grade, but I'm not -- I'll 14 15 listen, so if you'd like to [indiscernible]. UNIDENTIFIED MALE: I appreciate that, Bo. 16 17 COMMISSIONER BLANSETT: He does have a lot of 18 knowledge in that area, guys, really, he does. 19 MR. BO BURNETT: Thank you. 20 CHAIRPERSON MADSON: The status of South 21 Pittsburgh Water Project? 22 MR. W. GOUGER: There are -- there are two, I guess -- correct me if I'm wrong, Mayor -- but there's two 23 24 current water projects on that end of the county. One is

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[indiscernible] Battle Creek Project. The other is on top

25

1 of Bird Mountain. The status of the Bird Mountain Project I 2 think is probably a little bit easier to get an update on. 3 I think the engineering folks are in the process 4 of repaying private easements from landowners to route the 5 -- water lines off of the State Highway right-of-way, 6 because there were permitting requirements there. I think 7 there are only a handful of those left -- from what I 8 learned today.

9 As far as the Battle Creek Project, had a meeting 10 last week with Keith Garth, who's the director of the South 11 Pittsburgh Board of Water Works, Sewers Operation and -- or 12 the manager, rather. Is

And he was communicating with Stephanie about -- I -- called up Al and started -- of TDOT, who is the -- the local TDOT representative in charge of purveying for that project.

They were to get together this week on some options available to get around an area that -- that's been a problem from a permitting standpoint. And we should have that -- hopefully have that resolved this week. That is -that is where we left that.

22 COMMISSIONER CANTRELL: Is there any possibility 23 that because of what happened on SR-2, that the water coming 24 up South Pittsburgh Mountain won't happen because there's 25 not enough money?

1 MR. W. GOUGER: I don't think --2 COMMISSIONER CANTRELL: No. You don't. 3 MR. W. GOUGER: -- I don't think one is related to the other. And then --4 5 MAYOR D. JACKSON: Well, the County Commission has already approved that project, so it'll get done. 6 7 MR. W. GOUGER: Yeah. 8 COMMISSIONER CANTRELL: Okay. 9 MR. W. GOUGER: All they need to change it is to 10 [indiscernible] without the Commission's approval 11 [indiscernible] either way. 12 COMMISSIONER CANTRELL: Then we lose -- it -- it 13 -- should it happen, where one -- one property owner says, 14 No, I'm not giving it to you, we're in trouble. Are we not? 15 MAYOR D. JACKSON: No. It'll jump back onto 16 State. 17 MR. W. GOUGER: Well --18 MAYOR D. JACKSON: It'll jump back on the State 19 right-of-way. 20 COMMISSIONER CANTRELL: Can we do that? 21 MAYOR D. JACKSON: If they give us a permit --22 long as it's not on the slope. The slope area is what the problem is. 23 24 COMMISSIONER CANTRELL: Okay. Thank you. 25 MAYOR D. JACKSON: Thank you.

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1 CHAIRPERSON MADSON: Okay. Freedom of Information 2 Act discussion?

3 UNIDENTIFIED MALE: Go ahead, Billy, if you can 4 swing it.

MR. W. GOUGER: Sure.

5

First of all, I want to clarify a couple things.
Commissioner Schafer and I had a discussion about this
earlier today, too.

9 The Freedom of Information Act, just so everybody 10 understands, is the federal law that -- that applies to 11 federal agencies and federal officials. It doesn't apply to 12 state governments or local governments.

13 The -- the Tennessee State Open Records Act is the 14 state equivalent of the FOIA. So -- and -- and a lot of 15 times -- and people use those terms interchangeably, even 16 though they're -- they're technically different.

But what -- what this topic is on your agenda is for -- I reached out to the State's Office of Open Records Council last week. Looked for some guy to fill some [indiscernible] requests that the County had to see.

And in the process of doing that, discussed it with Commissioner Schafer and with Commissioner Brandt. I -- I made the request of whether that office would provide some training to the members of the County Commission, and any other local government officials who might be interested

1 in participating. They do offer that training. 2 There are classes on -- on the Open Records Act. 3 They will do them in-person if they have enough people sign 4 up 5 to participate. There's logistical issues that have to be addressed, travel and so forth. 6 7 And if there aren't enough people that signed up to do it in-person, then they'll do them --8 9 they'll do them online and do like a ZOOM type of class. 10 And I'll be glad to go back to the Open Records 11 Council with a request for some dates, if that's what the --12 if the Commission is interested in doing that. Personally, 13 I think it's a good idea. 14 You know, you all have had an Open Records Act 15 since 2017. It's mandated by state law. But un -- unless 16 you guys get a request, you don't really know how it works. 17 So... 18 COMMISSIONER CANTRELL: I think, too, that the 19 bigger issue is knowing, as a commissioner, when you have 20 constituents that call you and talk to you, or send you an 21 email or text message --22 MR. W. GOUGER: Right. COMMISSIONER CANTRELL: -- that they're aware of 23 24 what's considered -- what's the term, county business? 25 MR. W. GOUGER: Public -- public records,

1 county business. Yes.

2 COMMISSIONER CANTRELL: Yeah. Well, it's going to 3 be a county transaction. 4 MR. W. GOUGER: Kind of related. That's 5 related --COMMISSIONER CANTRELL: Yeah. 6 7 MR. W. GOUGER: -- to the county, the county 8 business. 9 COMMISSIONER CANTRELL: Because when our -- I -- I 10 would hate for the public to have that chilling effect, that 11 they're afraid to talk to anyone here because of what's 12 being said sent to them. 13 MR. W. GOUGER: Sure. 14 COMMISSIONER CANTRELL: So it would be ideal if we 15 could have that training. 16 MR. W. GOUGER: Yeah, I think she said that they 17 would like to have at least 20 participate for an 18 in-person class. 19 COMMISSIONER CANTRELL: Yeah. 20 MR. W. GOUGER: And if it's less than that, 21 then... 22 And it -- and it's not just your counties that --I mean, it could be municipalities if they want to 23 24 participate -COMMISSIONER CANTRELL: Uh-huh, uh-huh. 25

1 MR. W. GOUGER: -- they -- they're welcome to -2 COMMISSIONER CANTRELL: Yes. 3 MR. W. GOUGER: -- participate as well. 4 CHAIRPERSON MADSON: Any more discussion? 5 [Indiscernible voices.] 6 CHAIRPERSON MADSON: The Mayor's Report? 7 MAYOR D. JACKSON: Thank you, Madame Chairman. We only have two RFIs this past month, and most of 8 9 them for existing building. RFIs have just -- just turned 10 to frost on a window pane. I'm looking at Billy right now, 11 for some reason -- in -- in locating these jobs here. 12 We did receive our computer -- computer audit 13 today, from the State Comptroller's Office. There were no 14 findings, on the computer audit. 15 We have issued some of the fire equipment out to 16 our fire departments. The grants filed from the -- giving 17 out the SCBAs and the loose equipment. We'll have to have 18 all the turnout gear in this week. 19 And once the State clears it, we will get it out 20 to the fire departments. And we'll have about 100-some 21 thousand -- \$130,000 left to buy some more stuff for the 22 departments. And they'll be meeting to -- I forgot what 23 they want to do. 24 A company will be cleaning the outside of the 25 courthouse. Hopefully they'll get [indiscernible] their

1 equipment -- equipment in this week. And provided it 2 doesn't rain all week, we'll get started on that project. 3 And our next meeting is April 22nd. That's the fourth Monday, not the last Monday. There's five Mondays in 4 5 April, so it's the fourth Monday, April 22nd. 6 That's all I have [indiscernible]. 7 CHAIRPERSON MADSON: Okay. [indiscernible] 8 Lawrence, Joshua Dave Robinson, Madison Grace Darnell, 9 Andrew Lang, Enid Young Pauler, Marcus Deondre Kohls, Amy 10 Allridge. [all phonetic] 11 UNIDENTIFIED MALE: Motion [indiscernible]. 12 UNIDENTIFIED MALE: Second. 13 [Indiscernible voices.] CHAIRPERSON MADSON: There's been a motion and a 14 15 second. All in favor? 16 17 [Commissioners say, "Aye."] 18 CHAIRPERSON MADSON: Opposed? 19 UNIDENTIFIED FEMALE: [indiscernible]. 20 COMMISSIONER MORRISON: Madame Chair, may I? 21 CHAIRPERSON MADSON: Absolutely. 22 COMMISSIONER MORRISON: Thank you. 23 I would just like to get Attorney Gouger to update 24 us on the -- acquiring other properties on the Big Fork 25 Road. We had asked him to -- I think we chose a deadline

for the 23rd, or somewhere in that area, a couple days preceding the meeting, we tried to get these finished up. And I want to ask - I'd like to ask Council at this time to brief us on that.

5 MR. W. GOUGER: I'll -- I'll be glad to, 6 Commissioner Morrison.

7 The -- the -- the deadline for responding to the last letter and - and update date of dedication was last 8 9 week. If you had a number of -- of those that were still 10 outstanding. As of today, there were, I believe, six that 11 were -- that were still unaccounted for. Of those six, I 12 did get a visit from a couple that own two lots in Skyland 13 [phonetic] who said they would not sign a date of 14 dedication. They're unwilling to -- to sign the deed. 15 Of the five remaining, one of those five is a

16 piece of property that was inherited by a lady who lives in 17 Nashville and a cousin who lives in Chattanooga that she has 18 lost contact with.

19 She's willing to sign the deed, but she's asking 20 for some help in locating her relative who owns the other 21 half interest. So -- so that moves -- moves us down to 22 basically four that are unaccounted for.

I'm fairly certain that those -- the names on those tax records and deeds are of folks who are most likely deceased. They've owned the properties in all of those

1 instances since about 1960 or '61.

2	And I found with the others that there that
3	were in that same posture that they have passed through at
4	least one or two other generations of family members since
5	then, because I've had to update a number of those deeds.
6	But no one has responded on on those four.
7	COMMISSIONER MORRISON: Can can we go back to
8	who - some someone is obviously paying the taxes.
9	MR. W. GOUGER: Correct.
10	COMMISSIONER MORRISON: Is there a way to go back
11	from who's I mean, I notice they come in there and
12	probably pay cash, which which is highly unlikely.
13	MR. W. GOUGER: When when they pay by check or
14	in cash it's easier because then there's a paper trail.
15	When they pay online is when it's difficult.
16	COMMISSIONER MORRISON: Okay.
17	MR. W. GOUGER: And some of these folks are paying
18	online. And and one of the one of those four is is
19	actually somebody that you and I have talked about that has
20	asked me to send him the deed two extra times. And I've
21	done that, and he still hasn't responded.
22	COMMISSIONER MORRISON: Yeah. I'll I'll
23	MR. W. GOUGER: So I I just I just had
24	remembered that one. So that would knock it down to about
25	three.

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1 COMMISSIONER MORRISON: About three. Okay. 2 And -- and I did -- actually, he contacted me --3 MR. W. GOUGER: Okay. 4 COMMISSIONER MORRISON: -- and apologized, and 5 said basically "it's still laying on my kitchen counter." MR. W. GOUGER: Okay. So maybe the three of 6 7 them --8 COMMISSIONER MORRISON: Yes. 9 MR. W. GOUGER: -- will come back. It will all 10 come together. COMMISSIONER MORRISON: But I'm -- I'm good with 11 12 it, but -- so that brings us down to three. 13 My question on the two - was that two separate 14 owners? 15 MR. W. GOUGER: It's -- it's a husband and wife 16 owners. 17 COMMISSIONER MORRISON: A husband and wife. 18 MR. W. GOUGER: Yeah. It's --19 COMMISSIONER MORRISON: Okay. 20 MR. W. GOUGER: Correct. 21 COMMISSIONER MORRISON: And where do they reside? 22 Do we know? 23 MR. W. GOUGER: They -- they're not local. I -- I 24 don't remember where they live, but they don't - they just happened to be in town. They don't live here. But -- but I 25

did talk to them again on the phone this after -- talked to the -- to the wife on phone again this afternoon. And I didn't look at the map. I looked at the survey that -- that was done by Mr. Jones.

And she is correct in the sense that the road, as it presently exists, appears to go through the middle of their property, you know, so it would split it. And I -- I understand her concern. They're one of the few that actually is in that situation.

10 So I did ask her if -- if -- if we could get 11 everybody else signed up, if the road could be maybe 12 relocated a little bit to the edge of their property, would 13 they then cooperate. And she would not make a commitment to 14 that - to that effect, but said they would consider that. 15 So...

16 COMMISSIONER MORRISON: So basically -- let's --17 let's go to our total numbers. Is there 86 --

18 MR. W. GOUGER: 88.

19 COMMISSIONER MORRISON: -- '7, '8.

20 MR. W. GOUGER: 88 [indiscernible] yes, sir.

21 Okay.

COMMISSIONER MORRISON: To minus the one that's laying on his kitchen counter, not counting the one who can't find the other relative, we're down to two.

25 MR. W. GOUGER: Yeah, something like that.

1 COMMISSIONER MORRISON: Now, though, it's --2 MR. W. GOUGER: Now it's 78. 3 COMMISSIONER MORRISON: Now it's 78. That's 4 pretty good track record, I'll tell you. I'll --5 MR. W. GOUGER: [indiscernible]. 6 [Indiscernible voices.] 7 COMMISSIONER MORRISON: Beings that it's under General Business, what I would like to do - and -- and thank 8 9 you for your hard work on this. Well, we got it down to two 10 people and neither -- neither of those two people reside in 11 our county. 12 I would like to come into next month's meeting and 13 present a motion to move forward with this. That'll give 14 you, you know, until that meeting. 15 MR. W. GOUGER: Right. 16 COMMISSIONER MORRISON: And then that way I'm not -- I don't like to bring up a vote under General Business 17 18 because I feel like it's unfair to the other commissioners 19 to have that sprung on them that quickly. 20 But I think we have done our due diligence, or --21 or you have, Attorney. And I think that's a pretty good 22 record, to get within two people. And those people don't 23 reside here, so --24 MR. W. GOUGER: Well, one -- one thing it would 25 also allow me to do, Commissioner Morrison, I -- I could get

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1 with Mr. Jones, the surveyor, and ask him to look at that --2 that road location with respect to that property owner that 3 said no --4 COMMISSIONER MORRISON: Absolutely. 5 MR. W. GOUGER: -- and see if there's some way to relocate just in that one section --6 7 COMMISSIONER MORRISON: Absolutely. MR. W. GOUGER: -- and -- and make -- eliminate 8 9 that as an - as an obstacle to -- if that's agreeable with 10 the Commission. 11 COMMISSIONER MORRISON: Absolutely. 12 MR. W. GOUGER: Great. 13 COMMISSIONER MORRISON: Do you need approval? 14 MR. W. GOUGER: No. I mean, I can just --15 COMMISSIONER MORRISON Okay. Yeah. MR. W. GOUGER: -- you know, I can just --16 17 COMMISSIONER MORRISON Okay. 18 MR. W. GOUGER: -- ask him --19 COMMISSIONER MORRISON Yeah. 20 MR. W. GOUGER: -- and then report back to y'all. 21 COMMISSIONER MORRISON: Soon. So I think, you 22 know, like I said, we've been -- done this before. This has been going on now for about 16 months. I think that's ample 23 24 time, I think, for everyone to do what's necessary, and 25 uncover anything that may be hidden, or whatever the

1 case may be.

2 So to get down within two property owners that do 3 not reside here, I think next month I will be placing this 4 on the agenda to move forward with a vote on it. 5 Thank you. 6 COMMISSIONER BLANSETT: May I ask a question for 7 both of you? 8 Go ahead, Commissioner Brandt. Go ahead. 9 COMMISSIONER BRANDT: Okay. I just got a -- is 10 there any place in the county like Jackson Point where 11 they're not denied, but where they may not have 911 service? 12 Is there -- is there such a thing? 13 MR. W. GOUGER: Not that I'm aware of, no, sir. COMMISSIONER BRANDT: Okay. Good. 14 15 And I've got a request for Nickajack Landing, 16 asking for water. And then the last thing I've got is --17 I'm concerned about the waterworks for the South Pittsburgh area. It seems like there could be some discharge from 18 19 septic systems going into the Tennessee River. 20 COMMISSIONER HARGIS: Huh. 21 CHAIRPERSON MADSON: Okay --22 COMMISSIONER BRANDT: And the Notice of Violation, 23 I've got one right here. It says, "A sewage discharge 24 was sent through the Tennessee River from a rock-lined 25 Channel near Castaway Lane."

1 CHAIRPERSON MADSON: Right. That's -- that's 2 actually in Crown Harbor. 3 COMMISSIONER BRANDT: Okay. CHAIRPERSON MADSON: And TDEC has that well under 4 5 control. 6 COMMISSIONER BRANDT: But I was -- I was wanting 7 to ask Commissioner Blansett: With the volume of water --8 COMMISSIONER BLANSETT: How much? 9 COMMISSIONER BRANDT: Huh? 10 COMMISSIONER BLANSETT: How much? 11 COMMISSIONER BRANDT: What? I'm asking --12 COMMISSIONER BLANSETT: In gallons, how much --13 how many gallons of sewer --14 COMMISSIONER BRANDT: Okay. Okay. But we -- I --15 I -- it -- there's no threat, is what I'm asking. 16 COMMISSIONER BLANSETT: This is Crown Harbor 17 that's above the dam? 18 CHAIRPERSON MADSON: It's right there by Shell, 19 around --20 COMMISSIONER BLANSETT: Of the dam. 21 CHAIRPERSON MASON: Recreation, of the dam. 22 COMMISSIONER BRANDT: It won't be a problem. 23 COMMISSIONER BLANSETT: Well how many 24 gallons? You never did tell me how many gallons. 25 COMMISSIONER BRANDT: Well, how in the hell do I

1 know? I don't count [indiscernible]. 2 UNIDENTIFIED FEMALE. Hush, you guys. There's a 3 switch [indiscernible]. 4 [Indiscernible voices.] 5 UNIDENTIFIED FEMALE: There's a switch 6 [indiscernible]. 7 COMMISSIONER HARGIS: Once -- I'll tell you this [indiscernible] --8 9 UNIDENTIFIED FEMALE: Yeah. COMMISSIONER HARGIS: -- has overflowed many times 10 11 in the river. They're playing up there. COMMISSIONER BLANSETT: Here's -- here's --12 13 COMMISSIONER HARGIS: And it's --14 COMMISSIONER BLANSETT: No. These are not 15 featured --16 COMMISSIONER HARGIS: -- thousands and thousands 17 of gallons. 18 COMMISSIONER BLANSETT: -- you haven't been here 19 that long. 20 [Indiscernible voices.] 21 COMMISSIONER BLANSETT: Right up the stream to 22 that you've got the Moccasin Bend Sewer Treatment Plant. That's right up a strip up -- up in Chattanooga. So you got 23 24 more going in there than you have going out of 25 Crown Harbor.

1 COMMISSIONER BRANDT: Okay. And -- and what's the 2 status with that, as far as TDEC is concerned? 3 MR. W. GOUGER: I did speak to the attorney for 4 the developer last week, and also to the attorney for the 5 Town of Jasper. They had a conference call last week. 6 They're working on different solution options for that, I 7 think, both a temporary, short-term fix and a long-term fix. That's what -- that's what both attorneys told me at 8 9 different times. 10 COMMISSIONER BRANDT: And -- and we --11 UNIDENTIFIED MALE: [indiscernible]. 12 COMMISSIONER BRANDT: -- we have one that the TDOT 13 letter that came in. Is that resolved now as far 14 as what's happening on SR2? 15 MR. W. GOUGER: That -- that was one we referred 16 to -- we met with Mr. Garth [phonetic] and -- and he was to 17 get with Stephanie this week on options available. 18 COMMISSIONER BRANDT: Okay. 19 CHAIRPERSON MASON: We actually have the Mayor of 20 Jasper here tonight. So if he would --21 Want to fill us in there, Mayor? 22 [Indiscernible voices.] 23 UNIDENTIFIED MALE: He had a point. 24 MAYOR J. TURNER: They worked in the 25 [indiscernible] over there. They had a contractor.

1 MAYOR J. TURNER: They had a contractor --2 [Indiscernible voices.] 3 MAYOR J. TURNER: -- they had a contractor to take 4 down the [indiscernible]. 5 COMMISSIONER ROLLINS: Speak into the microphone. [Indiscernible voices.] 6 7 I'm sorry. They can't hear CHAIRPERSON MASON: 8 you. 9 [Indiscernible voices.] UNIDENTIFIED FEMALE: I should [indiscernible]. 10 11 [Indiscernible voices.] 12 UNIDENTIFIED MALE: Yeah [indiscernible]. Well, 13 it was working [indiscernible]. 14 MAYOR J. TURNER: That -- that developer over 15 there has had -- had several contracts with Town of Jasper. 16 And there's a time line on those contracts, and they -- and 17 they let them lapse before they actually finished the 18 project, or did anything to the project. So the last one 19 lapsed. 20 Then they hired a secondary contractor for an 21 instance there, and there was some -- a couple things 22 happened there. It kind of got TDEC'd bombed. So yes, they were discharging there. 23 24 But the contract has been drawn up. We're waiting to see what they're going to do. Just waiting on 25

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1 the developer.

2 [Indiscernible voices.] 3 COMMISSIONER BLANSETT: Madame Chairman? I want 4 to clear up a statement, too. I wasn't indicating that 5 Mocassin Bend is putting untreated sewer in the river. 6 COMMISSIONER THOMPSON: Did you have to say that? 7 UNIDENTIFIED MALE: Now you say that. [Indiscernible voices.] 8 9 COMMISSIONER BLANSETT: If I don't say that, I'm 10 probably not coming back next month [indiscernible]. 11 [Indiscernible voices.] 12 UNIDENTIFIED MALE: Right. 13 COMMISSIONER BLANSETT: So I didn't say --14 I didn't say they were. 15 UNIDENTIFIED MALE: I didn't --16 [Indiscernible voices.] 17 UNIDENTIFIED MALE: I didn't know whether or not 18 we need to buy First District people toothpicks to get the toilet paper out of it. 19 20 MAYOR J. TURNER: Yeah, that paper -- that paper 21 [indiscernible] you're talking about was -- was a blowout on 22 Castaway Lane, down there. 23 And the way that wet well sits on the hill, it --24 it actually -- there's no props in it, so with the pickup 25 tubes in the bottles, it acts like a -- well, it's just a

1 trough, just sucks it back out. So that's what
2 sucked it out.
3 And then TDEC put Keith -- Keith through -- as

4 soon as it happened they put Keith on those. But we're 5 talking about a couple thousand gallons versus how many 6 millions go through the dam, you know, in an hour. 7 COMMISSIONER BLANSETT: How far is that from the 8 river? 9 MAYOR J. TURNER: It goes right -- right above the 10 dam. 11 COMMISSIONER BLANSETT: Goes straight into the 12 river. 13 MAYOR J. TURNER: Straight into the river. 14 COMMISSIONER BRANDT: How clean is that water --15 UNIDENTIFIED MALE: [indiscernible] Tennessee 16 [indiscernible]. 17 COMMISSIONER BRANDT: -- when it comes out of the 18 river and gets treated? No? 19 COMMISSIONER BLANSETT: How clean is it? 20 UNIDENTIFIED MALE: Yeah. 21 COMMISSIONER BLANSETT: Meets the standard. 22 COMMISSIONER BRANDT: Well, I know that. 23 COMMISSIONER BLANSETT: Well, that's all I can

24 say.

25 CHAIRPERSON MADSON: Thank you, Mayor.

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1 COMMISSIONER BRANDT: Well, I mean, I'm just 2 3 asking. 4 COMMISSIONER CANTRELL: Madame Chair, if I may, 5 real quick? 6 CHAIRPERSON MADSON: Yes, sir. 7 COMMISSIONER CANTRELL: I'd just like to recognize a woman in the audience today. She received an award. This 8 9 award is only given out to 16 people in the United States. 10 And she's the only one in Tennessee. CHAIRPERSON MASON: Can you speak into the mic? 11 12 COMMISSIONER CANTRELL: All right. 13 CHAIRPERSON MASON: I don't think anybody can 14 really hear you. 15 COMMISSIONER CANTRELL: And she's the only one in 16 Tennessee who received this. It's the Vanguard Award from 17 the American Ambulance Association. It's Ms. Vicki Messer. 18 [Applause.] 19 [Indiscernible voices.] 20 COMMISSIONER CANTRELL: And again, thank you, 21 Vicki, for -- for all of that. 22 COMMISSIONER SCHAFER: Thank you, Madame Chairman. 23 I'd like to make a clarification of what Dane 24 said. River Gorge Ranch, and my complaint with -- in 25 Jasper Highlands are two different issues.

Jasper Highlands serves two culverts that dump water on my property. And I went up to Dane, and I says, According to Tennessee law -- am I correct on this -- You

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5 UNIDENTIFIED MALE: Yeah, that's right. 6 COMMISSIONER SCHAFER: But Dane came up to me and 7 says, Well, it was approved by the Planning Commission so we 8 could do it.

cannot dump water on private property.

9 And I said, Excuse me? I says, We can either do 10 this civilly, or I can get an attorney -- because I talked 11 to an attorney, and he just said that he would love to sue 12 you.

13 CHAIRPERSON MASON: Calm down [indiscernible].
14 COMMISSIONER SCHAFER: And in two days -- or I
15 mean, two weeks -- they were out there and they dug a
16 culvert from --

17 CHAIRPERSON MADSON: Okay. Commissioner Schafer, 18 really, I think you probably need to [indiscernible]. 19 COMMISSIONER SCHAFER: So I just wanted to -20 CHAIRPERSON MADSON: I know. 21 COMMISSIONER SCHAFER: -- clarify it. 22 CHAIRPERSON MADSON: I know. But --23 COMMISSIONER SCHAFER: And that's it. 24 CHAIRPERSON MADSON: -- you know, you're still an 25 official [indiscernible].

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1	COMMISSIONER SCHAFER: Okay.
2	UNIDENTIFIED MALE: I would love to
3	[indiscernible].
4	CHAIRPERSON MADSON: Anyone else?
5	COMMISSIONER ADKINS: If I may.
6	CHAIRPERSON MADSON: Absolutely.
7	COMMISSIONER ADKINS: Going back to Commissioner
8	Morrison's request: Do we have any numbers from the
9	gentlemen - we were going to talk about a budget for the
10	roadway. Do we have any of that?
11	COMMISSIONER MORRISON: Mr. Hood.
12	COMMISSIONER ADKINS: Yeah.
13	COMMISSIONER MORRISON: He submitted a report.
14	Did you get a copy of it?
15	COMMISSIONER ADKINS: I don't think so yet.
16	COMMISSIONER MORRISON: Okay. I'll I'll make
17	sure, if that's okay.
18	COMMISSIONER ADKINS: Okay.
19	COMMISSIONER MORRISON: I'll get you one. I'll
20	get all of you one.
21	COMMISSIONER ADKINS: I've got it. I'll put it
22	together.
23	COMMISSIONER MORRISON: Okay.
24	COMMISSIONER ADKINS: I'll put a packet in there
25	[indiscernible].

1 COMMISSIONER MORRISON: And -- and also, 2 Commissioner Adkins, thank you for your concern on this. Also remember that I personally -- this project means a lot, 3 4 but I have not come to the Commission with any monetary 5 requests whatsoever. 6 Our goal is to get this obtained for the county, 7 and not -- you know, not to go out and build a road. You --8 you know what I'm saying. I just want to clear that up. 9 But I will get that report to you. MAYOR D. JACKSON: Just so we'll know who the 10 11 packet is [indiscernible] --12 COMMISSIONER MORRISON: Thank you. 13 MAYOR D. JACKSON: -- affirmative. 14 COMMISSIONER MORRISON: Thank you, Mayor. 15 CHAIRPERSON MADSON: Commissioner Abbott? 16 COMMISSIONER ABBOTT: Madame Chairman, I'd like to 17 thank Commissioner Morrison for hosting us at the 18 Coal Miners Museum the other evening. 19 UNIDENTIFIED MALE: Excellent. 20 COMMISSIONER ABBOTT: For -- for those of you that 21 haven't been to the Whitwell Coal Miners Museum, it's a true 22 education on the history of Marion County, and especially 23 North Marion County. 24 So Commissioner Morrison, thanks for hosting it. 25 COMMISSIONER MORRISON: Absolutely.

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1	CHAIRPERSON MADSON: Anyone else?
2	Do I have a motion to adjourn?
3	UNIDENTIFIED MALE: So moved.
4	UNIDENTIFIED MALE: So moved.
5	UNIDENTIFIED MALE: So moved.
6	UNIDENTIFIED MALE: Second.
7	[Indiscernible voices.]
8	[End of recording.]
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1	STATE OF TENNESSEE )
2	COUNTY OF DAVIDSON )
3	I, Laurie McClain, Transcriber,
4	
5	DO HEREBY CERTIFY that the foregoing proceedings
6	were transcribed by me from a digital file, and the
7	foregoing proceedings constitute a true and correct
	transcript of said recording, to the best of my ability.
8	I FURTHER CERTIFY I am not a relative or employee
9	or attorney or counsel of any of the parties hereto, nor a
10	relative or employee of such attorney or counsel, nor do I
11	have any interest in the outcome or events of this action.
12	
13	Date 04/11/2024 Farrie MC Vain
14	Laurie McClain Transcriber
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# Exhibit #2





October 25, 2022

Thunder Enterprises 104 Battlecreek Road Kimball, TN 37380

Attention: Mr. Clarence Howard <u>clarence@thunderenterprises.com</u>

Subject: REPORT OF LIMITED GEOPHYSICAL SERVICES River Gorge Ranch ERI Guild, Tennessee GEOServices Project No. 26-22713

Dear Mr. Howard,

We are submitting the results of the limited geophysical exploration performed to provide information for the proposed development at River Gorge Ranch in Guild, Tennessee. The following limited report presents our findings. Should you have any questions regarding this report, or if we can be of any further assistance, please contact us at your convenience.

### **Project Information**

Project information was provided in email correspondence between Mr. Clarence Howard of Thunder Enterprises and Mr. Derek Kilday of GEOServices, LLC in January of 2022. We understand that a new residential community is planned to be constructed in Guild, Tennessee. This property is located on Aetna Mountain off US Highway 41. At this time, the first Phase of Construction will consist of 370 residential lots across the property. Because this site is in the preliminary design phase, project plans are not available at this time.

Topographic maps from USGS and LIDAR data show that existing site elevations slope from approximately 1650 feet MSL on the edges of the site to 1780 in the center portion of the site. The majority of the site is heavily wooded at this time; however, gravel roads have been constructed throughout the site to allow access for development. We understand that this site has previously been used for strip mining operations, generally located within the northeastern portion of the site.

GEOServices, LLC | 2561 Willow Point Way, Knoxville, TN, 37931 | Phone (865) 539-8242 Fax (865) 539-8252 | www.geoservicesllc.com

#### **Field Exploration**

#### Electrical Resistivity Imaging (ER) Survey

The ERI survey was conducted using the Advanced Geosciences, Inc. (AGI) Sting R8 automatic electrode resistivity system. Eight (8) ERI transects were performed across the lot using 28 to 51 electrodes with electrode spacing of ten (10) feet, for transects of 270 to 500 feet in length. A dipole-dipole combined with a strong gradient electrode configuration was used with a maximum "n value" of ten. The ERI data was analyzed using EarthImager 2D, a computer inversion program, which provides a two-dimensional vertical cross-sectional resistivity model (pseudo-section) of the subsurface. The positions and topographic information of the geophysical array lines were recorded using site measurements.

### **Electrical Resistivity Imaging**

Electrical resistivity surveying is a geophysical method in which an electrical current is injected into the earth; the subsequent response (potential) is measured at the ground surface to determine the resistance of the underlying earth materials. The resistivity survey is conducted by applying electrical current into the earth from two implanted electrodes (current electrodes C1 and C2) and measuring the associated potential between a second set of implanted electrodes (potential electrodes P1 and P2). Field readings are in volts. Field readings are then converted to resistivity values using Ohm's Law and a geometric correction factor for the spacing and configuration of the electrodes. The calculated resistivity values are known as "apparent" resistivity values. The values are referred to as "apparent" because the calculations for the values assume that the volume of earth material being measured is electrically homogeneous. Such field conditions are rarely present.

The resistivity of earth materials is controlled by several properties including composition, water content, pore fluid resistivity and effective permeability. For this exploration, the properties that had the primary control on measured resistivity values are composition and effective permeability. The general geological setting of this property area is clay overlying sandstone and shale. However, existing site conditions such as existing fill material and previous grading, may cause trapped water zones and present as low resistivity zones that may produce artifact affects.

For this study, a dipole-dipole combined with a strong gradient resistivity array configuration was used for each test. The dipole-dipole array is different than most other resistivity arrays in that the electrode and current electrodes are kept together using a constant spacing value referred to as an "a spacing". The current and potential electrode sets are moved away from each other using multiples of the "a spacing" value. The number of multiples is referred to as the "n value". For example, an array with an electrode spacing of 5 ft and an "n value" of 6 would have the current and potential electrode sets spaced 30 ft apart with a separation between the two electrodes in the set of 5 ft. By sampling at varying "n values", greater depth measurements can be achieved. Strong Gradient data is collected with the current set of electrodes being kept with a fixed separation (L spacing) and the potential electrodes a minimum distance from the inner current electrodes. Dipole-dipole resistivity data is usually presented in a two-dimensional pseudo-section format. Strong Gradient data is usually presented as a vertical profile of resistivity distribution below the center point between the two current electrodes. The dipole-dipole and strong gradient data is combined and presented as either a contour of the individual data points (using the calculated apparent resistivity values) or as a geological model using least squares analysis. Such least squares analysis was used for this study using the computer software program (EarthImager 2D) developed for the equipment manufacturer.

Apparent resistivity values are calculated using the following formula for a dipole-dipole configuration:  $\gamma_a = \pi (b^3/a^2 - b)\nabla V/I$ :

#### Where:

$\gamma_a =$	apparent resistivity
π=	3.14
a=	"a spacing"
b=	"a spacing" x "n value"
$\nabla V =$	voltage between the two potential electrodes
I=	current (in amps)

For a strong gradient configuration, the apparent resistivity is calculated using:  $\gamma_a = \pi([s^2 - a^2]/4)\nabla V/aI$ :

Where:

 $\gamma_a =$  apparent resistivity

π= 3.14

a= spacing between the inner set of electrodes

- s= distance between the outer electrode and nearest inner electrode
- $\nabla V$  = voltage between the two potential electrodes
- I= current (in amps)

#### Inversion Modeling of Electrical Resistivity Imaging Data

The objective for inversion modeling of resistivity data is to create a description of the actual distribution of earth material resistivity based on the subsurface geology that closely matches the resistivity values that are measured by the instrumentation. This modeling is completed with the use of EarthImager 2D, a proprietary computer program developed by the equipment manufacturer (AGI). When evaluating the validity of the inversion model several factors need to be considered. The RMS, or root mean square error, expresses the quality of fit between the actual and modeled resistivity values for the given set of points in the model. The lower the RMS error the higher the quality of fit between the acceptable. The size of the RMS error is dependent upon the number of bad data points within a data set and the magnitude of how bad the data points are. As part of the modeling process bad data points are typically removed, which decreases the RMS error and improves (with limitations) the quality of the model. The quality of fit between the actual and modeled resistivity alues are typically removed, and actual and modeled resistivity values is also expressed as the L-2 norm. When the modeled and actual data sets have converged, the L-2 norm reduces to unity.

However, as the number of data points is reduced, the validity of the inversion model is diminished. Accordingly, when interpreting a particular area of an inversion model the number of data points used to create that portion of the model must be taken into consideration. If very few points are within a particular area of the model, then the modeled solution in that area should be considered suspect and possibly rejected.

The entire ERI transect should be considered suspect if a model has a high RMS error and a large number of removed data points. It is likely that sources of interference have affected the field readings and rendered the modeled solution invalid. Such sources of interference can include buried metallic underground utilities, reinforced concrete slabs, septic leach fields or electrical grounding systems. Accordingly, all efforts need to be made in the field to locate, to the degree possible, the ERI transect lines away from such features. The locations of such features also need to be noted in the field so their potential effects can be considered when interpreting the modeled results. We noted a few such features in each of the array transects that have somewhat affected the data (in particular arrays #5 and #6), however it is our opinion the data is of sufficient quality to provide the following discussion with confidence.

### **Geologic Conditions**

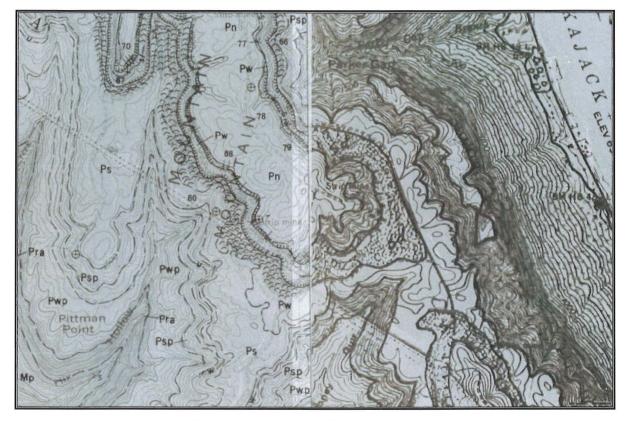


Figure 1 - Geologic Quadrangle Map 1950

The project site lies within the Cumberland Plateau Physiographic Province of eastern-central Tennessee. This Province is characterized by flat-topped mountains separated by narrow valley bottoms which wind between steep canyon-type walls. These canyon walls are formed primarily on resistant beds of sandstone, siltstone, shale, and conglomerate form the lower part of the Pennsylvanian strata. High terraces such as those associated with high-level fluvial deposits along the Cumberland River are remnants of earlier valley bottoms.

Published geologic information indicates that the site is underlain by bedrock of the Crab Orchard Mountains Group. This Group is composed of the Rockcastle Conglomerate, Vandever, Newton Sandstone, Whitwell Shale, and Sewanee Conglomerate formations. This group is typically composed of fine to coarse-grained sandstone, gray shale and siltstone, and sandstone/sandstone conglomerate which typically weathers to produce a thin sandy, silty residual overburden. Bedrock from this group is generally not susceptible to the development of karst conditions and has a low potential for the development of overburden sinkholes.

Available information on historical strip-mining of this site indicates that mining operations targeted the Whitwell Shale coal bearing formation, which is typically 120 feet thick and essentially horizontally bedded, dipping/tilting down from the northwest to southeast about 20 degrees. The western edge of ridge top mined geology ranges from approximately 1700 to 1830 feet MSL and on the eastern edge approximately 1680 to 1810 feet MSL. See image below for red zones (within areas requested to be explored) influenced by strip mining activities.

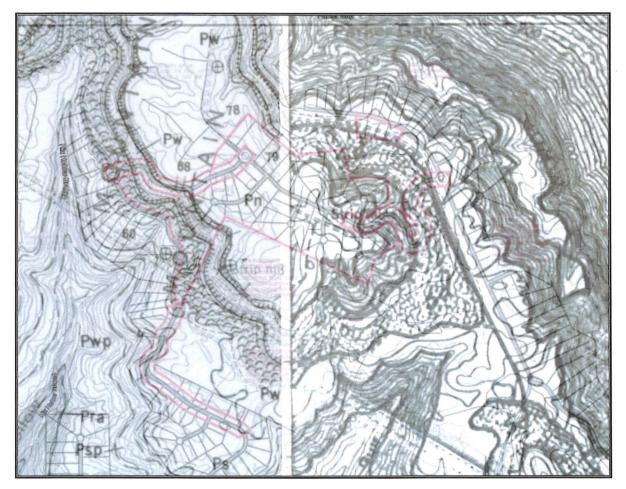


Figure 2 – Geologic Quadrangle Map 1950 with Site Plan Overlay

Within the Whitwell Shale formation one finds three distinct coal seams: the Sewanee Seam near the center of the geology, and the Slate and Richland Coal Seams within the mid to lowest elevation edge of the geology. Each coal seam is less than 36 inches thick. Mined soils and spoils will consist of shales and siltstones that are light brown and dark gray with some more yellowish colored sandstone. The southern elevation boundary of the mined geology is defined by the Sewanee Conglomerate formation, which typically consists of yellowish gray/light brown sandstone/conglomerate sandstone with quartz pebbles. If abundant quartz pebbles are found, published geologic data indicates one is outside of the mined Whitwell Shale geology.

Furthermore, during our desktop research and review of publicly available geologic maps in the area, it appears multiple abandoned adits were noted on site, generally dating to the 1950s. An adit is defined as a horizontal passaged leading into a mine. For ease of review, we have included a geologic map with both the proposed site development and the published approximate location of abandoned adits. It should be noted that GEOServices personnel attempted to hike and observe multiple adit locations, and none were found. Based on the existing site conditions, it appears likely that any adits have since collapsed or have been buried. We note orange surface water in an isolated area, generally on the southern edge of the proposed development (somewhat in the vicinity of adits #29 and 30), was observed. This area was outside the proposed area of development; therefore, GEOS did not attempt to observe the source of the orange stained water. It should be noted that the orange staining is an indicator of iron leachate from likely open mine sources or spoils.

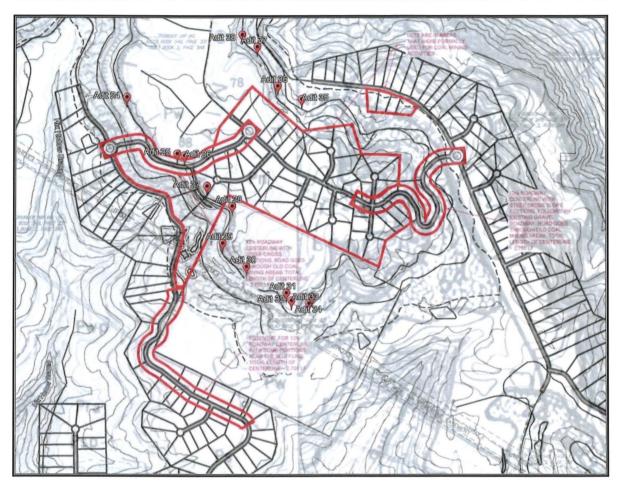


Figure 3 – Geologic Quadrangle Map 1950 with Site Plan Overlay and Abandoned Adits

## **ERI Arrays**

Eight (8) arrays were conducted on the property, located generally within the areas of possible mine spoils (outlined in red). A ninth array was conducted; however we note interference in the data such that we do not deem the final ERI array data usable for discussion. Figure 4 below indicates approximate location of the arrays on site.

Report of Limited Geophysical Exploration River Gorge Ranch / Guild, Tennessee

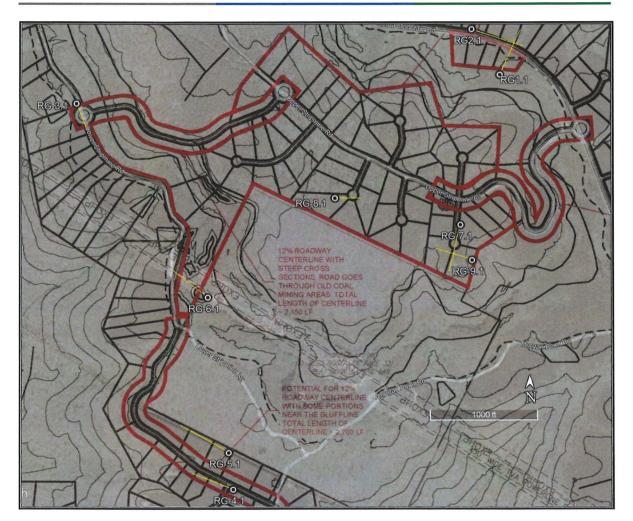


Figure 4 – ERI Transect Locations and Orientations

#### **Subsurface Conditions**

Overall, the ERI data indicated a transition from clay, saturated clays, mine spoils, and mass bedrock. Analysis of the attached ERI array images can be simplified by considering that the colors correspond to how easily electricity can travel through the ground. The more easily the electricity can travel (i.e. low resistivity) we may imply that saturated/more moist conditions exist. The harder electricity has to travel (i.e. high resistivity or high resistance), we can imply less water or moisture is located there. Therefore, the purples and blues are likely water traveling through the ground surface and areas where that water/saturated clays extends deeper into the ground we can interpolate as zones of likely mine spoils or water infiltration). For ease of review, we have included the inverted ERI imagery below. It should be noted that we have provided two (2) data analysis on each ERI transect: low resistance analysis and high resistance analysis. The owner should consider the low resistance analysis as a general discussion on nature of the underlying soils and generally depth to mass bedrock. The owner should consider the high resistance analysis as a general discussion on the underlying concern for voids, large diameter mine spoils, or other mass features.

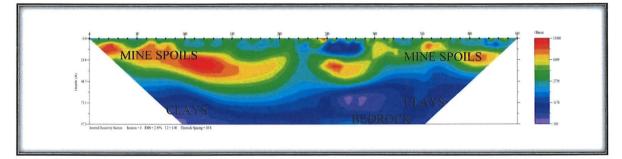


Figure 5 - ERI Array #1 Low Resistance Analysis

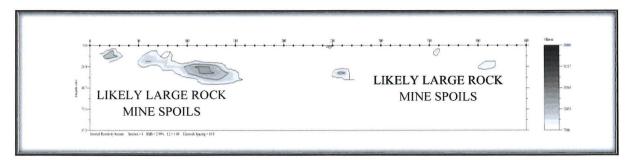


Figure 6 - ERI Array #1 High Resistance Analysis

- Depth of Mine Spoils 15-25 feet, appears a deeper draw was filled in (up to 30+ feet)
- Mine spoil presentation indicate very large rock fragments and low probability of void(s)
- Underlying spoils is clays to about 50-65 feet followed by bedrock

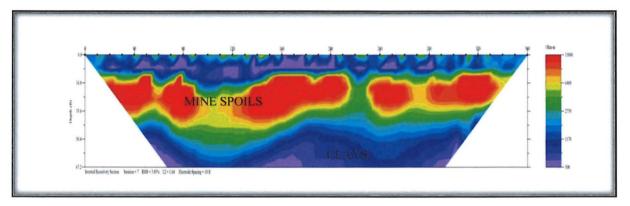


Figure 7 - ERI Array #2 Low Resistance Analysis

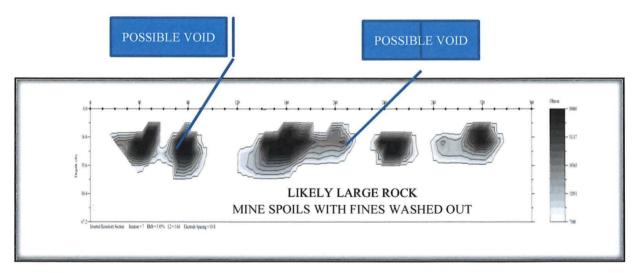


Figure 8 - ERI Array #2 High Resistance Analysis

- Depth of Mine Spoils 25-40 feet, appears a deeper draw was filled in (up to 45+ feet)
- Mine spoil presentation indicate very large rock fragments and moderate probability of void(s)
- Underlying spoils is clays to about 50-70 feet, no obvious bedrock

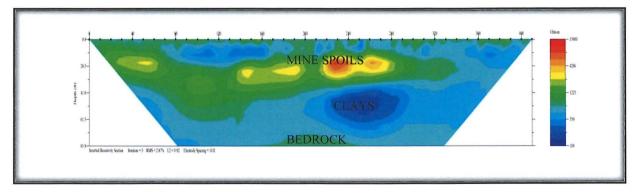


Figure 9 - ERI Array #3 Low Resistance Analysis



## Figure 10 - ERI Array #3 High Resistance Analysis

- Depth of Mine Spoils 10-20 feet
- Mine spoil presentation indicate some moderate sized rock fragments
- Underlying spoils is clays to about 20-50 feet followed by bedrock

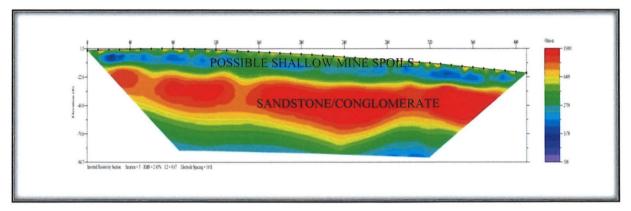


Figure 11 - ERI Array #4 Low Resistance Analysis

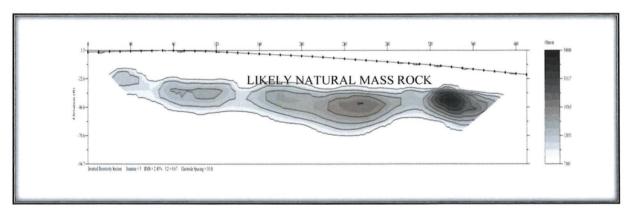


Figure 12 - ERI Array #4 High Resistance Analysis

- Depth of Mine Spoils, IF ANY, less than 5-8 feet
- Apparent sandstone/conglomerate mass rock past 15-20 feet
- Thin layer of clay overlying bedrock, anticipate a heavily weathered sand layer at the bedrock depth

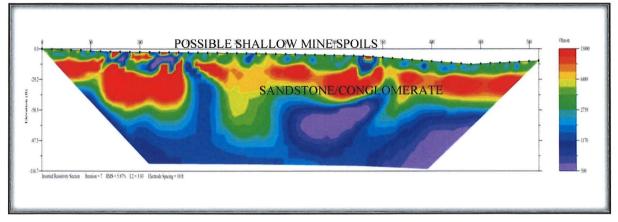


Figure 13 - ERI Array #5 Low Resistance Analysis

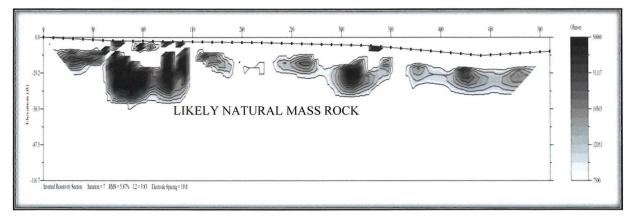


Figure 14 - ERI Array #5 High Resistance Analysis

- LOW QUALITY DATA UNKNOWN INTERFERRENCE ON SITE
- Depth of Mine Spoils, IF ANY, less than 5-8 feet
- Apparent sandstone/conglomerate mass rock past 15-20 feet
- Thin layer of clay overlying bedrock, anticipate a heavily weathered sand layer at the bedrock depth

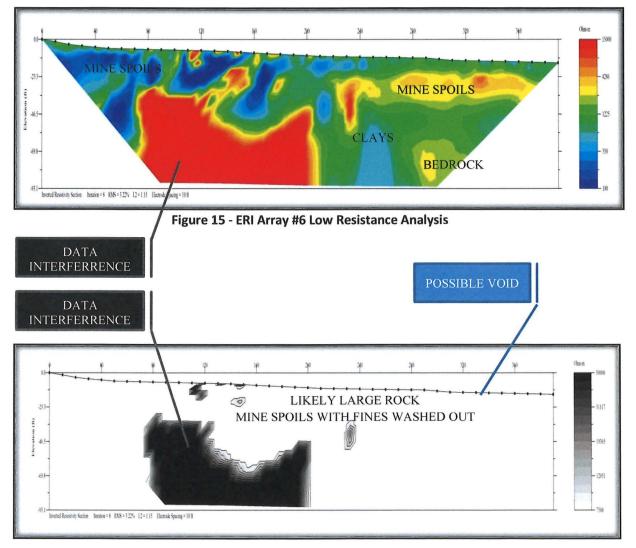


Figure 16 - ERI Array #6 Low Resistance Analysis

- LOW QUALITY DATA INTERFERRENCE FROM EXISTING UTILITY
- Depth of Mine Spoils 25-40+ Feet
- Apparent sandstone/conglomerate mass rock past 50 feet

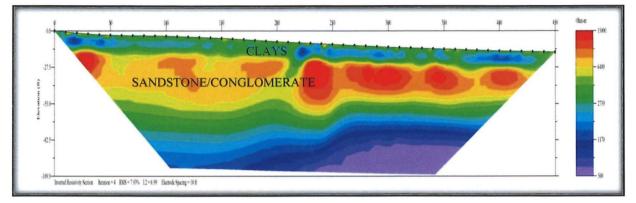


Figure 17 - ERI Array #7 High Resistance Analysis

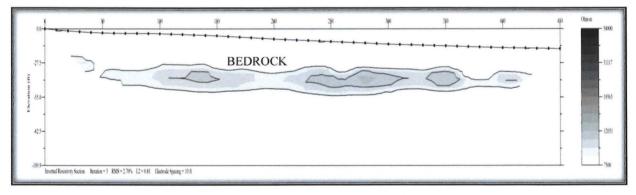


Figure 18 - ERI Array #7 Low Resistance Analysis

- No mine spoils observed
- Apparent sandstone/conglomerate mass rock past 10-20 feet
- Thin layer of clay overlying bedrock, anticipate a heavily weathered sand layer at the bedrock depth

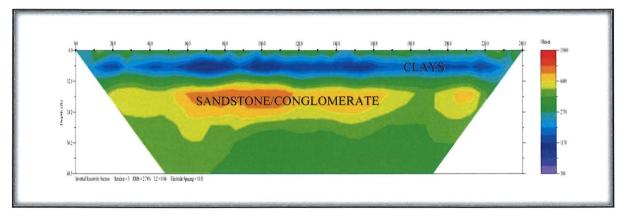


Figure 19 - ERI Array #8 Low Resistance Analysis

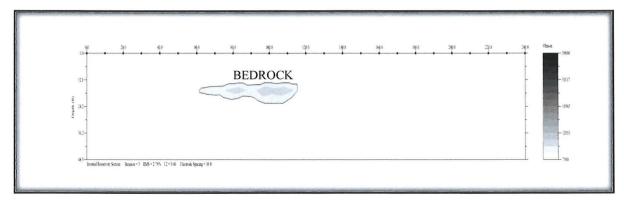


Figure 20 - ERI Array #8 Low Resistance Analysis

- No mine spoils observed
- Apparent sandstone/conglomerate mass rock past 10-20 feet
- Thin layer of clay overlying bedrock, anticipate a heavily weathered sand layer at the bedrock depth

### Recommendations

As previously mentioned, the results of the exploration indicate a significant amount of mine spoils with multiple zones exhibiting high resistance anomalies that likely indicate very large diameter rock fill. For ease of review, please see the figure included below with generalized mine spoil depths. This image shows anticipate depth of mine spoils, areas apparently influenced by strip mining activities, and the previously mentioned abandoned adits.

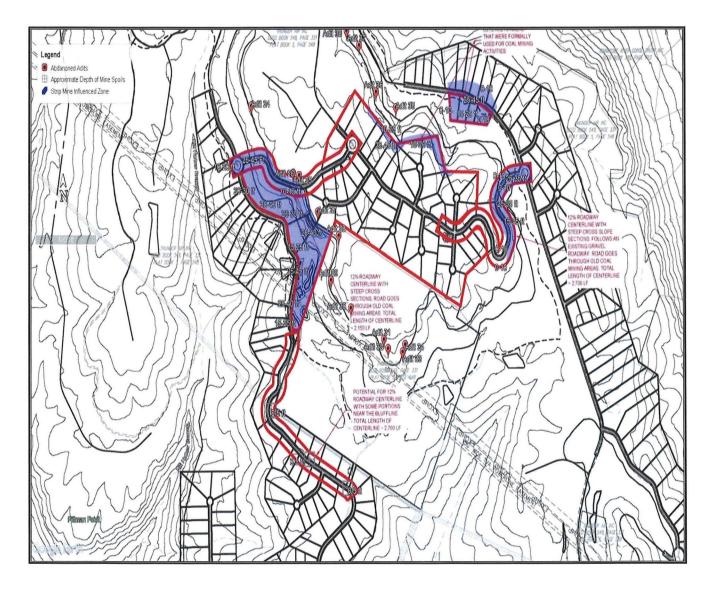


Figure 21 – Mine Spoils Depth

### Strip Mine Influenced Zones

We anticipate deep mine spoils will be encountered during grading, in particular during grading of the access roads to the higher elevation lots. Furthermore, we note the majority of the ERI array data collected within the mine spoil zones indicate moderate to very large rock diameter within the spoils. While this program was not geared to determine the size or dimensions of underlying rock fill, we note the presentation of the higher resistance soil spoil zones would indicate rock fragments exceeding 5-10 feet in multiple locations. We note the possible largest of the rock fragments appears generally located on the downside portion of the spoils, indicating large rock was likely pushed over the side during mining activities.

For the above reasons, we recommend limiting the undercutting of mine spoils, where possible, as the mine spoils were likely not placed in any controlled manner. Therefore, earthwork cuts into mine spoils will have a high risk of encountering unstable materials unsuitable for benched/sloped excavations (i.e. we anticipate any cut slopes in mine spoils may become unstable quickly).

However, we understand multiple road crossing and utilities will likely be located within these mine spoil zones. Where required, we highly recommend the owner consider a limited remediation program geared to protect future pavement and utility construction when located in mine spoils. For proposed roadways to be located within the mine spoil zones, we recommend the owner consider the use of a limited undercut and placement of triaxial geogrid. The area should then be brought to grade using compacted dense graded aggregate or compacted mine spoils which have been processed to meet an acceptable gradation for engineered fill. We recommend the depth of this undercut and replacement be a minimum of 5 feet (if in mine spoils).

We also note a few proposed residential lots in which apparently are underlain by abundant mine spoils. We note the northern most lots explored indicated abundant mine spoils with large rock diameters. In these areas, we highly recommend the owner either A) undercut existing mine spoils, B) abandoned residential development in the 4-6 lots, or C) consider alternate use for the area. It is possible to conduct site specific remediation programs for each lot, however this type of remediation would be dependent on the proposed development and acceptable cost-risk analysis. If requested, GEOS can facilitate a discussion on additional alternatives and associated costs. However, based on our experience the additional

alternatives typically utilized in this type of environment are likely cost prohibitive for residential development. We also note some of the highest elevation lots, generally located along the northern bluff line, likely contain some mine spoils where the lots extend past the bluff faces. We did not encounter signs of mine spoils at the highest elevations of the site.

### Abandoned Adits and/or Horizontal Mine Entrances

As previously mentioned, published geologic data indicates this site experienced strip mining dating back to the early 19<sup>th</sup> century, however during the early to mid-20<sup>th</sup> century horizontal mining was extended further into the mountain to increase coal yield. We have provided a map detailing the publicly available locations of abandoned mines, however we anticipate more mines likely existed at one point in time. GEOS personnel attempted to hike to the adit locations using a hand-held GPS unit in combination with the publicly available locations. While some areas of exposed cuts and low-grade coal was observed, no open mines or adits were noted. However, as mentioned previously we did observe free water with iron staining in one portion of the site, which would indicate some amount of groundwater flow thru either a mine or mine spoils. It should be noted that the area with iron-stained water was generally located well outside of the proposed development and the published location of the mine adits in the area of stained water flow appear to be located more than 500 feet away from any proposed lots (see below).

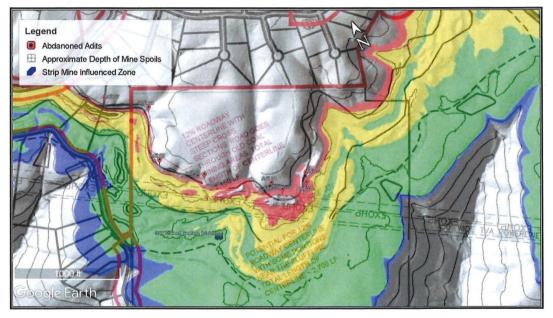


Figure 22 – Iron Stained Water Location

Furthermore, we note that the published geologic information indicates previous mining activities were solely geared towards the three thin coal seams located within the Whitwell Shale Formation. Therefore, while detailed information was not found or determined during the geophysical testing process regarding the existence of open-air mines, we anticipate any mine excavations would be targeted to the Whitwell Shale Formation and coal seams. The highest elevation proposed residential lots are located on what is considered a "cap rock" geologic unit, consisting of the Newton Sandstone formation which overlies the Whitwell Shale formation. In this area, the Newton Sandstone formation averages approximately 120 feet in thickness.

Therefore, while information regarding the existence, continuity, and length of any abandoned mines is not known, we anticipate that the highest elevation proposed lots would generally be underlain by a thick layer of mass sandstone. For this reason, we do not see an increased risk of subsidence to future residential development along the higher elevation lots. However, mass grading and/or extensive blasting in the sandstone formations would likely increase the risk of future distress related to underlying mines.

### Closing

GEOServices looks forward to continuing to work with you on this project. If you have any questions or require additional information, please feel free to call us.

Sincerely,

**GEOServices**, LLC

Matthew B. Haston, P.E. Senior Geotechnical Engineer

Phoebe G. Anderson Geophysical Project Coordinator

Matthew T. Bible Geophysical Department Manager

# Exhibit #3

# IN THE CHANCERY COURT OF MARION COUNTY, TENNESSEE

THUNDER AIR, INC.,	
Plaintiff,	
υ.	
JOE E. BLEVINS, JR., and RONNIE KENNEDY,	
Defendant.	

Case No.: 8424



# **DECLARATION OF JOE E. BLEVINS, JR.**

1. My name is Joe E. Blevins, Jr., I have personal knowledge of the facts asserted in this Declaration, and I am competent to testify regarding them.

2. I am the first named Defendant in Marion County Chancery Court Case No. 8424, *Thunder Air, Inc. v. Joe E. Blevins, Jr., and Ronnie Kennedy*.

3. I have been a resident of the Aetna Mountain area for decades and have lived in Guild, Tennessee since 1997. I previously served as a County Commissioner in the area. I am an engaged citizen. I care deeply about my community, its safety, and its well-being.

4. The Plaintiff in Marion County Chancery Court Case No. 8424 is a wellknown real estate company. It is owned and controlled by John "Thunder" Thornton, a wealthy and high-profile real estate developer and public figure who has been covered extensively by local and national media, including Forbes,<sup>1</sup> for many years. According to Thornton's University of Tennessee profile, Thornton:

[H]as served on the UT Board of Trustees, as chair of the UT Athletics

<sup>&</sup>lt;sup>1</sup> Master Bluffer, FORBES (Oct. 13, 1997), https://www.forbes.com/forbes/1997/1013/6008050a.html?sh=98cf14d72acb.

Facilities Capital Campaign, as chair of the UT Development Council, and as cochair of the women's athletics Development Campaign. He has also served on boards at UT Chattanooga and is an active civic leader in Chattanooga. The Thornton Athletics Student Life Center is named for him.

Volopedia, John Thornton, <u>https://volopedia.lib.utk.edu/entries/john-thornton/</u> (last accessed Apr. 17, 2024).

5. I am and for many months have been concerned that the Plaintiff's plan to develop the property it owns on Aetna Mountain by constructing residential homes above abandoned underground mines is dangerous.

6. In my opinion, the Plaintiff's proposed development presents safety, security, and environmental risks that will negatively affect community well-being. As a result, I have publicly criticized the proposed development. I have done so to bring public attention to the proposed development, to alert prospective buyers of the potential risks they may face from abandoned underground mines, and to enlist public participation in an effort to effect consideration by local government bodies of the safety issues that the development presents.

7. My efforts to enlist public participation in an effort to effect consideration by local government bodies of the safety issues that the development presents have been successful. Due in part to my advocacy, the safety concerns associated with the Plaintiff's proposed development have been discussed by local government bodies, including by the Marion County Commission—the body on which I used to serve—on March 25, 2024. An authentic transcript of that meeting is attached to my contemporaneously filed Tennessee Public Participation Act Petition as **Ex. 1**. During that meeting, the Marion County Commission considered a study conducted by the Plaintiff regarding mines on Aetna Mountain, an authentic copy of which is attached to my contemporaneously filed Tennessee Public Participation Act Petition as Ex. 2.

8. Every statement that I have made about the Plaintiff's proposed development—including that Aetna Mountain has abandoned underground mines and about underground fires from abandoned mines being a possible safety threat—has been based on information that I received from credible and trusted sources, including Ronnie Kennedy and government officials who recounted firsthand knowledge of Aetna Mountain and the mines there.

9. I have never called the Plaintiff's title to the parcel that it owns on Aetna Mountain into question.

10. I have never made any statement that challenges the Plaintiff's legal rights to the property it owns on Aetna Mountain, that clouds the Plaintiff's title to the property it owns on Aetna Mountain, or that calls the rights of the Plaintiff to the property it owns on Aetna Mountain into doubt.

11. I have never filed a lien on the property the Plaintiff owns on Aetna Mountain.

12. I have never claimed that I own the Plaintiff's property on Aetna Mountain.

Pursuant to Tennessee Rule of Civil Procedure 72, I declare under penalty of perjury that the foregoing is true and correct.

Jos: Blevin

Joe E. Blevins, Jr., Declarant

Apr 17, 2024

Date Executed

# **Blevins Declaration**

Final Audit Report

2024-04-18

Created:	2024-04-18
Ву:	Horwitz Law PLLC (daniel@horwitz.law)
Status:	Signed
Transaction ID:	CBJCHBCAABAA8o2PvTb21xTyV0JgPLfUtlrQQEcLjzqG

# "Blevins Declaration" History

- Document created by Horwitz Law PLLC (daniel@horwitz.law) 2024-04-18 - 1:15:52 AM GMT- IP address: 69.226.239.171
- Document emailed to Joe Blevins (autofashions@aol.com) for signature 2024-04-18 - 1:16:30 AM GMT
- Email viewed by Joe Blevins (autofashions@aol.com) 2024-04-18 - 1:19:09 AM GMT- IP address: 172.225.246.0
- Document e-signed by Joe Blevins (autofashions@aol.com) Signature Date: 2024-04-18 - 1:23:24 AM GMT - Time Source: server- IP address: 104.128.161.8

Agreement completed. 2024-04-18 - 1:23:24 AM GMT

# Exhibit #4



# Case No. 8424 (Thunder Air v. Blevins)

Daniel Horwitz <daniel.a.horwitz@gmail.com>

Fri, Mar 29, 2024 at 2:15 PM

To: hnorth@chamblisslaw.com Bcc: Melissa Dix <melissa@horwitz.law>, "William J. Harbison" <jharbison@nealharwell.com>, Daniel Horwitz <daniel.a.horwitz@gmail.com>

Mr. North,

My name is Daniel Horwitz, and I represent Joey Blevins in Case No. 8424 (*Thunder Air v. Blevins*). I just received a copy of the complaint, and I notice something that I was hoping you might be willing to amend to cure on the front end in order to avoid some unnecessary motion practice.

The issue is that the statements that Mr. Blevins is being sued over don't appear to be appended to the complaint as exhibits in their original form. That's a requirement under Tenn. R. Civ. P. 10.03. *See id.* ("Whenever a claim or defense is founded upon a written instrument other than a policy of insurance, a copy of such instrument or the pertinent parts thereof shall be attached to the pleading as an exhibit . . . ."). It's also a requirement in defamation cases generally, because statements have to be evaluated in context, and identifying the statements themselves without including the context surrounding them doesn't permit that. *See Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000) ("Allegedly defamatory statements should be judged within the context in which they are made."). Outside of the litigation itself, I need the statements appended in order to enable a coverage determination to be made, too.

Given this, would you be willing to amend your complaint by appending the statements that your client is suing Mr. Blevins over as exhibits? If so, I would appreciate it, since it spares me the need to file a motion for a more definite statement/for dismissal under Rule 41.02. *See Clear Water Partners, LLC v. Benson*, No. E2016-00442-COA-R3-CV, 2017 WL 376391, at \*8 (Tenn. Ct. App. Jan. 26, 2017) ("we conclude that Rule 10.03 applies to this claim by Clear Water. In response to Clear Water's argument that Rule 10.03 does not contemplate dismissal as a sanction for failing to comply with the rule, we note that Rule 41.02(1) provides that a plaintiff's complaint may be dismissed if the plaintiff fails to comply with the rules set forth in the Tennessee Rules of Civil Procedure."). If so, please let me know when possible. I will not need a hard copy of the amended complaint; email is fine.

Thank you in advance.

Best,

-Daniel

Daniel A. Horwitz daniel.a.horwitz@gmail.com

> DEFENDANT'S EXHIBIT 4 (Collective)



Chambliss, Bahner & Stophel, P.C. Liberty Tower 605 Chestnut Street, Suite 1700 Chattanooga, TN 37450 chamblisslaw.com Harold L. North, Jr. Direct Dial (423) 757-0244 Direct Fax (423) 508-1244 hnorth@chamblisslaw.com Also Licensed in the District of Columbia

April 2, 2024

VIA E-MAIL (daniel.a.horwitz@gmail.com)

Mr. Daniel A. Horwitz

Re: Thunder Air, Inc. v. Joe E. Blevins, Jr. and Ronnie Kennedy

Mr. Horwitz,

Thank you for reaching out regarding your representation of Mr. Blevins. I understand your concerns and share your desire to avoid unnecessary motion practice, but I cannot agree to amend the complaint at this time. I'm aware of Tenn. R. Civ. P. 10.03 and believe the complaint is in compliance. While we choose not to amend the complaint at this time, I'm happy to provide you with copies of your client's Facebook posts, which are specifically referenced in the complaint. Such Facebook posts are, of course, already in his possession and control.

I am sure you have recognized and explained to Mr. Blevins his obligation to preserve all documents related to the River Gorge Ranch; Aetna Mountain; Thunder Air, Inc.; John Thornton; anyone working with or for Thunder Air, Inc.; or anything else relevant (or which may become relevant) to this lawsuit, whether in electronic or paper form, including, for example, Facebook or social media posts, emails, text messages, phone records, videos, and photographs.

Please let me know if you would like me to send you copies of your client's Facebook posts referenced in the complaint, and I'll get them to you right away.

Very truly yours,

The horta

Harold L. North, Jr.

HLN/jcg





# Thunder Air, Inc. v. Joe E. Blevins, Jr. and Ronnie Kennedy

Daniel Horwitz <daniel.a.horwitz@gmail.com>

Tue, Apr 2, 2024 at 4:06 PM

To: "Garrett, Jackie C." <JGarrett@chamblisslaw.com> Cc: "North, Harold L." <HNorth@chamblisslaw.com>, "Bates, Peggy S." <PBates@chamblisslaw.com>

Yes, please send the posts.

Also, because it appears a motion will be necessary, can you please let me know your availability on May 3rd?

Thank you.

Best,

-Daniel

Daniel A. Horwitz daniel.a.horwitz@gmail.com

On Apr 2, 2024, at 4:01 PM, Garrett, Jackie C. <JGarrett@chamblisslaw.com> wrote:

[Quoted text hidden]

<Ltr to Daniel Horwitz re Thunder Air, Inc. v. Joe E. Blevins, Jr. and Ronnie Kennedy 4891-7531-3843 v1.pdf>