

April 6, 2021 (Pre-Agenda)

**MINUTES
BURKE COUNTY BOARD OF COMMISSIONERS
PRE-AGENDA MEETING**

Both Burke County and the State of North Carolina had previously declared a state of emergency which was ongoing as of April 6, 2021 due to the global COVID-19 pandemic. Following the N.C. Governor's Executive Order limiting mass gatherings and to protect the health of all meeting participants, attendance in the County Board Room, Burke Services Building, 110 N. Green Street in Morganton, was limited on a first come first served basis, social distancing measures were imposed inside the meeting room and face coverings were recommended. The 3:00 p.m. meeting was streamed live on the County's YouTube channel, BurkeCountyNC, and it was broadcast later on the local cable systems. The agenda, in its entirety, was posted to the County's website, www.burkenc.org, several days prior to the meeting as usual. Those present were:

COMMISSIONERS PRESENT: Jeffrey C. Brittain, Chairman
Scott Mulwee, Vice Chairman
Wayne F. Abele, Sr.
Johnnie W. Carswell
Maynard M. Taylor

STAFF PRESENT: Bryan Steen, County Manager
Margaret Pierce, Deputy County Manager/Finance Director
J.R. Simpson, II, County Attorney
Kay Honeycutt Draughn, Clerk to the Board

CALL TO ORDER

Chairman Brittain called the meeting to order at 3:00 p.m. and wished Commissioners Abele and Taylor a happy birthday.

APPROVAL OF THE AGENDA

Motion: To approve the agenda.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Maynard M. Taylor, Commissioner
AYES:	Jeffrey C. Brittain, Scott Mulwee, Wayne F. Abele, Sr., Johnnie W. Carswell and Maynard M. Taylor

PRESENTATIONS

CHARTER COMMUNICATIONS - UPDATE ON THE FCC RURAL DIGITAL OPPORTUNITY FUND – RDOF AWARDS

In hopes of expanding broadband service, County Manager Steen reported Michael Tanck, Charter Communications, Director of Government Affairs, will present an update on the FCC Rural Digital Opportunity Fund-RDOF Awards at the regular meeting. Chairman Brittain opened the floor for questions and comments from the Board. County Manager Steen responded to a question from Commissioner Taylor regarding communication tower height. A brief discussion

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ensued.

RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

SCHEDULED PUBLIC HEARINGS

CM - CONSIDERATION OF EXCEPTIONS TO PERFORMANCE REQUIREMENTS IN DIG AGREEMENT WITH MORGANTON LODGING ASSOCIATES LP & PUBLIC HEARING - 6:00 PM

County Manager Steen briefly reviewed information from the agenda packet (shown below) where exceptions to certain grant requirements for the hotel's project completion and employment numbers fell short. He stated a public hearing is necessary for public transparency and out of an abundance of caution for statutory compliance since taxpayer funds were utilized. Wet weather conditions and government shutdowns related to the global pandemic, COVID-19, were the primary reasons identified for the shortcomings. He further advised that the hotel owners will be present at the regular meeting to formally present the request and explain what happened.

Information from the agenda packet:

In October of 2018, the County entered into a grant agreement (DIG) with Morganton Lodging Associates, LP for construction of an 85-bed hotel at 400 N. Green Street in Morganton. Separately, the City of Morganton also entered into a grant agreement with the company for construction of the hotel. The grant agreement established certain performance requirements and/or thresholds that must be met such as the project completion date, the amount of investment, job creation, etc. The hotel was completed in the spring of 2020, but the project did not meet some of the performance requirements outlined in the DIG agreement. While Morganton has paid the company, staff believes that additional Board action, to approve certain exceptions to the DIG requirements, is necessary before any reimbursement can be made. Representatives of the Morganton Lodging Associates, LP were asked to determine if those performance factors were achieved within the established performance period, what the performance factors actually turned out to be and to provide some explanation as to what happened if there was a difference. The Commissioners are asked to take this new information into consideration and decide if they want to grant exceptions to the performance requirements for grant year 2020.

Data for Items 1-6 were provided by Morg. Lodging Associates:

No.	Performance Requirements or Thresholds	Per the Grant Agreement	Actual
1	Project Completion	December 31, 2019	Feb. 20, 2020*
2	Number of hotel beds	85	85
3	Restaurant / Lounge	December 31, 2019	Opened January 2021
4	Square Footage	50,000 sq. feet	50,074 sq. feet
5	Investment	\$12,000,000	\$12,659,358
6	Job Creation	At Least 18 New FT Jobs	12 FT, 8 PT=16 FTE^

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7	Payment of Property Taxes	Payment Required	Paid Dec. 9, 2020
8	County Grant Payment	Due / Payable 90 Days After Payment of Property Taxes	Pending BOC Action

*This delay was due to 2019 being the rainiest year on record in Burke County, and is a very small delay in the context of a construction project of this size and scope.

^Because of the global pandemic, at times the hotel is forced to fill a full-time role with 2 part-time people, if that is what is available in the labor market.

The hotel ran at a 38% occupancy in 2020 due to COVID-19, versus the original projection of 68%. As such, an 11% reduction in workforce is expected.

Note: The company's NCUI 101 forms are on file in the County Manager's office and the employment numbers were verified by the Manager.

Chairman Brittain opened the floor for questions and comments from the Board. Commissioner Taylor asked what happens if the company does not attain 18 full-time employees this year and what options are available to the County. County Manager Steen said there are a multitude of options and the County Attorney may need to assist in exploring those options. County Attorney Simpson said the County has the right to either hold them to the agreement or say they understand what happened. He said the company has submitted the NCUI 101 forms which gives the County a basis of understanding their employment and noted it is up to the Board to decide how they want to move forward. Vice Chairman Mulwee said in addition to the issues caused by the COVID-19 pandemic, legislation continues to be passed that gives additional unemployment funds to citizens which makes hiring even more difficult. David Bennett, one of the owners who was in attendance, said everyone knows that employment is a challenge, but they are trying to mitigate it as best they can. Commissioner Carswell said 12 full-time and eight (8) part-time jobs is pretty good during a pandemic and that is 20 people who were not employed who are now working during the COVID-19 pandemic. Commissioner Taylor said if everyone could have seen the future and what the pandemic has done to all businesses, they would have probably made different decisions, he concurred with Commissioner Carswell's comments about the full and part-time staff, but said he asked those questions because they did have an agreement in place.

RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

COMM. DEV. - AMENDMENT REQUEST TO ORD. 2018-16 & PUBLIC HEARING - 6:00 PM

Pete Minter, Senior Planner, presented information regarding the amendment request to Ord. 2018-16 as follows:

On December 18, 2018, the Burke County Board of Commissioners approved a Parallel Conditional Rezoning for one (1) parcel of land (PIN # 2733063442) from Conservation District - Low Density (CD-L) to Planned Residential Mixed Use – *Conditional District* (PRMU-CD). The purpose of the request was to construct a

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one-hundred foot (100') tall Communications Tower with a single antenna for an existing off-site FM radio station.

The conditions of the approval were as follows:

1. The rezoning approval shall be specific to the communication tower use. No other uses within the PRMC-CD shall be allowed.
2. The maximum height of the communications tower shall be one-hundred (100') feet. The communications tower and/or equipment compound shall not be expanded upon or altered in any way without prior approval from the County.
3. The radio station shall provide written notice to the County whenever the use of the communications tower is to be discontinued. The communications tower shall be removed from the subject property within 90-days of the said notice.
4. The owners of the WSVM Radio shall be responsible for the removal of the tower from the subject property and the re-establishment of vegetation in the disturbed area(s).

Since the time of approval, the applicant has not moved forward to construct the tower. The property has also been subdivided and the existing SF (single family) dwelling is on its own parcel of land.

REQUEST

The applicant, Eddie Jolly, is requesting an amendment to the December 2018 Conditions of Approval. Mr. Jolly would like to increase the height of the proposed radio tower from one hundred (100') feet to one-hundred fifty (150') feet. The applicant is requesting this change for the following reasons:

1. The additional tower height allows for the wavelength of the transmission system to be as close to quarter wavelength as possible.
2. The radio station is currently operating on an analog radio carrier but intends to operate in High Definition (HD) Radio Mode. This mode replaces the current analog system and will increase the coverage area and audio quality to better serve the public.
3. The additional tower height will allow for "error free" transmission of HD radio data.
4. The current approved tower height only allows for analog transmission. The applicant also would like to relocate the tower to a different location on the property.

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PROPERTY IMAGES



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STAFF COMMENTS

In considering the proposed request, staff would like to point out the following Findings of Fact:

1. The request is an Alteration to the Conditions of a previously approved Conditional Rezoning. The Planning Board is not involved in this decision.
2. The request would be asking for a 50% increase in the height of the tower.
3. The changes to the property (subdivision) and the tower (height and location) will require the applicant to submit an amended Site Development Plan.
4. The changes to the approved tower will have to meet the requirements of Section 1107 Communications Towers of the Burke County Zoning Ordinance.
5. The vesting period for an amended approval shall be two (2) years.

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6. A Zoning Permit would be required prior to the commencement of any work, including grading the lot.

Chairman Brittain opened the floor for questions and comments from the Board. In response to a question from Commissioner Taylor concerning the height of the tower, Mr. Minter said, if approved by the Board, then the applicant would have to submit a revised site development plan and noted that as the height of the tower increases, the fall zone would also increase, and the applicant may wish to move the tower away from a pre-existing structure to remove it from the fall zone. Mr. Minter said the current zoning ordinance does not have a tower height maximum and is dictated by the FCC / FAA (Federal Communications Commission / Federal Aviation Administration) and noted if a tower is over 200 feet, then it is required to have special markings and lights for increased visibility. A short discussion on towers ensued between Commissioner Taylor and Mr. Minter.

RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

COMM. DEV. - ZONING MAP AMENDMENT ZMA 2021-01 & PUBLIC HEARING - 6:00 P.M.

Pete Minter, Senior Planner, presented information regarding ZMA 2021-01 as follows:

REQUEST

Staff has received a rezoning application from Patrick and Jacqueline Welch to rezone a parcel of land totaling 2.29 acres. The request is to rezone the property from its current zoning of Office/Institutional (O/I) to the Residential Two (R-2) zoning district.

BACKGROUND AND SITE ANALYSIS

In 2014, the applicant's property was zoned by the County during the Morganton ETJ Relinquishment. At that time, approximately 2,300 parcels were rezoned from city zoning to county zoning. On either side of the applicant's residence is a health care office and a church. The city had both Office/Institutional zoning in the immediate area with a small slice of residential zoning corresponding to the applicant's property. The applicants are now needing to rezone their property to residential in order to refinance their home. The bank will not approve a residential loan because the property is not zoned residential.

The parcel is described as follows:

The parcel is further identified in county records as (PIN# 2702966923 and REID# 5001). The parcel 911 address is 606 Old NC 18, Morganton, NC, 28655. The parcel is located within the Morganton Township and the Salem Fire District of Burke County. The parcel is located within a WS-IV PA Water Supply Watershed. Records indicate that the property can be served by public water and private onsite septic. The parcel has approximately 212 linear feet of frontage on Old NC 18. Old NC 18 is a state maintained public road (SR #1924). The parcel is located within the I-40 Overlay District.

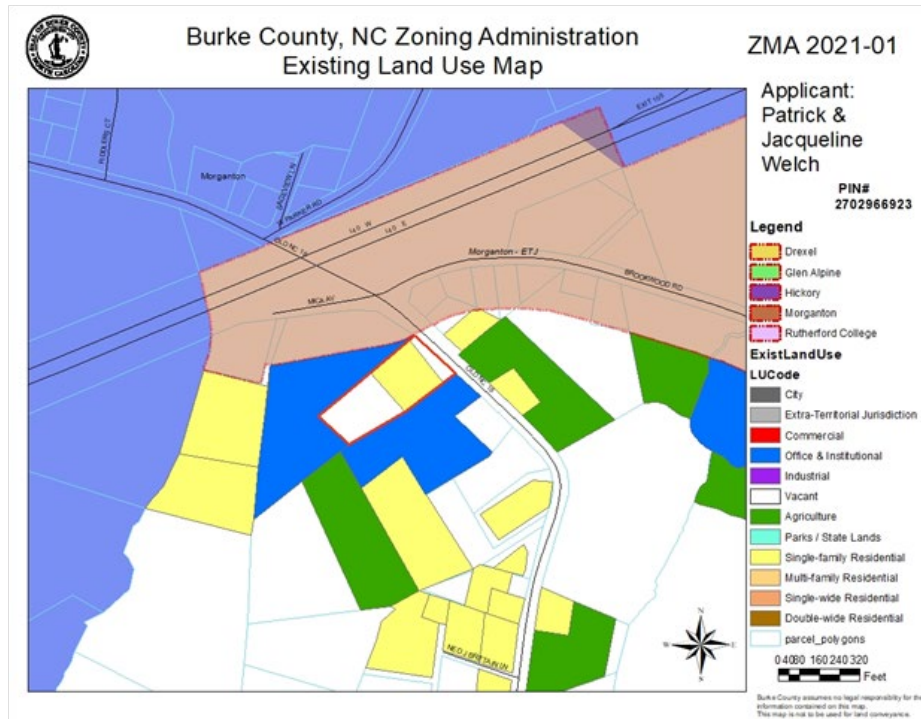
SURROUNDING AREA

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The predominant zoning in this area is Residential-Two (R-2), however, the adjoining parcels are zoned Office/Institutional (O/I). To the north is City of Morganton zoning. The Medium Intensity District (MID) district is the closest city zoned district to the subject property. Morganton's Medium Intensity District is intended for a variety of medium-to-high density residential and low-to-medium intensity civic, institutional, office, service, and retail uses designed to keep the impact on adjacent residential areas at a minimum.

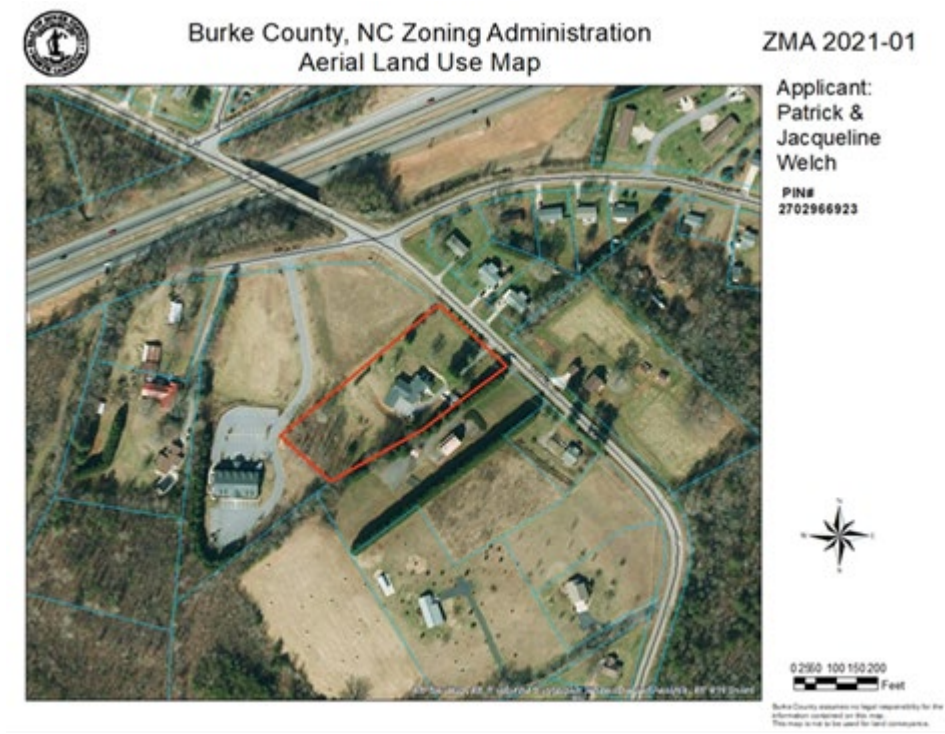
Existing Zoning and Land Uses within the Surrounding Area		
	Current Zoning	Existing Land Uses
North	MID - Morganton	Vacant Land / Residences
South	O/I and R-2 / I-40	Church / Residences / Vacant Land
East	R-2 / I-40	Residences / Vacant Land
West	O/I / R-2 / HID Morganton	Health Care Facility / Residences

The Existing Land Use Map provides a visual representation of the existing uses outlined in the "Existing Zoning and Land Uses within the Surrounding Area" table.



The Aerial Land Use Map depicts the health care facility to the west and the church to the south. There is a small subdivision to the north (Brookwood) which is in Morganton's Extraterritorial Jurisdiction (ETJ). Other surrounding land is either vacant or has scattered residential uses on it.

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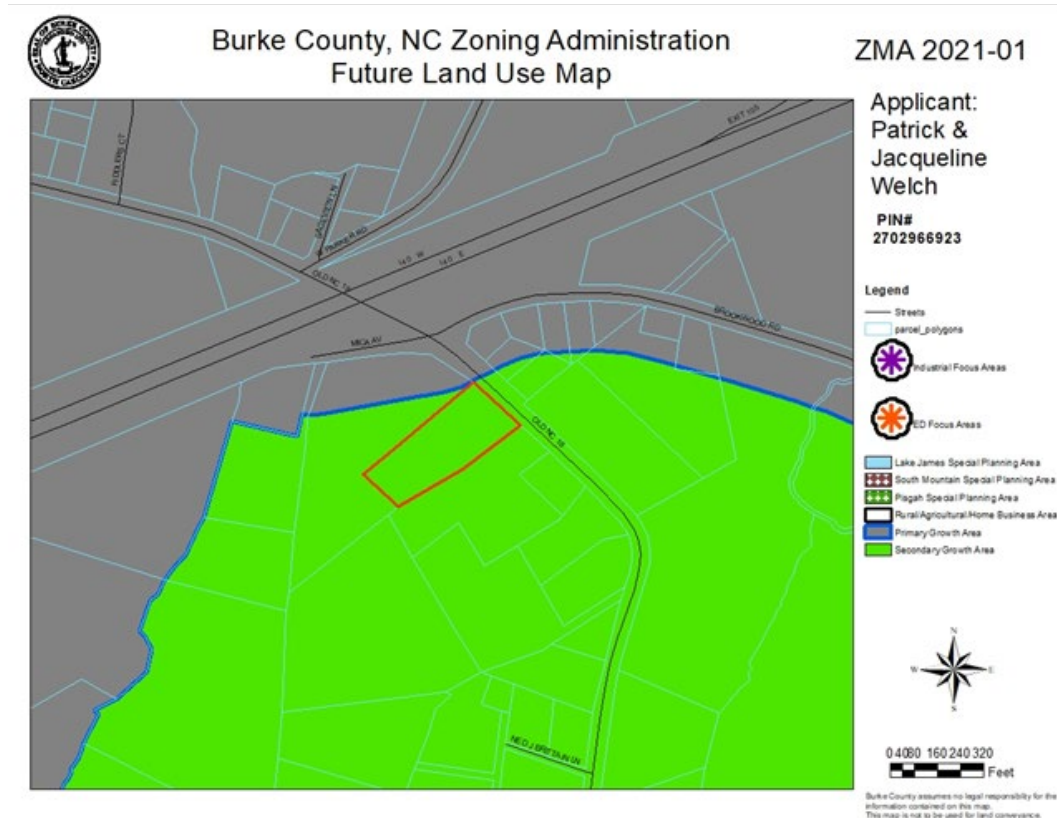


CONFORMITY WITH THE COMPREHENSIVE PLAN

The current land use plan for Burke County is the 2016-2030 Blueprint Burke Strategic Land Use Plan. The subject parcel is located in the Secondary Growth Area. Secondary Growth Areas have many of the same attributes as Primary Growth Areas such as infrastructure, utilities, and transportation corridors. The Primary Growth Area (gray color) is within the city of Morganton's city limits and ETJ.

One of the fundamental policies of the Land Use Plan is to allow and promote multiple types of economic development opportunities. A diverse economy can appeal to a wide range of population groups. This could be achieved through higher density and mixed-use type developments. In addition to residential uses, commercial, institutional, and industrial development can be expected in these areas as needed to support the other uses within this area.

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CONFORMITY WITH THE BURKE COUNTY ZONING ORDINANCE

The current Zoning Map shows the zoning for the subject parcel and surrounding area. As stated earlier, the "current" zoning district for this parcel is Office/Institutional (O/I). This zoning conflicts with the existing residential use of the property and creates a *non-conforming* situation. Rezoning the property to the Residential Two (R-2) district would resolve the land use conflict and bring the non-conforming situation into compliance.

The subject parcels have frontage on Old NC 18 (SR# 1924), a minor arterial road. Minor arterials serve to connect activity centers, but they also serve less intense development areas like small retail centers, office centers, and industrial/business parks. Minor arterials provide traffic service for moderate trip lengths. Average trip lengths on minor arterials will be one or two miles long.

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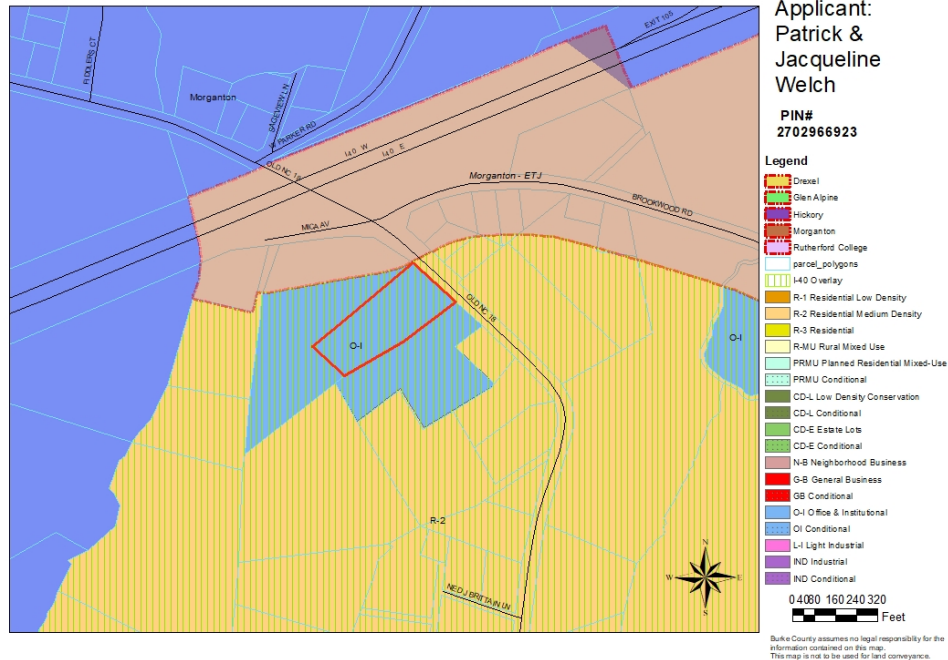


Burke County, NC Zoning Administration Current Zoning Map

ZMA 2021-01

Applicant:
Patrick &
Jacqueline
Welch

PIN#
2702966923



STAFF COMMENTS

Although, the subject parcel is currently zoned Office/Institutional, the current use of the property is a residential use. The majority of land surrounding the subject parcel is zoned either residential (R-2) or Medium to High Intensity (City of Morganton). Both of the Morganton districts allow residential uses. Rezoning the subject property to the R-2 District would resolve the current zoning/land use conflict and would be compatible with the surrounding land uses in the area. Staff recommends approval of the rezoning petition.

PLANNING BOARD RECOMMENDATION

The Burke County Planning Board held a public meeting on March 25, 2021 to hear this request. The Board heard from staff and the applicant regarding the rezoning petition. There was no one present from the public to speak at the public comment portion of the meeting. The Board had no deliberation and voted unanimously 6-0 to approve the rezoning request.

To assist the Board in their decision, staff has provided the following considerations:

- Is there a public need for additional land to be zoned to the requested classification?
- What is the impact on public services, facilities, infrastructure, fire and safety, and topography?
- What are the nearby development/zoning patterns?
- Consider the full range of uses allowed by the proposed district versus the uses allowed within the current zoning district.
- Is the rezoning request compatible with the character of the surrounding area and suitable with the property for certain use?

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ADDITIONAL INFORMATION

Please refer to the application, driving directions, photos, and map(s) for more information.

Chairman Brittain opened the floor for questions and comments from the Board. Commissioner Taylor said from looking at the maps it appears that they do not have room to put a second home on the lot. However, Mr. Minter said the acreage would allow for a second dwelling to be placed on the property, if the owners decided to, and discussion ensued on the requirements for adding a second dwelling on the parcel. Commissioner Taylor then said the only fair thing to do is to rezone the property. Commissioner Carswell said the applicants are practically neighbors of his who were fortunate to get out of the ETJ and that he hopes the Board will look favorably upon the request since the property should have been residentially zoned the entire time.

RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

WPCOG - GRANT (CDBG WATER PROJECT 16-I-2914) CLOSEOUT PUBLIC HEARING NO. 2 - 6:00 PM

Erin Schotte, WPCOG, reported due to an advertising error, a second (2nd) close-out public hearing on the Rhoney Road / Hwy. 18 South water infrastructure grant (No. 16-I-2914) is required to close the grant. Erin Schotte, WPCOG Community & Economic Development Administrator, will review the pertinent grant information.

A public hearing is required to close out the Community Development Block Grant water project on Rhoney Road and Hwy. 18 S. Utilizing a \$2 million grant awarded by the N.C. Division of Water Infrastructure in 2017, this project extended 18,870 LF of 8" water line on NC Highway 18 South (connecting dead end lines currently on Highway 18 South between the 4824 NC Hwy 18 South and John Abree Street intersection) and 12,130 LF of 8" water line on Rhoney Road to Old NC Highway 18 South. Prior to this project, homes in the area were served by rock wells with low yields and the water was high in iron, manganese, and hydrogen sulfide. Other homes were served by springs, with varying water yields contingent on precipitation. Income surveys were conducted for each of the 42 occupied households within the project area; total water project benefit is 64.7% low- to moderate-income individuals. The project provided an additional direct benefit to 23 low-moderate income households (46 low-income persons served) by installing water connections (including service lines, connection at house, and well disconnection). In addition to installing 31,030 LF of new 8" waterline, the Burke County CDBG-I Water Project (16-I-2914) installed 13,267 LF of new water services lines, 29 new hydrants, and 40 new meter setters and boxes.

Summary of Benefits Provided by Infrastructure Project:

- 42 households (85 people) improved with access to new water line (approximately 64.7% low/moderate-income people)
- 23 households (46 persons) (100% low/moderate-income) benefiting with free water tap and housing connection
- 31,000 linear feet of new 8" water lines installed

Budgetary Effect: None for the public hearing. Courtesy reminder: In January of 2019, a construction contract for \$1,843,844.38 was awarded to Piedmont Utility Group, Inc. and up to

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\$225,000 of General Fund, Fund Balance was appropriated if additional grant funding could not be found. In addition to the construction contract, there were other contracts associated with the project totaling \$381,280: grant administration services (\$170,000), environmental review (\$12,000), engineering services (\$178,280) and construction observation services (\$21,000). For the construction contract, there were two (2) change orders totaling (\$17,507.74); therefore, the final construction contract amount is \$1,826,336.64. Highlights of the change orders are as follows:

Change Order 1

- A 90-day time extension was requested by contractor to allow for coordination with plumber connecting new lines with project beneficiary homes.
- Net Increase of this Change Order: \$0

Change Order 2 (Final)

- Final adjusting change order with bid item quantity adjustments due to quantity changes or design changes.
- Net Decrease of this Change Order: (\$17,507.74)

Unfortunately, no additional grant funding was found. However, only \$117,943.43 of Fund Balance was needed to balance the project budget. In actuality, only \$14,930 of GF Fund Balance was used due to interest earnings and old project funds available in the CDBG Fund.

RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

CONSENT AGENDA

BOC - OPPOSITION TO INCREASED ACCESS TO MARIJUANA THROUGH DECRIMINALIZATION AND POTENTIAL LEGALIZATION

Chairman Brittain presented information regarding the resolution in opposition to increased access to marijuana through decriminalization and potential legalization as follows:

The following resolution proclaims the Commissioners' beliefs that the residents of Burke County as well as the entire State of North Carolina will suffer if increased access to marijuana is allowed through decriminalization and potential legalization. It also implores the North Carolina General Assembly to seriously consider the ramifications of decriminalizing and legalizing marijuana. Research suggests the most effective and cost-efficient way to reduce substance use is to prevent it before it starts. In a county of 90,000 people, the majority of whom have been impacted by substance use, overdose rates are at an all-time high and fear is soaring.

RESOLUTION

Opposition to Increased Access to Marijuana Through Decriminalization and
Potential Legalization by the North Carolina General Assembly

WHEREAS, ensuring prevention, education and awareness is consistently shared with all ages and is key in impacting this substance use epidemic; and

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WHEREAS, collaborative efforts are occurring across our state and nation with the common goal of saving lives; and

WHEREAS, potential decriminalization, and possible legalization, of marijuana is currently one of the most concerning issues facing the many coalitions working with victims of substance use; and

WHEREAS, decriminalization and/or legalization of any substance reduces the perception of risk or harm and thus increases use of the substance; and

WHEREAS, Burke County's average age of first use of a substance is 12.5 years old - essentially a 6th grader; and

WHEREAS, research shows full development of the brain does not occur until the age of 25, therefore, substance use will cause changes to the brain; and in an underdeveloped brain, like that of an adolescent, these alterations can lead to permanent damage; and

WHEREAS, the legality of a substance does not change the fact that it physiologically damages the user with Marijuana being no exception; and

WHEREAS, in every state where marijuana has been decriminalized and/or legalized, youth perception of risk or harm has decreased and as a result adolescent use has skyrocketed; and

WHEREAS, decriminalization and legalization also increases the availability of marijuana, so youth also have increased access; and

WHEREAS, lowered perception of risk or harm coupled with increased availability are contributing to a damaged generation.

NOW, THEREFORE, BE IT RESOLVED that the Burke County Board of Commissioners does hereby proclaim their belief that the residents of Burke County, North Carolina as well as the entire State of North Carolina will suffer if increased access to marijuana is allowed through decriminalization and potential legalization;

AND BE IT FURTHER RESOLVED that the Burke County Board of Commissioners as advocates for an already scarred community and for the safety of our children and families implore members of the North Carolina General Assembly to seriously consider the ramifications of decriminalizing and legalizing marijuana.

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BOC - PUBLIC HEALTH MONTH PROCLAMATION

Chairman Brittain presented information regarding the public health month proclamation as follows:

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To recognize the service that the Burke County Health Department provides to the community and to encourage Burke County citizens to take steps to protect and promote the health and wellbeing of their families by making healthy personal lifestyle choices and seeking regular preventive health care, approval of this proclamation is requested.

Proclamation
Designating the Month of May 2021 as Public Health Month

WHEREAS, the Burke County Health Department has served the community for many years and provided immeasurable contributions to enhancing the quality of life for our residents; and

WHEREAS, public health programs have evolved over the past century from a focus on sanitation and controlling the spread of infectious diseases to now also preventing the onset of chronic diseases; and

WHEREAS, the significant increase in life expectancy is widely credited to improvements in public health programs; and

WHEREAS, public health promotes improved lifestyles by providing services and supporting policies to help young people stay well and develop into healthy adults.

NOW, THEREFORE, BE IT RESOLVED that the Burke County Board of Commissioners does hereby proclaim the month of May 2021 as Public Health Month and encourages all citizens of Burke County to take steps to protect and promote the health and wellbeing of their families by making healthy personal lifestyle choices and seeking regular preventive health care.

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CLERK - APPOINTMENT TO LIBRARY BOARD OF TRUSTEES

Clerk Draughn reported Seat No. 9 (at-large) on the Library Board of Trustees was occupied by Sherry Willard; however, she is not seeking reappointment. An application was received from Susan Berley, WPCC VP for Student & Support Services. The remainder of the 3-year term of appointment ends December 31, 2023.

RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

CM - PROCLAMATION DECLARING MAY 6, 2021 AS NATIONAL DAY OF PRAYER

County Manager Steen presented information regarding the National Day of Prayer proclamation as follows:

The National Day of Prayer tradition predates the founding of the United States of America, evidence by the Continental Congress' proclamation in 1775 setting aside a day of prayer. In 1952, Congress established an annual day of prayer

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and, in 1988, that law was amended, designating the National Day of Prayer as the first Thursday in May.

Though the National Day of Prayer focuses most of its efforts promoting the annual day of prayer, we realize that true life-altering, world-changing prayer cannot happen in a single day. It must become a discipline. The theme for the 2021 National Day of Prayer is "LORD pour out Your LOVE, LIFE, and LIBERTY." The Board is requested to adopt a proclamation.

PROCLAMATION
NATIONAL DAY OF PRAYER
THURSDAY, MAY 6, 2021

WHEREAS, civic prayers and national days of prayer have a long and venerable history in our constitutional republic dating back to the First Continental Congress in 1775; and,

WHEREAS, the Declaration of Independence, our first statement as Americans of national purpose and identity, made "the Laws of Nature and Nature's God" the foundation of our United States of America and asserted that people have inalienable rights that are God-given; and,

WHEREAS, the Supreme Court has affirmed the right of state legislatures to open their sessions with prayer, and the Supreme Court and the United States Congress themselves begin each day with prayer; and,

WHEREAS, in 1988 legislation setting aside the first Thursday in May in each year as a National Day of Prayer was passed unanimously by both Houses of Congress and signed by President Ronald Reagan; and,

WHEREAS, the National Day of Prayer is an opportunity for Americans of all faiths to join in united prayer to acknowledge our dependence on God, to give thanks for blessings received, to request healing for wounds endured, and to ask God to guide our leaders and bring wholeness to the United States and her citizens; and,

WHEREAS, it is fitting and proper to give thanks to God by observing a day of prayer in Burke County when all may acknowledge our blessings and express gratitude for them, while recognizing the needs for strengthening religious and moral values in our state and nation; and,

WHEREAS, this year's theme is "LORD pour out Your LOVE, LIFE, and LIBERTY."

NOW, THEREFORE, we, the County Commissioners for Burke County, North Carolina, do hereby proclaim Thursday, May 6, 2021, to be designated as "A Day of Prayer in Burke County" and encourage the citizens of Burke County to observe the day in ways appropriate to its importance and significance.

Chairman Brittain opened the floor for questions and comments from the Board. Commissioner

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Taylor thanked the Chairman for this proclamation and said it should be approved. He also expressed appreciation for the resolution opposing increased access to marijuana through decriminalization and potential legalization. He said the Board should do everything they can to protect its citizens and noted both agenda items support that goal.

RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

TAX DEPT. - TAX COLLECTION REPORT FOR MARCH 2021

Danny Isenhour, Tax Administrator, presented the tax collection report for March 2021 as follows:

Category	Annual Budget	Amount Collected YTD	% Collected	Balance to Collect
Property Tax	\$44,250,000.00	\$44,447,418.92	100.45%	\$197,418.92
Motor Vehicle Tax	\$4,600,000.00	\$4,042,849.78	87.89%	\$557,150.22
Current Year Taxes	\$48,850,000.00	\$48,490,268.70	99.26%	\$359,731.30
Delinquent Taxes	\$700,000.00	\$696,872.08	99.55%	\$3,127.92
Late List Penalty	\$300,000.00	\$403,658.95	134.55%	\$103,658.95

The Tax Levy is the total property tax value not including motor vehicles times the tax rate. This amount changes monthly with the addition of discoveries, other changes, or corrections, and when Public Utility Values are added, typically during September.

Category	Tax Levy	Amount Collected YTD	% Collected	Balance to Collect
Property Tax	\$45,573,569.00	\$44,447,418.92	97.53%	\$1,125,347.07

RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

TAX DEPT. - RELEASE REFUND REPORT FOR MARCH 2021

Danny Isenhour, Tax Administrator, presented the release refund report for March 2021 as follows:

Tax System Refunds and Releases				
	Report Amount	Rebilled Amount	Net Release	Refund Amount
Releases (TR-304)	\$3,590.40	\$890.21	\$2,700.19	\$0.00

VTS Refunds Over \$100	
	Refund Amount
VTS Adjustments	\$101.54

*Note: The net loss amount is a result of the report amount minus the rebilled amount.

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RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

ITEMS FOR DECISION

COMM. DEV. - LAKE JAMES GLAMPING, LLC LEASE AGREEMENT

Scott Carpenter, Deputy County Manager/Planning Director, after commenting on the evolution of plans for a public / private partnership to develop county-owned property at Lake James, presented information on a proposed lease agreement with Lake James Glamping, LLC as follows:

Burke County wishes to enter into a public - private development and lease agreement at the Fonta Flora County Park in order to develop tree houses, cabins and glamping structures on +/- 15 acres. The development agreement will be for a term of 25 years with provisions to allow for a 40-year lease if Developer is in compliance with the terms of the agreement. The agreement will require building no fewer than 15 rental units and no more than 30 structures over the life of the agreement. Burke County has been in discussion with Lake James Glamping, LLC (Isaac Hoff) who has an interest in leasing property from Burke County and developing glamping, tree houses and cabins to rent to the public. The document "Hoff Development Agreement" is the result of the negotiations and shall serve as the basis for any other potential bids.

Budgetary Effect: Positive; Lease will consist of \$5,000 annual rent, paid in monthly installments and three (3) percent of the gross rental sales once the third structure is built. Lease will increase by \$1,000 a year for each additional structure in following years. Lessee shall be responsible for paying taxes on any real property and for paying occupancy taxes.

Due to this development agreement including a long-term lease, the development agreement must be treated as a competitive bidding procedure under G.S. 160A-272 by Burke County and in compliance with N.C.G.S. 160-269. This requires special provisions for advertising and potential upset bids from other third parties. Other bids must be submitted within ten (10) days to the Burke County Attorney, J.R. Simpson II, Attorney at Law.

Note: The required public notice was published on March 23, 2021 in The News Herald and posted to the County's website on that same day.

Chairman Brittain opened the floor for questions and comments from the Board. Commissioner Abele commended the project and asked if after the 30 structures are constructed, will the developer be able to build additional structures. Mr. Carpenter said not under the terms of the current agreement and noted that because of the limited usable land, the County may want to entertain other types of activity to increase tourism besides cabin rentals such as traditional or RV camping. Commissioner Taylor asked if the developer is there for over 25 years, does he have to restore the property to its original condition. Mr. Carpenter said there are opportunities for re-negotiation of the camping structures, including how they would be rented and if the County would want to buy and take over the project at the end of the lease. Mr. Carpenter then responded to an additional question from Commissioner Taylor concerning the treehouses. In

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response to a question from Commissioner Abele, Mr. Carpenter reiterated that the developer cannot build more than 30 structures. However, he said there are opportunities to create traditional camp sites by working with Duke Energy to utilize the 180-acre tract. Vice Chairman Mulwee asked when is the boat access going to be moved. Mr. Carpenter responded after new engineering and design work is completed this year, the deep-water access is tentatively scheduled for construction in 2022, afterwards the engineering and design work will begin for the Linville Access area which should be complete by 2024. Commissioner Taylor asked if Mr. Carpenter anticipates any major objections to tree removal in the area. Mr. Carpenter said he did and has a meeting scheduled with the Lake James Environmental Association and they will be brought into the discussion with Isaac Hoff for design and setbacks, etc. during the site plan review and as the master plan is created. He noted that this project will be a high quality, low impact, rustic village look with minimal tree removal being the objective. Mr. Carpenter responded to a question from Commissioner Abele and brief discussion ensued regarding development around Lake James.

RESULT: MOVED WITHOUT OBJECTION TO A RECESSED MEETING ON MAY 4, 2021 AT 4:00 PM

REPORTS

Chairman Brittain reminded everyone to please spay/neuter their pets and please do not litter. He reported he completed his two (2) required clock hours of ethics training. Further, he asked the Board to please submit their reports for the regular meeting.

RESULT: NO ACTION TAKEN.

OTHER DISCUSSION ITEMS

BOC - STATUTES CONCERNING MONUMENTS

Chairman Brittain said for the past few meetings there has been comments on the monument on the Old Historic Courthouse Square and the Board had discussions on this matter a while ago, but he asked J.R. Simpson, II, County Attorney, to remind the Board what the specifics are regarding the monument and the relevant General Statutes concerning monuments and their potential removal.

Attorney Simpson prepared the following document which was distributed and presented to the Board:

J.R. Simpson, County Attorney
April 6, 2021

MEMORANDUM RE: CONFEDERATE MEMORIAL

1. STATE LAW.

The protection of local monuments is governed by N.C.G.S. §100-2.1(b). This law, established in 2015, provides that an "object of remembrance" that is located on public property may not be permanently removed, and may only be relocated as set forth in this statute. An "object of remembrance" is a monument, memorial, plaque, statue, or similar object of a permanent character

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that commemorates an event, a person, or military service that is part of North Carolina's history.

The Confederate memorial and statue on the grounds of the Old Burke County Courthouse qualifies as an "object of remembrance" for purposes of this statute.

Only two (2) reasons are allowed by the statute for the relocation of an object of remembrance: when necessary, for the preservation of the object, or when necessary, for the construction, renovation or reconfiguration of the buildings or open spaces surrounding it.

There does not seem to be either one of these situations present for purposes of the statute.

An object of remembrance, if moved, cannot be permanently relocated except to a site of similar prominence, honor, visibility, availability, and access within the jurisdiction from which it was relocated. It may not be relocated to a museum, cemetery, or mausoleum unless it was originally placed at such a location.

There does not seem to be, in Burke County, a place of similar prominence to the Old Burke County Courthouse, unless it possibly could be the new Burke County Courthouse.

There are three exceptions to the application of N.C.G.S. §100-2.1(b), which are found in §100-2.1(c). These exceptions refer to the following:

- 1) Highway markers set up by the Board of Transportation (not applicable here).
- 2) An object of remembrance owned by a private party that is located on public property and is subject of a legal agreement between the private party and the public subdivision governing the removal or relocation of the object.
The County appears to be the owner of the monument. (See Section 2). There is no legal agreement that I am aware of concerning this memorial. Therefore, this exception is inapplicable.
- 3) An object of remembrance for which a building inspector or similar official has determined poses a threat to public safety because of an unsafe or hazardous condition.

This refers to a dangerous condition or state of repair to a monument that might cause it to fall, and not to the presence of protestors or counter-protestors.

It is my legal opinion that none of the exceptions are applicable to the Confederate monument at the Old Burke County Courthouse.

2. OWNERSHIP.

No County records in legible form address the placing of the Confederate monument on the grounds of the Old Burke County Courthouse in the early

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1910s, or the placing of a statue atop the monument in 1918. Secondary sources indicate that the County may have paid a substantial part of the cost of the monument. There seems to be no legal agreement in existence between the County and any group that sets forth ownership claims or terms that would create anything other than an outright gift to the County.

It is my legal opinion that until some evidence is produced showing a retention of ownership by a private group, then based upon payment and control for more than 100 years, the County is the owner.

3. CONTROL.

In 2008, the County entered into a lease with the City of Morganton that leased the Old Burke County Courthouse and the Old Courthouse Square to the City for a 25-year term, with an option to extend the lease for an additional 15-year term. The terms of the lease require the City to maintain the Confederate monument and the Senator Sam Ervin statue.

It reads as follows:

Maintenance of Courthouse Yard. The City will keep the Courthouse yard properly landscaped and maintained including keeping the grass mowed all as required in the agreement. All trees and shrubs will be trimmed and/or replaced as necessary and all sidewalks will be properly maintained. The existing Confederate Soldier Monument and the Senator Sam Ervin Statue will be properly maintained in a good state of repair by the City. Other public artwork may be installed on the Courthouse property in the sole discretion of the City and will be maintained by the City. All artwork and monuments placed on the Courthouse grounds at the discretion of the City, including the existing Sam Ervin Statue, will be insured to their full insurable value by the City. Repairs to the stone or rock wall surrounding the Leased Premises exceeding FIVE THOUSAND DOLLARS (\$5,000) shall be deemed to be a major repair under Paragraph 9(b).

Based upon this provision of the Lease, it is my legal opinion that should circumstances change, the County would need the consent of the City of Morganton in order to make any changes to the Confederate monument. Likewise, the City of Morganton could not make any changes to the Confederate monument without the consent of Burke County.

4. CONCLUSION.

The County's authority to relocate the Confederate monument is strictly limited by the application of N.C.G.S. §100-2.1(b). No exception to the statute appears to be applicable in the current situation. There does not appear to be way under current law to remove the Confederate monument, should that be the desire of this Board.

Attorney Simpson further reported he has investigated how other counties have handled similar situations and for every confederate monument there is a different set of circumstances and rules. In Iredell County, Attorney Simpson said, their monument had always been under private ownership in addition to possessing a memorandum recorded in the 1920s that their Board

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considered a legal agreement, so they came under exception c2 of the statute. He said that allowed them to move their monument, but those circumstances do not exist in Burke County. He noted that Iredell County's situation has gotten more complicated because the City of Statesville will not accept the monument in their cemetery. Attorney Simpson said Gaston County has evidence that they paid for their monument in the 1910s and they are now involved in litigation with the NAACP (National Association for the Advancement of Colored People), among other plaintiffs. He said one of the things the suit is asking for is to declare Section 100-2.1 unconstitutional. Further he said there is a similar suit in Alamance County which could be a good thing because the North Carolina State Supreme Court may rule on Section 100-2.1 which may give an application for every county to rely on and not have to use their own interpretation. Attorney Simpson provided another example of a local government, Salisbury, moving their confederate monument. He noted that at the past few Board meetings public speakers have mentioned that other entities have done something, and it is a situation where every monument / backstory is different. However, he has not found anything in Burke County that would allow the Board to go outside of Section 100-2.1.

Chairman Brittain opened the floor for questions and comments from the Board. Vice Chairman Mulwee asked if he is correct that due to the current state law, the County could not move the monument to Forest Hill Cemetery or The History Museum of Burke County until additional legal precedent is set. Attorney Simpson agreed and said it is not a private monument and there is not a pre-existing agreement for it. Further, he noted the Morganton City Council authorized the issuance of a letter to the County Commissioners offering property at the Forest Hill Cemetery, but the monument cannot be moved there because the cemetery does not have the same dignity / prominence as the monument's current location. Discussion ensued on the April 5, 2021 Morganton City Council meeting. Attorney Simpson noted at that meeting the Morganton City Attorney did read the applicable law aloud, but it did not slow down the City Council's enthusiasm at all. Vice Chairman Mulwee asked if there was legal precedent and the Board decided to look at options to move the monument, then they would have to work with Morganton to come to an agreement. Attorney Simpson said yes because of the preexisting lease with the City for the Historic Courthouse Square. Discussion continued. Commissioner Taylor said he has written several items on this matter and noted that one (1) newspaper printed his remarks, but the Morganton News Herald refused to print two (2) of his submissions. He asked what kind of person would ask an elected official to break an oath to uphold the Constitution and federal, state, and local law that they swore on the Bible. He said the Board cannot honor movements that might break the law, nor can they honor popular opinion if it breaks the law. The truth cannot be changed just because someone does not want to accept it, he said. Further, he said he has never witnessed the monument swat a fly and noted that the Easter holiday was just celebrated. It was a hate movement that crucified Jesus and the people involved in the ordeal did not have the fortitude or courage to uphold the truth and do the right thing. Commissioner Taylor said he is proud that this item is on the agenda so the Board can solidify that the law is the law. He noted that the Bible uses the word "remembrance" approximately 8,467 times and they cannot expect past, present, and future generations to remember what happened if the monument is removed. Commissioner Taylor said God would not be pleased and said out of remembrance and God's instructions, the Jewish people still celebrate four (4) feasts a year. He said the Board does not have a choice in the matter and the law is pretty clear and noted the monument was put in its current location by past generations for remembrance purposes. Chairman Brittain said this information is not new to the Board because they received similar information in 2017 although some people may not know or care about the information. He said each situation where a monument was removed

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had a different set of circumstances and according to the law and Burke County's situation, the monument cannot be moved. Going forward, he said it will be his statement that the Board believes, based on legal opinion, that the County cannot move the monument and no further action will be taken at this time. Commissioner Carswell concurred with Chairman Brittain's assessment of what has transpired. He said he watched the Morganton City Council meeting last night and the anticipated letter will also encourage the County to begin a dialogue between proponents and opponents of the monument. He said the County has already done that by listening to citizens who were for and against the monument at several meetings. Commissioner Carswell then discussed the Alamance County monument situation and said their county manager asked for their monument(s) to be removed without a legal basis before their county attorney could intervene. Opinions are opinions, he said, but the law is the law, and the monument cannot be moved. If it was left up to him, he would rather have a commemorative plaque saying that Burke County citizens choose to remember the past and take seriously the lessons learned and rather than be offended, we choose to take a moment to offer forgiveness and to receive forgiveness and pledge to work together for a more promising future. Chairman Brittain said the Board has been glad to hear opinions on every side of this matter and the Board appreciates the opinion of every person who has come to speak. Going forward, he said, unless there is other direction from the Board, his response will be that this Board will not be taking action on this item based on the fact that they believe there is no legal basis to do so.

RESULT: NO ACTION TAKEN.

ITEMS FOR DECISION

COMM. DEV. - CONDEMNATION APPEAL - CASE FILE 072-19

Bradley Kirkley, Zoning Administrator, reported the subject property is located off Ridgecreek Drive and the landowner is Mr. Lee Flynn. Mr. Kirkley said the property caught fire approximately four (4) years ago and the planned work to repair the home never got completed and then the global pandemic occurred. He said due to the pandemic, there were exemptions whereby Mr. Flynn was allowed an extra year to complete the work, but no work occurred on the property. Mr. Kirkley noted that the home is collapsing on itself. Within the past 20 days the property was posted as unsafe by the Chief Building Inspector, Steve Holden. At that time, Mr. Kirkley said, a condemnation hearing was set, which was held last Tuesday in the building inspection's office and resulted in a deadline of May 30th for either proper repairs with an engineer's letter or the demolition of the home. He said after the hearing, Mr. Flynn filed an appeal and Mr. Kirkley noted that General Statutes only allow for the Chief Building Official to offer 60 additional days. He said if an appeal is filed, it then comes before the Board to offer a decision to either uphold the order as written, approve and modify it with a change in the amount of time, or revoke the order and say the home is fine to stay in its current state. Mr. Kirkley said from a staff perspective, they are currently on hold until a decision is made by the Board of Commissioners. He noted that there will most likely be a significant turnout from the residents of Ridgecreek Drive who have had to look at the structure for approximately four (4) years.

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To Whom It may Concern:
 Mr Steve Holden,
 I Jerry Lee Flynn want a appeal.
 Thank you Jerry Lee Flynn
 4/5/2021

Chairman Brittain asked if the Board has a time frame to listen / decide on the appeal. Mr. Kirkley said General Statutes just say in a timely manner. Mr. Kirkley responded to additional procedural questions from Chairman Brittain and Commissioner Taylor asked if this is the same property that received complaints due to motocross races and other issues. Mr. Kirkley said no and encouraged Commissioners to drive by the subject property.

Received 4-5-2021.

RESULT: MOVED WITHOUT OBJECTION TO THE REGULAR MEETING ON APRIL 20, 2021 AT 6:00 PM

CLOSED SESSION

Chairman Brittain reported a closed session is needed to discuss threatened or pending litigation, to preserve the attorney-client privilege, to discuss economic development matters and to discuss personnel matters as authorized by NCGS 143-318.11(a)(3), (4) and (6).

Motion: To go into closed session to discuss threatened or pending litigation, to preserve the attorney-client privilege, to discuss economic development matters and to discuss personnel matters as authorized by NCGS 143-318.11(a)(3),(4) and (6).

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RESULT:	APPROVED [UNANIMOUS]
MOVER:	Wayne F. Abele, Sr., Commissioner
AYES:	Jeffrey C. Brittain, Scott Mulwee, Wayne F. Abele, Sr., Johnnie W. Carswell and Maynard M. Taylor

Motion: To come out of closed session.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Maynard M. Taylor, Commissioner
AYES:	Jeffrey C. Brittain, Scott Mulwee, Wayne F. Abele, Sr., Johnnie W. Carswell and Maynard M. Taylor

RETURN TO OPEN SESSION

Motion: To come out of closed session.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Wayne F. Abele, Sr., Commissioner
AYES:	Jeffrey C. Brittain, Scott Mulwee, Wayne F. Abele, Sr., Johnnie W. Carswell and Maynard M. Taylor

RESULT:	NO ACTION TAKEN IN CLOSED SESSION.
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ADJOURN

Motion: To adjourn at 5:00 p.m.

RESULT:	APPROVED [4 TO 1]
MOVER:	Maynard M. Taylor, Commissioner
AYES:	Jeffrey C. Brittain, Scott Mulwee, Wayne F. Abele, Sr. and Maynard M. Taylor
NAYS:	Johnnie W. Carswell

Approved this 18th day of May 2021.


 Jeffrey C. Brittain, Chairman
 Burke Co. Board of Commissioners

Attest:


 Kay Honeycutt Draughn, CMC, NCMCC
 Clerk to the Board