

## MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
NOVEMBER 10, 2004

The Henderson County Board of Commissioners met for a special called meeting at 6:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building at 100 North King Street, Hendersonville, North Carolina.

Those present were: Chairman Grady Hawkins, Vice-Chairman Larry Young, Commissioner Bill Moyer, Commissioner Charlie Messer, Assistant County Manager Justin Hembree, Assistant County Attorney Russ Burrell, Planning Director Karen C. Smith, Planner Anthony Prinz, and Deputy Clerk to the Board Amy Brantley.

Absent was: Commissioner Shannon Baldwin.

### QUASI-JUDICIAL PROCEEDING

Chairman Hawkins called the meeting to order.

Chairman Hawkins – *“I make the motion to go into public hearing. All those in favor of the motion say aye.”*

In unison – “Aye.”

Chairman Hawkins – “Ladies and Gentlemen, we are here today for the hearing of a quasi-judicial proceeding on the following application: Special Use Permit Application #SU-04-01 submitted by Todd Leoni, Applicant on behalf of Camp Riley, Inc., for a special use permit for a planned unit development to be known as Leoni’s Mountain Lake Properties.

I want to remind everyone that the proceedings will be conducted under the Henderson County Board of Commissioners Rules of Procedure for Quasi-judicial Proceedings. Unless otherwise decided by the Board, only persons made a party to the proceeding will be allowed to participate as a party in today’s continuation of the hearing. Those people include Karen Smith, Planning Director, Todd Leoni and Camp Riley, Inc., Applicant, and such other persons allowed to become parties by this Board. Only persons who can demonstrate that they will be affected by the outcome of the decision are allowed to participate in the proceed, proceedings as parties.

Are there any Board members who feel that they cannot sit as an impartial decision-maker in today’s proceedings? And Commissioner Baldwin’s not here yet uh, uh, if he is not here by the time we start taking the evidence then uh, uh, he, he won’t participate in proceedings either but we enough of a quorum here but we might need to uh, uh, uh, ask the uh, applicant if they want us to proceed uh, if that be the case Russ.”

Russ Burrell – “Yeah I think so.”

Chairman Hawkins – “Uh since we don’t have a full Board.”

Todd Leoni – “Yes.”

Chairman Hawkins – “Are there any Board members who have received any information concerning the application? If so, please indicate what information you have received so that it can become part of the record for today. Anybody received any information other than what we’ve been given? Okay. Give you just a brief overview of, of how the proceedings are conducted. All persons who speak and participate,

DATE APPROVED: \_\_\_\_\_

including any witnesses that will be called, will be placed under oath. The Board will ask the Applicant or the Applicant's attorney what evidence the Applicant wishes to present in support of the request. After the Applicant is finished, anyone else who has expressed a desire to be a party and who the Board has recognized as a party would then be allowed to present their evidence. All parties would be given an opportunity to ask questions of all witnesses testifying in this proceeding. The Board will be given an opportunity to ask questions also. After the evidence is presented the Board will discuss the issue raised and will make a decision. The Board's decision uh, should be made within 30 days of the close of the hearing, and must be made in writing within 45 days of the hearing. As I stated, the Board acknowledges the following persons as parties. As I call your name, please answer so that we will know you are present. Karen Smith, Planning Director."

Karen Smith – "Here."

Chairman Hawkins – "Um, the Henderson County planning staff? I guess that's just it. Todd Leoni."

Todd Leoni – "Yes sir."

Chairman Hawkins – "Uh and Camp Riley, Inc., is that?"

Russ Burrell – "That's Mr. Leoni."

Chairman Hawkins – "All, all together? Okay. Uh, applicant. Are there any other persons present who can demonstrate that they will be affected by the outcome of this proceedings and who wish to be party to this proceedings? Okay, if, if what ya'll would do is just one at a time if you'd take the stand and tell the Board why you should be a party to the proceedings uh, the Board will make a decision whether or not to make you a party to the proceedings. And after we've, get that all figured out then we'll take um, uh, we'll take whatever time we need for everybody to get sworn in even if we have to do it in shifts and then we'll start actually hearing the evidence. So those that raised your hand that thought you were, uh, would like to be a part of the proceedings if one at a time you would come up and address the Board."

Bill Harper – "I'm Bill Harper Jr. I've lived on Osceola Lake for 40 years. I swim in the lake, fish in the lake, my grandchildren swim in the lake and fish in the lake. We use the lake a lot."

Chairman Hawkins – "Where, where is your residence in relation to the um, uh, the project uh Mr. Harper?"

Bill Harper – "It'd be kinda diagonally across the lake from it. I can, on my property I can see the project from my house."

Chairman Hawkins – "Karen, do you have that on the map that you have up there or is that?"

Karen Smith – "I don't think so, I think that's in the City's jurisdiction..."

Chairman Hawkins – "Let me ask, on that map that you got is the little circle out there the lake?"

Anthony Prinz – "Yes sir, this is the lake right here."

Chairman Hawkins – "That's the lake right there? Okay."

Bill Harper – "If you look straight up on that thing I'd be right on that point"

Chairman Hawkins – "Okay."

Bill Harper – "right directly across from it."

Chairman Hawkins – “Okay. Then you’re, you’re pretty much adjacent to it then. Does the Board have any problems with Mr. Harper being a party? Okay we’ll take you as a party Mr. Harper and we’ll swear you in in just a minute. Any one else? Yes mam.”

Marsha Hammel – “I’m Marsha Hammel and my house is on the corner of Kanuga Road and Bonner Street and because I’m on Bonner Street I feel that I have an interest in the project.”

Chairman Hawkins – “Okay how, how far back is that uh.”

Marsha Hammel – “Right on, I face Kanuga Road and Bonner Street.”

Chairman Hawkins – “Okay. So you’re about a, a lot or two down from the uh, actual project. But Bonner Street is gonna be serving the project.”

Marsha Hammel – “Exactly.”

Chairman Hawkins – “Uh, anybody uh, have any uh, any problem with uh, uh Marsha being a party to, to the hearing from that position? Okay. We’ll accept you and we’ll get you sworn in in a minute.”

Brenda Coats – “Brenda Coats. I adjoin the property to the south east. No it’s, it’s on the lake, on Lakeside Drive.”

Anthony Prinz – “This one?”

Brenda Coats – “Correct.”

Chairman Hawkins – “There? Okay, anybody have any, did everybody see where her property was located? Anybody have a problem with her being a party? Okay we’ll accept you as a party and swear you in in a minute.”

Dianne Green – “I’m Dianne Green and I’m at 419 Bonner. And that’s right at the corner there, or right beside it. Right there.”

Chairman Hawkins – “Okay anybody have a problem with Mrs. uh, Green being a party? Okay we’ll accept you as a party then. Any, any other persons wish to be a party to the uh, deliberations?”

Judith Sloan – “Um, I’m Judith Sloan. I own um, lots 8, 9 and 10 in the Osceola Subdivision and I’m pretty much directly across from um, the Camp Riley property.”

Chairman Hawkins – “Okay. Anybody have a problem with uh, Judith being a party? Okay we’ll take you as a party also Mrs. Sloan.”

Georgina Holmes – “I’m Georgina Holmes. I’m at 506 Bonner Street um, directly opposite the property.”

Chairman Hawkins – “Okay. I’m sorry, what was your first name?”

Georgina Holmes – “Georgina Holmes.”

Chairman Hawkins – “Georgina. Holmes?”

Georgina Holmes – “Holmes, yes.”

Chairman Hawkins – “Okay anybody have a problem with uh, Mrs. Holmes being a party? Okay we’ll take you as a party Mrs. Holmes and swear you in in a minute.”

Kathy Gallagher – “I’m Kathy Gallagher. I’m here as an agent for Larry and Becky Powell. They live at the corner of Lakeside Drive and what used to be South Carolina Avenue, now I think it’s Old South Carolina Avenue. Our family’s had property there for over 40 years.”

Russ Burrell – “If you choose she can be a party, I don’t think she can be a party for someone else. I’m saying I don’t think you can be a party for someone else but you can be a party for yourself. You said you, your family owns property. If the Board chooses to, you can be a party for yourself but I don’t think for someone else.”

Kathy Gallagher – “Okay, I don’t actually own the property I’m, I’m just here on their behalf.”

Chairman Hawkins – “I, I.”

Commissioner Moyer – “Does she have anything in writing, evidence, uh, that she has authority to act for them?”

Chairman Hawkins – “Where, where do you live Mrs. uh, Gallagher?”

Kathy Gallagher – “I myself live at Eas, by East High.”

Chairman Hawkins – “You’re, you’re some, somewhere else?”

Kathy Gallagher – “Um hum.”

Chairman Hawkins – “Okay. What, what’s the Board’s pleasure?”

Commissioner Messer – “Are those family you represent, are they kin?”

Kathy Gallagher – “Yes they are.”

Commissioner Messer – “In, in, in what manner.”

Kathy Gallagher – “My husband is a, is a Gallagher. My husband was a Gallagher. Um, I’m Kathy Gallagher my, he’s my nephew. My husband has passed away.”

Chairman Hawkins – “Uh, Mr. Burrell what, what is your opinion for the Board?”

Russ Burrell – “You have pretty broad discretion on that. You really, pushing, that would be pushing as far as you could go or maybe further.”

Chairman Hawkins – “Okay I, I, I, I guess my feeling is that uh, that you probably don’t qualify to be a party not owning the land or.”

Kathy Gallagher – “Okay.”

Chairman Hawkins – “Knowing, but I, I, I. I’ll leave that to the discretion of the Board. Bill?”

Russ Burrell – “...thing is she could be a witness...”

Commissioner Young – “I started to say she...”

Several people speaking at once.

Kathy Gallagher – “Okay.”

Orion Goodman – “I’m Orion Goodman, I’m Judy Sloan’s son. Um, am I, like, too young to speak or, could I speak?”

Chairman Hawkins – “Where, where do you live? Or do you live adjacent to the property?”

Orion Goodman – “Um, I’m Judy Sloan’s son live at 422 Bonner Street.”

Chairman Hawkins – “Oh, Judith Sloan’s daughter. Uh, we’ll probably just have uh, Ms. Sloan call you as a witness. I, I think is probably the way to do that. Uh, understand that we’re dealing in a, uh, quasi-judicial manner and so what you’d normally, the way you’d normally conduct business at the County Commissioner business is a little bit different since uh, uh, since we’re in a, a more of a legal proceeding. So, um, uh, not, not, not a totally normal thing. So, so we, we do have some bounds uh, from legal issues that we have to go by. Uh, is there any, anyone else that wants to be parties? That can demonstrate your. Yes mam.”

June Reese – “I’m June Reese. The first two villas are right across from my property.”

Chairman Hawkins – “And, and where, would you point that out.”

June Reese – “I’m at 508 Bonner Street.”

Chairman Hawkins – “Okay.”

June Reese – Uh, Kathy do you see that?”

Chairman Hawkins – “Okay. Anybody have a problem with her being a, wit, uh, party? Okay we’ll take you as a party and swear you in in just a minute.”

June Reese – “Thank you.”

Chairman Hawkins – “Okay. Um.”

Commissioner Moyer – “There’s somebody else Grady.”

Chairman Hawkins – “Yes mam.”

Polly Davis – “I’m Polly Davis. I live at the corner of Bonner and Kanuga.”

Anthony Prinz – “Is it here? Is it that part?”

Polly Davis – “Yes.”

Chairman Hawkins – “Okay, anybody have a problem with that on the entrance? Okay we’ll take you as a party, uh. Any, anybody else wants, that wishes to be a party.”

Jerry Jones – “I’m Jerry Jones I live at 413 Bonner Street which is about two lots uh, back toward Kanuga Road.”

Chairman Hawkins – “Okay. Anybody have a problem with him being a party? Okay we’ll take you as a party. Any, anybody else wish to be a party?”

Dianne Simpson – “I’m Dianne Simpson and I live on Old, well I have lots on Old Oklahoma, they’re 13 and 14. Want me come... ”

Karen Smith – “Sure.”

Anthony Prinz – “Yes, if you can.”

Chairman Hawkins – “Okay. Any, anybody have a problem with uh, Ms. Simpson being a party? Okay we’ll take you as a party Ms. Simpson. Any, anyone else wish to be a party? Okay.”

Commissioner Moyer – “Grady? I, I think we gotta to give the applicant a chance to object.”

Russ Burrell – “At some point before we start.”

Commissioner Moyer – “Yeah.”

Russ Burrell – “It could be right before the evidence starts.”

Chairman Hawkins – “Is that on your uh, listings?”

Russ Burrell – “It’s ... I’m gonna ask that in my notes from Mrs. Beeker’s normal process.”

Chairman Hawkins – “Okay. I don’t, is uh, I, I guess uh, and of course we already identified the applicants. Is, do, and I’ll inquire at this point if they have any uh, objections to the uh, parties that we’ve identified?”

Karen Smith – “Mr. Chairman I don’t have an objection but I was gonna see if I could get somebody to give up a packet cause I’m, I’m one short.”

Commissioner Moyer – “Looking right at you Justin. You can share mine.”

Chairman Hawkins – “Is that, is that sufficient? Okay and the uh, see the uh, the lady that uh wanted, Mrs. Goodman wanted to be a witness uh, I think that uh, you’ll be able just to have one of the parties call you as a witness at some point.”

Russ Burrell – “We need to swear the witnesses.”

Chairman Hawkins – “Yeah, we’ll and uh, so uh, let’s see if I got all those in there. Okay do any, any other parties uh, or any of the parties that have witnesses they’re gonna call that haven’t been identified? Okay, now comes the hard part, we’ve gotta swear everybody in. So uh, if you would just uh, and Amy might just kinda do that in a couple of shifts over there. Um, uh, if, I don’t know how many we’ve got here. Maybe about five or six of you come up we’ll uh, we’ll get you sworn in and then everybody else can get sworn in after they’re sworn in.”

Commissioner Moyer – “Russ, does the record show the applicant didn’t object to any of the witnesses?”

Chairman Hawkins – “I already asked.”

Several people talking.

Amy Brantley – “If you’re a party come on up.”

Russ Burrell – “...the order’s gonna say...”

Chairman Hawkins – “He, he shook, he shook his head.”

Commissioner Moyer – “Yeah but, okay but getting that on the record is the uh. As long as Russ is saying he shook his head that’s fine.”

Russ Burrell – “The order’s gonna say that no objection was raised upon...”

Chairman Hawkins – “Okay af, after you get signed up well then we’ll get everybody sworn in and then we’ll be ready to start.”

Amy Brantley – “I’m gonna get four people to put their hands on the Bible so I don’t have to do this twelve times. Alright if you’ll raise your right hand, put your left hand on the Bible. Do you swear or affirm that the testimony you shall give to the Board of County Commissioners shall be the truth, the whole truth and nothing but the truth so help you God?”

In unison – “I do.”

Several people talking.

Amy Brantley – “Need you to place your left hand on the Bible and raise your right hand. Do you swear or affirm that the testimony you shall give to the Board of County Commissioners shall be the truth, the whole truth and nothing but the truth so help you God?”

In unison – “Yes.”

Several people talking.

Amy Brantley – “If you guys would all put your left hand on the Bible and raise your right hand. Do you swear or affirm that the testimony you shall give to the Board of County Commissioners shall be the truth, the whole truth and nothing but the truth so help you God?”

In unison – “I do.”

Amy Brantley – “That should do it.”

Chairman Hawkins – “Any, any parties or witnesses that didn’t get sworn?”

Amy Brantley – “I did not swear the witnesses.”

Chairman Hawkins – “Uh, you need to swear the witness if somebody’s gonna call them.”

Amy Brantley – “Okay.”

Commissioner Young – “And the little girl.”

Commissioner Moyer – “Little boy.”

Commissioner Young – “Little boy.”

Chairman Hawkins – “Is, is that a problem age wise for.”

Russ Burrell – “If you, you know, the short answer no. If they’re capable of understanding and they can tell the truth no.”

Commissioner Moyer – “Wait a minute, you got one more Amy. Amy, you got one more.”

Several people talking.

Amy Brantley – “I’m sorry, Ryan or Orion?”

Orion Goodman – “Orion. Like the constellation.”

Amy Brantley – “And Goodman?”

Orion Goodman – “Um hum.”

Amy Brantley – “If you’ll all put your left hand on the Bible and raise your right hand. Do you swear or affirm that the testimony you shall give to the Board of County Commissioners shall be the truth, the whole truth and nothing but the truth so help you God?”

In unison – “Yes.”

(Witnesses sworn were: Kathy Gallagher, Orion Goodman and Luther Smith)

Amy Brantley – “That should now do it.”

Chairman Hawkins – “Okay. Okay, I think, I think we’ve got everybody and let the record show that uh, Mr. Leoni had no objection to our, our parties uh, and witnesses. Okay, before we begin the proceedings I need to inquire of the uh, applicant what their preference is since we don’t have a full Board and I do that because uh, it can affect how, how your voting may go. Uh, and so I, I don’t know if you wanna talk with uh, uh, uh.”

Todd Leoni – “No I’m fine, I’m fine with what you have.”

Chairman Hawkins – “You’re, you, you wanna proceed with uh, less than a full Board?”

Todd Leoni – “Yes.”

Chairman Hawkins – “Okay. If you’ll uh, have the record show that then also. Okay at that case then we’ll uh, uh, I assume Mr. Baldwin’s not gonna be able to make it this evening and uh we’ll go ahead and start uh, we’ll begin the proceedings with the uh, Staff overview. Uh, Mrs. Smith, uh, you or a member of your staff wanna give us your overview.”

Karen Smith – “I’m going to sir.”

Chairman Hawkins – “Alright.”

Karen Smith – “Um, everybody has the material that I’m gonna go over in the packet. Um, that was handed out this evening and the Board members of course had it ahead of time. Uh, just to get it in the record I do want to enter that packet as evidence later when it’s my turn but this’ll be um, just to give you a little bit more background. As Mr. Hawkins said uh, the Board of Commissioners scheduled the hearing for this evening on the Special Use Permit Application #SU-04-01 and it is for a proposed Planned Unit Development. And that uh, Planned Unit Development is known as Leoni’s Mountain Lake Estates. Again as uh, Chairman Hawkins said Camp Riley Inc. is the property owner and Mr. Todd Leoni is the applicant and together in this packet I’ve referred to them jointly as the developer. Um, actually through uh, Luther Smith, um, Mr. Leoni submitted the application to the Board of Commissioners and the Planning Department back on September 1, 2004. And a copy of that application as submitted is attached, um, it is Attachment #1. Planned Unit Development is proposed for approximately 12 acres of property. Um, you have a vicinity map that’s on the television screen. It’s also Attachment #2 in your packet. Uh, it’s known by parcel identification number 00-9567-29-4058-55 and I’ll refer to that as the subject property. It is located across from South Lakes, across Lake Osceola from uh, or via South Lakeside Drive. Anthony if you could just point that out. Across from Lake Osceola that’s South Lakeside Drive and is also um, it also has frontage on Bonner Street as we’ve determined earlier. And you can see these through Attachments uh, #2 and #3, a vicinity map and then also an aerial view of the subject property. Uh, the property is located in a County R-20 District, that’s a low density residential district and the Zoning Map is included as Attachment #4. As you can see all around the property it is zoned R-20 and then uh, the lake itself actually falls within the City’s jurisdiction, City of Hendersonville jurisdiction, and



there's a small corner, uh, of property to the southeast that I think on the maps in the packets may have been white. That actually is zoned R-40 by the County. The um, R-20 district allows Planned Unit Developments as a special use um, provided that they can meet certain specific standards as well as some general standards that apply to all special uses. Through the planned unit development, or PUD, concept developer has more flexibility in terms of the number um, excuse me not the number, in terms of the uh, siting of lots, the setbacks, the separation between buildings and that sort of thing. They are not able to exceed the density that would be allowed in the underlying district however. So in an R-20 district that is one dwelling unit per 20,000 square feet. And in this case that works out to be 26 units. 26 unit, uh, excuse me, 26 lots. And that is what the applicant has proposed, is 26 lots averaging .29 acres in size. Um, single family dwellings are proposed of two different types. They've got uh, seven cottage lots and 19 villa lots shown on the site plan. Uh, the villa lots will use a zero lot line concept. I'm sure Mr. Smith can go into that lit, in a little more detail, but uh, basically that means that uh, one side lot line or setback is zero and it pushes the building over to the property line and then 10 feet is being proposed on the other side. And then the next building would be on the lot line, 10 feet and so forth. The lots will be accessed by two, the two state maintained roads, South Lakeside Drive and Bonner Street, but the uh, developer's also proposing a new private road which runs from South Lakeside Drive to Bonner Street. The project will be served by public water through the Hendersonville system and group septic systems. And will have approximately 4.65 acres of open space. And that, those open spaces are mainly in the three areas that uh, encompass the group septic areas.

In accordance with the Henderson County Zoning Ordinance um, Luther Smith and Associates held a pre-application conference with the Planning Board back in um, August, it was August 17, 2004. And when the application of course came in on September 1, 2004 we brought it to you to refer back to the Planning Board. All this is by the process outlined in the zoning ordinance. Planning Board looked at it at it's September 21, 2004 meeting. And they reviewed the application, they reviewed staff comments which you have um, in Attachment #5 and I'll refer back to that later on in the meeting. Um, they had comments that had come in from other agencies, that's Attachment #6 in everybody's packets. And any additional information that had been presented by Mr. Smith, the developer's agent. Uh, after considering all this information the Planning Board voted 6-1 to send the Commissioners a favorable recommendation on this special use permit application subject to certain conditions being satisfied. And I reference Attachment #7 which is a draft set of the minutes from the Henderson County Planning Board meeting of September 21, 2004. Um, so that you could get uh, some idea of um, Planning Board's discussion on that matter. Because the proposed Planned Unit Development involves the division of the land into lots that will be for sale the developer had to also submit an application for subdivision review under the Henderson County Subdivision Ordinance. And I, there's an error in your packet. The application number for the subdivision should be 2004-M15. That's on page two, instead of 2005. Planning Board reviewed the subdivision application and the Planned Unit Development application at the same time and at the same meeting. Uh, and they also voted 6-1 to conditionally approve the subdivision application. And one of the conditions that's most significant is that the developer obtain special use permit approval from the Board of Commissioners. Um, you are not an approval authority for subdivisions, therefore you do not have to make, take action specifically on the subdivision application.

Um, let's see, okay on October 7<sup>th</sup>, um, 2004, Mr. Smith uh, submitted a revised master and preliminary development plan for the project to the Planning Department. This is part due to conditions imposed by the Planning Board. Uh, as a result of the subdivision application he also submitted some other materials and I've included those in Attachment #8 and for the purposes of this hearing we're gonna use those plans. It's a, re, a master plan and a development plan and there is also a boundary survey that was included with the original application materials that if we need to reference that we can. I've got large maps of all three here available..."

Chairman Hawkins – “Karen excuse me did, did you say that Attachment #8 responded to the Planning Board's uh, inquiries off of uh, Attachment #5? Or just the subdivision aspect of it?”

Karen Smith – “It, it's, it's, really to both. It, it does some of both but the terms master plan and preliminary development plan are subdivision terms. And so um, they had to show some items under the

subdivision ordinance that may or may not be required under the zoning ordinance. Um, okay, so those will be the plans we'll be looking at. Um, this is probably more for the benefit of the, the folks that are here rather than the Board, you've been through this before but. In accordance with Sections 200-56D and 200-70A(2) of the Zoning Ordinance, the Board of Commissioners has to make findings of fact regarding the compliance of the special use permit application with the Zoning Ordinance and the Board may impose conditions on the permit to assure that the proposed use will meet the Ordinance requirements. As I stated earlier, uh, there are general site standards that apply to all special uses in Section 200-56D. If a general site standard cannot be met and based on evidence provided during the hearing the Board finds that imposing a condition or conditions um, will allow general site standards to be met then the Board may impose those conditions. The applicant does not bear the burden of demonstrating that all the general site standards have been met. Section 200-70A(6) of the Zoning Ordinance requires that the Board also make findings suit, to demonstrate that the special use permit application complies with specific requirements for the use. Two, Section 200-33 is the planned unit development section of the Zoning Ordinance and it lays out all of the application requirements, procedures, and standards that do apply to um, planned unit developments specifically. And then there's another Section 200-70A(6) that requires that the Board find that provisions have been made for um, items such as ingress, egress, parking and loading, utilities, buffering, playgrounds, open space, yards, access ways and pedestrian ways as well as building and structure location size and use. A lot of those issues, as you'll see as we go through the hearing, are addressed through other means.

For the record I wanted to review uh, the public hearing notification that occurred for the hearing. Um, it has been advertised in accordance with the zoning ordinance and the Board of Commissioners Rules of Procedure for Quasi-Judicial Proceedings. Planning Department had notices of the hearing published as legal ads in the Times-News on October 23<sup>rd</sup> and October 30<sup>th</sup>, 2004. On October 22, 2004 the Planning Department sent notices that, of the hearing via certified mail to the developer and to the owners of property adjacent to and across the street from the subject property. And I learned a few minutes ago actually within a 100 foot uh, buffer. Um, I probably knew that before I didn't realize it when I wrote this.

On October 22<sup>nd</sup>, uh, 2004, we also posted notices of the hearing on the subject property and you have copies of the ads um, in Attachment #9. And uh, finally you have a, a good bit of material in your packet. Um, I tried to get it to you a little bit ahead of time so you could peruse it. Um, and I will review during my evidence um, a little bit more about the Planning Board's recommendations and, and how um, the revised application materials and such may have um, satisfied some of the requirements. Thank you."

Chairman Hawkins – "Any questions for Mrs. Smith at this point?"

Karen Smith – "Do you need any of these big maps up at this point?"

Chairman Hawkins – "Um, I, I don't right now."

Karen Smith – "Okay. Everybody has a copy but just in case."

Chairman Hawkins – "Okay."

Karen Smith – "Okay. Thank you."

Chairman Hawkins – "Okay. Um, okay we're ready for the applicant's uh, evidence. Are you gonna present that or is Mr. Smith gonna do it?"

Todd Leoni – "Mr. Smith."

Chairman Hawkins – "Okay. Luther?"

Luther Smith – "Mr. Chairman, Commissioners, my name is Luther Smith. I'm a planner and landscape architect here in, with offices in Hendersonville and our firm has been retained to work with uh, Camp

Riley Inc. uh, far as the application and the special use permit for Leoni's Mountain Lake Homes. Just to give you a little um, I guess background on the property. Most of you are probably very familiar with it. Um, some time ago it was a uh, summer camp, it was called Camp Mountain Lake for a number of years. After that closed it sat empty for a while. It was used as a YMCA summer camp and uh, over the past few years a number of, of other uses have been presented either to the Commissioners or have come up as potential uses for the property all to no avail at this point. Uh, the current applicant in looking at the property, it is zoned R-20. Um, decided to uh, attempt to develop the property for single family homes and that's why we're here tonight. Just to run briefly down through the um, elements of the project. The current zoning as Karen indicated is R-20 which does allow Planned Unit Developments. Uh, the property is approximately 12.01 acres. That allows 26 uh, single family lots under the normal zoning ordinance. We are proposing 26 lots but in a, a planned development uh, concept. The uh, density that is allowed by the ordinance is 2.16 and that's the same density we're requesting. The total area proposed in lots under the, the plan before you is 7.36 acres. That leaves 4.65 acres as open space. As you know in the Henderson County ordinance, planned unit development ordinance, roads are included in that open space, so roughly a half acre of that 4.65 acres is an actual road uh, through the property. So you have about uh, 4.1 acres that's, that's actually undeveloped property. In uh, comparison with uh, the original development around Lake Osceola we have, this plan has lots that range from .16 acres up to a half acre. Uh, the average lot on the original platting around Lake Osceola is approximately .16 acres. So they sound like small lots and I, I realize a number of homes have perhaps two, two or more of those lots around the lake, but from a standpoint of, of what is allowed in the zoning district and what is consistent with the neighborhood it very much matches that.

The street running through the property will be private. It's approximately 1,200 feet in length. It runs from South Lakeside Drive, this side to uh, Bonner Street. You'll note on the plan as you get to Bonner Street uh, maybe a difficult on the reduced plan you have, but the State has attempted uh, apparently to secure walk, right-of-way along Bonner Street to upgrade it. It's currently, most of it is a dirt road. Uh, at this point they have not had success but in the planning of this project we have gone ahead and, and set aside the right-of-way for that if the State does come back and attempt to upgrade that road. From the lots that uh, face on Bonner Street.

Uh, excuse me. Water will be by the City of Hendersonville. There is water on Lakeside Drive. That will be uh, extended into the project uh, including the fire hydrants both at the, to meet the requirements of the City and the recommendations of the uh, fire department. Uh, sewer, the uh, of course on a project of this sort we would prefer to have a municipal sewer of some sort unfortunately the nearest gravity sewer is about 7,000 feet away on the north side of uh, Erkwood Road at Clear Creek which makes it economically a little impractical um, to get the sewer. Therefore we have looked at an alternative uh, group septic fields for the development. And I'll get into those in a little more detail later.

At this point in time we currently have the following approvals in place. From NCDOT we have driveway permits for both, both of the two entrances on the property, or on the proposed road. From the City of Hendersonville we have preliminary water plans approved. Uh, NCDENR we have the erosion control approval and from Henderson County preliminary subdivision approval. Now, now the purpose for going to the PUD concept was simply that in years past as the property was uh, used a substantial portion of the ground was disturbed to the point that when we had the property evaluated by a uh, soil scientist to determine the feasibility of development of the property we found that significant portions were not suitable for septic fields. So if we proceeded with a normal or traditional subdivision we would find that a number of the lots would not be um, able to have a septic field. However we did find portions of the property uh, that at this time soil scientist feels are more than adequate to provide us with the area needed for group septic systems that were suitable. And those are the areas in d, in developing or designing the plan that we have left as open space areas. Uh now, group septic fields are exactly like the septic field at your house. It's just that you're collecting uh, maybe two or three homes at a time and puttin' 'em on one field instead of individual fields that would be in your back yard. That is uh, given the size of this the permitting process for that goes through the Environmental uh, Health, I guess it's Environmental Health Section at the State level as opposed to the, the County level because of the size of the system.

Excuse me, uh, we do have two types of uh, homes uh, proposed in the project. All of the homes are single family homes but we have what we're terming cottages and villas. The cottage lots are the lots that faces directly onto either Bonner Drive or will access Bonner Drive or directly access Sac, South Lakeside Drive or Lakeshore Drive. Whatever that is. Um, the purpose for that was to try and keep those parts of the community that face the, face the street similar in character with the other development, excuse me, that exists around Lake Osceola. So these will be single family homes on a traditional lot, setbacks on each side uh, and the front and rear, and they really won't be any different from the other homes you see in the neighborhood. The villas lots we have put in the center of the property internally. As Karen indicated these are proposed as, as zero lot line lots. Uh, they're actually a, a narrower but longer lot so you have more of a shotgun style house uh, where the house is set on one lot line and the majority of the property then is to the, to the other side before you get to the next house. Uh, this is an effective way of, of utilizing um, the land on property, that we felt was the most effective way of utilizing the land on the property.

Uh, traffic is always an issue when you start talking about new development in an area. Uh, any kind of development whether it's one house or 20 homes is gonna add, add to traffic. Uh we feel that we, since the development that is being proposed is not multi-family, it's not apartments where you may end up with, you know, a number of different people kinda a same apartment, that the traffic um, that will be added to the neighborhood is equal to any kind of single family residential development that occurs there.

Uh, other than that I'll be happy to ans, answer any question uh, that you may have uh, about the, the project in general, the layout of it, or any of the uh, other parties have."

Chairman Hawkins – "Luther I, I just wanted to ask you a couple questions. Uh, you mention that the City of Hendersonville is uh, is gonna take care of the fire hydrant. Is that the one that was recommended by the Valley Hill Fire Chief?"

Luther Smith – "No, the City has recommended we have one all the way up in the development as well. Fire, Fire Chief wants one down at the front so to my understanding John Jeeter has included both of those on the plans that were submitted. Because the City, City has uh, certain rules that they want 'em a certain distance but the Fire Chief was concerned at one near the entrance. So there is one just down Lakeside Drive but I think he also wanted to have one right at the entrance."

Chairman Hawkins – "So, so your plans actually anticipate two fire hydrants versus one?"

Luther Smith – "That, that's my understanding. The plans that were submitted."

Chairman Hawkins – "On the uh, on the uh septic, uh, I, I'm lookin' over the uh notes from the Environmental Health uh, uh, and, uh, the first one, it talks about pits will be required. Is that just a sep, is he talking about a septic tank or what, what is the pits?"

Luther Smith – "I'm not sure. Um, well the process is each home will have it's own septic tank. Alright, and what, what the septic fields will be handling is again just like the septic field at your house. Will just be taking the effluent from the tank to the septic field. In the evaluation process the soil scientist is digging large pits cause he has to categorize the soils to determine the, the you know, the capability of, of can it take the effluent and so forth and I, I assume, I read that, I'm sorry but I don't remember what all they had on there."

Chairman Hawkins – "I wasn't sure what pits were unless it was a, a septic tank on, on each lot but that being the case the septic tank on the lots not, I mean it's just a holding area for septic it's not uh, treating any septic."

Luther Smith – "No, no more so than your, your house is. I mean your septic tank takes out the primary solids and so forth, about 98% or whatever. And then the, the effluent goes out of your septic tank at your house into a drain field. We have exactly the same system it's just that instead of the drain field being

right in the back yard the drain field is gonna be up the street and there'll be several drain fields together. Where's?"

Chairman Hawkins – “The very, very first item.”

Luther Smith – “I'm not sure what pits will be required.”

Chairman Hawkins – “Okay, I don't feel so bad not knowing what it is then.”

Luther Smith – “I'm sorry.”

Chairman Hawkins – “Um, let me ask you another question. I, I would assume. ”

Luther Smith – “Unless they're talking about the evaluation of the soil that's uh.”

Chairman Hawkins – “I, I would assume that that uh, is either uh, is some type soil evaluation or the, he was talking about the septic tank. Um, as you mentioned the uh, now the application instead of the local Health Department approving it I guess has to go to DENR for approval”

Luther Smith – “Yes sir it goes”

Chairman Hawkins – “of this system?”

Luther Smith – “to Black Mountain Environmental Health Section or something like that.”

Chairman Hawkins – “Um, he indicated in uh, again in his comments that that permitting process could require as much as a year or more of time and I, I looked at that and I looked back at your road permitting and uh, it said that uh, that you had to finish your uh, your road within uh, the policy uh, uh, laid out by DOT. I wondered how those two compared as far as time frame. Do you know? I guess what I'm thinking is that while you're waiting for your uh, DENR permit your permit'll expire.”

Luther Smith – “Well, I, the, the comment that, that was in that from the Health Department kinda surprised me when they said it'll take up to a year. We've done a number of these in developments throughout the western part of the state and um, I really can't think of one that's taken more than about three to four months to get through their process. So I'm, I'm, you know I'm not uh...”

Chairman Hawkins – “He said there were a few.”

Luther Smith – “...in at that point.”

Chairman Hawkins – “He said there were a few examples in Henderson County. Have you done some outside Henderson County?”

Luther Smith – “Uh, we've done 'em outside, there's also in Henderson County all the cottages and condominiums in Kenmure down at the bottom are all on group septic systems.”

Chairman Hawkins – “Group septic.”

Luther Smith – “Uh, that's probably the, the largest example here in Henderson County. We've also done 'em, you know, in Lake Toxaway area. Anywhere where you have a, a tighter development uh, it's easier to group the septic systems in the common septic systems than it is to, to try and get one for each, each unit.”

Chairman Hawkins – “Will you require uh, pumps, uh, to, to move that uh down.”

Luther Smith – “There may, some of ‘em, some of the units may require pumping systems. And that’s, that’s something again that the uh, between the engineer and the soil scientist they’ll be working out. Uh, we tried to, uh, do the general design of the lots so that we took gravity to those fields as much as possible but I think uh, some of the cottage lots down along uh, South Lakeshore Drive will have to be pumped back up to a point where they can then gravity down into the field system.”

Chairman Hawkins – “Do you know if that’ll be included in their DENR permitting? Do they address that?”

Luther Smith – “Yeah all, all of that...”

Chairman Hawkins – “Backup whatever.”

Luther Smith – “...my understanding all that is part of their, their whole process. Now they don’t require the same, you said backup, they don’t necessarily require the same backup generators and so forth on small uh, where there’s actually sump pump type systems that they do on a large lift station. Uh, but it is, that, that whole design is part of the package that goes to them for approval.”

Chairman Hawkins – “Do you uh, do you have the same repair area like you do on your house?”

Luther Smith – “That’s correct.”

Chairman Hawkins – “And is that amount of acreage enough to have the standard repair area a l, a system that size or?”

Luther Smith – “Yeah ba, based on the preliminary studies that the soil scientist has made, he’s not completed all of his finals though. He indicated the area we have available is more than enough for the regular system plus the repair area.”

Chairman Hawkins – “Okay. Any Board members have any questions for Mr. Smith? Any of the parties have a question for Mr. Smith on the information he’s presented? You’ll, you’ll have a chance in a minute to present your evidence but if you have a question on just what he’s presented then do you want to ask him? Yes mam would you come up and take the mic and uh.”

Judith Sloan - “I have, I have several questions um, about the septic system.”

Chairman Hawkins – “Okay.”

Judith Sloan – “Um.”

Chairman Hawkins – “I’m sorry, just a minute mam.”

Amy Brantley – “Could you identify yourself?”

Judith Sloan – “Oh, my name’s Judith Sloan, 422 Bonner Street. I have several questions about the septic system just cause we hate to have a septic problem in our neighborhood. Um, if there’s what, 26 homes there, then that would be about what eight houses per each, um, group septic system? Is that right? You have three group septic systems marked out on the plat so.”

Luther Smith – “We have three areas of soil that are suitable to put the septic systems in. That doesn’t necessarily mean that they will be broken up in groups of eight nor that a group system, you know an individual system is maybe more economical to do it large enough just for three homes. So we have one here for three homes, one here for three homes they’re not.”

Judith Sloan – “Well okay if you just have them for three homes and you have three of them marked on the plat and you have 26 homes I’m just trying to see who’s responsible for these things. Who, what homes are draining into it, how many, I’m not really um, knowledgeable about these things.”

Luther Smith – “Well yeah I, I cannot, since I’m not designing the system, our engineer and the soil scientist is, I cannot tell you how many homes will be in any given field area. In terms of responsibility it becomes the responsibility, the road, all of the common property and the common septic field areas become the responsibility of the homeowners association to maintain and you know take care of. The individual homeowner will be responsible for his septic tank.”

Judith Sloan – “Okay now in the um, that brings me to, this is a question I have about the maintenance of this cause if, if these things are built and left to a homeowners association it’s different than say Kenmure which is a country club and has administration. So, a homeowners association is just among the home owners, there’s no administration to oversee this. The only thing I see in this is that the home owners would be required to pay \$50.00 a month to um, the homeowners association and I’m just wondering if these things have pumps and um, something goes wrong and it costs tens of thousands of dollars to fix them, who is going to make sure the homeowners association fixes them. I mean where’s the liability on this. Who’s just gonna take care of this? I’m just concerned that um, who, who will take care of it in the event that they break down? Can you see where I’m that?”

Luther Smith – “Yeah, I, I understand what you’re saying. The homeowners association, you know, all of the people who live in the development are members of it. It does have a Board of Directors, they are responsible for managing the property, keeping the grass mowed, taking care of the road, those sort of things. Whatever assessments, as a collective group they agree to annually is up to them. They know what the maintenance cost is gonna be. And yet, in the initial document it may say they’re gonna do \$50.00 a month.”

Judith Sloan – “Right.”

Luther Smith – “Because in the document you have to set a minimum of what your, what the fee is gonna be when somebody moves in so you can’t, excuse me, so you can’t surprise them with oh, you know, your fee’s gonna be \$200.00. Beyond that \$50.00 a month the decision to increase that fee is the responsibility of the homeowners in the operation of the homeowners association.”

Judith Sloan – “I, I, I uh, I understand what you’re saying. But what I’m saying is if you have three things and they’re gonna have pumps and you’re gonna create this and then go away and leave it to these people to fix if it goes wrong what guarantee is it that they can actually um, afford to fix it?”

Luther Smith – “Uh, I don’t know. That’s a question I can’t really, I can’t really answer. Uh.”

Chairman Hawkins – “Lu, Luther are there gonna be uh, bylaws for the homeowners?”

Luther Smith – “Yes, yes and the documents”

Chairman Hawkins – “Would that.”

Luther Smith – “have been turned into the County. So there are bylaws for the Association that set it up. Uh, many homeowners associations, as you are probably well aware, contract with groups like IPM and some of the other management groups to operate all of that and so forth. It would be solely at the discretion of these homeowners exactly how would really handle that. Uh, but in terms of road maintenance, maintenance of any of the common properties and the septic, uh, restrictive covenants set out that it is the responsibility of the homeowners through the association to maintain it and bear the cost.”

Judith Sloan – “Is, is there a way to make that lan.”

Chairman Hawkins – “Well I, I think maybe what you’re looking for.”

Judith Sloan – “Do you see what, do you understand what I’m.”

Chairman Hawkins – “Cause I looked for it also. I didn’t see any of the bylaws in our packet. We had a declaration of restrictions or the covenants and I, I don’t know that the, the bylaws, at least was in what I got. I don’t know if anybody else got.”

Luther Smith – “You might wanna address that with the landowner.”

Chairman Hawkins – “Okay.”

Judith Sloan – “Yeah, I mean I, that just, you know, it’s a concern that I have given that it’s a unique kind of septic system.”

Chairman Hawkins – “Mr. Leoni you wanna address the uh, uh.”

Todd Leoni – “Yes sir. “

Chairman Hawkins – “That responsibility.”

Todd Leoni – “Um, the bylaws are in there. They’re, it’s actually the long paper and it’s a few pages. Um, they should be in your packet are they not?”

Chairman Hawkins – “Well.”

Todd Leoni – “It’s the 8 ½ by 14, the one that’s hanging out.”

Chairman Hawkins – “That says Declaration Restrictions.”

Todd Leoni – “Right.”

Chairman Hawkins – “Is that the home owners bylaws?”

Todd Leoni – “Yes sir.”

Chairman Hawkins – “It doesn’t deal with how to elect the President. It, of course it.”

Todd Leoni – “No, I.”

Chairman Hawkins – “Has to be recorded in Register of Deeds but mostly your, your covenants and your restrictions not...”

Todd Leoni – “Right these are my, well that’s, these are my covenants and restrictions yes. The, the bylaws, I mean I haven’t created anything yet because I’m waiting on your approval. Um, you know, and I am certainly going to um.”

Chairman Hawkins – “So you don’t have any homeowners bylaws at this point. Just the.”

Todd Leoni – “No not, not yet.”

Chairman Hawkins – “Basically the restrictive covenants that you’ve presented here.”

Todd Leoni – “Right I, that’s right.”



Chairman Hawkins – “Any, any other questions for this witness? Yes sir. Did you have a question?”

Bill Harper – “Yeah.”

Chairman Hawkins – “Would you take the mic and identify yourself and, and give us your question and Mr. Smith will.”

Bill Harper – “I’m Bill Harper, Bill Harper Jr. Live on Osceola Lake. My question on this sewer system, is this what’s known as a low pressure system?”

Luther Smith – “No sir. It is no different than the septic system that you have, I assume you have at your house, which comes out of the house, it goes into a two chambered septic tank. Solids come out of it but flu, effluent goes to a distribution box and puts it in a regular line...”

Bill Harper – “Tell you what I’m, what I’m.”

Luther Smith – “...same system.

Bill Harper – “What I’m really concerned about, and most everybody else in here is, you got any kind of a, of a sewer system that’s based on electric pumps, like a low pressure system is. It just pumps out and evaporates, it’s on top of the ground. We’re, we’re afraid all of this, everything that comes out of this if it drains off or sewer system doesn’t work it’s gonna end up in that lake. And the lake is, is in a fragile state now because of uh, Champion Hills. All that fill is comin’ a top and, and the lake’s, lake has really got a problem. And that’s our big concern, and I think most people in here too is that we’d like to have some kind of guarantee that none of that sewerage is gonna get in the lake. Now that’s our number one problem, that’s my big concern.”

Chairman Hawkins – “Okay. That’ll, that’ll be part of your evidence to present. Uh, any other questions for Mr. Smith? Karen you had some for him?”

Karen Smith – “I did, these were just for um, some clarification. I don’t know if you wanna come up Luther.”

Chairman Hawkins – “Is this, goes back to the uh, Attachment #8 that we spoke of. Is that where you’re going?”

Karen Smith – “No, no. These are other um, things that.”

Chairman Hawkins – “Okay.”

Karen Smith – “Um. We didn’t talk about at the Planning Board level. Um, does the developer, or maybe for Mr. Leoni. Is the developer planning um, a sales office as part of the development?”

Todd Leoni – “Yes. Yes.”

Karen Smith – “In one of the homes?”

Todd Leoni – “Um, well not right away. Maybe a uh, maybe more of a trailer uh, right away until we build the first home. And I, and, you know, we’re not gonna build the home until we actually sell a lot. So, but I will have a sales office there.”

Karen Smith – “I’ll address that during my evidence but okay. How about um, a model home, multiple model homes?”

Todd Leoni – “No.”

Karen Smith – “No models. Um, and did you say your sales office would be the same as a construction office or?”

Todd Leoni – “Yes.”

Karen Smith – “Okay. Thank you.”

Chairman Hawkins – “Okay. Yes mam, you have a question for Mr. Smith? If you’d come up and take the mic and state your name and ask Mr. Smith a question.”

Georgina Holmes – “My name is Georgina Holmes, and my question is, this always used to be a floodplain and I’m wondering if it’s um, uh, that’s been rectified now. It’s, it’s not a flood plain anymore.”

Chairman Hawkins – “I.”

Georgina Holmes – “Because there’s, there’s no flood insurance I understand in, in the c, in the City, in the County of, of Henderson. So uh, I..”

Chairman Hawkins – “Your question is, is this in the floodplain?”

Georgina Holmes – “Is this in the floodplain.”

Chairman Hawkins – “Luther do you know the answer to that?”

Luther Smith – “Based on the, the floodplain map which uh, we use throughout the County it is not indicated to be within a 100 year floodplain. The lake is, and essentially up to the road for the most part of the right-of-way. The property outside, on the outside is not in the floodplain.”

Chairman Hawkins – “Is the 100 year floodplain in the blue on your map.”

Luther Smith – “It’s the dark blue.”

Chairman Hawkins – “So, it uh, none of that’s uh, according to the most current maps we have which is two decades old which is another problem but we won’t get into that tonight.”

Georgina Holmes – “Okay.”

Chairman Hawkins – “Any other questions?”

Georgina Holmes – “No, that’s all.”

Judith Sloan – “...about the open land.”

Chairman Hawkins – “Okay if you would come up to the mic and identify yourself. And do that just so we can catch it on the tape because we transcribe the record.”

Judith Sloan – “Okay uh, is this not just about the septic system but I could talk um.”

Chairman Hawkins – “You.”

Judith Sloan – “Okay I, I have a question about the open land part of this development. Um, because I know you have um, like, a sample uh, rules for a covenant for the open land. Um, but I also see that it, it, can be renewed every so often and that it seems to me it’s not quite foolproof that the um, people who live there when the covenant comes due to be renewed could say well we don’t want this for open land we

would rather build something on this. So what I would, am asking you about this and what would actually request um, because you know, it looks like a nice little development the way it is. Um, but if then you have these houses kind of um, condensed together and then the, the, the people who live there wanna build something else on there at some point later um, is there any way to assure that nothing will be built like maybe an easement through the land conservancy or something and not just a covenant that is renewable every 20 years or every five years the way you have it down in there. Um, kind of concerned about, that the open land stay open land. The way you say they will be.”

Chairman Hawkins – “Luther you wanna address that.”

Luther Smith – “That may be a question that is better for Karen to answer but since this is a zoning permit uh, this permit goes with the land so the people who live there inherit this thing. For them to decide oh we wanna get, get City sewer so we don’t need to use these, these open areas.”

Judith Sloan – “Right, exactly.”

Luther Smith – “We wanna build more houses they then have to come back to the County and ask for this permit to be amended to add more homes to that area. In other words this permit will lock it to 26 homes until the County gives you a different permit which allows somebody to build more homes.”

Judith Sloan – “Okay well, just personally if this is the plan for the property um, which, you know, there are some issues with it that I have but the basic plan looks nice to me. I would like to see some kind of um, initiative on the part of the owner or the whoever to, to make this a permanent plan then. To, to make a conservation easement on the open spaces so that we don’t have to deal with that in the future.”

Chairman Hawkins – “Any other questions for Mr. Smith. Yes mam if you’d come up and state your name.”

Dianne Green – “I’m Dianne Green, I live at uh, 409 Bonner. And so that makes me in a low lying area. Which I have fought for uh, 36 years, but that’s my problem. But the water that comes off, rain water, that comes off Kanuga, Chestnut, everybody on Chestnut comes down hill, across Bonner Street. But the biggest problem with my property is that if anybody wants to come out with their canoe when there’s a real good storm, my yard looks like Osceola Lake. And my yard adjoins the ball field which is gonna be eventually a septic pump out, or whatever station. My question is, if they don’t consider this a flood plain I don’t know what would. Because it is very, very flooded during a storm. So if this system is there right in my back yard, which it will be by the map, um, how do they design these systems to where they don’t flood because it’s gonna definitely be under water.”

Chairman Hawkins – “You talking about the repair, or the uh, septic field is, you think’s under water a lot of the time but I think Luther said it wasn’t in the 100 year flood plain so I don’t know if I understand your question.”

Dianne Green – “Well, I guess what I’m concerned about is that as much water as I get when there’s a lot of rain, say two or three days of rain you know, and my yard is full of water, my back yard cause it’s a low lying area. And it drains into the camp where they’re going to, going to put one of their pump up stations or whatever it’s called. And so my question is, is there a guarantee that this can’t be, you know, all this water go in this pump station or whatever cause I don’t I don’t know anything about pump stations but I’m concerned for my part that is, if there’s any kind of back flow, I don’t want it in my yard. I don’t need it.”

Chairman Hawkins – “I understand that. I, I don’t know Luther can you answer that better. I, I don’t know the answer to that.”

Luther Smith – “I’m not sure. I understand, if I understand you correctly it’s just during rains you have water trans, water running across your property.”

Dianne Green – “Exactly it’s routed from Kanuga.”

Luther Smith – “Right. And, and I guess my question would be you know, has it impacted your septic field. If it is”

Dianne Green – “Yes.”

Luther Smith – “then yes there’s a possibility of it impacting fields downstream.”

Dianne Green – “Most definitely.”

Luther Smith – “Uh, and that’s something that uh, you know, when they design the system that we’ll just have to make ‘em aware of.”

Dianne Green – “Exactly.”

Luther Smith – “Um, that, that there is a possibility.”

Dianne Green – “Yes. And I guess another question I may not be able to get it done or whatever but, since there is this problem and it would effect their septic system could they, you know, in the future before they get anything started whatever, put in some huge culvert pipe to d, to route it. See it’s just like Mr. Harper said, all this is gonna do is route it down to the people, you know, on Lakeside Drive. So, you know, and eventually into Osceola Lake. It doesn’t have anywhere else to go.”

Luther Smith – “There’s a little creek that runs down through there.”

Dianne Green – “Yes, yes. So that’s.”

Chairman Hawkins – “Well maybe we’ll get into that a little more. There, there’s part of the covenants over here that deals with storm water runoff I believe and uh, I think the State requires a um, some kind of plan for uh, sedimentation and erosion control and so that, that may be addressed in it. I don’t know I, I, we’ve not got to that point yet.”

Dianne Green – “Okay. Thank you.”

Chairman Hawkins – “Any other questions for Mr. Smith?”

June Reese – “May I say something about just what Dianne said?”

Chairman Hawkins – “Well, if you wanna do that in, when you’re giving evidence. Right now we’re just taking questions to Mr. Smith. You’ll have an opportunity to give whatever evidence you want since you’re a party in just a few minutes.”

June Reese – “Okay.”

Chairman Hawkins – “Okay. Okay, let’s see. We’ve got the applicants evidence and anybody had anymore question on the evidence that uh, Mr. Smith or Mr. Leoni presented? Okay then we’ll move on to staff evidence and uh, Karen if you wanna give yours and then we’ll start with the parties evidence.”

Karen Smith – “It’s not as big as my normal packet.”

Chairman Hawkins – “Press go down?”

Karen Smith – “Anthony’s handing out the same item to the um, parties.”

Chairman Hawkins – “We’ll, we’ll take just a minute to read this Karen. I’m going to uh.”

Karen Smith – “Okay. Let me know”

Chairman Hawkins – “I’ll be right back.”

Chairman Hawkins – “Okay Karen. Everybody had a chance to get through those?”

Commissioner Moyer – “One more second.”

Karen Smith – “Alright. Okay.”

Chairman Hawkins – “Ready Bill? Okay.”

Karen Smith – “Um, before I go any further I mentioned earlier in the meeting that I wanted to enter the large packet into evidence um, as part of my evidence uh, for the record. Also, the two uh, sheets of photos, or I think it’s a double sided sheet is what you have. Um, there’s here if we need them for anybody’s reference uh, if the Board has any questions about those and that sort of thing. I guess I also need to enter the floodplain map that we put up on the um, document camera a little while ago. Um, and then now, this memo that I presented to you. As I mentioned earlier the Planning Board has uh, discussed and made recommendations on this special use permit application. And basically what the Planning Board did was review the staff memo. They received some information from the reviewing agencies, they heard from Mr. Smith, they discussed what they heard and they decided in looking at the zoning requirements for the special use permit uh, to approve, 6-1 vote, the, or, recommend approval of the special use permit application subject to certain conditions. Those conditions actually were the comments that are contained in the staff memo that’s in your big packet and it’s Attachment #5. And rather than reproduce all of that to attach to this packet that I just handed out I wanted to uh, review some of those with you so know which ones are still um, outstanding conditions, some that have satisfied due to the submittal of additional information, and some that appear to be satisfied to me based on the Planning Board’s discussion and the draft minutes that you have uh, from their meeting on September 21<sup>st</sup>.

The um, okay, I’ll go over first the ones that appear to have been satisfied and if you want to follow along in Attachment #5 uh, basically I’m starting on page 5 in Attachment #5. Everybody finds the, half way down are the staff comments based on the review under the Zoning Ordinance. And as of or since September 21<sup>st</sup> 2004 the following comments, which the Planning Board recommended as conditions have been satisfied. The Comment #1, which has to do with the ownership of the property they did establish that at the time the Planning Board review, actually prior to. Comment #2 which has to do with the density requirements, uh, they did satisfy the, the PUD standards and Zoning Ordinance requirements for that. Uh, Comment #3 the height limitations which for a PUD is 35 feet for structures that is indicated on their plans. Comment #7 off street parking um, required two parking spaces per dwelling unit. Uh, wasn’t specifically indicated on their earlier plans but the plan that we’re reviewing tonight shows, uh, the development plan shows there will be two spaces including the garage space. Uh, Comment #10 which has to do with dwelling unit access, the applicant did clarify for the Planning Board that um, certain lots did have access to uh, Bonner Street. Comment #14 uh, having to do with recreation areas uh, at the Planning Board meeting the applicant had indicated that um, they were probably just going to be open areas and on the revised plan they did not add any um, recreational structures. Um, and I noted in the, or, excuse me, uh, Mr. Cook who actually wrote the memo, a former uh, Planning Staff member had indicated that um, staff felt that the developer had satisfied all the general conditions or general standards in Section 200-56 of the Zoning Ordinance.

In addition to the ones that have been satisfied, uh, the Planning Board also made some recommendations as to um, some standards that the project should be allowed to be constructed under. The Planned Unit Development section of the ordinance allows some of these things with specific approval. And in this case um, the Planning Board recommended that they be allowed to construct the project according to the conditions found in Comment #4, required distance between buildings. Um, the Zoning Ordinance, uh,

Planned Unit Development section permits uh, minimum separation between single family detached dwellings to be reduced below the minimum specified in another section provided the buildings are not closer than ten feet and that the um, construction of adjacent walls conforms with North Carolina building codes and that the area between buildings remains open. And so the, the Planning Board um, recommended approval based on the applicant meeting that standard. Um, allowing them to go down to the ten feet on the villa lots and 15 feet on the cottages. Uh, they also agreed to uh, recommend, uh, the standards for setbacks and side to side separations that have been proposed by the applicant. And if you look on, see, that's in comments, actually it's after Comment #14 on page 8 of the Staff memo. Uh, as I mentioned earlier Planned Unit Development concept gives you flexibility as to the standards for setbacks and, and lot sizes and such. And the developer has proposed um, front yard setbacks of 44 feet 6 inches from the center lines of rights-of-way for all the lots. Uh, rear setbacks of 10 feet for the villa lots and 15 feet for the cottage lots. And side setbacks of 10 feet and zero feet for the villa lots due to that zero lot line concept. And side setbacks of 7 feet 6 inches on the cottage lots. And the Planning Board uh, was um, in favor of recommending that the developer be able use those setbacks as proposed. In addition the uh, applicant had proposed the minimum side to side separation between structures be 10 feet for the villa lots and 15 feet for the cottage lots. And again the Planning Board uh, has recommended this provided that the um, construction of adjacent walls conform with the North Carolina Building code and the area between buildings remain open and unobstructed.

The um, remaining comments or conditions recommended by the Planning Board that would still need to be addressed in whole or in part, in order for the developer to begin construction um, that I see are Comment #5 dealing with the water plans. Um, Mr. Smith indicated earlier that they had preliminary water plan approval. That uh, comment or condition requires that the applicant submit plans and other documentations to ensure that the water system has been designed by a professional engineer and that such system has been approved by appropriate local and state agencies. Uh Comment #6."

Chairman Hawkins – "Excuse me Karen."

Karen Smith – "I'm sorry."

Chairman Hawkins – "Do you know, is there a State agency has to approve the, the water plan or is that just the local."

Karen Smith – "In this case I don't believe so I think it's purely City."

Luther Smith – "No it."

Karen Smith – "It, it does have to go to the State?"

Luther Smith – "Every extension of the City system goes to the City first"

Karen Smith – "That's right."

Luther Smith – "and they have to forward it to the State to get approval for expanding their system then it comes back."

Chairman Hawkins – "Okay."

Luther Smith – "We have City, City approval, it's gone to the State."

Chairman Hawkins – "Okay, thank you."

Karen Smith – "Thank you. Uh, Comment #6 regarding the sewer plans uh, that's still outstanding. Uh, the applicant has to submit plans and documentation similar to that for water um, that they've been

designed by a professional engineer and that they, the systems have been approved by the appropriate uh, agencies. In this case it would be the State.

Uh, Comment, let's see #8 down with erosion control. Again, Mr. Smith, this was outstanding, Mr. Smith has indicated that the applicant has such approval. They would just need to submit documentation of that prior to beginning construction.

Comment #9 dealing with emergency services uh, the Ordinance actually requires the applicant to send letters out to the Fire Chief, the EMS Director, and such um, notifying them and asking for comments. Um, the Planning Department received a response to our request for comments for the Fire Chief but as of yet I, I don't believe that the applicant has received anything in writing from either the um, EMS uh, Director or the Fire Chief. Okay, he's, he's saying no."

Chairman Hawkins – "Well is that a matter of that agency corresponding with..."

Karen Smith – "With him and then him submitting that to us."

Chairman Hawkins – "Okay."

Karen Smith – "Okay? Uh Comment #11, perimeter treatment um, I have this as a comment or, or, Mr. Cook did in the Planning Board's review. Um, however I don't remember that it was specifically addressed at the Planning Board meeting so I think that is just something that the applicant should address. Um, if Commissioners are satisfied with their response there may not need to be a condition. If, if uh, not the um, Board may wanna consider a condition.

Uh, Comment #12, the conveyance of open space and Comment #13 maintenance, um, we've already had some discussion about those. Um, you have to receive the legal documents that will produce the guarantees on the open space and um, the insurance setting forth the care and maintenance of the open spaces, recreation areas, rights-of-way, community facilities and on maintenance it requires that the County Attorney or Assistant County Attorney approve the Declaration of Covenants and Restrictions and the bylaws as to form and that the Commissioners approve the same as to the suit, suitability for the proposed uses. And Mr. Burrell may address that a little bit later but um, based on a prior Planned Unit Development application I believe you actually dep, delegated that to your County Attorney. Um, but that'll be your decision, a different Board.

Um, in addition to those comments now that I've reviewed, those that are completed um, some of the standards and some that are still outstanding. Um, I wanted to proposed that we, just to tie everything back together, that the Board of Commissioners also make the special use permit approval subject to the applicant satisfying all of the requirements of the Subdivision Ordinance and the conditions that the Planning Board imposed on that. And then uh, in addition to this memo based on response to the question I asked Mr. Leoni, I would also ask that the Board have the applicant indicate on the plan where the sales and construction office would be located and under what conditions it would be placed and removed. Um, typically the Board of Adjustment grants temporary uses for things such as this but the Board of Commissioners has allowed it a part of a special use permit process if it's specifically designated and time frames are spelled out and that sort of thing. And I have a um, if the Board wants to consider it um, later a condition that you used in prior special use permit with regard to that. And that is all I have."

Chairman Hawkins – "Okay. Uh, any, anybody have any questions to the Staff's evidence? Yes mam if you'd come up and state your name and uh, Mrs. Smith'll try to answer any question you have."

Marsha Hammel – "Marsha Hammel, 1901 Kanuga Road. Uh, also Bonner Street. Um, my question for you is regarding ingress and egress. Um, currently proposed is uh, an entrance to the private road going through the development on Bonner Street down to Lakeside Drive and that is essentially uh, the two entrances to the property. Um, has anyone considered uh, opening Wright Street which as you can see is on the other side of the property um, to be opened uh, probably 150 to 200 feet to create a third ingress

egress um, into the property to relieve what is going to be a lot of new traffic on little ol' Bonner Street in particular. Um, Bonner Street is a narrow gravel lane. Uh, it's not designed to carry big traffic uh, and of course we're projecting not just a couple years of construction here but because we have individual people coming in and buying individual lots this could be ongoing home construction for many years to come. Um, to say nothing of the initial construction project, which I certainly do not envy Mr. Leoni of prepping all of this property uh, the way that you all are intending. So there's gonna be some huge big tractors, bulldozers, trucks, um, a lot of heavy duty traffic coming down a narrow gravel lane that doesn't even allow for two cars to pass each other as it stands now. So um, I'm just wondering why no one else has thought of opening Wright Street to create, if not a permanent ingress egress to this development, but even as a construction entrance uh, while this heavy work is being done down there. Um and of course perhaps uh, the decision doesn't have to be made immediately whether to make it permanent or not. Uh, and it's also been pointed out to me that, that Wright Street although it is platted out on paper it doesn't really exist and it would be a decision for the State, the County and other powers that be. Um, but I just wonder if now would not be a good time to at least bring this idea into the paper work as a possibility."

Chairman Hawkins – "You wanna try to answer that?"

Karen Smith – "Well I, I don't have any control over the design of the project as far as what, road it was considered or not. Um, and I really don't have any information about Wright Street. So the Planning De, the Planning Department and the Planning Board did not address Wright Street at all. I don't know if the developer has considered it or not."

Marsha Hammel – "Well what would be the proper channels to address this idea through."

Karen Smith – "I don't know a whole lot about paper streets I'd probably have to defer..."

Chairman Hawkins – "I, I don't either. I suspect it sounds like that the question is more appropriate to ask the developer than uh, than Staff. Uh, and uh, I don't know Mr. Leoni do you wanna address that?"

Todd Leoni – "Yeah I, I'll address that. Um, I, I told Marsha uh, when she had approached me with this last night. And it, do which is Wright Street? It's the, I think it's the south east part, yeah, that's where it is. Uh, that's been a closed off street for, forever and um, you know, in order to do something like that even on Bonner Street we've been trying to have that thing paved for years. You, you have to get people's approval on both sides of it and I don't own the property all the way to Kanuga Road. She's talking about getting, you know, it's, it's, it's a whole to do especially with the, with the DOT to come in and pave it, you know, it's, it's not my land. I'm not actually allowed to do it. And um, also you know, it, it, you know, it, I think it would have to go also through that other development Devonwood or close to it which is adjacent to my property and all kinds of approvals would have to take place, and."

Chairman Hawkins – "Thank you, do you, does anybody have any other questions for Mrs. Smith. Yes mam."

Brenda Coates - "It's not a question but it's a comment on what, on what Mr. Leoni and what she ques, she raised a question about. Uh, Wright Street. Brenda Coates by the way, 1501 South Lakeside Drive. Um, Wright Street has never been open, that's been previously mentioned. And in fact as, as what you see happen in the County every so often when you have closed streets in subdivisions, I believe you'll find that there are houses built on those rights-of-ways."

Chairman Hawkins – "Wouldn't surprise me. Any, any other questions for Staff's evidence. Okay. Okay let me ask now for um, any of the parties evidence. Each of you that's been uh, recognized by the Board as a party at this time can come up and present whatever evidence you want. Uh, because you're party you don't have to come up and present evidence if, if four people ahead of you said the same thing you was gonna say you don't have to come up but you're welcome to if you want to. So uh at this time uh, any of the parties that's been recognized uh, uh, can take the mic and present your evidence uh, for the Board."



Dianne Green – “We’ve made, excuse me, Dianne Green, 409 Bonner. We’ve made uh, extra pictures of Bonner if anybody would like ‘em.”

Chairman Hawkins – “Are these these pictures that we have here?”

Dianne Green – “No sir.”

Chairman Hawkins – “Okay.”

Dianne Green – “These are just personal picture we made of the street just so you’d get an idea of what it looks like.”

Chairman Hawkins – “Do you have enough for everybody in the proceedings...”

Dianne Green – “Yes sir.”

Chairman Hawkins – “and uh, uh, can we submit that then as evidence. If you’d give those to the Clerk.”

Dianne Green – “Okay.”

Chairman Hawkins – “And then uh, if you’d leave some on the table there for everybody that’s a party to look at, uh, then we’ll uh, we’ll take a look at ‘em.”

Dianne Green – “Um, I just wanted to draw the attention uh, back to the traffic that would be on Bonner Street. Because when you look at these pictures the little white house is mine and my front yard is Bonner Street because I’m very, on the road. And I would definitely be suckin’ up dirt since it is dirt, road. But we like it that way as long as there’s not a lot of traffic. And even if it was paved it would be a problem because of the safety. Um, because of my grandchildren that I keep, I baby-sit and not only that we uh, joggers, walkers, bicyclists and they have to be still for cars to go by. You cannot pass on Bonner Street because it’s really narrow. And even though it looks really wide in the pictures the uh, embankments or where the ditches are, are very soft and if you got over far enough to let another car by you’d slide in. So that is my biggest concern really is safety.”

Chairman Hawkins – “Okay.”

Dianne Green – “And not only the uh, dust problem and the traffic, and especially when the construction’s going on the big trucks that’ll be coming down that little road. That’s all.”

Chairman Hawkins – “Okay, thank you. Anybody have any questions for Ms. Breen on her evidence? Applicant, Staff, and other parties? Thank you. Any, any other parties wants to present evidence?”

Georgina Holmes – “Georgina Holmes, 506 Bonner Street. Uh, I just want to reiterate what Dianne said and also going out of Bonner Street onto Kanuga Road. You can wait there for a long, long time because the traffic is so bad and it’s hard to see and any traffic coming in from Kanuga that swings in is um, you know, that, because it’s so narrow it’s difficult to swing in if somebody’s going out. So it, it is really a safety thing because of the narrowness and also of course because it is, is not uh, it’s just a gravel road. It’ll look like a farm track after about six months of all those heavy equipment stuff, and DOT will have to coming in about every month to fill it up with gravel. So um, it, it uh, it is just really a little country lane. That’s all it is. So, thank you.”

Chairman Hawkins – “Anybody have any questions uh, for Georgina? Applicant, any of the other parties? Okay any other parties wanna present evidence?”

Bill Harper – “Bill Harper, 598 Lakeside Drive. It’s already been established that this piece of property has a problem with the sewers at the drain. They’ve had a problem with the field was the, as they’ve

already testified. We've had one lady testify that water actually stands on top of one of the so called rain f, the drain fields. And you'll never know this developments up, whether this sewer system's gonna work or not. We know right know, that's ... by, by the testimony you've heard here that it is borderline. It's borderline at best. And once it's up and done, and it doesn't work, now what happens. Now they gonna be coming to the County or the City or somebody to come and bail 'em out and put 'em in a sewer line. And that's the thing I'm concerned. I'm thinkin' that the sewer system is, is, is a one big concern here that you gotta look at it down there cause it's gonna cost the tax payers if this thing doesn't work. It's gonna come right back on top of us and they've already, you heard it tonight, it's a borderline situation. Thank you."

Chairman Hawkins – "Any, any questions for Mr. Harper from any of the other parties? Any other parties wants to present evidence."

Brenda Coates – "Brenda Coates, 1501 South Lakeside Drive. Um, I have looked at the plans and actually Mr. M, uh, Mr. Leoni about three weeks ago did have the courtesy to stop by my house and show me the plans and briefly review it for which I, I, I thank him. I appreciate uh, his taking me into consideration for that. Um, I, I agree with most of the comments that have been said tonight. I think the primary concern really is the safety and the road factor. Uh, the road that Mr. Leoni shows curving through the property so that you have access from Bonner Street as well as South Lakeside I think is probably about as good a solution for this piece of property as you might be able to get. I see he also is proposing uh, three foot wide sidewalks which I think will be a nice safety factor. Uh, we do have people now who walk through the property as it is and it would be nice to have those sidewalks so people from Bonner Street would have access directly to, to the lake. So I think that that's a, um, a nice solution for that problem. Uh, I, Osceola Lake is a small lake. It has a two lane road around it that's very curvy. Uh, we have had problems in the past with, with people speeding. We have asked the Department of Transportation to put a series of three way stops around the lake in order to slow the traffic down. Uh, when I was listening to the comments tonight I was thinking that uh, if we could work with the developer because I, I, I think this is a nice development as he is proposing it. And one I guess relies faithfully on the fact that uh, he has presented the Declaration of Restrictive covenants and he does want to have a Homeowners Association and so forth. Uh, but if we could work together maybe to make the road safer i.e. uh, ask the County for it's participation and the developer for his participation to approach DENR to put the three way stops around so traffic would be required to slow down. Also on Bonner Street it is a very small, narrow street and I don't know that this is a part of your uh, job or it might be considered by the developer or whomever. It could be that Bonner Street could be a one way because it does circle, it is a circular, circular road. It does come back out on Chestnut Street so it c, enters from Kanuga, circles around and comes back on Chestnut so it's a possibility that there's another access uh, or a detour exit in that fashion.

Um, the, the septic will be a problem a I guess we will lie, rely on State engineers to determine if the ground can uh, hold that kind of a septic system on the property. So I, I would say that the plans as submitted if, if they do go through that, that I find them uh, agreeable to look at. We just need to address the problems of the sewer. We need to address the problems of the roads. It is a, a serious consideration for all the people in the area especially with the lake there. Thank you."

Chairman Hawkins – "Any, any parties have any questions for Ms. Coates?"

Dianne Green – "If I could make another comment please."

Chairman Hawkins – "Yes mam if you'd take the mic."

Dianne Green – "Dianne Green. Um, we all like the idea of having the camp developed. I mean that would be really nice. Because it's uh, very deteriorated right now. Uh, since the storm there's been trees and they're uprooted on the cabins and uh we all have to look at this every day so this is a nice, for us you know. So as far as the develop, developing the property there's none of us opposing that. Our only problem is the Bonner Street deal because of the traffic and, and the safety. But also there was a mention of the private road through the camp was going, going to be private. I mean it's not gonna be a short cut and no one can use it but the people that are gonna be living there. And we just feel like they're gonna use

our little street as a short cut and if and when this is developed we should be able to use that road to the lake also. The people that are on Bonner Street. Thank you.”

Chairman Hawkins – “Any, any questions for Ms. Green from anybody? Thank you Ms. Green. Are there any other parties that wanna present evidence? Please.”

Judith Sloan – “Uh, Judith Sloan, 422 Bonner Street. Uh, everybody on Bonner Street feels the same way. We are not opposed to the development of this property but we don’t wanna suffer because of it. We don’t want our neighborhood destroyed um, for another neighborhood to be built. We are a neighborhood, we talk to each other, we help each other out, during the hurricane we ate at whoever’s house had the gas stove. Um, this is a neighborhood in the true sense of the word. This is not um, just a bunch of houses okay. Now some of the people have lived there over 30 years, some of the people haven’t. Um, I just wanna read you this letter that everyone on Bonner Street signed. Okay. ‘Dear Commissioners. We are the residents of Bonner Street which has been indicated as one of the main a, access streets to the proposed Leoni cluster subdivision on the Camp Riley property. We are opposed to Bonner Street being used as an access road to this development.’ And in this letter it says an over 300% increase in traffic but if they’re supposed to have two parking places per house that’s gonna be an over 600% increase in traffic on that road. Um, and the construction vehicles which will use this street, and they’ll all use this street because it’s a straight shot to Kanuga. Um, will create an unsafe situation on the small neighborhood road. This amount and type of traffic will disturb our well being and destroy our neighborhood as we know it. We are not opposed to the development. We are opposed to having our neighborhood disrupted and changed because the plans call for Bonner Street to be a main access for this development. With even further plans indicated on the plat for another right-of-way into Bonner Street. We also have concerns about the septic system upkeep and who will be responsible, liable for repairs to it in the event it fails and there’s a sewage problem next to our neighborhood. We were not notified of this plan prior to receiving the letter about this meeting. We find this disturbing since our street will suffer the brunt of this proposed subdivision’s traffic. We find it disconcerting to think that a plan for a cluster subdivision in the middle of an established mature neighborhood could be approved without any kind of study regarding the impact it would have on the neighborhood surrounding it. We feel this plan was approved by the Planning Board prematurely. Our neighborhood will be irrevocably changed by the subdivision using our road and our neighborhood was not even considered in the preliminary hearing. We ask that you do not approve the plans for this subdivision until these potential problem issues have been solved to everyone’s satisfaction. We live in Henderson County and we certainly do hope that our well being will be considered by the County Commissioners. I have a copy for everyone with the original signatures on the top and everyone’s name typed on the back. And I, and I wanna address a few issues. Making Bonner Street a one way street would do nothing but aggravate us further. Um, that’s not a possibility but we wonder why, um, Wright Street wasn’t considered and there are all sorts of possibilities perhaps the State would throw up Wright Street and Mr. Leoni can then have it be the subdivision’s own street opening onto Kanuga Road. Maybe he could buy a little piece of land going on the other side because that plat is misleading. What’s on the other side of, um, the property, it’s not like there’s Wright Road and then there’s a bunch little lots. Um, there’s, there’s Wright Road is an undeveloped right-of-way that was meant to be a road. Um, but there’s a field after it and then there’s a house there and then there’s a road that goes next to the other subdivision kind of behind it. I don’t know if he could tap into that road but I think that it would be a good idea for other options uh, to be looked at.

Um, let’s see. One of the reasons Bonner Street hasn’t been paved is because it’s so narrow and it’s such an old development and there are people who’s houses are very close to the road and they really don’t want, you know, to be any closer. Uh, let’s see, um, and like I said we’re not opposed to the development at all. There is an issue with the um, open space, because in the agreement for the, the potential agreement for the lot owners it says there’s amendments and term of declarations and they’ll be enforced for a period of ten years and then can be renewable but they can also maybe deemed null and void. If the property owners wanna deem them null and void and then build more houses there so, you know, it’s not like this is the development and it looks nice the way it is and like everybody says, develop it, it’s fine with us. Just, we really don’t wanna suffer, we don’t want our neighborhood destroyed and, it’s not that we don’t wanna move over for progress. We don’t wanna move over for someone’s profit, who doesn’t even live in

this state, unless everything is absolutely approved, you know, makes sense, is gonna be safe and isn't gonna make us suffer forever for it. That's just our issue, you know."

Chairman Hawkins – "Any questions for? Any other parties wish to submit any evidence?"

Judith Sloan – "Well my son wanted to say something."

Chairman Hawkins – "Any, any parties wish to call witnesses."

Judith Sloan – "My son is concerned about something and he wanted to speak."

Chairman Hawkins – "Are you calling him as a witness?"

Judith Sloan – "Um, I call Orion Goodman to witness."

Chairman Hawkins – "Okay Mr. Goodman."

Orion Goodman – "I like to ride my bike like, around the neighborhood and um, if traffic came on Bonner Street I wouldn't really feel safe riding my bike or even going near the street and I just, would feel like it was all changed."

Chairman Hawkins – "Any questions? Any, any of the other parties want to call a witness?"

Jerry Jones - "I'd like to."

Chairman Hawkins – "Are you?"

Jerry Jones – "Make a statement please."

Chairman Hawkins – "Okay so you wanna come up. I think you were already sworn as a party."

Jerry Jones – "Yes I was. Jerry Jones, 413 Bonner Street. I'd just like to um, make uh, you aware of some of the drainage sys, uh, problems that we have on Bonner Street. First of all, all the water that is flowing west on Kanuga turns down Bonner Street. It requires a 15" culvert which is under my driveway which intersects with another 15" culvert at the same point at the end of my driveway. There's also a 12" culvert just above Ms. Green. All of this water is flowing toward that um, the property and, uh, that we're speaking of. And uh, there's an awfully lot of water that goes across my front yard, has no other way of getting out of there, it has to go across the corner of my front yard. Goes in the back yard of Ms. Green and eventually winds up in that area. And uh, how these um, drain fields are gonna handle that I just have no idea."

Chairman Hawkins – "Any body have any questions for? Thank you. Okay uh, any other parties for, that wanna present evidence or any parties that wants to call witnesses?"

Marsha Hammel - "I've got a question."

Chairman Hawkins – "If you wanna present some evidence uh, you may take the mic and uh."

Marsha Hammel – "Um, Marsha Hammel, 1901 Kanuga Road. Um, it's be, appearing to me as if this Board, you all are being presented with making a decision on something that's not quite finalized yet. It seems to me that there's uh, some outstanding issues that need to be settled a little bit more. Um, in my mind uh, and the minds that have, my neighbors, the issue of the use of Bonner Street for a big construction project is just being left hanging. Um, I think that uh, investigating some alternatives some other options, uh, taking the state of this little road into consideration, needs to be written into the plan somehow. It needs to be addressed somehow. Um, whether this is the time and place to do it I don't

know. Uh, Judy mentioned that maybe we all should have been brought into this process a lot sooner and could have brought some of these um, problems that we live with every day to the attention of Mr. Leoni and to uh, the, uh, Mr. Smith, the guys on the ground who are dealing with this, um, on the ground themselves. I just think that it's just a lot more stuff to be looked at and dealt with and some decisions need to be made that just don't seem to be quite ready to be made with. Um, how do you all feel about that? Do you think that we're at a point for decision making right now?"

Chairman Hawkins – "We'll get to that after we hear all the evidence."

Marsha Hammel – "Thank you."

Chairman Hawkins – "Any other questions uh, for, the, this is your third shot Ms. Green."

Dianne Green – "Okay. I'll sit down. Uh, it hasn't been brought up but I've often wondered why uh, they don't use Chestnut. They, you can get off Kanuga, it's a paved street, it's well traveled, it's, you know, all they gotta do is go on Chestnut, Patterson it's, it's already paved and well traveled, and they can go around and down South Lake."

Chairman Hawkins – "Who are they? I, you taking about construction people?"

Dianne Green – "Yeah, construction or whoever needs to have a lot of travel right now, you know, instead of coming down Bonner Street. Have they even."

Chairman Hawkins – "And they may well do that."

Dianne Green – "Right. Yes."

Chairman Hawkins – "I was..."

Dianne Green – "I just take for granted that they wanna use Bonner cause it's flat and Chestnut's got a hill."

Chairman Hawkins – "I."

Dianne Green – "You know."

Chairman Hawkins – "I don't know."

Dianne Green – "So I just want to bring that up that they can use the already paved road."

Chairman Hawkins – "Basically what, what you're saying is there are other routes other than Bonner."

Dianne Green – "Leave Bonner out of it."

Chairman Hawkins – "Well we."

Dianne Green – "Thank you."

Chairman Hawkins – "Any questions? Okay."

Judith Sloan – "I just have one small thing..."

Chairman Hawkins – "Yes mam."

Judith Sloan – “Judith Sloan. Um, on the subject of Bonner Street. Um, and Wright Street and I just, they could, if they opened Wright Street or went, or made a deal with the people in the other subdivision to use their back road they wouldn't even have to change the plans for the subdivision. So I'm gonna hand this over to, with a little drawing of how that could possibly happen.”

Chairman Hawkins – “Do you have copies for everybody?”

Judith Sloan – “Yes, I have copies for everyone, everybody. And basically, you know, our feeling on Bonner Street is if you leave Bonner Street out of it we won't complain. You know, develop it, but close off the access to our street and don't destroy our lives. That's all we're saying.”

Chairman Hawkins – “Okay. Okay we've received all the ele, uh, evidence uh, does anyone wish to make any closing remarks? Uh, we'll start first with the uh, I'm sorry wait just a minute I'm, I think we had uh, rebuttals first. Do we have any rebuttal evidence? Okay. Uh, then I would ask if anyone wishes to give closing remarks. Uh, the applicant, do have any closing remarks that you wanna give Mr. Leoni? You wanna mention anything that's been brought up?”

Todd Leoni – “Um, you know, I um, I have grown up on this property. Uh, as a boy I went, my parents, I'm, I'm from Florida and my parents sent me to this camp as a young child. In my 20's I, I acquired the camp. Um, you know, I, was always really my dream to, you know, carry on this camp. It was, it had gone into foreclosure and uh, I had uh pulled, uh, I had uh, problems with one of my partners when uh, I owned the camp and then eventually, you know, seven, eight years later I, I bought him out. And I've always wanted to keep the property a camp. Um, trying to, not, not to run it but just to have someone run it and just, you know, keep it for my own purpose. It has now gotten to the point of um, you know, really just a hazard in my life and my, and my views on the world are totally different. Um, the way this thing is sitting and I've done everything I can. I've lease, I leased it to the YMCA for a year, subsidizing it, uh, did a lot of good things with the property but now it's time to move on from this. Um, you know, a year ago I tried to have the property rezoned so as to get more density which afford me the uh, cost of bringing in the sewer. And uh, the majority of these people that were, that uh, that are here tonight came last January and said we don't want a high density development. So at that meeting last January I withdrew my, and some of you may remember I, I withdrew my, my petition for that high density and I said okay, let, I, I, I won't do it. I'll just do it in a form where I can afford it. I do not want this property to sit any longer. I've owned it 14 years. Um, I, I am from Florida but I'm going to have a place on this property for myself. Um, you know, I'm a father with uh, three young children and one on the way. Um, and um, you know, I, I plan to spend my summer here and I wouldn't do anything, you know, to and the majority of these people, a lot of 'em, uh, known me for at least 15 years, since I've owned this property and I would not do anything that would hazardly affect the um, you know, the, the property. Especially because of the emotional attachment that I have for it. But I wouldn't do it anyway. Um, and what I'm looking for here is just to make sure that everything is done right. Bonner Street is a street that accesses this property and this property also has a right to use Bonner Street. I understand their, you know, I understand their comments and their concerns but, you know, um, if they can bear with me for, you know, a little while we can get this thing done, you know, in an orderly fashion and, you know, I'll do whatever I can to, you know, uh, direct trucks to come around Lakeside Drive. But, what about the people on Lakeside Drive? Are those people gonna be concerned about trucks coming down Old South Carolina Avenue? I mean, you know, Bonner Street, I've done my part also to get that, that street paved. And a lot of the residents that live on Bonner Street or some of them, or the majority of them will not sign a petition from the DOT to get it paved. So, you know, I'm here to work with the neighborhood and I am, always tried to work with the neighborhood. And um, I am looking now to, you know, make this, the Lake Osceola area has, to me, has always been left back and I am trying to, I think there were two crucial elements to this area to, to bring it into a um, into, you know, a, to make it a, a better area. One was on the, the north side of the lake. Uh, an old, uh, rundown hotel, which someone has recently purchased and made it a beautiful hotel. And also my piece which is one of the larger properties because it was a summer camp years ago. And this will enhance the entire area. And it won't hurt it. It'll be nice. It'll be a beautiful site. If you drive by my property now, you know, there's overgrown grass there's cabins that need to be removed. There's a bunch of things that need to happen in order to make this beautiful and that's really what I wanna do. And I'm

not doing anything that's out of the ordinary. I'm sticking within my guidelines. That's all I wanna say. Thank you."

Chairman Hawkins – "Thank you. Staff do you have any closing comments?"

Karen Smith – "No sir."

Chairman Hawkins – "Uh, any of the other parties have closing comments? If ya'll would just take turns comin' up."

Georgina Holmes – "Georgina Holmes, 506 Bonner Street. The reason the um, property owners have refused to sign for a, um, paving the road is that the road itself is probably about nine feet across. The order is 25 feet and if we say, yes, we'll have it paved the ..., there's, there's a ten foot drop on the one side of the road which means that we, our, our, our property has to, will be scooped up to fill in that drop. And we don't want that. I have a very, very old st, stone wall and my neighbor has a 10 foot, uh seven foot uh, hedge. And that would all be scooped up to fill in the drop. Cause I asked DOT about it. And so obviously we're not going to, to um, make our own property into a mess just to get a 25 foot street. So that is why we have never, and never will sign. Thank you."

Chairman Hawkins – "Some other closing comments? Yes sir."

Bill Harper – "Bill Harper, Lakeside Drive. You know, looking at this property and lookin' at the best possible use for it, it's really be nice if this property, and the County and Mr. Leoni could get together and make a park out of it. I'm not kiddin' you. I'm, I'm not kiddin' you. If you go out and look at the properties near the lake we got, we got people that come out on bicycles, we got ladies pushin' babies in baby carriages around the lake. It, and it'd be just a, a, a perfect setting out there if the County and, and, and Todd could work out some kind of, maybe he could take a big tax break on some of his properties down in Florida. But it's really something to think about. I mean I'm not, I'm doing this as being a joke, I'm serious as I can be. And, and there's no park like that on that side of town. Now that's just, that's just a suggestion on my part."

Chairman Hawkins – "Thanks Mr. Harper. Any, anyone else wants to make a closing comment?"

Todd Leoni – "Just quickly. You know, I'm open to offers so if you guys got your checkbook with you come on, I'm ready."

Chairman Hawkins – "Thank you."

Judith Sloan – "Judy Sloan. Um, On Bonner Street we have never seen Mr. Le, Leoni except in this room. Um, he wanted to change it from an R-20 density to an R-10 um, and yes we opposed that. We had the same concerns about Bonner Street that we have now. That, a reason we don't have it paved is as Georgina Holmes said and also because they flatten six, six feet on the side of the road which is wider than the road would be now. And we do have property there. It's an old subdivision, I think it's the oldest subdivision in Henderson County, Osceola Lake Subdivision and th, they didn't have all of the rules that we have now and so it's a little strange. Okay. Um so we don't want it paved because we're protecting our property. We're not behind uh, I don't know why Mr. Leoni says that he is trying to get it paved. I've never heard about that before. He's never come to us to talk to us. We don't know him as a neighbor. We've never seen him on the property except when he is trying to change zoning. Um, and so I have a lot of um, reluctance to believe him when he says he's dong this for everybody's good. Um, and I don't oppose him selling this property or building on it to make money. But I do oppose the destruction of our neighborhood to support his cluster subdivision."

Chairman Hawkins – "Thank you. Any other parties closing remarks."

Dianne Green – "Do I get to go past three strikes?"

Chairman Hawkins - "Or, the applicant then will have the. Do you, do you have another rem, another remark?"

Dianne Green - "Just one, one more comment I promise. Right now, and I just noticed this recently, um, like I say we don't really have a problem as far as the development cause I think it'd really be great. Because there are vagrants using the cabins and this disturbs me cause like I say I've lived there so long that I know when there's anything moved in that camp really and like he said when he went to the camp he was probably one of the little boys I rocked out of my yard. But anyhow um, that is my biggest concern right now is that there is no one watching out for this camp and making sure there isn't any dangerous people in there because we are right on, you know, right beside especially me and everyone in here probably. But anyhow, um, there's bottles. There's, you know, beer bottles, there's all of the trees that's went through the roofs of the cabins so they've started puttin' plastic on the windows. So, you know, we know there's people coming in at night and staying in there cause you can hear 'em once in a while you know. And that is a concern right now. Whether it's developed or not I just feel like someone should be monitoring this camp to see who's living there and what they're using it for because we're pretty sure it's drug and you know, under the table things. Thank you."

Chairman Hawkins - "Thank you. Okay the applicant has an option of any final closing remarks."

Todd Leoni - "No."

Chairman Hawkins - "Okay. Uh, before we go out of public hearing I did have one question I wanted you uh, Mr. Leoni. That, the status of the road that runs through is, you, you mentioned that you were anticipating putting sidewalks on it."

Todd Leoni - "Yes sir."

Chairman Hawkins - "Is that, uh, is that gonna be open to the public to go through or not? I, I wasn't quite sure and how do you."

Todd Leoni - "Um, I didn't really address that and I, I didn't expect to close it off. I, I figure that everyone could use it. I mean as far as I'm concerned. I didn't, I don't think I, it's been addressed though. But I wasn't, there was not gonna be like a gate or a fence up. I was not gonna put that it was gonna be, and, you know, I, I mean the ma, that road should really be for the residents but I mean if the people of Bonner Street wanted to walk down. I certainly don't want all, all of Hendersonville driving, walking down uh, Bonner Street and coming through that road you know, but."

Unknown - "They will."

Todd Leoni - "Well, I mean you know but no I don't, I don't think so. But I, I think that you know, the people that live in the area if they wanna walk down to the lake, rather than go around, you know, for me I wouldn't have a problem with that I, you know, I want everyone to be able to use it, you know."

Chairman Hawkins - "Thank you."

Todd Leoni - "But I, I certainly, one other thing, I certainly don't want to, uh, if it becomes, you know, a, an access of, of a lot of clutter and you know, and it starts to bother the residents that are living there then, you know, I want the homeowners association to be able to say hey, you know what, we don't want this kind of traffic here. If we have to put up one of those things, but if, people wanna walk down to the lake from Bonner Street that could be a different, you know, that's a different thing. But I think that um, you know, we'll, we'll address that issue when it becomes a problem."

Commissioner Young - "Is that street through your development gonna be a state maintained road?"

Todd Leoni - "No sir."



Chairman Hawkins – “One of the uh, one of the requirements was on the plat and to indicated that it may not be built to state standards and I think ya’ll have already addressed that so uh. Is there any other questions the Board has of anybody before we go out of public hearing? Uh, once the Board is out of public hearing we won’t hear anymore from, uh, from the uh audience. It’ll be our deliberation and we won’t be accepting any other comments from the floor. So any questions the Board may have?”

Commissioner Young – “Can we ask questions of Karen or?”

Chairman Hawkins – “Sure.”

Commissioner Young – “Okay. Karen on, on, on the page six of your memorandum here, down, down on number four it says required distance between buildings. Um, what is the required distance that we have on record now between these villas and the setbacks. Uh, I see ‘em listed over here that, that the setbacks that.”

Karen Smith – “Ones that the applicant has proposed.”

Commissioner Young – “Yeah. Uh, what, how much variation are they between that and what is required in our zoning ordinance.”

Karen Smith – “Give me just a moment to get to the. It’s in Section 200-33 which is at the back of your packets but let me get the specific section.”

Chairman Hawkins – “Would that be the setbacks for an R-20?”

Karen Smith – “No it actually, the setbacks in the um, the uh, Planned Unit Development section.”

Chairman Hawkins – “Oh it, that’s it. Okay.”

Karen Smith – “It, it addresses separation between buildings. Let me just try to find that for a minute. Uh, if you’re looking at Section 200-33 if you go to, this is at the back of the packet, Attachment I believe #8. You need to go to 200-33A(6)(a) and it talks about the normal lot side setbacks and frontage rule requirements being waived for a PUD. Um, and that the Board has the ultimate discretion on whether or not the, the plan complies with the intent of the ordinance. Um, requirement A2 is the required distance between buildings um, and it, it talks about whether they’re end to end, side to side and that sort of thing. So normally if they’re end to end, short sides, and are less than 20 feet in height, minimum separation is 20 feet. If one or both buildings exceed 20 feet, separation gets increased an additional foot for every foot of increased height.”

Commissioner Young – “So.”

Karen Smith – “If they’re loc. I’m sorry. Go ahead.”

Commissioner Young – “Basically we’re looking at cuttin’ um, the distance in half basically from 20 feet to 10 feet.”

Karen Smith – “Um hum. If they, if they provide that firewall.”

Commissioner Messer – “Karen I’ve got a question on uh, I guess the recommendation from the Planning Board and I’ve looked over, looking over or looked at some of these from our other people in Henderson County. The fire departments etcetera, going back to the public safety of uh, of that road. Was that ever brought out to the Planning Board about the public safety?”

Karen Smith – “On Bonner Street?”

Commissioner Messer – “and access and. Right, on Bonner Street.”

Karen Smith – “I think it was brought out more in terms of the driveway permit from DOT and whether or not they could obtain that permit. And as it turned out, apparently the permit had already been issued but they comment we got from another employee at DOT said that the driveway permit would be necessary. But I think that is about the only discussion that the Planning Board had on it.”

Commissioner Young – “Um, Bonner Street to me looks like a gravel lane.”

Karen Smith – “It is.”

Commissioner Young – “More than a road.”

Karen Smith – “It is.”

Commissioner Young – “And it’s, and it’s a narrow one lane?”

Karen Smith – Yes it is.”

Commissioner Young – “Has the DOT purchased right-of-way or do they own right-of-way to widen that street to make it a normal two way street with the proper ditching and sewer run offs. Storm sewer run offs?”

Karen Smith – “I don’t believe so, but I, I can’t answer that for certain. Um, based on the testimony I’m hearing tonight the right-of-way has not been granted although the applicant has shown an additional uh, amount of area along Bonner Street in the event that that were to happen.”

Commissioner Young – “Well if that’s, and it looks like that’s gonna be the main access street really into that property or.”

Karen Smith – “I, I don’t know which will be the main but, you know, you’ve heard comments about people trying to get to Kanuga and that sort of thing which’ll be quicker.”

Commissioner Young – “It looks like it, if you wanna increase the traffic and, and if you just use 26 units and two cars per unit you’re increasing the traffic quite a bit for that, that uh. It’s got to be a two street to carry that amount, extra amount of traffic.”

Karen Smith – “And we don’t have any standards for that. You know under even the normal subdivision requirements. If they can access a state road, we don’t, we don’t have any standards as far as traffic um, or doing traffic studies or anything like that. And so, uh, that’s probably not why it was not...”

Commissioner Young – “Of course my next question goes to the #7 on your memorandum on page 6.”

Karen Smith – “Which attachment are you in? One?”

Commissioner Young – “Um, attachment five.”

Karen Smith – “Five.”

Commissioner Young – “And down on #7 it says off-street parking. The applicant’s primary development, preliminary development plan does not appear to specifically address the requirements of off street parking. So that tells me that uh, they’re gonna mainly park on the street on, in that subdivision. They’re not gonna have driveways or parking places.”

Karen Smith – “When I testified earlier.”

Commissioner Young – “For each unit.”

Karen Smith – “The revised plan does address it. Um, it is in the upper right corner of the revised development plan in Attachment, in Attachment #8.”

Commissioner Young – “What I’m concerned about is on Bonner Street and in this street in the subdivision, are we gonna be able to access emergency vehicles like fire trucks and stuff like that. That’s, that’s my concern.”

Karen Smith – “I sent the comment sheets to those agencies and the only comment I got back was from the fire chief and it had to do with the hydrant. So I didn’t hear any other concerns, but if the Board wants to have somebody address those concerns you could call them. Probably have to continue the meeting and call them. But that’s why I send it out to review agencies for those kind of comments cause they do talk to us all the time about that at the subdivision level.”

Chairman Hawkins – “Any.”

Commissioner Messer – “I’ve got a question I guess for Mr. Leoni on uh, uh, have you ever done or had any uh, roads or talked about any other access to this property other than what’s currently being, you know.”

Todd Leoni – “No sir, because there really, first of all there’s really no other option. Um, what I, and I didn’t know this un, just until tonight that Wright Street below the property um, who um, Brenda Coats who lives right next door to the property she says that someone has built some housing on there. And there is, there’s like a little creek that is at the, I think it’s the east, is that the east end of my property, I think it’s the east end of the property. So, uh, you know, that, the, I don’t think that that’s really an option. And also the way that this property is situated it backs up to another development which is already developed and houses are, I think, built in the way. Uh, they say the street goes straight through but, I don’t understand how because I’ve been back there and there’s no uh, there are houses that are, are, that are in the way. As, as far as I’m concerned I think that’s really the job for the DOT. Um, you know, and not really for me. The, the access is really either through Lakeside Drive or Bonner Street.”

Chairman Hawkins – “Okay. Any, any other questions for Mr. Leoni?”

Todd Leoni – “And uh one, one other thing I wanted to, to say was you know when, a few years ago when the DOT approached me to pave you know, they, they wanna take 25 feet from the center of the, they wanna take 25 feet from the center of the street. They wanted me to dedicate and I said okay. It’s, I don’t, I don’t know that some of the resident fully understand what the consequences are but that has always been, has never been paved and it’s 25 feet from the center so if it’s um, five feet or nine feet or whatever they would have to give up, you know, or dedicate a portion of their property to increase the road. My property ha, owns the majority of one side of it, and, you know, I, I would be affected by it as well. I, I, therefore I’d have less land but I know it would be good for the entire area so as far as I was concerned I think it would, I think it would be good. Even before I addressed this, this thing. But I’m, I’m stuck because they’re not interested in doing it.”

Chairman Hawkins – “Does anybody on the Board have any other questions before we go out of public hearing? Mrs. Smith has something to.”

Karen Smith – “If I can just um, ask one more time if there would be any information the applicant wants to provide about the um, construction or sales office. If there are details...”

Chairman Hawkins – “And, and also I’d uh, ask if you plan any phased development uh, and Lu, Luther you or, or Mr. Leoni might wanna answer both of those.”

Luther Smith – “Um, to the best of my knowledge unless Mr. Leoni has changed the plans we discussed uh, this is looked at from a development standpoint uh, the infrastructure is a single phase project. In other words the roads, water and sewer. Um, now the homes would obviously be built over a period of time as lots are sold but, but it is to be developed as a single phase subdivision. Uh, could I, could I add an, another thing. I realize everybody has been talking about using Bonner as a primary entrance. The project was designed from a standpoint of, of uh, whatever it is, South Lakeside Drive as the primary entrance with the DOT permit having the, the widened taper and everything entering into an existing paved street as opposed to Bonner Street. But, you know, granted some people may go out the back to get to Kanuga Road. Having lived in that general neighborhood for a number of years I always found it was easier to go in and out of town off of Willow Road than it was to try and get out to Kanuga simply because you have some traffic lights to, to let you out on Kanuga but, just a comment.”

Chairman Hawkins – “And, and the construction or uh, I’m sorry what was your other question Karen? The uh, office, sales office?”

Karen Smith – “The sales/construction office. Where it would be, how long it would be there?”

Chairman Hawkins – “You wanna answer that Mr. Leoni?”

Todd Leoni – “Yeah um, well, I didn’t, I haven’t placed it yet. Um, because I’m just really selling the lots. Um, I don’t know where it will be cause I haven’t addressed that. But um, it, where it will be will be somewhere by the entrance of Lakeside Drive. Because, and uh, you know, it should be there until all the lots are sold.”

Chairman Hawkins – “Does that answer your question Karen?”

Karen Smith – “Um, sort of. I didn’t know if maybe the Board should just defer it to the Board of Adjustment when he does know cause uh.”

Chairman Hawkins – “Uh, that may be a better solution and that’d give you time if, if we give it the permit.”

Todd Leoni – “Okay.”

Chairman Hawkins – “Any other, any other questions by the Board?”

Commissioner Moyer – “Well it might help the situation if he’d commit to put it at the corner of Lakeside uh, Drive. And it probably would help your overall situation with the people to put...”

Todd Leoni – “To commit to put the sales office at the corner of Lakeside Drive or, you mean at the entrance of the? Yeah, I, I.”

Commissioner Moyer – “It would bring the people in from that way”

Todd Leoni – “Absolutely.”

Commissioner Moyer – “rather than Bonner which is one of the things they’re.”

Todd Leoni – “Absolutely I would commit to that. You got it. I mean that, I mean that’s what I would rather. I would rather have people, right and from, from my, from my standpoint you know when they come in I want them to see the lake. That’s a very important selling point I think. So, yes, I, I commit to that.”

Commissioner Moyer – “Can I ask another question of Mr. Leoni? One the sewer which is a big issue which I think is solvable.”

Todd Leoni – “Yes sir.”

Commissioner Moyer – “Um, the um, the overall situation, if you’re collect monies to make sure this is kept up, and if you put in your bylaws and charter, which I’m sure Luther can tell you, you put an assessment on the properties.”

Todd Leoni – “Yes.”

Commissioner Moyer – “Which is enforceable.”

Todd Leoni – “Uh huh.”

Commissioner Moyer – “I mean you have to do it if you’re gonna be able to collect the.”

Todd Leoni – “Right.”

Commissioner Moyer – “Otherwise people can not pay.”

Todd Leoni – “Right.”

Commissioner Moyer – “I think people would be more comfortable if there was a specific mechanism in there which provided a way for you to enforce your right to get money to repair the sewer system, the roads etcetera if there were any problem.”

Todd Leoni – “I see. What I think they...”

Commissioner Moyer – “...bylaws it’s not there. But that’s the mechanism you need.”

Todd Leoni – “Okay.”

Commissioner Moyer – “And could we specify that uh.”

Russ Burrell – “I think you could. I think one of the things contemplated by one of Mrs. Smith’s uh, comments to you was that you might wanna place that condition that, that that particular specified condition but also other conditions with those legal documents be approved by the County Attorney.”

Todd Leoni – “And they made, I don’t know if you’ve read the, the Dec. Restrictions, but there may be some, some um, some wording in there to that effect as well, you know, special assessment or um, you know, as, as to the, as to the sewer system, you know, all this is governed by, I think the Health Department here. I mean, and if this is, this is gonna be a brand new system I would think that um, you know, based on, you know, uh the soil and science and the, the engineer and the way it’s worked it’s all gonna be approved you know, by this municipality. So, why wouldn’t it work unless, unless something, you know, catastrophic happened I, I just don’t under. I don’t really understand the concern if I go through the proper channels or, and permitting I, I don’t understand how it, how it could fail. I mean if it’s done, you know, with engineers and, and soil science and, you know, all the stuff that really would make it work.”

Commissioner Moyer – “And that’s true but the separate issue if there would be a problem, we’re trying to protect what the citizens...”

Todd Leoni – “Absolutely.”

Commissioner Moyer – “...to us is saying.”

Todd Leoni – “You’re right.”

Commissioner Moyer – "...had a condition in there to put a lien to enforce collection and repair"

Todd Leoni – "Absolutely."

Commissioner Moyer – "then it would help your situation."

Todd Leoni – "Right."

Commissioner Moyer – "And that would be acceptable to you?"

Todd Leoni – "Yeah and I think it's in my dec, my, my restrictions uh you know any type of special assessments or anything."

Chairman Hawkins – "Any, any other questions by the Board? *Then I move we go out of public hearing, all those in favor of that motion say aye.*"

In unison – "Aye."

Chairman Hawkins – "Okay. Um, discussed a lot of information uh, uh, I think that uh, uh, we've had a look at uh, a lot of concerns that the surrounding uh, uh residents have. Uh, they deal uh, not only with the access of roads, traffic safety issue, uh, run off and, and the sewer system. Those are, those are about the, the three things. Uh, one of the things that I would point out in the uh, in the, in our code book, uh, that uh, to be able to qualify for a PUD that you have to have uh, is uh, something that deals with the conveyance of open space, recreational areas, and communally owned facilities. And uh, because somebody raised that question of what if you know, some time from now somebody decided to do something else. Well you really can't decide to do something else uh, because the common open space, the recreational areas uh, and owned facility shall be guaranteed by restrictive covenants describing the areas and facilities and their maintenance. That's what uh, Bill was just talking about, uh, their maintenance and improvements running with the land and this is something that uh, that the County Attorney pointed out, that runs with the land it doesn't, it doesn't go any, anywhere else that, it stays right there. For the residents of the Planned Unit Development or, adjoining property owners or both. So uh, that, some of the issues that you've raised uh, to, to be able to qualify as a uh, as a Planned Unit Development to meet code uh, the County Code it has to do those things. And, and they're, they are guaranteed by restricted covenants. Uh, Commissioner Moyer mentioned some of the things that you can but in the restrictive covenants to ensure that, that they're taken care of. And so I just wanted to put that out. Uh also Item E talks about maintenance that says Planned Unit Developments shall be approved subject to the submission of an instrument or instruments setting forth their plan for permanent care and maintenance of permanent open spaces, recreational areas, easements, right-of-ways, uh, etcetera, etcetera. Uh, uh, which would be legally enforceable. So that's another requirement of the code uh, that not only the people that buy into this, to the subdivision but you that live next to it uh, uh, ha, have those uh, guaranteed uh, uh, by the code. Uh, and I'll just hit a couple more of those because uh, it says also the home owners association must be set up before the homes are sold. So you don't have four or five homes and then somebody says gee, I gotta make a home. You have, you have to have that first. And the open space restrictions must be permanent, not for just a period of years. That again is in the code book and uh, another area that we didn't cover and I mentioned to the County Attorney earlier today it says that the uh, the association must responsible for liability insurance and local taxes. And we had a problem, we had a problem with that uh, uh, at the, at the end of last year and so uh, I'd just point that out. Uh, uh, and uh, and it goes on saying the maintenance of recreational and other designated facilities. So, there's a number of things that are really addressed in the uh, Henderson County Code book for Planned Unit Developments. I think that covers a lot of concerns that uh, that, that you've raised here. Legitimate concerns. Um, and if the Board chooses to approve the special use permit then it will have to be in accordance with the code. And Karen I, I don't if I left anything out but uh, I, I'm, I'm just reading straight from the, from the code book. So, that should cover most of those. The, the other area dealt with uh, you know traffic safety and water run off and uh, and one of the things that, that we talked about uh, in some of the uh, things in Attachment #5 uh, dealt with being properly permitted by the State. And uh,

in those areas particularly and even with septic ar, uh, system um, the, the Board of Commissioners don't uh, do that. Uh, but if the Board chooses to approve the special use permit one of the conditions thereof would be that it meets uh, the approval of the State DENR office. And they're, they're the experts that decide whether the thing works and, and all the restriction on. So uh, that would be uh, as, as well as the water run off. Uh, uh they have uh, sedimentation and control, and erosion control uh, that has to receive State approval um, before uh, before you can move forward with those. So um, those are uh, those I think are, are the key issues that, that you addressed. Uh, you know, that, that you had concerns with and uh, uh, so uh. The other thing is that, uh, Attachment #5 that Mrs. Smith has uh, talked to, uh, I think a number of the um, issues there has already been addressed and is part of the record. Uh, the ones that uh, uh, that uh, still had not been of course was the water and sewer plans. As I mentioned those are approved uh, at the state level. Uh and/or the local level, being the Hendersonville Water Department as far as the certification. Uh, and then as Mr. Smith pointed out uh, they go on to the state for approval off of the Hendersonville water system. So there are some other levels in there. Um, one of the areas that uh, that I think was, was raised in, in the Staff's that we didn't quite get to was uh, uh the treatment of the perimeter and the conveyance of open space and uh, did, did we get any information on that or did I miss it? Did does anybody recall? In other words uh, how is it, is it, is it gonna be conveyed in uh, uh when the lots are sold or part of the uh, uh bylaws? I, I'm not sure that would be something I think that specifically needs to be addressed."

Commissioner Moyer – "You mean when it gets conveyed to the homeowners association."

Chairman Hawkins – "Yeah, because that was one of the problems that we ran into in another subdivision uh, because, uh, Bill, might correct me if I'm wrong, I think that commonly owned property is not subject to tax. Is that correct? Or you get an exemption from it? Where you have to."

Commissioner Moyer – "Under certain circumstances."

Chairman Hawkins – "But you have to file for it. You being the homeowners if you live in the subdivision. Uh, however if the developer waits until December 31<sup>st</sup> at 6:00 in the evening to convey the property to the homeowners that have not applied for a tax exempt then uh, uh, there can, there can be problems with that and so uh. I, I, that's the reason I pointed that out is how that property is gonna be conveyed. It won't affect you out there but it'll affect the people that uh, if the Board allows the use permit, that moves in so that they don't get caught up in the, in the tax uh, uh, catch 22 thing. So I, I would think that we'd need to address that uh, if that's the pleasure of the Board."

Commissioner Moyer – "And I would imagine that since it's only one phase you would convey the roads and the open space..."

Chairman Hawkins – "Right. As soon as you opened it up."

Commissioner Moyer – "...before any property sold just like your covenants..."

Chairman Hawkins – "Uh, probably when you made the uh, the homeowners, which you have to do before you ever sell a house would be a place to put it in but uh, those are just some things I think need to be addressed so. Uh, those, those were the notes that I had and uh, uh, I don't know if uh, Charlie you got any, any other stuff you wanna bring up or thoughts and, or things you wanna discuss."

Commissioner Messer – "No not really other than the fact that I do have some concern about the streets uh, for the public safety of the people of Henderson County which, you know, all of our, I mean all of us have that uh, same concern. Uh, but then we have Staff that has looked at the evidence and so forth and, and, you know, voted it a unanimous decision to accept it. And it sounds like the developer and the people that live in the subdivision or the area are trying to, you know, reach an agreement that would be suitable for everyone. Uh, and that's basically what, you know, I intend to do. Uh, but the re, but they are rules and regulations from the State on septic, on roads, etcetera. And, and, you know we've, you know we've heard these same problems before in, in other uh, uh, times and so, you know, I mean I know it's a

tough call, uh, but something, I guess, what I'm saying it's, if you weren't to develop then somebody else would come back, well sooner or later and develop it, and it could be worse than what, you know, you know, you're applying. And you know we've also heard that so uh, like I say maybe we can work things out. You know, you sound like you're trying to work things out and some of your, your people likewise so. You know that's basically all I have to say."

Chairman Hawkins – "Bill you got, what are your thoughts uh."

Commissioner Moyer – "Well, I think we've dealt with most of the issues except for uh, for Bonner Street and, and that, that's really a tough one to uh, resolve. But, to me the only thing I can think of is like we said with the sales office, put a condition in there that the sales office, all the literature with respect to directions and access to the site be focused on having the entrance off of South Lakeside Drive. And require them to use that as the main exit. We can't put any limitation I don't believe on the entrance to Bonner but I, ask them to put all the emphasis, their sales office, all their promotional material, direct the entrance to South Lakeside Drive."

Chairman Hawkins – "Okay. And Larry your."

Commissioner Young – "One of the charges that this Board has is protecting the property and the public safety and welfare of the people. And from the information that I've got tonight with Bonner Street, with the sewer system, with the storm water run off, with the, a, uh, emergency vehicles being able to access this property, with the increased amount of traffic, I don't believe that, and, and, cuttin' our setbacks in half to allow them to build these units on this property, I don't feel like that's being served if we pass this uh, plan to, uh, special use plan to uh, give him the right to put this development in. Right now I'm in favor of not passing the uh, plan."

Chairman Hawkins – "What uh, what kind of things or restrictions do you feel need to put on ..."

Commissioner Young – "Well there's a lot from the DOT that needs to be done, that needs to furnish this Board. There's um, probably uh, the sewer people, the Health Department, they need to give us the um, information that we need to be guaranteed that this is gonna be put in a right way, We need to know that if he goes to gradin' it's not flood neighbors. You know, there's a lot of things that need to be looked at in this and, and I just, till we get more confirmed information and more guarantee I can't vote for the plan."

Chairman Hawkins – "If he had a, if he had stipulations in your uh, in your conditions to, to meet those requirements from uh, from uh, whatever, whatever DOT has to offer which we don't have any control over, uh, but certainly the sewer uh, is gonna have to meet it and"

Commissioner Young – "Yeah the Health Department, they're gonna have to do that. The the Bonner Street really concerns me. And I'm like Mr. Moyer, you know, I, you talkin' about a one lane gravel lane that you're gonna put enough traffic on till it'll take a two way uh, street, a wide street to carry the traffic, the extra traffic. I, uh, if the DOT's not willing to do that I don't know how we can approve the use permit."

Chairman Hawkins – "Well I think the uh, the applicant's indicated really that uh, that he had really not planned to use Bonner Street as a, as a, either a primary part of the construction or uh, the, the, the uh, the people moving in and out of it uh, but that aside if uh, Kar, uh, well I think the wh, the area down there is uh, uh already zoned R-20. So um, there, uh, there essentially wouldn't be anything to preclude developing it, uh, R-20, uh, which I thought was interesting that the density uh, that we first started out with uh, is the same density as was in an R-20. And, and so you could uh, without ever asking for a special use permit the applicant could develop it as an R-20 uh, and basically do uh, many of the things that he's asking for in the, in the PUD permit. And, and, they, that would uh, nothing would preclude that uh, from occurring."



Commissioner Moyer – “He may lose some lots because of septic...”

Commissioner Young – “I started to say, he, he, uh, he would, would not have to ask us to modify our setbacks uh, in, in, the uh, zoning and planning, that Ordinance.”

Chairman Hawkins – “That’s true.”

Commissioner Young – “And, and I, you know, I, any time you modify setbacks for one individual then you’ve got to do it for somebody else at a later date.”

Chairman Hawkins – “Well the uh, the, the whole idea of a, of a PUD is to, you know, is, is to help mitigate some of that uh, where, where you give a little bit in one area, in this case setbacks, to get open area or some other uh, uh, some other uh.”

Commissioner Messer – “But you know something else that we’ve definitely got to look at is, if I’m correct in hearing the numbers from uh, Luther is you know, uh, uh, sewer is about what 7,000? 700?”

Chairman Hawkins – “Little over a mile.”

Commissioner Messer – “Well, somewhere down the road the way property is going in Henderson County you, we could take a developer come in here and put this sewer on this, on this parcel of land and you know, you talking about 26 units, you know, you’re talking about a lot more units could be on there. Then we would really have a problem as far as, you know, I mean that’s what we’ve had in the County throughout the four years that I’ve been on this Board. But you know then again you look at the facts. You know I’ve got a problem with Bonner Street. But until the State comes in and you know, and the, the land owners make it a, a public road and agree to improve the road then you know, that’s where the problem lies.”

Commissioner Young – “Well that’s, that’s right and, and if we don’t get the, the preferred right-of-ways and, and the preferred access uh, in, into this development then I think it’s gonna create problems for everybody. Uh, even the people that buys lots in this new development. Uh, it’s gonna create a problem for. Much less the citizens that’s already, has property on Bonner Street and around that development.”

Chairman Hawkins – “So you don’t see any uh, any practical solution to Bonner Street.”

Commissioner Young – “Not unless the DOT and the, is willing to buy some right-of-way and, and put a proper State maintrain, uh, maintained road in there to carry the amount of traffic that’s gonna be on that street. I don’t, I just, if, if it’s not done right to start with then it’s gonna be wrong from now on.”

Chairman Hawkins – “Well that, uh, from what I’ve heard the um, the State would have to condemn and take the land since the property owners don’t want to do that um, which would really get up close to their front door or front yard or walls and, and hedges so um.”

Commissioner Young – “Well if you can’t work the traffic out then I don’t know what you’re, I mean if it can’t be accessed properly then.”

Chairman Hawkins – “Why, why do you think all the traffic’s gonna be on Bonner? Why, why not...”

Commissioner Young – “Well I think Bonner Street looks like the main access into that from what I can see. I, you know, I, comin’ off of Kanuga Road I think that’s gonna be one of your main accesses into that property from what I can see.”

Commissioner Messer – “But if you have an access like Mr. Moyer was talking about I mean I, you know I really don’t see a problem in, in, you know, if the model home and everything is located on that end, sure you’re liable to have some people coming through but I’m sure you have people come through there

every day that's lost. So I mean you know, uh, I mean like I said I think it's a compromise that, that they can work out and I don't have a problem with it."

Chairman Hawkins – "Well there's a lot of uh, I guess there's a lot of uh, uh, fine points uh, that you know that you could look at but uh, I, I'm sorry that. Public comment's closed. Um, um, it, it would certainly be good if, you know, if there was a, was a big road on Bonner or, or, Bonner was a, was a better highway but it isn't. And I, I don't think the prospects of it getting any better as far as either the residents there wantin' to let the State widen it or the State uh, I don't think the State's ever gonna condemn the land and, and widen it because that's not part of their policy. And so I think uh, that street's gonna remain like it is for, for a very long time. Uh, and so that notwithstanding uh, if, if this uh, if this is not approved uh, uh there, there's still uh, there's still opportunity to develop it as an R-20 which is uh, already on, on the zoning uh, that, that certainly is an option. And it would have, generate the same traffic, uh, uh, maybe a little bit less than uh, than this would but none the less traffic. So, uh, it, it would seem that uh, uh, if uh, if we approve the uh, special use permit uh, in accordance with the uh, uh area's that was in Attachment #5, uh, that we have uh, that we have gone through um, uh and, and leave the uh, those uh, significant legal documents uh, to the County Attorney for approval as we have in the past. Uh, that uh, it might be a reasonable compromise to get uh, some movement in that area. I think most people are uh, uh at least uh, uh think it's a, it's a, it's better than what the land's being used at right now. And uh, while it may not be perfect it may be as good as we can, uh, as good as we can get with, with what we got to work with. In that the County don't control roads, and uh, and so we're, we're really hamstrung when it comes to dealing with DOT as to what they'll do or what they won't do. Uh, so that's, that's kinda my uh."

Commissioner Messer – "Are we gonna make a decision or, tonight or we gonna?"

Chairman Hawkins – "You wanna make a motion?"

Commissioner Messer – "Well I guess I could, *I would make a motion to approve the plan as presented by Karen and Luther with all of these uh, with uh, putting the main entrance on uh, uh, trying to look at this.*"

Commissioner Moyer – "South Lakeside."

Commissioner Messer – "Yeah, South Lakes, and to try to uh, work with the people on Bonner Street as far as public safety and etcetera to uh, approve by, recommended by, the Planning Board. I guess I covered."

Commissioner Moyer – "Can we say that we really want uh, their document, Attachment #5 as modified by"

Commissioner Messer – "Right."

Commissioner Moyer – "Attachment #8."

Commissioner Messer – "Right, and that's what we were talking."

Commissioner Moyer – "Plus the condition, audition, the conditions that Grady mentioned and I"

Commissioner Messer – "Right."

Commissioner Moyer – "mentioned with respect to entrance."

Commissioner Messer – "So I guess, Amy, did you get all of that or?"

Amy Brantley – "The tape will help."

Russ Burrell – “Okay, do I understand that your conditions be the ones that the Planning Board has approved subject to what Mrs. Smith has said today?”

Commissioner Messer – “Yes, plus the ones that we’ve talked about.”

Russ Burrell – “Plus the ones that ya’ll talked about”

Commissioner Messer – “Right.”

Russ Burrell – “which include that all documents be approved by the County Attorney to ensure the permanence of open spaces, the maintenance of the road and the septic system, including provisions regarding a lien assessment on the property and collection to allow for a set, association payment for repairs, improvements, and if any common property tax bills. A co, condition on the common area that it be conveyed to homeowners before the conveyance of the first lot in the subdivision. Convey the homeowners association and then also a condition that the sales office be located on South Lakeside Drive and that all literature, sales material, etc, be focused on the entrance being on South Lakeside Drive. That’s what I heard, if I don’t have ‘em I need to know if I don’t have ‘em.”

Commissioner Messer – “Sound like you got it all.”

Chairman Hawkins – “I think you got most of it and, you could figure out how to convey the um, uh, uh, the uh, uh, since there’s no lots gonna be sold until the, the owner may be the homeowners association until he sells a lot then he confers or, I’m not sure how that would work.”

Karen Smith – “Is the, I wasn’t clear on the, whether the um, sales lot is allow, being allowed by the Board or if they want that deferred to the Board of Adjustment.”

Russ Burrell – “Think they’ve located it, I don’t think they’ve described it. Think they’ve only located it being at the intersection of the private road with.”

Chairman Hawkins – “Yeah. Do you wanna amend your motion to allow that at the entrance you designated?”

Commissioner Messer – “That’d be fine if like I said, or they can take...”

Chairman Hawkins – “No, that’ll keep ‘em from having to go to the Zoning Board of Adjustment.”

Commissioner Messer – “...Zoning Board of Adjustment. Right. That’ll be fine, I mean.”

Chairman Hawkins – “Any, any other additions or discussion on the motion on the floor? I, I think that uh, the other thing I’d ask maybe to just amend your motion to direct Staff to bring those findings back at our next meeting for final approval and.”

Commissioner Messer – “The next meeting.”

Chairman Hawkins – “Or, at uh, on the 30<sup>th</sup>.”

Commissioner Messer – “That’s fine.”

Commissioner Moyer – “We really do need it on the 30<sup>th</sup>...”

Chairman Hawkins – “And, and the, the reason for that is cause the Board will change complexions on the first meeting in December and so the, the Board that heard the uh, the Board that, that heard this needs to be the one that makes the decision on it so, uh, that, that’s why the time frame. Although I guess technically we could have it some time prior to the 6<sup>th</sup> of December. But we’ll, and, we may end up with

that but if we do we'll deal with that. But the Board will just try to uh, to have that done so you don't have to go through this again. So, with that amendment to the motion then I call the question. All in favor of that say aye."

Chairman Hawkins, Commissioner Moyer, Commissioner Messer – "Aye."

Chairman Hawkins – "Opposed."

Commissioner Young – "No."

Chairman Hawkins – "Okay so the motion carries 3 – 1. Any other business before the Board?"

Commissioner Messer – "*I move that we adjourn.*"

Chairman Hawkins – "So moved."

Attest:

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Amy Brantley, Deputy Clerk to the Board

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Grady Hawkins, Chairman