

**TOWN OF TALLULAH FALLS  
STATE OF GEORGIA  
SPECIAL CALLED MEETING AND  
DETERMINATION OF VESTED RIGHTS HEARING  
TOWN HALL, 255 MAIN STREET, TALLULAH FALLS, GA  
OCTOBER 1, 2020, 6:00 P.M.**

Agenda

- I. CALL TO ORDER
- II. ADOPTION OF THE AGENDA
- III. SPECIAL BUSINESS
  - A. Adoption of Rules of Procedure for Determination of Vested Rights Hearings
- IV. DETERMINATION OF VESTED RIGHTS HEARING
  - A. Claim by J & D Irvin Holdings, LLC for Hickory Nut Mountain lots 4, 17, 18, 18A, 19, 20, 20A, 21, 21A, 22A, 23, 24 and 58, River Street lots 15, 16, 17, and 18, and Cabin lots 36, 37, 38, 39, and 40
  - B. Claim by S & B Irvin Properties, LLLP for Hickory Nut Mountain lot 56
- V. EXECUTIVE SESSION, if necessary
- VI. ADJOURNMENT

**The link to join via Webex is: <https://mkearlydesigngroup.my.webex.com>  
meeting number is: 794 499 414**

**Public access with audio will be available outside the engine bay of the fire department and via YouTube at  
<https://www.youtube.com/channel/UCytr3V3naaBwBwlzBlg-y8A>**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION TO PROVIDE FOR THE ADOPTION OF GENERAL RULES OF PROCEDURE FOR HEARINGS ON PETITIONS TO DETERMINE VESTED RIGHTS AND FOR OTHER PURPOSES.**

**WHEREAS**, the Town Council adopted Article XXII to Appendix A of the Code of the Town of Tallulah Falls, Georgia, on July 23, 2020;

**WHEREAS**, Section 2213 contained therein provided as follows:

**Section 2213 – Applicability.**

Any person or entity claiming a vested right to use or develop property for STVR purposes shall present such claim to the Town Council for a determination regarding its validity. Application for a determination shall be made to the Town through the Zoning Administrator on forms established by the Zoning Administrator. Within 60 days of the filing of an application, the Town Council shall hold an administrative hearing on the application in which all questions and evidence shall be presented for consideration. The Town Council shall render a final written decision on the application within 30 days of the hearing[;]

**WHEREAS**, the Town Council of Tallulah Falls hereby adopts this Resolution to set forth procedures by which the hearings conducted pursuant to Section 2213 of Article XXII to Appendix A of the Code of the Town of Tallulah Falls, Georgia shall be governed.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF TALLULAH FALLS AS FOLLOWS:** the above preamble is incorporated here.

**SECTION 1.** These rules of procedure shall apply to any hearing held pursuant to Section 2213 of Article XXII to Appendix A of the Code of the Town of Tallulah Falls, Georgia.

**A. INTRODUCTION AND GENERAL PROVISIONS**

1. The Mayor or his/her designee will explain the procedures set forth herein.
2. The Mayor or his/her designee shall be the Presiding Officer of the hearing. Unless otherwise stated herein, all questions or comments shall be directed to the Presiding Officer. The Presiding Officer, at any time, may consult with the Town Attorney as needed.
3. Any objections or other issues raised shall be ruled upon by the Presiding Officer, after consultation with the Town Attorney; and such ruling is final, unless the Council, by a majority following a duly seconded motion, votes to override the Presiding Officer's ruling.

4. The hearing is an open session of the Mayor and Council. The final decision of the Mayor and Council is voted on in open session.
5. The Mayor or his/her designee will, at the appropriate times as set forth below, request the identification of witnesses, if any, including the one presenting evidence, and administer the following oath to each witness: **“Do you solemnly swear (or affirm) that the testimony you are about to give on the issue pending before this Council shall be the whole truth and nothing but the truth?”**
6. The Mayor or any member of Council has the discretion to introduce any document regarding the petition, unless objected to by a member of the Council and affirmed by a majority vote after a duly seconded motion to bar the introduction of the document.
7. The Mayor or any member of Council has the discretion to call any person present to testify regarding the petition, unless objected to by a member of the Council and affirmed by a majority vote after a duly seconded motion to bar the calling of the witness.
8. The issues considered at any hearing held hereunder shall be confined to whether the applicant has a vested right to use or develop property for STVR purposes. No other issues shall be allowed or entertained.
9. The burden of proof is on the party petitioning the Town for this quasi-judicial ruling or determination (the “Petitioner”). Accordingly, the Petitioner bears the burden of proving the existence of the claimed vested right to use or develop property for STVR purposes in accordance with Georgia law.
10. The Petitioner is not required to be represented by an attorney; however, an attorney may represent the Petitioner if the Petitioner so chooses.
11. The Mayor and Council are not required to apply formal rules of evidence pursuant to Georgia Code, but may use such rules of evidence as a guide. For example, the Mayor and Council are authorized to not accept written letters, affidavits, statements, or other documentary evidence that would otherwise be considered generally as “hearsay.” This means that if the person who wrote the letter, affidavit, or statement, or prepared the document generally, is not at the hearing to testify, the document may not be considered by the Mayor and Council except for in extremely limited circumstances. The party introducing such evidence generally must have the maker of the written statements and/or documents present.
12. The Presiding Officer shall, at all times, maintain order and decorum in the proceeding and may enlist the help of the representative from the Tallulah Falls Police Department to assist in this endeavor.

**B. PRESENTATION BY THE PETITIONING PARTY-** The following procedures shall be followed by the party petitioning the Town for this quasi-judicial ruling or determination (the “Petitioner”):

1. OATH: Each person or persons appearing before the Mayor and Council shall take the oath prescribed hereinabove prior to addressing the Mayor and Council.

2. OPENING STATEMENT. The Petitioner is allowed an opening statement not to exceed 10 minutes, unless, by consent of a majority of the Council, additional time is granted.
3. PRESENTATION OF EVIDENCE. Following any opening statement, the Petitioner shall present evidence in the following manner:
  - (a) Documentary evidence shall be presented to the Presiding Officer for distribution;
  - (b) After a document is presented, the Mayor and Council, or other Town personnel (including the Town Attorney) may ask questions of the Petitioner or other person submitting a document regarding any such documents presented;
  - (c) Petitioner may also call any witnesses;
  - (d) After a witness testifies, the Mayor and Council, or other Town personnel (including the Town Attorney) may question the witness. The person desiring to question any witness in this manner must be recognized by the Presiding Officer first. Only one person may question a witness at a time;
  - (e) The procedures contained herein shall be cumulative and may be used in tandem, such as: a document may be presented during a witness' testimony and questions may be related to the document, witness' testimony, or both, as may be appropriate under the circumstances. When documents are presented during a witness' testimony, questions regarding the document may be asked at the time such document is presented if necessary for purposes of understanding the nature of the document. Otherwise, questions regarding the substance of the document or of the witness' testimony regarding the document shall, insofar as practicable, be held until the witness finishes his or her testimony;
  - (f) The procedures contained under subparagraphs (a)-(e) are to be repeated for each document and/or witness presented. For example, questions of any witness may be asked before that witness is excused.
4. CLOSING STATEMENT. The Petitioner, or his or her representative, is allowed a closing statement not to exceed 10 minutes, unless, by consent of a majority of the Council, additional time is granted.

**C. HEARING CONCLUDED**

1. The Presiding Officer announces hearing closed.
2. If so desired, the Council may then deliberate jointly, or take the matter under advisement. To that end, nothing contained herein shall require joint deliberations.
3. The Council may also continue or postpone any deliberations or vote on any decision to a date certain by a duly seconded motion and vote of the majority.
4. At the appropriate time, the Presiding Officer shall call for a motion and vote on the Council's final decision. (The decision will be by a duly seconded motion and vote. A majority vote is required for the Council's final decision.)

5. In all circumstances, however, the Council shall render a final written decision on the application within 30 days of the hearing.

**D. APPEAL OF FINAL DECISION** – Appeal of the Town Council’s final determination is to the appropriate Superior Court by writ of certiorari.

**SECTION 2.** The Town Clerk is hereby directed to record this Resolution in the official minutes of the Town.

**SECTION 3.**

A. It is hereby declared to be the intention of the Town Council that all sections, paragraphs, sentences, clauses and phrases of this Resolution are and were, upon their enactment, believed by the Town Council to be fully valid, enforceable and constitutional.

B. It is hereby declared to be the intention of the Town Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Resolution is severable from every other Section, paragraph, sentence, clause or phrase of this Resolution. It is hereby further declared to be the intention of the Town Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Resolution is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Resolution.

C. In the event that any section, paragraph, sentence, clause or phrase of this Resolution shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Town Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of the Resolution and that, to the greatest extent allowed by law, all remaining Sections, paragraphs, sentences, clauses, or phrases of the Resolution shall remain valid, constitutional, enforceable, and of full force and effect.

**SECTION 4. Authorization for Execution.** The Mayor is hereby authorized to sign this Resolution, the Clerk is authorized to attest the Mayor’s signature, and the Town’s Attorney is authorized to indicate whether he approves as to form by signing this Resolution below.

**SECTION 5. Repeal of Conflicting Provision.** Except as otherwise provided herein, all resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

**SECTION 6. Effective Date.** This Resolution shall become effective immediately upon its adoption by the Mayor and Council of the Town of Tallulah Falls.

*(Signature Page Follows)*

SO RESOLVED this 1st day of October, 2020.

\_\_\_\_\_  
MIKE EARLY, Mayor

ATTEST:

\_\_\_\_\_  
LINDA LAPEYROUSE, Town Clerk

(seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
WARREN TILLERY, Town Attorney

**APPLICATION FOR DETERMINATION OF VESTED RIGHTS CLAIM**

AUGUST 19, 2020

APPLICANTS:

**J & D IRVIN HOLDINGS, LLC**

**S & B IRVIN PROPERTIES, LLLP**

SUBJECT PROPERTY ADDRESS: **Hickory Nut Mountain lots 4, 17, 18, 18A, 19, 20, 20A, 21, 21A, 22A, 23, 24, and 58, River Street lots 15, 16, 17, and 18, and Cabin lots 36, 37, 38, 39, and 40, owned by J & D. S & B owns Hickory Nut Mountain lot 56.**

SUBJECT PROPERTY PARCEL ID:

**Parcel 101A 015D**

**Hickory Nut Mountain Lot #4**

**Parcel 101A 003B**

**Hickory Nut Mountain Lots #17, #18, #18A, #19, #20, #20A, #21, #21A**

**Parcel 101A 003C**

**Lots 22A, 23, 24**

**Parcel 101A 007F**

**Top of Hickory Nut Mountain Lot #56**

**Parcel 101A 011B**

**Top of Hickory Nut Mountain Lot # 58**

**Parcel 101B 064**

**Lakefront Lots #15, #16, #17, #18**

**Parcel 101B 001B**

**Septic and Cabin Lots #36, #37, #38, #39, #40**

APPLICANT MAILING ADDRESS: **P.O. Box 219, Tallulah Falls, GA 30573**

APPLICANT CONTACT NO.: **706-754-5464**

APPLICANT EMAIL ADDRESS: **[brian.t.irvin@gmail.com](mailto:brian.t.irvin@gmail.com);  
[davidirvinepa@gmail.com](mailto:davidirvinepa@gmail.com); [marciabrockngf@gmail.com](mailto:marciabrockngf@gmail.com)**

With a copy to [mreeves@atclawfirm.com](mailto:mreeves@atclawfirm.com) and [sadams@atclawfirm.com](mailto:sadams@atclawfirm.com)

1. TITLE: Requested documents as of July 23, 2020 are attached.
2. BOUNDARY SURVEY AND LEGAL DESCRIPTION: Requested documents as of July 23, 2020 are attached.
3. AFFIDAVIT: sworn statement is provided below.
4. DESCRIPTION OF VESTED RIGHTS CLAIM: detailed description below and attached herewith.

### **DESCRIPTION OF VESTED RIGHTS CLAIM**

J&D Irvin Holdings, LLC and S&B Irvin Properties, LLLP (the “Applicants”) in reliance on the Town’s then-current ordinances and communications, spent substantial time, funds and resources in furtherance of Short-Term Vacation Rental (“STVR”) use of their 23 lots in the Town of Tallulah Falls before the Town enacted its STVR Ordinance on July 23, 2020. Enclosed are detailed records per property relating to the Applicants’ vested STVR rights, including but not limited to deeds, land disturbance permits, building plans, and other plans for the subject property for use as STVR’s before the Town’s STVR ordinance was enacted.

Applicants obtained in furtherance of STVR use, engineering, surveys, a temporary driveway, gravel, architectural elevations of STVR cabins and homes, floor plans for STVR homes, marketing and due diligence with local realtors, soil tests, land disturbance permits, clearing, grading, equipment, vehicles, designs and renderings, inspections, software, tree cutting, stump removal, supplies, dump trucks, personnel time, corporate work, legal fees and other expenses, site underbrush clearing, and other expenditures of money and resources in furtherance of STVR, after reviewing the Town’s ordinances and communicating with Town elected and staff officials about Applicants’ pursuit of STVR use.

Applicants own 23 lots in the Town on which Applicants had expended substantial time and resources pursuing STVR use of their 23 lots, before July 23, 2020. Applicants have a track record of operating high-quality STVR’s in Rabun County and surrounding areas, which knowledgeable experts have informed the Town will increase property values substantially above property restricted from STVR use. Applicants have reason to believe that the Town acceded to the demands of certain individuals with personal conflicts of interest, who targeted Applicants’ 23 lots to be excluded from the STVR use which Applicants had expended time and resources in furtherance of, after speaking with Town elected and staff officials. Applicants had a vested right to use their 23 lots for STVR use before the STVR Ordinance was enacted. It is noteworthy as of July 9, 2020 some of J & D’s lots were marked white and showed no zoning on the Town’s zoning map.

The STVR Ordinance imposes a substantial detriment on Applicants’ 23 lots, is unconstitutional and otherwise violates Applicants’ legal rights, violates due process, and is otherwise objectionable and legally defective. The Town’s actions on July 9 and July 23, 2020 in enacting the zoning map and STVR ordinance (a new 9 page ordinance posted on the internet without discussion less than 24 hours before the meeting and then a “vested rights” paragraph not discussed until the meeting started and not even circulated in writing to all Council members) caused \$700,000 or more of expenses or resources to be wasted, and caused



\$6,000,000 or more in damages to Applicants and their 23 lots. The Town's STVR ordinance followed a moratorium, revival and stacking with conflicted STVR opponents the Planning Commission, and other damaging and targeting actions by the Town. This Application follows and supplements Applicants' March, 2020 and August, 2020 Ante Litem Notices, July 9, 2020 constitutional objections, July 20, 2020 supplemental constitutional objections, and July 23, 2020 second supplemental constitutional objections, as well Applicants' constitutional objection to the July 9, 2020 zoning map. The foregoing previous communications are in the Town's records and are incorporated herein by reference.

In addition to the facts and damages reflected in the enclosed documents, Applicants are prepared, and request the opportunity, to present testimony in furtherance of their Application. Reserving all rights and claims, Applicants renew their request for the Town to allow Applicants to use their 23 lots for STVR uses.

Applicants have forbore from filing suit to date in a good faith effort to allow the Town to honor Applicants' private property and other legal rights relating to STVR use voluntarily pursuant to the new STVR Vested Rights Application process, and file this Application reserving all rights and under protest, subject to their previous Constitutional objections and Ante Litem Notices, as well as subject to Applicants' proposed revisions to the verbiage of the 9-page STVR Ordinance.

**AFFIDAVIT**

Personally appeared before the undersigned attesting officer authorized to administer oaths, David Irvin, who being duly sworn, deposes and says on oath that the facts contained in the APPLICATION FOR DETERMINATION OF VESTED RIGHTS CLAIM filed herein are true and correct based on his personal knowledge and that he is authorized to execute this Affidavit on behalf of J&D Irvin Holdings, LLC and S&B Irvin Properties, LLLP.

  
David Irvin

Sworn to and subscribed before me,

this the 19<sup>th</sup> day of August, 2020



Notary Public

My Commission Expires: 10/17/22

