

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
APRIL 20, 2005**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Shannon Baldwin, Commissioner Chuck McGrady, County Manager David E. Nicholson, Assistant County Manager Justin Hembree, Acting County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Karen C. Smith, Budget and Management Director Selena Coffey, Public Information Officer Chris S. Coulson, Fire Marshal Rocky Hyder, and Finance Director J. Carey McLelland. Deputy Clerk to the Board Amy Brantley was present through nominations.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance.

PLEDGE OF ALLEGIANCE

Commissioner Young led the Pledge of Allegiance to the American Flag.

INVOCATION

David Nicholson gave the invocation.

INFORMAL PUBLIC COMMENTS

1. Fielding Lucas – Mr. Lucas distributed a several page hand-out to the Board and spoke to the issue of current School Board capital improvements, the site for the “new school”, the Hillandale soil test dilemma, the Board’s decision to go beyond the State funded class size reductions, the Board’s arbitrary decision to limit elementary school capacity to 600 membership, and the extremely unscientific approach to membership long range forecasting.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer explained that Dr. Jones was expected to attend the meeting but had not arrived as yet. He will address item “F-3” Historic Courthouse. Chairman Moyer will adjust that item when Dr. Jones arrives as he will not be able to stay long. Chairman Moyer requested flexibility to make that adjustment as necessary.

The County Manager requested adding an item under Discussion Items as “G – Economic Development Incentives Grant”. The company cannot be here until after 11:00 a.m. The Board will be asked to set a public hearing for a later date. This item also needs some flexibility.

Commissioner McGrady made the motion to adopt the agenda with the two revisions above. All voted in favor and the motion carried.

CONSENT AGENDA

Commissioner McGrady made the motion to adopt the consent agenda as presented. All voted in favor and the motion carried.

DATE APPROVED _____

Consent Agenda included the following:

Minutes

Draft minutes were presented for the Board's review and approval of the following meeting(s):

March 9, 2005, regular meeting

Tax Collector's Report

Terry F. Lyda, Henderson County Tax Collector, had provided the Tax Collector's Report dated April 18 for the Boards review and consent approval.

Tax Releases

A list of 36 tax release requests was presented for the Board's review and consent approval.

Tax Refunds

A list of 18 tax refund requests was presented for the Board's review and consent approval.

Tax Discoveries

A list of 6 tax discoveries was presented for the Board's review and consent approval.

Addition of topic to May 9, 2005 public hearing

The Board was requested to add the subject of the re-consideration of the Interim Development Ordinance, adopted by the Board on April 9, 2005, to the subject matter of the special called meeting (and public hearing) scheduled for May 9, 2005.

Cane Creek Water & Sewer District

The County Manager had presented a copy of Sewer Line Extension Request #X0055CC which will add 1,148 linear feet of 8" gravity sewer line. This is a routine extension which requires no Board action. This item was for information purposes only.

Adoption of Order on Variance Request of Pegasus Tower Company, L.L.C.

On April 4, 2005, after a quasi-judicial hearing, the Board of Commissioners voted unanimously to deny the request of Pegasus Tower Company, L.L.C., for a variance from the requirements of the Henderson County Communications Tower Ordinance. The variance sought was to be relieved of the requirement of obtaining an easement from the owners of the property surrounding the proposed tower within a distance from the tower base equal to the height of the tower.

Staff had prepared a proposed order which, if approved by the Board of Commissioners, makes findings of fact and conclusions from the hearing, and denies the variance request.

LEPC Annual Report

Pursuant to Article VIII, Section I of the Henderson County Emergency Planning Committee by-laws, the annual report of activities conducted in the 2004 calendar year was submitted.

The County Manager suggested the Board approve the 2004 Annual Report from the LEPC.

2005/06 Rural Operating Assistance Program (ROAP) Grant Public Hearing

The State of North Carolina requires that the Board of Commissioners hold a public hearing prior to the beginning of each fiscal year to provide an opportunity for local input regarding the sub-allocation of ROAP funds. These funds are used for rural public transit programs in the community.

County staff recommended that a public hearing to provide an opportunity for public input regarding the sub-allocation of ROAP funds be set for 7:00 p.m. on Monday, May 2, 2005.

Improvement Guarantee for Pinnacle Falls, Phase I – Sections 2 and 3

Mr. Luther E. Smith, on behalf of Pinnacle Falls, LLC, owner and developer of Pinnacle Falls subdivision, had submitted a request for an improvement guarantee for Phase I, Sections 2 and 3, of Pinnacle Falls. Pinnacle Falls will be located on the south side of Pinnacle Mountain Road, between Pinnacle Mountain Road and Cabin Creek Road. The Henderson County Planning Board granted conditional approval of a Development Plan for Phase I of Pinnacle Falls on February 15, 2005. The Board of Commissioners will consider a request for a variance from certain road standards for portions of Pinnacle Falls Lane in Phase I; however, as was the case for the improvement guarantee for Phase I, Section I, the cost estimate for the requested improvement guarantee is based upon the conditionally approved Development Plan (which does not reflect the variance). The improvement guarantee is proposed to cover required road and water system construction costs.

Pursuant to Sections 170-38 and 170-39 of the Henderson County Code (the Subdivision Ordinance), a developer may, in lieu of completing all of the required improvements prior to Final Plat approval, post a performance guarantee to secure the County's interest in seeing that satisfactory construction of incomplete improvements occurs. One type of permitted guarantee is an irrevocable letter of credit. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$564,318.00 to cover the cost of the improvements (\$451,454.40) as well as the required 25% contingency (\$112,863.60). The proposed completion date for the improvements is March 1, 2007. The Subdivision Ordinance allows a developer using an improvement guarantee a maximum of two years between the time of initiation and completion of required improvements.

A draft Performance Guarantee Agreement was presented for the Board's consideration. If the application is approved, the developer must submit an irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the relevant parties must execute the Agreement.

Preliminary Engineering Report

Staff requested approval to execute an agreement with Camp Dresser & McKee (CDM) for a Preliminary Engineering Report (PER) for the Mud Creek Sanitary Sewer Project. We hope to have the Mills River Sewer Project completed this fall. According to the adopted Master Sewer Interceptor Plan, the next project to be considered would be the Mud Creek Sewer Project. This PER will provide us with recommendations concerning the route, cost, and project phasing. The cost of the PER is \$6,900 and will be funded out of the Cane Creek Water and Sewer District Fund.

Staff recommended the Board authorize the development of a PER by CDM.

Reimbursement resolution for new elementary school

Staff had prepared a proposed reimbursement resolution (similar to those done for previous construction projects) to provide for reimbursement of the expenditures for the new elementary school project from anticipated financing proceeds.

The County Manager supported this proposal. This resolution is necessary for the costs and expenses we incur prior to the financing to be included in the financing amount.

Application #SP-93-13-A5 to Amend Special Use Permit SP-93-913 (as amended) for the Carriage Park Planned Unit Development

Dale Hamlin, Manager of Carriage Park Associates, LLC, submitted an application on April 8, 2005, to request a change in the definition of "Townhouse (Townhome)" as shown in Section 1h of Exhibit A of Special Use Permit 93-13 (as amended). Special Use Permit SP-93-13 was originally granted by the Board of Commissioners on October 11, 1993.

On March 15, 2005, the Applicant held a pre-application conference on the proposed amendment with the Planning Board as required by Section 200-33, Planned Unit Development (PUD), of the Henderson County Zoning Ordinance, prior to submittal of an application for a Special Use Permit for a PUD.

Staff requested that the Board of Commissioners refer Special Use Permit amendment application #SP-93-13-A5 to the Planning Board for review and recommendations as required by the Zoning Ordinance. Once the Planning Board takes action on its recommendations, Staff will request that the Board of Commissioners schedule a quasi-judicial public hearing on the application.

The County Manager recommended that the Board refer Special Use Permit Application #SP-93-13-A5 to the Planning Board for review and recommendations.

Board excused member from voting

The agenda item on the April 20, 2005 Board of Commissioners meeting "Registered Motor Vehicle Tax Refund & Release Requests" includes a request release and refund by Commissioner Young. Pursuant to NCGS 153A-44, the board "may excuse a member from voting, but only upon questions involving the member's own financial interest" Commissioner Young had previously requested that he be released from voting on this issue.

The County Attorney proposed the following motion:

Commissioner Young is hereby excused from voting on the agenda matter "Registered Motor Vehicle Tax Refund & Release Requests" on the Board's April 20, 2005 agenda, and that on such item the vote be counted, if the item passes on the Board's Consent Agenda, as "all in favor, but Commissioner Young, who was excused, did not vote".

Registered Motor Vehicle Tax Refund & Release Requests

A list of 2 motor vehicle release and refund requests was presented for the Board's review and consent approval.

Mills River Sewer Interceptor Project; Request to file condemnation actions

Due to a conflict with an existing 24" diameter water line, it has become necessary to make a change (as shown on the presented drawing) in the route of the subject Sewer Interceptor.

Staff requested authorization from the Board to file condemnation actions, if needed, in order to make this re-alignment of the said Sewer Interceptor.

Staff recommended approval of the request.

NOMINATIONS

Chairman Moyer reminded the Board of the following vacancies and opened the floor to nominations:

1. Apple Country Greenways Commission – 1 vac.

Commissioner McGrady nominated Joanne Hill. We don't yet have an application for her so this item was rolled to the next meeting. Commissioner McGrady stated that Mills River is not represented on the Apple Country Greenway's Commission. Mayor Snyder has indicated an interest in having Mills River represented there formally as the other municipalities are. That will take an amendment to the agreement, to bring them in. Since the County has an open position now, he hoped that we could appoint someone from Mills River to fill that slot. Once the agreement gets modified then they could appoint their own representative. This had already been discussed at the LGCCA meeting.

2. Henderson County Planning Board – 3 vac.

We had previously had five people nominated for these three positions, being Tedd Pearce, Stacy Rhodes, Mark Williams, Eric Goodman, and Carolyn Swanner. There were no other nominations at this time. The Clerk was asked to poll the Board and the vote was as follows:

Commissioner Baldwin	Pearce, Rhodes, Williams
Commissioner McGrady	Pearce, Rhodes, Williams
Chairman Moyer	Pearce, Rhodes, Williams
Commissioner Messer	Pearce, Rhodes, Williams
Commissioner Young	Rhodes, Williams, Swanner

The three incumbents were reappointed, Pearce, Rhodes, and Williams.

3. Juvenile Crime Prevention Council – 2 vac.

There were no nominations at this time so this item was rolled to the next meeting.

4. Nursing/Adult Care Home Community Advisory Committee – 3 vac.

There were no nominations at this time so this item was rolled to the next meeting.

ANIMAL SERVICES DIRECTOR

Rocky Hyder introduced our new Animal Services Director, Mr. Morgan Woodward. He comes to us from McKinney, Texas which is somewhere near Dallas where he was employed as an Animal Services Supervisor with the Texas SPCA. He supervised a shelter with a staff of about 26 employees. He served in the U.S. Navy as an Ordinance Supervisor. He studied Biology at Ohio State University. He is married to Amanda.

Mr. Woodward came forward and accepted comments from the Board. The Animal Services Work Plan for the coming year was presented for the Board's review.

Mr. Nicholson reminded the Board that we would be opening the bids for the Animal Shelter tomorrow. With the new facility we will be able to increase the programs we have available for animals.

NCACC – OUTSTANDING PROGRAM AWARD

Henderson County has been awarded an Outstanding County Program Award from the North Carolina Association of County Commissioners for our Mental Health Maintenance of Effort grant program. Ed Wooters, Director of Member Services with the NCACC (North Carolina Association of County Commissioners) was present at the meeting and made the presentation to David Nicholson (and his staff).

The Outstanding Program Award was started by the Association in 1991 and is a matter of recognizing counties who come up with innovative programs in the three general areas of General Government, Human Services, and Public Education and Participation. The emphasis is on innovation and sometimes

multi-county jurisdictional involvement. The criteria for winning involves innovation, success, effort and difficulty, and collaboration. Henderson County won the award in 1996 and again in 2003.

Mr. Nicholson explained that at least five counties got copies of our information and they may have spread it to others. It became something that a number of units of government across the State used to determine how to utilize these funds.

TOWN OF FLETCHER REQUESTS THAT HENDERSON COUNTY RELINQUISH ZONING AUTHORITY OVER THREE PARCELS

Craig Honeycutt, Town Manager of the Town of Fletcher, was present and requested that the Board of Commissioners relinquish County zoning authority over three parcels of land:

- Property PIN 00964362687755 (0.05 acres, owned by the City of Asheville)
- Property PIN 00964362972555 (0.59 acres, owned by the City of Asheville)
- Property PIN 00964362963855 (0.36 acres, owned by Murphy-Wilson Investment Co.)

This request would allow the Town of Fletcher to exercise extra-territorial zoning jurisdiction in the area made up by these three parcels.

As the County has previously enacted both zoning and subdivision regulation for the area including these three parcels, and as the County enforces the State Building Code within this same area, under NCGS 160A-360(e), the Town of Fletcher cannot exercise its extraterritorial zoning jurisdiction over these parcels without the approval of the Board of Commissioners.

The proper method is an agreement with the Town of Fletcher setting out which services (zoning, subdivision regulation, building code enforcement) which jurisdiction will provide in the affected areas. If the Board wishes to grant Fletcher's request, it should adopt a motion directing the drafting of such an agreement.

Much discussion followed. Mr. Nicholson explained that these three parcels are Open Use in an area which is substantially Commercial Zoning. Mr. Honeycutt stated that these are the only three parcels between the current municipal limits and county-wide that are not within the town limits of Fletcher.

Commissioner Messer made the motion for the Board to approve the request as presented. A vote was taken and the motion failed two to three with Commissioners Moyer and Messer voting aye.

Commissioner McGrady made the motion that our Zoning staff look at this with the idea of making these parcels compatible with Fletcher zoning and to present staff's recommendations to the Planning Board and the Board of Commissioners. All voted in favor and the motion carried.

HUMAN SERVICES BUILDING BIDS

Mr. Nicholson explained that on April 13, 2005, bids were opened for the construction of the new Human Services Building. We received six proposals which are shown on the Bid Tabulation Form. The lowest bid was from Cooper Construction Company of Hendersonville for \$9,417,243 including the recommended alternates. The bid was approximately one-half million dollars below the architect's estimate. The balance of the funds will be used for construction contingencies and FF&E for County and the school's projects.

Our architectural firm, Calloway, Johnson, Moore & West, has received Cooper's bid and has stated that they are the lowest responsible bidder. They recommend that the Board award the bid to Cooper Construction Company. A copy of their cover letter was presented for Board review.

Staff recommended that the Board accept the bid from Cooper Construction Company and authorize staff to negotiate and sign a contract.

Commissioner McGrady made the motion to accept the bid from Cooper Construction Company and authorize staff to negotiate and sign a contract. All voted in favor and the motion carried.

COUNTY MANAGER'S MONTHLY REPORT

David Nicholson presented the "April" Manager's Monthly Report. Staff highlighted the following:

Strategic Plan up-date – Karen Smith

Flood Damage Prevention Ordinance. Staff is on track to bring that to the Board for the public hearing on May 2 in accordance with the timeline in the Strategic Plan. Staff has also been working on the Land Development Code and that project appears to be on target. A staff team meets weekly. Contracts have been signed with two firms to assist, with Access Management and with Design Standards. Staff also presented an update last night to the Planning Board on the status of the project. Staff is also proceeding with the industrial study.

Mr. Nicholson mentioned the centralized enforcement and permitting process to include cross-training of functions. Applications have been received for that position and they are beginning the interview process. He explained that the jail demolition package should be out on the street any day now. The animal shelter bid date was extended. We now have four bidders. We need at least three proposals on the animal shelter. We'll be opening bids tomorrow. In about 2 weeks we'll do the closing on the former City Water Building.

Gary Tweed stated that CDM has preliminary lay-outs done for the second bay at the transfer station and he's going next week to review those.

Mr. Nicholson reminded the Board that the ribbon cutting was last week for the new southeast EMS substation. Park Ridge Hospital assisted with the establishment of this substation. We are averaging over six calls a day out of that facility.

There was some discussion regarding the appraisal of the Tuxedo property proposed for a park and library.

Mr. Nicholson explained that the first joint college facilities meeting is next week, next Monday at 2:00. The Cable Franchise Renewal Advisory Committee has had three meetings and are working on their responsibilities. Staff met last week with the NCDOT public transit division and they hope to have a proposal to bring back to the Board as early as the next meeting to deal with the public transit issue.

Chairman Moyer announced that Dr. George Jones and his wife were present and he adjusted the agenda to let Dr. Jones speak so that he could then leave. There were also several members of the Historic Courthouse Corporation Committee present: Judy Abrell, Argie Taylor, Tom Orr, Spence Campbell.

Historic Courthouse

Chairman Moyer explained that the issue here is how to move forward with the restoration/rehabilitation of the historic courthouse and get things moving. There was a big question about the funding issue concerning whether or not we demolish the old jail.

At the Commissioners' meeting of March 9, 2005, Dr. George Jones of the Historic Courthouse Corporation presented a proposal for the renovation of the facility. This plan called for the removal of the annexes and the construction of a larger annex at the rear of the building. Staff has been working with the architect on a budget for their alternative plan. This plan raised the cost of the project considerably. Further, the National Park Service's March 22, 2005 letter indicated that the Save America's Treasures funds would be withdrawn if the old jail is removed.

The Corporation Members encouraged the Board to proceed with the renovation of the Historic Courthouse as the community celebrates the 100th Anniversary of the building during 2005. Dr. George Jones and Bill Moyer have met several times and reached an agreement with respect to the Historic Courthouse project and agreed to present that agreement to their respective Boards for consideration.

The Corporation had a special meeting on April 14, 2005 and unanimously adopted the agreement set forth in bullet form below:

Henderson County agrees to:

- Demolish the Old Jail immediately.
- Manage and pay for the exterior and interior rehabilitation of the entire Historic Courthouse. The County will pay for any costs the Corporation has incurred to date with respect to exterior restoration.
- Develop plans to restore the Historic Courthouse leaving the First Avenue Annex and the radio equipment.
- Remove the annex on the Second Avenue side of the building.
- Provide space at the entrance and other space on the main floor of the Historic Courthouse for the Corporation.
- Consult with Corporation on issues that would effect the historical nature of the building and its historical rehabilitation.
- Build an adequate Annex on the Church Street side (rear) of the Historic Courthouse that meets ADA requirements with an attractive entrance consistent with the historical character of the Historical Courthouse and provide parking in the rear of the building with an emphasis on green space.
- Work with the Corporation and the City of Hendersonville to extend the front lawn of the Historic Courthouse.
- Develop a timeline that will begin the rehabilitation project of the Historic Courthouse in October, 2005.
- Restore the Courtroom with modern technology that will allow for multiple community use and reopen the windows facing the west.

The Historical Courthouse Corporation agrees to:

- Raise funds to develop and equip the areas that are designated for their use.
- Provide staffing in the historical areas of the building once occupied.
- Consult with the County on issues that would effect the historical nature of the building.

- Work with the County and the City of Hendersonville to extend the front lawn of the Historic Courthouse.

The Historical Courthouse Corporation has voted unanimously to accept and adopt this agreement and authorize the Board of Commissioners to move forward, working together in a spirit of cooperation to get this courthouse restored.

Dr. Jones stated that this is the best we're going to get although he did ask for one word change. He asked that rehabilitation be changed to restoration. He stated that the Historical Courthouse Corporation voted unanimously to approve the agreement and he hoped that the Board of Commissioners would also.

Following discussion, *Commissioner McGrady made the motion that the Board of Commissioners approve the terms of the proposed rehabilitation/restoration of the Historic Courthouse discussed by the Board of Directors of the Historic Courthouse Corporation at its meeting on April 14, 2005, and directs the County Manager to develop a more detailed timeline for the May 2 County Commission Meeting, consistent with the terms discussed by the Board of Directors of the Historic Courthouse Corporation, which will begin rehabilitation/restoration of the Historic Courthouse in October 2005. All voted in favor and the motion carried.*

Historic Courthouse Celebration

Chairman Moyer stated that he and Tom Orr had been discussing the Centennial Celebration for the Courthouse. He had promised, as part of the Centennial Celebration, to have the dome repainted and lights back on it so that it could be turned on in December as part of the Celebration.

UPDATE ON PENDING ISSUES

FY 2005-06 Budget

Mr. Nicholson informed the Board that staff has been working on the development of the FY 2005-06 Budget for the past several months and should have the final budget requests next week from the Department of Social Services, Board of Public Education and Blue Ridge Community College. As in past years, staff will meet with all departments and agencies to review their budget requests reviewing the individual line items and any new budget initiatives.

As we have proceeded with our budget review process, there are a number of significant issues that have arisen and will have to be addressed within the coming year's budget. Some of these issues are as follows:

1. Strategic Plan Initiatives
2. 27th Payroll Period
3. School Debt Service
4. Personnel Requests
5. Capital Equipment Purchases
6. Education – Current and Capital
7. Employee Compensation Study
8. Medicaid

Staff is willing to present and discuss any line item within the recommended budget. However, at the end of the day, the Board always spends the majority of its time on the major requests. In order to assist the Board, Mr. Nicholson was planning to submit a recommended prioritized budget enhancement list. This list will include the items listed above and any other issues that the Board should specifically note. He

strongly encouraged the Board to focus on this enhancement budgetary list during budget deliberations.

Mr. Nicholson plans to submit his recommended budget to the Board on May 18, 2005.

Fund Balance Plan

Mr. Nicholson stated that the Board requested that staff provide its thoughts on ways to increase our Unappropriated/Undesignated Fund Balance to the 12% level as required by Board of Commissioners' policy. Below are a few of the steps that the Board could consider beginning with the Fiscal Year 2005-06 Budget.

1. Budget an additional 12% for all new expenditures.
2. Sell surplus properties and place proceeds in Fund Balance.
3. Lower the first year percentage of property tax collection.
4. Budget the full cost for new positions and then phase in their hiring dates.

Henderson County's Unappropriated/Undesignated Fund Balance at June of 2004 was 9.15%. We are expecting a slight increase in the Fund balance at the end of the current fiscal year. A conservative estimate would place the percentage between 9.5% and 10%. However, should the Board implement these types of budget stipulations, staff believes that we should be between 10.5% and 11% at the end of Fiscal Year 2005-06. With the sale of the properties during Fiscal Year 2006-07, we should reach the Board's goal of 12%.

Mr. Nicholson explained that the Board of Commissioners had stated their desire to increase the Unappropriated/Unreserved Fund Balance to 12%. The Board was requested to establish the following percentage goals and direct the County Manager to develop the coming years' budgets in a manner that will meet these goals:

Fiscal Year 2004-05	9.5%
Fiscal Year 2005-06	10.5%
Fiscal Year 2006-07	12%

Commissioner Baldwin made the motion that the Board adopt these fund balance goals as presented by the County Manager. All voted in favor and the motion carried.

Recess

Chairman Moyer called a brief technical recess.

Chairman Moyer called the meeting back to order at 11:07 a.m.

ECONOMIC DEVELOPMENT INCENTIVE GRANT

Scott Hamilton, Executive Vice-President of Economic Development with the Greater Hendersonville Chamber of Commerce, was present to support the request that Mr. O'Connell was going to make of the Board. He recognized Dan O'Connell, President of Raflatac; Phil Webb, Raflatac; Bob Williford, President of the Chamber of Commerce; and Kyle Edney, Project Coordinator for Economic Development with the Chamber of Commerce.

Dan O'Connell thanked the Board for their support and requested the Board set a public hearing to consider providing Raflatac with an economic development grant. They are considering investing \$24,000,000 in equipment and establishing an additional 110 jobs in the next five years. The Board was asked to consider a grant in the amount of \$96,000 for a period of seven years. Raflatac had come to the

Board less than a year ago to locate here. Mr. O'Connell had just returned from their parent company in Finland. Past success in Henderson County is what made this a prime location for expansion. This is a product expansion for them that requires the investment.

Scott Hamilton reminded the Board that five years ago Raflatac came before the Board requesting incentives to build a 240,000 sq.ft. building and invest \$45 million and create 200 jobs over a 7 year period. We are five years into that first 7 year period, they've already come back talking about the announcement they made in December of investing an additional \$38.9 million and another 70 jobs, and are now requesting assistance to help them to continue to grow this market in a competitive situation where they would invest \$24 million more and create an additional 110 jobs. Mr. Hamilton requested that the Board set a public hearing to consider an economic development incentive package for Raflatac for this project to be located here in Henderson County.

Commissioner Messer made the motion to set the public hearing for 6:00 p.m. on May 9, 2005, at West Henderson High School auditorium. All voted in favor and the motion carried.

PUBLIC HEARING – Quasi-Judicial Public Hearing on an Application for a Variance from the Henderson County Subdivision Ordinance for Pinnacle Falls

Commissioner McGrady made the motion for the Board to go into public hearing. All voted in favor and the motion carried.

Chairman Moyer – “For those of you here, we'll now – we have to do this as a quasi-judicial proceeding. It's on the application of Pinnacle Falls, L.L.C. for a variance, application subdivision file 2005M03 under the Henderson County Subdivision Ordinance. I need to remind you that the proceeding will be conducted under the Board of Commissioners' Rules of Procedure for Quasi-Judicial Proceedings. It is a more formal procedure than we would like to do ourselves but it's what we have to do in this type of proceeding. Unless otherwise decided by the Board, only persons made a party to this proceeding will be allowed to participate as a party, as part of this hearing. Those persons include automatically Karen Smith, Henderson County Planning Director and members of her staff; Pinnacle Falls L.L.C. and its representative, as applicants; and such other persons allowed to become parties by this Board. Only persons, and this is key, who can demonstrate that they will be affected by the outcome of the decision are allowed to participate in the proceedings as parties. Are there any Board members who feel that they cannot sit as impartial decision makers in this proceeding today. (no response) I'd let the record show that the ans – no-one responded. Are there any Board members who have received any information concerning this application beyond the information which is a public record, if so please disclose the information.”

Commissioner McGrady – “Mr. Chairman, I attended the Planning Board consideration of this matter and so if there are any differences as between the facts that are presented here and the facts that were presented there, but didn't otherwise participate in that – that hearing.”

Chairman Moyer – “OK. All persons who speak and participate including any witnesses that will be called, will be placed under oath. The Board will ask staff for an overview of the application then the applicant will present the evidence the applicant wishes to present in support of their 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 will 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, all throughout the proceeding. After the evidence is presented the Board will discuss the issues raised and will make a decision. The Board's decision must be made within

30 days of the close of the hearing and must be made in writing within 45 days of the hearing. We'll begin with identification of all parties to the proceeding. As I stated, the Board acknowledges the following persons as parties: Karen Smith, Henderson County Planning Director; Matt Card, Planner from the Henderson County Planning Department; Pinnacle Falls L.L.C., applicant. I guess Luther Smith you will be."

Luther Smith – Did not come to the mic so I could not tell what he was saying. He did mention A.J. Ball.

Chairman Moyer – "Are there any other persons present, I know there is a lot of people here that have an interest, that wish to be a party and can demonstrate that they have an interest and will be affected by this decision. If so, I need you to come to the microphone, state your name and what your interest and why you believe the Board should make you a party. Mam, please."

Some lady from the audience – "Um we're just adjoining land owners and we just had a couple of questions – um – you know was all we were wondering before any final decision is made."

Chairman Moyer – "Alright what we can do if you would like rather than have everybody, if one person – we'll make a party and then they can give you the questions to ask. Luther, would that be satisfactory? I think that would expedite things. So if you would identify yourself and we will make, if the Board agrees, we will you a party and then the other people can give you whatever questions they want to ask and we'll allow you to participate in that way."

Same lady from the audience – "Uh I'm Pat Osteen."

Chairman Moyer – "OK, thank you. And you are adjacent land owner? Is there anybody else here that would like to be a party?" Mr. Ponder?"

Someone from the audience – "I apologize"

Chairman Moyer – "Please come – please come to the"

Someone from the audience – "I'm Vera Pace and I join Pinnacle Fall's property on the Cabin Creek Road."

Chairman Moyer – "Would you like to be a party to this proceeding and – and give evidence?"

Vera Pace – "Yes."

Chairman Moyer – "OK. Your name again, please."

Vera Pace – "Vera Pace."

Chairman Moyer – "Is that alright with the Board?"

Commissioner Baldwin – "Yes."

Commissioner Young – "Yes"

Chairman Moyer – "Mr. Ponder?"

Someone from the audience – “My name is Bill Ponder. I’m adjoining property owner on the left side and would fall under the same category as the two ladies that have just spoken so.”

Chairman Moyer – “You would like to be a party and ask some questions?”

Bill Ponder – “If it – if I feel the need, yes.”

Chairman Moyer – “Alright we’ll make you a party and if you feel then if not we’ll just pass. Is that alright with the Board?”

Several answered yes.

Commissioner McGrady – “One more.”

Chairman Moyer – “Did I see one more hand, yes. John Bell.”

John Bell – “Yes, my name – my name is John Bell. I have an interest and ownership in adjoining property to Pinnacle Falls.”

Chairman Moyer – “OK. Any objection to Mr. Bell being a party? (no response) Alright is there anyone else? (no response) We will need now all parties to the proceeding to come up and be sworn. The Clerk, Mrs. Corn, will swear you all in so if”

Elizabeth Corn – “If everybody will touch the Bible with your left hand and raise your right hand. We’ve got one more we need to get in. 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.”

Elizabeth Corn – “Thank you.”

Chairman Moyer – “Now before you each leave, make sure Mrs. Corn has your name. She may have gotten them down but I went pretty quickly so if there’s any issue with spelling, please make sure she has your name. OK, Mrs. Corn?”

Elizabeth Corn – “Uh huh.”

Chairman Moyer – “OK, we’ll begin with the presentation of evidence and we’ll start with the staff overview. Mrs. Smith, then Mr. Card I guess. Karen, are you gonna start?”

Karen Smith – “I – I will start and just for the Board, this is Matt Card. He is our Assistant Subdivision Administrator. He’s been the primary reviewer of this subdivision but I’m going to do the presentation and he’ll be available if we have questions that I can’t answer. Uh as an introduction I wanted to make you aware of where this property is and some other facts. Pinnacle Falls, L.L.C. is the property owner and developer of what is a major subdivision known as Pinnacle Falls and Pinnacle Falls L.L.C. has submitted the application for variances from three standards of the Henderson County Subdivision Ordinance and as you heard in the swearing in, A.J. Ball, Manager of Pinnacle Falls L.L.C. and Luther Smith are acting as agents on behalf of the developer. Pinnacle Falls is a proposed 110 lot subdivision

that's going to be located on the south side of Pinnacle Mountain Road, between Pinnacle Mountain Road and Cabin Creek Road. Matt can point those out to you there. Thank you Matt. The Henderson County Planning Board conditionally approved a Master Plan for the entire 110 lot project on November 16, 2004 and then conditionally approved a Development Plan for Phase I of the project on February 15, 2004. We do have um – these documents are included in the packet that the Board has and which we have distributed to the parties this morning. At the same meeting when the Planning Board considered the Development Plan for Phase I. The developer also presented the application for variances and along with that application submitted an alternate plan for Pinnacle Falls Lane and you have that in your packet as attachment 9. And that alternate road plan showed the development of a portion of Pinnacle Falls Lane which is the main road in the subdivision being developed in accordance with the Board granting the variances that they have requested. The Planning Board has reviewed the application for the variance and the alternate road plan and I'll present their recommendation during my evidence later in the hearing. The variances that the applicant is requesting are from three standards that apply to private roads as dictated by our subdivision ordinance. Table 1 in Section 170-21(c) of the subdivision ordinance lays out the standards for three different types of roads that we allow – uh three different types of private roads, collector, local and limited local. Pinnacle Falls Lane would be classified by definition as a collector under our ordinance. The variance application requests the developer be allowed to construct a portion of Pinnacle Falls land according to certain standards for the local residential subdivision roads. The portion of Pinnacle Falls Lane that they're interested in having the variances granted for is within phase I and it's for a 3900 foot section. The applicant is asking for variances from three standards. The first is the minimum sight distance on vertical curves. The second is the maximum road grade and the third is minimum, excuse me, maximum ditch slope. If granted, the variances would allow the sight distance on vertical curves to be decreased from 150 feet to 110 feet, for the maximum road grade to be 18% instead of 16% and that the ditch slope be 3 to 1 instead of 4 to 1. Section 170-48 of the subdivision ordinance spells out the requirements for the Board to grant a variance. It states that in considering a variance the Board has to determine that an undue hardship would result if there was strict compliance with the subdivision ordinance. The ordinance also states that the Board shall consider the physical characteristics of the land, adjacent land uses, and the intensity of the proposed development and that in determining undue hardship the Board shall consider unique conditions peculiar to the site and design flexibility to preserve and protect the site's natural features. The variance shall be the minimum necessary to mitigate the hardship and should not violate the intent of the ordinance or be a detriment to health, safety, and welfare of properties within the development and those adjacent. You have the application for the variance in your packet and on that application it spells out what you commonly know as three tests that have to be met in order to grant a variance, one that there are practical difficulties or unnecessary hardships in carrying out the strict letter of the ordinance and typically we look at three different things under that. If the applicant complies with the ordinance the applicant can make no – secure no reasonable return or make no reasonable use of the property, the hardship of which the applicant complains results from unique circumstances related to the applicant's land and that the hardship is not the result of the applicant's own actions. The second conclusion is that the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and the third is that in granting the variance the public safety and welfare have been assured and substantial justice has been done.

For the record, I did want to note that today's hearing has been advertised in accordance with your procedures for quasi-judicial proceedings and that those procedures require that we do certified mail to the applicant. The subdivision ordinance does not have any specific requirements for notice for quasi-judicial proceedings however, staff did mail by certified mail notices of the hearing to property owners adjacent to the entire boundary of Pinnacle Falls and we also published notices in the newspaper, a legal ad in the Times-News on April 7, and a display ad in the Times-News on April 13. That's the

introduction. If the Board has any questions at this point I can try to answer them or I can do so later when I present the Planning Board's recommendation."

Chairman Moyer – "Any questions for Mrs. Smith at this time. (no response) OK, we will move to applicant's evidence and Luther Smith or A.J. Ball. Who's gonna start? Obviously Luther Smith."

Luther Smith – "Mr. Chairman, members of the Commission, my name is Luther Smith. I'm a planner with offices here in Hendersonville. Our firm has been asked to speak on behalf of the application by Pinnacle Falls L.L.C. for the variance before you today. Karen gave a brief description of the project. I'd like to go into a little more depth with that as – so that you really understand the basis for why we're asking for a variance. Pinnacle Falls is – comprises approximately 290 acres. The map that you see faces – the top of the map is north. The very top of the property is – is Pinnacle Mountain Road. It goes down the side of Pinnacle Mountain, the southern side of Pinnacle Mountain to near Cabin Creek Road on the lower end. We're not – we don't actually connect to Cabin Creek Road, simply near to it. The project is proposed to include a total of 110 home sites in three different groups. The light or the pale color you see, those are more traditional lots, about an acre in size that are scattered through the property that are identified as the Ridges. The sorta pinkish lots to the northern end of the property are identified as the Cottage lots, they run about a third to a half acre and will be more – we perceive those to be more permanent homes associated with – with access to Pinnacle. And the remainder of the lots in the middle and the southern end of the property are Cabin sites and residents will own these cabins but together they total up to about 110 lots. The – in addition to the homes sites – the overall piece of property because of the quality and the type of property it is – the development includes about 4-5 miles of graded trails, a number – Cabin Creek which is trout waters, and a number of other tributaries to it. The quality of the property – I think most of it probably has not been timbered in some 80 years or more so you have a very heavy Southern Appalachian forest and we anticipate upon completion of development that approximately 200 acres of the property will be put in a conservation easement so the entire intent of what we're trying to do is really geared around protecting as much of the property as possible and preserving the existing character of the property. Topographically with Pinnacle Mountain Road at the top, you have the property adjacent to that as a nice rolling ridge top and then when you drive to the far southern portion of the property you have a nice flat valley. In between we have the escarpment which is the side of Pinnacle Mountain. This area includes and I guess you can see it, would you zoom back just a little bit there? That, yeah, you see sorta the black box that's in the center of the property. That constitutes the majority of that escarpment area. Slopes in there range anywhere from 20% up to 50 to 60%, significant block out crops and they have some very unique features to it. Within that area there is an out-cropping of rock that they've already identified for example four plant species that are very unique here to the mountains. They seem to be found on the coast but up here in the mountains they're extremely uh unique. But in laying out the development uh there is a road, I call it the old Cabin Creek Road because that's what I was told it was years ago, that ran from Cabin Creek up through the property – alright but you could basically see the road running up through the property. We have attempted simply again to minimize disturbance in the property to keep as much of our existing road system using that road and that road bench, particularly as we cross the escarpment. We have concerns when we get in that area, obviously grading and so forth increases the potential of erosion substantially. The variance request that we're asking for is for a section of road within that black box area that you see on the slide on the screen. It's approximately 3900 feet long and is totally within the Pinnacle Falls property. It doesn't – doesn't impact any adjacent owners and we're asking for what we feel is the minimum that is necessary to uh put the road in there, traverse this area, and minimize the impact to the property. Uh the uh – this is a portion of the development plan that was submitted to the Planning Board and approved for phase I development. The – rotate 90 degrees, the other 90 degrees - there you go. Now we're the same orientation. This again is that section of road within the black box that was up there. And this is the section that we're requesting

the variance. The area outlined in red here down to there constitutes approximately 3900 feet of road, of what is a total road length for Pinnacle Falls – the main road – a little over 10,000 feet. So we're not really looking at the whole road. We're looking at just a section in the center of it. The uh – this plan meets the requirements of a collector road in the Henderson County Ordinance – Zoning Ord, excuse me, Subdivision Ordinance and we can do this and the Planning Board approved the plan for phase I based on this alignment and so forth in here, in assuming that plan. As you can see, as you come down uh from the Pinnacle Mountain Road you get into this section, there are a couple of significant switch-back type curves, you go down and then move across the slope and then a little tighter curve at the bottom. This slows traffic down, it also causes some problems based on some discussions we had with the Assistant Fire Marshal, is that who Wally is? The Assistant Fire Marshal on the property uh concerns from their truck standpoint of having to negotiate these turns. It also creates because of the – keeping the grade to a minimum or maximum, excuse me the 16% the ditch slopes we're talking about. It also disturbs more area on the side of that bluff. What we have requested as a variance basically the same section of road across the face of the mountain but has several key differences. First off by allowing us to go in certain portions of the road up to that 18%, the length of the road is reduced by 500 feet. Uh by allowing us to reduce that ditch slope from 4 to 1 to 3 to 1 the culmination of that and the reduction of the length of the road we basically drop the area of disturbance just in that one section to a minimum of five acres, maybe even more, depending on what we hit in terms of rock. All of these things are part of why uh we decided to ask for the variance and again this area – no construction has occurred in this area so we're not coming back in asking for a variance for something that's been built – alright and we're trying to get a blessing after the fact. Uh we uh – yeah we noticed this early on that this was going to be a real problem area and as we got more and more information about the quality of the streams in the property, the quality of plant material, and everything else, the character of the property, we felt that it was really necessary and beneficial to not only the piece of property but to the county as a whole in a sense, in terms of trying to maintain areas like this, to come in and try to address this issue uh with a variance. As Karen indicated we're asking for a variance to three standards of the uh – I don't remember the chart number but collector road standards in the Henderson County Subdivision Ordinance. Uh the first of those is the sight distance on vertical curves. What that is basically is you come over the hill on a vertical curve, the standard says that at a certain point you should be able to see a car that's 150 feet away from you. We're asking that that be reduced to 110 feet which is the standard for, excuse me, that is the standard for a local residential street or – and that's in private streets in the ordinance, that's the same standard that DOT applies on general secondary roads which we're all familiar with. The second standard is the grade. A collector road is limited to 16% maximum grade. We are asking for 18% as a maximum grade, not for the entire – not that we intend the entire 3900 – 3400 feet to be 18%. You'll notice some areas right in here, one is a green color – that area, most of the grades in that at this point are planned to be between 16 and less than 18%. That's above the 16%. The blue areas that you see are areas that we know, excuse me, we're gonna be right at that 18%. But we have tried to design the road so that none of those areas exceed 400 feet in length, none of those that are maximizing out the grade and so forth. And then the third condition is the ditch slope. This is simply the ditch on the side of the road, the collector road, you widen out the ditches by making the slope going into em a 4 to 1 slope, again the secondary road standards or the local coll – local road standards in the ordinance allow you to steepen up that ditch to a 3 to 1 slope. So again in an effort to try and reduce the bench width that we're having to disturb as we go down across this, we're asking for a variance to that. Again just stepping one level back basically to the local road standards. Uh I'll be happy to answer any questions the Board has with regards to this. We feel – I want to say that it is that the standards – the variances we're requesting are minimum and that uh – that on the other hand the potential reduction of impact that those standards can have, particularly on this specific piece of property in this situation can be enormous. Questions?"

Chairman Moyer – “Are there questions from the Board right now?”

Commissioner Young – “Mr. Smith, let me ask a question and I can tell from the second drawing versus the first that you’ve took a lot of the sharp turns out of it.”

Luther Smith – “Right”

Commissioner Young – “Uh”

Commissioner Baldwin – “Could we contrast those two?”

Commissioner Young – “Yeah”

Commissioner Baldwin – “Could we put one on the scr – leave yours up there and then two on the screen?”

Commissioner Young – “Let me ask this. You’s talking about the Fire Marshal. Does this allow emergency vehicles to navigate this road better?”

Luther Smith – “Yes it does. I assume Karen, we have a – the Fire Marshal was on the property.”

Commissioner McGrady – “It’s attachment seven to the materials we’ve got.”

Luther Smith – “He submitted comments to the Planning Board, I assume they’re in your – in the packet.”

Commissioner Young – “Uh also uh as far as school buses, they wouldn’t have a.”

Luther Smith – “They wouldn’t be – school buses wouldn’t go down this road anyway because it’s a private road, it’s not a public road.”

Commissioner Young – “Yeah. So you – you don’t plan on the State taking this road over and maintaining it or anything like that.”

Luther Smith – “No sir. Pinnacle Falls will be a controlled access community because and partially because of the low density in the community uh.”

Commissioner Young – “Does it meet the state standards for roads? In other words would – would it meet the state standard in a subdivision as far as.”

Luther Smith – “Uh yes. Yeah if we had gone with state roads uh what is identified as a collector road in the ordinance would be a standard secondary road for the state and – and the standards that we’re requesting would meet those standards for the state.”

Commissioner Young – “And not being a civil engineer I need to ask you some questions about uh the drainage and the run-off in the ditches. Are they gonna be – is that gonna carry the run-off well enough with the steeper slope?”

Luther Smith – “Yeah, the ditches actually in – you know in all that has been designed, the ditches actually get wider with the steep slopes because of the volume of water that we’re dealing with. All of the uh – the erosion control plans and drainage plans have already been approved by the state on this. All

of the pipe crossings uh as they come out on the downhill side and this road – I don't know if any of you have ever been on – on the piece of property but topographically when the road was built it's sorta right at the break of where you go from rolling ridge top and cross off as is - was normally the case with many roads that were built years ago- the right – a drop off so when the pipe comes out the other end it's either sticking way out in the air and then dropping to the ground or whatever. But what we had to do was go back in working with the state on the erosion control plan, as we bring the pipe out most of em we actually have to put a 90 degree bend on em and then develop uh a structure paralleling the slope to dump that water out to slow it down and catch any sediment before it can be released to go on down the hill."

Commissioner Young – "So in essence it's – the run-off and the uh storm run-off or whatever is not gonna produce any hardships to the neighbors or anybody that's surrounding this property or."

Luther Smith – "No, no it should not. All again we're pretty much a closed watershed so whatever is generated is – eventually is gonna come out the bottom at Cabin Creek but because of the quality of the stream and so forth the measures that were required by DENHR on the erosion control are substantially greater than – than what you see on most normal roads."

Commissioner Young – "And this road feeds into (someone coughed) ... state road?"

Luther Smith – "No it actually dead-ends at the property – you know we don't – we don't have a road that goes all the way down."

Commissioner Young – "But I mean going into this property. You've got to travel a state road to get into the property?"

Luther Smith – "Yes you travel Pinnacle – Pinnacle Mountain Road to get to the entrance."

Commissioner Young – "Does the state – is that state road gonna provide the uh – I guess the accessibility for this property without creating a lot of traffic congestion or problems with that?"

Luther Smith – "I would think. That's a section we're just – that's a half mile west of where Mount Olivet Road joins Pinnacle and that's a section that they regraded, the state widened and paved last year or year before last uh so yes, it – it would easily handle any traffic generated by this development."

Chairman Moyer – "Any other questions for Mr. Smith at this time?"

Commissioner Baldwin – "I've got – I've got one. Did you – is the old road bed that that was back in this property, does this follow the old roadbed?"

Luther Smith – "Yes, it does. What we're actually trying to use – do is use the old road bed as the bench for the toe of our fill slope that we've got – rather than trying to build the road on top of it uh – you know use that same bed and build on top of it which would kick fill material off and down the mountain, we're trying to use the edge of that road as the start of our fill as we come up and then cut our bench into new ground basically on the uphill side of that road."

Commissioner Baldwin – "So the existing is what is on the screen? Does that pretty much follow the old roadbed number two?"

Luther Smith – “No actually uh the old road bed as it comes around here it gets steeper and it basically sorta goes straight up, straighter up through there.”

Commissioner Baldwin – “OK.”

Luther Smith – “It does have – it’s got more little curves in it because it’s only a 12 road, this one has but uh it doesn’t have those – those large switchbacks in it as you ... “

Chairman Moyer – “Any other questions for Mr. Smith at this time? OK, what I’m gonna do now is ask each of the parties – this will be your chance to ask questions, not to give testimony but I’m gonna ask Mr. Smith to step aside, I’ll call each of you up, ask the question that you want. It can be 1, 5, or 10, then Mr. Smith will step in and try to respond as appropriate so Ms. Osteen I’ll start with you please.”

Pat Osteen – “I’m Pat Osteen. I – we have land adjoining this property and I guess one of the biggest concerns is the whole mountain is rock so they’re definitely running into problems with rock and so we have concerns about dynamiting uh and whose gonna be responsible for any damage uh because Doe Runner Road is probably gonna be impossible without dynamite in there.”

Chairman Moyer – “If you’ll step back and let Mr. Smith respond to that.”

Luther Smith – “Uh I’ll attempt to answer that, Mr. Ball who represents the owner may be better to address that. Obviously any blasting that may have to occur and so forth and she’s right, we’re going to hit some rock so that’s a real possibility, uh has to meet certain state standards and conditions and those sorts of things. In terms of liability I’ll let Mr. Ball address that one.”

Chairman Moyer – “Alright. Mr. Ball.”

Commissioner McGrady – “But the expectation to follow on that – I mean this is a shorter length of road so in theory you ought to have less dynamiting since there’s a shorter length of road. Is that right?”

Luther Smith – “That’s correct.”

Commissioner McGrady – “OK.”

Chairman Moyer – “Mr. Ball, would you – you’ve already been sworn so you can respond. Maybe you should stay close by. We may need you again.”

A.J. Ball – “I’m A.J. Ball, I’m the project manager for Pinnacle Falls. We would anticipate as Luther said, less impact with the variance than with the uh – the road that meets the subdivision ordinance at this point. Uh we do anticipate some rock there. We would be liable for any damage that would occur to adjacent properties. We would have insurance that would – that would cover that. So I think we would accept responsibility. Uh the road, Pinnacle Mountain Road was upgraded recently and there were significant blasting there to get through some rock on the uh – I guess it’s about 5/10 of a mile away from where Hattie Osteen Drive is and I don’t know of any damage that occurred there so I feel fairly comfortable that we’re not gonna create significant problems for them but if we did that we would be responsible – the company would be responsible for that.”

Chairman Moyer – “Thank you Mr. Ball. Ms. Osteen, do you have more – additional questions?”

Pat Osteen – “I think Mr. Smith mentioned about the – the plants and the trout and there are very – there’s several different plant species up there that probably are not in Henderson County anywhere else and so uh I just wondered if there has been anyone – you know – brought in to look at that to make sure that that is not – you know – disturbed in any way because a lot of that can’t be found anywhere else around here.”

Chairman Moyer – “OK.”

Luther Smith – “Yes, part of the process of developing the property and – and more specifically with regards to having the property put in a conservation easement is a uh botanical inventory of the property. A portion of that has been done, wetland areas have been uh delineated and mapped as well and the biolo-botanical portion of that is going on – I assume they’re still out there as we speak working on it so all of those types unique areas are being identified throughout the property and that becomes – it’s important to us because it becomes part of the base for establishing the conservation value of the property from an easement standpoint and those areas – you know we have done some shifting even in the initial road, the first section from Pinnacle down to where this starts we’ve already done some minor adjustment to avoid – or get a little farther away from an area that has some – some identified plants in it, not just getting further away from em but we’re finding there’s a section because of the amount of moisture that these plants on the rock receive coming from the ground above, we’re having to rebuild or redesign the road base to allow that water to continue to percolate through as opposed to a normal road base you dig out there – you hit something and have to fill it up. We’re actually having to build a gravel area under this to allow that water to move through – to continue providing the existing habitat for those plants so – you know that’s – that’s a major part of what we’re gonna do.”

Commissioner McGrady – “Cool, it will be held in the uh conservation easement?”

Luther Smith – “Uh we’ve been talking to CNL too.”

Chairman Moyer – “Mr. Ball, do you wish to add anything on that. I know you’re always concerned about these issues. You might speak with respect to the applicant.”

A.J. Ball – “Uh we – we are environmentally sensitive and that’s the reason we do low density type developments. And when we looked at this property we did discover a significant rock out-cropping at the top and uh originally planned Luther had the plan the road was going right across that particular area and as he indicated we did move it at significant expense to us and uh making sure that that water was able to flow the way it naturally does. We brought engineering in and looked at it, designed a system to accommodate that, and will feed – continue to feed that rock out-cropping. It’s a beautiful place on the mountain and that will be a part of the common open space and will eventually be a part of the conservation easement.”

Chairman Moyer – “Certainly your intent is to preserve and protect all that?”

A.J. Ball – “Absolutely. Yeap, yeap.”

Chairman Moyer – “Ms. Osteen, additional questions?”

Pat Osteen – “Well, pertaining to that, is there any way that we could get a copy of something from the – the people that have looked at all of this of what their – you know – at the different species that they did find?”

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Chairman Moyer – “Of what they’ve identified?”

Pat Osteen – “What they did find and how they’re gonna be protected and everything cause I would like that if I could get it.”

Luther Smith – “They haven’t produced their final report (not at microphone).”

David Nicholson – “Luther” (and he motioned for him to come to the mic)

Chairman Moyer – “Thanks David, I forgot. I lost my head.”

Luther Smith – “We have not gotten a final report yet from that. At such time that it’s available, Mr. Ball will have it and I assume if you ask him he could provide that information.”

Pat Osteen – “OK. OK and I think – two more things.”

Chairman Moyer – “That’s alright, you go right ahead.”

Pat Osteen – “How many phases and what time span are we looking at on this – uh to do this?”

Luther Smith – “Uh let me clarify, when you say to do this are you talking about this road change we’re doing? OK. Uh this road change is part of the first phase of development. The development is proposed to have three phases so uh – you know road construction has started which I’m sure you’ve seen adjacent to Pinnacle Road. Until we get this issue resolved with the Commissioners, we’re – when we hit this point we’re at a stand still. While we could build what’s approved but we hope to build what they approve if they approve the variance today. So construction will begin on – on this – you know as they move on down – so basically immediately.”

Commissioner Young – “Luther. Can I ask a question?”

Chairman Moyer – “Sure, go ahead.”

Commissioner Young – “Uh you mentioned three phases and I didn’t hear the time frame, maybe I missed it.”

Luther Smith – “Uh the actually – what was approved in phase one in terms of the road system went from Pinnacle all the way down to this point and the development along these lots and this area and a portion of the lots up here. Phase two includes some of these other cul de sac, I don’t know exactly which ones and extending this collector road on down and this development up here. And phase three builds in some of the other little neighborhoods.”

Commissioner Young – “Do you have a time frame for each phase or is it – are they in conjunction with each other. You gonna do part of them... (more than one person talking - ???).”

Luther Smith – “They are sequential. We are preparing now documents to get approval from the county for phase two so we can continue uh and then phase three will follow immediately after that from an approval standpoint. Actual construction standpoint – I’m sure A.J. would like – would like to have any owners – would like to have all of them going at one time because they’ve got commitments on all the lots at one time but obviously they’ll – you know what have you all planned, two year?”

A.J. Ball – “Two year sell out.”

Luther Smith – “Two year sell out so the construction will occur over the next couple of years.”

Chairman Moyer – “Ms Osteen?”

Pat Osteen – “My last question. Um and I don’t know if this pertains particularly just to the road or but its just a concern I think to all of us – is like the zoning – if there’s gonna be any rezoning or anything because of that – like I don’t even read the newspaper, I don’t have time so if its just something in the paper I may not ever even know it – you know if there’s gonna be a hearing on it so.”

Chairman Moyer – “You’re asking whether there’s been any rezoning requests.”

Pat Osteen – “Right because we would like to know that so that we could be present – you know.”

Chairman Moyer – “Luther?”

Luther Smith – “No mam, we are – we are not requesting any rezoning from the Commissioners and have no intention to as far as I know.”

Commissioner McGrady – “This is all open use I believe, right?”

Luther Smith – “That’s correct. It is open use.”

Commissioner Baldwin – “Open season.”

Pat Osteen – “So if it is requested later – is that the only way that the community is notified, is by paper – you know in the newspaper, or?”

Chairman Moyer – “ ... I’ll ask Ms. Smith to respond to that.”

Pat Osteen – “OK”

Karen Smith – “In the case of a rezoning application, we notify all owners of property that adjoin the area that’s subject to the rezoning. It’s not a certified mail but it’s a first class mail.”

Pat Osteen – “OK, thank you.”

Chairman Moyer – “Thank you. Next on my list is Vera Pace. Do you have any questions you’d like to ask? This is just questions now, not statements at this time.”

Vera Pace – “Well when they’re building that road, re-doing that road I just wonder if they got barriers to keep the silt off of my property and out of Cabin Creek?”

Chairman Moyer – “Alright.”

Luther Smith – “Yes mam, we had to file an erosion control plan with the state and they’ve approved that plan and at any point in time during their inspections if they find there’s a violation that has to be dealt

with and it could be even a financial penalty. So yes, we do have a plan for that – the whole piece of property, not just this one section of road. And again, that’s very important to us to try and not get anything in the creek up there.”

Chairman Moyer – “Ms. Pace, do you have any other questions now?”

Vera Pace – “No.”

Chairman Moyer – “OK. Mr. Ponder?”

Bill Ponder – “Well everything that I have talked to Mr. Ball and I’ve known Luther. It seems to me that uh they found out what we’ve known all along and uh everything I have dealt with them, they have been in good faith and forthright and uh and I have seen no uh intention to pull the wool over anybody’s eyes if that’s a concern to anybody. At least in the way I see things so uh I see them making very very good effort to be good neighbors so I don’t see a problem, at least on our side of the – of the road.”

Chairman Moyer – “OK, thank you Mr. Ponder. Mr. Bell, do you have any questions.”

John Bell – “I have no questions.”

Chairman Moyer – “You’ll have a chance to make a statement later if you like so we’ll. Karen, do you, I’m sorry Ms. Smith, do you have any questions?”

Karen Smith – “I don’t have any.”

Chairman Moyer – “Alright. We’ll now move to staff’s evidence, Ms. Smith.”

Karen Smith – “Uh just for the record, I wanted to go ahead and enter the packet that the Board has into the record for the hearing and that packet, of course, has the application materials. I did want to note that with regard to attachment 11 which are the minutes from the Planning Board’s March 15 meeting, those meetings (minutes) were in draft form. The Planning Board did approve those minutes at it’s meeting last night. We do have some photographs. I don’t know if they are necessary to enter into the record but we have them if the Board wants to see them. Um it’s kinda hard on a road of this length and that sort of thing to give you a good idea without going out there of what kind of issues we’re talking about but we do have a few. Um as I mentioned in my opening comments, the Planning Board did approve the development plan for phase I on February 15 and as Mr. Smith said and as the application materials show, that plan shows the road designed for Pinnacle Falls Lane that can meet the Henderson County Subdivision Ordinance without the variances being granted. At the same meeting, I mentioned that they presented the alternate road plan and the variance request and the Planning Board decided to send that request to a subcommittee. They do that when they need or want to have a little bit more in-depth conversation and site visits and that sort of thing. The subdivision issues subcommittee scheduled a meeting to go out and do a site visit; however, they didn’t have a quorum. The members of the subcommittee that were present as well as staff, Matt Card and myself and Wally Hollis, the Deputy Fire Marshal participated in that site visit and during that visit I had asked Mr. Smith to clarify in the request whether or not the entire 3900 linear feet portion was going to need the variances for all three items and that he mentioned to you or clarified for you here today and in the narrative that’s in the packet that is for road grade. It’s some seg – excuse me that wouldn’t be any greater than 400 feet. During that site visit we learned that the developer may obtain a small parcel that’s adjacent to the property that contains a pond that could be used for fire protection. Wally Hollis, the Deputy Fire Marshal, provided you with

some comments. He attended the site visit as I said and commented that he and the Fire Chief from the Green River Fire & Rescue Department were in agreement with the alternate road plan and variance application. They felt that the 18% grade increase would not affect emergency vehicles from accessing the subdivision and that the reduction in the travel distance and sharp curves improves the plan. The Planning Board heard the application again on March 15, 2005. They heard the report from the two members of the subcommittee who had made the site visit and after some discussion about the merits of the application, the Planning Board voted to send the Commissioners a favorable recommendation on granting the three variances as requested. The Planning Board stated that strict compliance with the Henderson County Subdivision Ordinance will not only require additional length of road and disturbance of the project site but will also create greater difficulty for emergency vehicles to respond to emergencies because they would be farther from a water source and they would need to fight fires – that they would need excuse me. They would be further from the water source they would need to fight fires within the project. The Planning Board's action is shown in the minutes. They are included in your packet. As far as staff comments, I mentioned to your earlier the paragraph in the subdivision ordinance that deals with subdivision variances and that language deviates a little bit from what you see in the application as the test for a variance to be. And the Subdivision Ordinance appears to give you a little more flexibility in terms of a subdivision ordinance variance compared to say a zoning variance. That – it is only that language I would think that would give this Board any ability to grant the variances if the case – the applicant can make the sufficient. Um if that language was not present, I don't think the applicant has shown that they can meet the test because they are able to construct the project according to the standards. That's really all we have to offer at this point."

Commissioner Baldwin – "I've got a question."

Karen Smith – "Sure."

Chairman Moyer – "Mr. Baldwin."

Commissioner Baldwin – "Karen, for the – you said the language that was in the variance reflects the type of language you would normally find in a – a variance that would go say before the Board of Adjustment and in the Subdivision Ordinance the language is different?"

Karen Smith – "The Subdivision Ordinance has just that very short paragraph and it does not go into the same level of – of strict test that you might find for a zoning variance, particularly it gives you a little bit more flexibility in taking into account the impact on the property itself, the environment, and that sort of thing in spite of what might be the ability for the applicant to meet the standards."

Commissioner Baldwin – "So is it a clerical – is it a clerical oversight that the application doesn't reflect – the language doesn't reflect what's in the subdivision regulations?"

Karen Smith – "I don't know. We've had that application form as long as we've had the ordinance. I – it's something though that we discussed with the Planning Board that we need to take a look at."

Commissioner McGrady – "My impression to follow up is uh that uh while the letter from the Fire Marshal uh states that it won't hinder access uh and uh that in fact they believe that this – the – the roadway construction for the variance is preferable to the roadway construction without the variance, in terms of just the Fire Marshal's perspective, is that fair?"

Karen Smith – "That's fair, uh huh."

Commissioner McGrady – “OK.”

Chairman Moyer – “Any other questions for Ms. Smith at this time? I’m gonna give each of the parties the same opportunity they had, starting with the applicant. Luther or Mr. – Jim do you have any? No questions for Karen? Alright Ms. Osteen, do you have any questions for Ms. Smith. Mrs. Pace? OK. Mr. Ponder? And Mr. Bell, do you have any questions, OK. We will – thank you. We will then move into statements by the other parties. This is your chance to make – give evidence, if you will. I’ll let you – give you some flexibility with respect to making a statement if you want. Mr. Ponder has already made a statement for the record. I’ll start again with uh Ms. Osteen do you wish to make a statement? OK. Technically it’s called evidence but.”

Pat Osteen – “OK, well in private I did ask Mr. Ball if he would get me a copy of uh the uh environmental – the – for the plant species and everything uh because I think that is very important, not only just to us the people that live there but to all of Henderson County. So I would like to make sure that I get that and to make sure that – you know – that – that the County follows up- you know – on that to make sure that all that is protected because, like I said, I don’t think some of that stuff is found anywhere else in Henderson County so it’s real important to everybody. Thank you.”

Chairman Moyer – “Very good. Thank you. Ms. Pace, do you wish to make a further statement.”

Vera Pace – “No”

Chairman Moyer – “OK. Mr. Ponder, you’ve already made your statement, OK. Mr. Bell, this is your opportunity to make – provide evidence.”

John Bell – “Uh I grew up on that.”

Chairman Moyer – “State your name please.”

John Bell – “My name is John Bell. Thank you. I grew up on that property or a few hundred yards from there and am very familiar with it. As a matter of fact I rode on the bulldozer that cut that road when my Father built it, or at least improved it and widened it from a, basically a trail. The – the – the spirit of the subdivision ordinance in Henderson County is – is really a great program. There’s no question that we have wonderful subdivisions because of it. Crooked Creek is a good example. It’s a beautiful subdivision. There are some areas in this county that just don’t lend themselves to a – to a perfect world and I think Luther and Mr. Ball have tried to adapt this program to that area to create the least impact for the – the property itself, the environment, and the community and I would like to commend them for doing that and also the Planning Board for – for having the process where all of this gets aired out and understood by all. And it’s – respectfully I would request that the Board of Commission honor the request for the – for the uh variance. Thank you.”

Chairman Moyer – “Please stay there and I’m gonna give the – all the parties have a chance to ask you now any questions. The applicant any questions? Run down then – Ms. Osteen? Ms. Pace? Mr. Ponder? Obviously John, I’m not going to let you ask yourself any questions so thank you very much. This is your chance, the parties chance to give rebuttal evidence. I’m presuming that based the way the record went, there’s no need for rebuttal evidence from anybody. Is there anyone, starting with the applicant that would like to make any closing remarks?”

A.J. Ball – “Uh I would just like to say that – that we’re very excited about the opportunity to uh put a quality development there in this part of the county. We are very sensitive to the uh – the uh topography there, the environment there. Our intent is to do a very low density development, do that in a quality fashion so that we have the least amount of impact on the environment there as possible while providing folks coming to Henderson County an opportunity to share in the beauty and natural environment that we have here – enjoy that. We intend to protect it fully. We intend to comply with the erosion and control standards that uh – that uh our application says that we must, uh and we think that the variance will enable us to do that in a much more efficient and effective manner than the original subdivision ordinance standard so we feel the variance is a much more – much less impactful standard than what the subdivision ordinance requires at this point. So we’re excited about it. I think it’s gonna be a great development.”

Chairman Moyer – “Thank you, Mr. Ball. Does staff wish to make any closing comments?”

Karen Smith – “No sir.”

Chairman Moyer – “Do any of the other parties wish to make a closing statement? OK, fine.”

Commissioner McGrady – “I move we go out of public hearing.”

Chairman Moyer – “Do you want to do that or do you want us to have our deliberation as part of the?”

Russ Burrell – “Due deliberation.”

Commissioner McGrady – “Due deliberation in? OK.”

Commissioner Baldwin – “And I’ve got some additional questions.”

Chairman Moyer – “Oh you have further. Shannon.”

Commissioner Baldwin – “Sure, the applicant, Mr. Smith or his agent. The applicant’s agent, Mr. Smith.”

Chairman Moyer – “Alright.”

Commissioner Baldwin – “The uh – we’ve got a section. This comes from section 170-48 from the subdivision regulations with respect to variances and we have a statement here that reads ‘in determining an undue hardship the Board shall consider unique conditions peculiar to the site and design flexibility to preserve and protect the site’s natural features. What – could you just bullet for me what you consider the natural features to be. I’ve heard em but I just wanta make sure they’re stated together so we can get em in the record.’”

Luther Smith – “Uh in terms of the whole piece of property or just this specific area?”

Commissioner Baldwin – “That specific area.”

Luther Smith – “Uh that specific area or immediately adjacent to it – we have existing high quality streams that we feel this will help us minimize impact on those – on that water. Plant communities – various different types. Uh the amount of disturbance uh on the side of the escarpment as well due to the slope, trying to minimize just the disturbed area which translates into less effort from an erosion control

standpoint to protect the streams and everything uh downhill from it uh and the vege – general vegetation, tree canopy and everything else by reducing the impact area uh it will allow more of the tree canopy to stay in place.”

Commissioner Baldwin – “And you said the growth has been there for about 80 years? Did I hear you say?”

Luther Smith – “Yeah, it appear to me that the majority of the – majority of the forest, I’m sure Mr. Bell knows since he’s more – more aware of it but it looks like most of it is – is at least 80 year forest.”

Commissioner Baldwin – “The wetlands area that you mentioned uh is it within the black box or adjacent to the black box?”

Luther Smith – “Uh no, no it occurs in other places throughout the property though.”

Commissioner Baldwin – “So this road would not have an impact on the wetlands area or it would?”

Luther Smith – “Well the only place it has a direct impact is – is one stream crossing. You know the stream itself essentially becomes a wetlands area but that’s the only – only place within that uh – the original 3900 feet or the proposed 3400 feet that it impacts, directly impacts a stream or a wetland area.”

Commissioner Baldwin – “OK, so – so there’s another section of the road under which the stream must pass that actually affects wetlands? Did I hear that correctly?”

Luther Smith – “Well, no. In terms of general wetlands, setting streams aside.”

Commissioner Baldwin – “OK”

Luther Smith – “General wetlands are scattered throughout the property, most of them are down in the lower valley area, off-stream and so forth. Now we have – through the property we have a number of stream crossings. By law each stream crossing is an impact to wetlands.”

Commissioner Baldwin – “OK”

Luther Smith – “OK so we have in this section of road we have one stream crossing so we are in fact impacting the – that section of the stream which is classified basically as wetlands. Does that?”

Commissioner Baldwin – “OK and so what uh just – just for the record again what measures are you taking to – to ensure that the streams maintain the high quality designation? Is that high quality waters designated by the state?”

Luther Smith – “No, it’s not designated as high quality waters. It’s just trout waters and uh but it doesn’t have the heritage or high quality designation.”

Commissioner Baldwin – “So it is designated trout water? “

Luther Smith – “Yes, it is designated trout water.”

Commissioner Baldwin – “OK so.”

Luther Smith – “The one specific crossing within the – the area of impact, the road we’re talking about here actually that crossing will be a – in a sense a bridged crossing or there – there will not be a culvert sitting in the stream. We’ll be going from high ground to high ground so from the standpoint of actual impact to that section of stream, there will be none.”

Commissioner Baldwin – “OK, so just – just to get it in the record, what are you doing to – to protect the trout waters?”

Luther Smith – “Uh, trying to minimize the impact uh when we cross the waters but the principle protection is to just minimize the amount of disturbed area on the property to reduce the potential of – of impact from erosion or stormwater uh influencing the waters on the property.”

Commissioner Baldwin – “OK so – so securing this variance you’ll minimize disturbance which will have a positive impact on the uh trout waters?”

Luther Smith – “Yes reducing – minimizing the disturbance will have a positive”

Commissioner Baldwin – “Or less – less of an impact.”

Luther Smith – “Well, yeah. Let’s say it will reduce the negative impact.”

Chairman Moyer – “You stated earlier how much less road you’d have to build if you What again was that?”

Luther Smith – “Uh about 500 feet less road.”

Chairman Moyer – “Yeah so there’s obviously less disturbance.”

Luther Smith – “Bill, which translates into at least 5 acres of land area that’s undisturbed.”

Commissioner Baldwin – “OK now back on the plant community that you described, the vegetation. Uh what – what’s being done to insure a continual flow of water on the rock outcroppings that you?”

Luther Smith – “Now again that – that areas above – is not included or as part of this application or the area included in the variance. I was using that as an example in terms of talking so its – its above this but in that instance where building a road base under the – the pavement that allows the water to continue to move laterally through the soil so that it – it provides the required moisture to the surface of the rock.”

Commissioner Baldwin – “But that’s not really related to this specific request?”

Luther Smith – “That’s not in this section.”

Commissioner Baldwin – “OK, what about – what about the uh – the – I wouldn’t call it old growth but the 80 years worth of growth. How does this – how does this request uh lessen the impact on the growth in that area?”

Luther Smith – “Well again it reduces the – the area that we have to do grading and so forth in so it – you know reduces the amount of clearing that has to occur of the existing old growth forest or established forest, we shouldn’t call it old growth uh simply by reducing the disturbed area.”

Commissioner Baldwin – “Are there any other uh positive impacts uh on the environment because of this variance that you requested, that you can think of? We’ve got land disturbance and we’ve got grade and uh a uh.”

Luther Smith – “Again I think – you know – the biggest long term impact is gonna be reduction of negative impacts on the stream system because everything eventually gets down to the stream system so if we reduce the impact area uh – you know – then uh eventually – reduce – you reduce the amount of road, you reduce the increase in storm water that occurs with – with that additional impervious surface and so forth so the bottom line impact is – is in terms of maintaining the quality of the stream.”

Commissioner Baldwin – “OK. I had a question for Karen right quick. Karen, the stream that he’s referred to as a trout stream, is this designated by the state?”

Karen Smith – “Cabin creek. It is, uh huh.”

Commissioner Baldwin – “OK. And what is the official – is it class C – what’s – do you know what the designation is?”

Karen Smith – “I can’t remember if it’s class B or C trout, I don’t know.”

Commissioner Baldwin – “OK.”

Karen Smith – “We may have something in the file if you want to give us a moment.”

Commissioner Baldwin – “That’s OK. Thank you.”

Chairman Moyer – “I’d ask the – the parties. Has any of the additional questioning given rise to any additional statements or any questions anybody would like to ask? OK. We as a Board can either vote today and direct staff to bring back findings of fact and conclusions consistent with the decision and the Board’s discussion or we can continue our discussion and decision until our May 2 meeting. I remind the Board that under our rules we must issue a written decision within 45 days of the conclusion of this hearing. So I’ll open it for Board discussion.”

Commissioner McGrady – “Mr. Chairman, I uh – I support the uh variance request uh the three technical variances uh requested by the applicant here. I think we can make a finding of undue hardship uh based on strict compliance with uh the ordinance. I think there’s been a showing of – of the unique physical characteristics of the land and I think if we uh follow the responses to most of the questions that Commissioner Baldwin has just now posed, we can find based on the condition – there are conditions peculiar to the site and underlying and that there needs to be additional flexibility here to preserve and protect the site’s natural features. Um I – I think I would just that I’m appreciative of the applicant’s handling of this matter. I would state while I’m not an adjoining land owner I guess I’m in the view shed uh if the trees weren’t in the way um and I appreciate the spirit of the proposal that’s being put forward so I would again, subject to discussion, I would like to see us direct staff to bring back findings of fact and conclusions and in order form uh consistent with the granting of variance in this situation, following the recommendation of the Planning Board in this case.”

Chairman Moyer – “And that was in the form of a motion?”

Commissioner McGrady – *“I will make it if you want it now in advance, I’ll put it in the form of a motion if that’s OK.”*

Chairman Moyer – “I would say that with respect to this variance language that we have discussed, probably three of us here, probably myself, Commissioner McGrady and I know Karen was involved when we did the subdivision ordinance and this is the kind of flexibility and – and preservation or unique natural features that we – exactly what we intended and that’s why it has this broader feature because we certainly recognize and have experienced and there’s further work to do but when you start cutting roads in the sides of mountains you can do a lot of damage and destroy a lot of stuff and we started with state standards of wanting 60 – 80 feet wide roads with shoulders and – and you know we just wreck a lot of the beauty we have so I support the variance also. I think it’s the kind of thing we intended to do. I strongly am in support of them protecting natural environment to the extent they can and I think we do have the flexibility to grant the variance which will help the natural features of this land. Commissioner Young?”

Commissioner Young – “I agree with what you and Commissioner McGrady have said on this. It’s not too often we have developers come in and want to protect the environment uh as well as these people are and uh I – I support the variance.”

Chairman Moyer – “Commissioner Young. Commissioner Baldwin, do you want to?”

Commissioner Baldwin – “Well I – I think uh it – that long series of questions was meant to pull some things out that I sensed, based on the presentation of the application was that we have the authority to grant a variance under section 170-48 of the uh Subdivision Ordinance and uh in some of the things that have already been said uh was what I was hoping to pull out in that uh the unique conditions, the need for flexibility in design are there to help us find a way to preserve and protect the site’s natural features and I think that in order to be good stewards of the environment, I think we’ve given ourselves an opportunity to do just that. So I think there’s enough here to – to warrant a variance based on the issues that have been stated with respect to the application. Uh I would just like to clarify for Russ when you draft the language in that it seems to me the language has to come from 170-48 rather the language that’s on the application. And it’s very important that we – we uh – we uh do that.”

Chairman Moyer – “Alright, Commissioner Messer.”

Commissioner Messer – “Well I too agree with everything that’s been said about the variance and it just goes to show you that we have high quality people, developers in Henderson County like Mr. Ball and his investors that’s willing to go out and go far and beyond and into – you know – I just think it’s great that we have those type of people working in Henderson County.”

Commissioner McGrady – “Alright Russ and Mr. Chairman, the only other thing I’d add is in putting together the – the findings of fact, the other key finding I think is the issue relating to the uh emergency service piece. Um because it was very clear to me and Karen stated – restated it that the Fire Marshal and uh the Fire Chiefs that uh looked at this all were of the opinion in fact that this design was preferable in the terms of public safety to the design that might have occurred if we simply ritualistically followed the uh ordinance and I think that’s another critical fact, putting aside the natural features.”

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Chairman Moyer – “Alright, there’s a motion on the floor to grant the three variances and that we direct that findings of fact and conclusions be drawn consistent with that decision. Vote on the motion. All in favor say ‘aye’.”

In unison - “Aye”

Chairman Moyer – “Opposed? Alright it passes unanimously.”

Commissioner McGrady – “*I move we go out of public hearing.*”

Chairman Moyer – “All in favor say ‘aye’.”

In unison – “Aye.”

IMPORTANT DATES

Chairman Moyer stated that at the next meeting he’d like the Board to approve the Budget dates.

David Nicholson reminded the Board that on May 25 is the NCACC Legislative meeting in Raleigh.

ADJOURN

Commissioner Messer made the motion to adjourn the meeting. All voted in favor and the motion carried.

CANE CREEK WATER & SEWER DISTRICT – no business

CLOSED SESSION – none

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman